

Sheila Evans  
Quality and Regulation  
Area 601 Richmond House  
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London  
SW1A 2NS

5 September 2013

Dear Ms Evans,

## Strengthening corporate accountability in health and social care consultation

I am pleased to enclose the response of the Institute of Chartered Secretaries and Administrators (ICSA) to the above consultation document.

### About ICSA

ICSA is the professional body qualifying and supporting governance and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enable them to add value to any organisation.

As a leading authority in corporate governance, ICSA, and its Members, are well placed to provide input on the proposals for strengthening corporate accountability in health and social care given the range and breadth of their practical experience and understanding of the issues pertaining to board assurance, corporate governance and accountability. The response below has been developed in partnership with Members and non-members working within the NHS and those providing services to the NHS, advising decision-makers and ensuring governance arrangements are robust and appropriate.

### Specific questions

#### **Q1: Do you have any evidence about the likely costs and benefits of these proposals?**

When implementing proposals regarding the suitability of individuals acting as directors or trustees of organisations delivering services as part of, or on behalf of, the NHS due consideration should be given to existing arrangements to ensure those controlling organisations meet relevant eligibility requirements. Where existing requirements can be used to provide assurance on the suitability of individuals, these should be incorporated into the proposed framework to avoid undue bureaucracy.

#### **Q2: How should we define which positions the new requirements apply to? Should only directors of boards be required to be fit and proper persons or are there other principal officers who might not be part of the board to whom this test should also apply?**

The proposed test should apply to those that are responsible for setting the direction and controlling the organisation. Depending on the type of organisation this could involve a mix of paid executive, and non-executive directors, voluntary trustees, or committee of members delegated with the power to make such decisions. As such, the individuals likely to fall within

the test are board/governing body/executive or management committee members and the senior management team. It should be noted that the senior management team may not be members of the decision-making body, but will be tasked with ensuring the implementation of those decisions and actions.

**Q3. What considerations should be taken into account in applying the fit and proper persons test? Do you agree this should include the concerns mentioned or are there other concerns that need to be addressed?**

When defining the fit and proper persons test mechanisms should be included to not deliberately exclude those individuals that suffer from long term medical conditions who may struggle to meet a high standard of competence or capability all of the time. For instance, an organisation working with people living with mental health challenges may wish to have user representatives on their board. As such, their condition may mean that there are episodes in which an individual may fail the test. The experiences of such individuals however may be important in ensuring the services provided are of appropriate quality and efficacy. In these circumstances it might be appropriate to adopt a collective approach to the test to ensure the board, or other decision-making entity, together meet the fit and proper persons test.

Where CQC seeks to remove a director for failure to meet the fit and proper persons test, there should be a swift and straightforward process for appealing such decisions before sanctions are enforced.

**Q4. Do the proposed introduction of fundamental standards and a new fit and proper person test, together with existing legislation, set an adequate framework for holding providers to account for unsafe care? If not, what other measures are required?**

Consideration should be given to ensuring the collective framework does not unduly prevent or prohibit interested people from coming forward to serve on the boards of such providers. There needs to be a balance between ensuring that directors and executives act appropriately to ensure safe and quality care, without having to set remuneration at disproportionately high levels because of the personal risks involved.

Should you require any further clarification regarding any aspect of ICOSA's response, please do not hesitate to contact me directly.

Yours sincerely,

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