

Fit and proper persons

Guidance and declaration

Authors: Governance Assistant, Office of the Vice-Chancellor

Publication date: 1 August 2022

Version: 1.0

Table of Contents

[Fit and Proper guidance 1](#_Toc124243729)

[1. Introduction 1](#_Toc124243730)

[2. Why is there a ‘Fit and Proper Persons’ test? 1](#_Toc124243731)

[3. What does ‘Fit and Proper’ mean? 1](#_Toc124243732)

[4. What do I need to do? 2](#_Toc124243733)

[5. I’ve signed the declaration, so what happens next? 2](#_Toc124243734)

[a. Prospective applicants 2](#_Toc124243735)

[b. Successful applicants and continuing members of Council 2](#_Toc124243736)

[Declaration 4](#_Toc124243737)

[6. Additional information 7](#_Toc124243738)

## Fit and Proper guidance

### Introduction

As a charity, and as part of the University’s initial and continued registration with the Office for Students (OfS), members of our governing body are required to confirm that they are what is known as ‘fit and proper persons’, in line with the Public Interest Governance Principles contained within the OfS’s regulatory framework[[1]](#footnote-1), and with the University’s legal obligations. We therefore ask prospective and current members of Council and its committees to complete and return a ‘fit and proper persons’ declaration form as part of our pre-appointment process, and thereafter annually, and to notify us if their circumstances change in-year. The form can be found below.

### Why is there a ‘Fit and Proper Persons’ test?

The fit and proper persons test exists to ensure that our management arrangements do not present a risk to students or to public funds, and enables us to demonstrate to the OfS that we are meeting a key condition of our initial and ongoing registration.

### What does ‘Fit and Proper’ mean?

An individual is 'a fit and proper person' if they ensure, or are likely to ensure, that the University’s funds are used in support of our charitable objectives[[2]](#footnote-2) and for the purposes for which they were given[[3]](#footnote-3). It also means that the person[[4]](#footnote-4) is of good character, has the qualifications, competence, skills and experience necessary for their role, is able by reason of their health, after reasonable adjustments are made, to perform properly the tasks of the office or position for which they were appointed, and has not been responsible for, been privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in their employment or in the conduct of any entity with which they are or have been associated.[[5]](#footnote-5)

### What do I need to do?

Completed forms must be received electronically by the published deadline via the [Box Upload link](https://essexuniversity.box.com/s/kqjg5xrl102ly8uofwe1t4zrcx5szycn). Please email [elections@essex.ac.uk](mailto:elections@essex.ac.uk) to confirm your submission has been uploaded.

If you wish or need to provide any additional information as part of your declaration, please do so in the space provided at the end of the form, specifying the element(s) of the declaration to which your additional information relates.

In signing the declaration, you are confirming that you will act to ensure that University funds will be used appropriately in support of our charitable objectives and for the purposes for which they were given, and that you have disclosed all relevant information to enable consideration to be given to your status as ‘a fit and proper person'. You are also consenting to the University submitting your declaration (on request), to the Office for Students as evidence that you are a fit and proper person.

### I’ve signed the declaration, so what happens next?

#### Prospective applicants

If you are completing the declaration as part of the University’s pre-appointment processes for joining Council or a committee of Council, the document will be considered alongside other supporting documentation. It will be provided to the Nominations Committee, or its appointed representatives, in support of your application.

Declarations made by individuals who do not progress to appointment to Council will be retained for a period of two years following the completion of the application process.

#### Successful applicants and continuing members of Council

If you are successful in appointment to Council, or are completing the declaration as an existing member of Council, declarations will be retained by the Governance Office until the term of your appointment to Council ends and for a subsequent seven years.

It may be necessary for the University to submit your signed declaration to the OfS, as evidence that our trustees have been deemed ‘fit and proper persons’. The OfS will hold and process your information as part of its regulation of the University as an English Higher Education Institution.

A declaration form will be issued to you annually to complete and return. Should your circumstances change mid-year, you should inform the Chair of Council and the Registrar and Secretary at the earliest opportunity.

Declarations will not be disclosed outside of the Governance Office, OfS, other relevant University persons, External Auditors or otherwise as required by law.

## Declaration

I, the undersigned, declare that:

* I am a person of good character as defined by the Office for Students[[6]](#footnote-6).
* I have the qualifications, competence, skills and experience necessary to perform the role.
* I am able by reason of health, after reasonable adjustments are made, to perform properly the tasks of the office or position for appointment/appointment to.
* I have not been responsible for, been privy to, contributed to, or facilitated any serious misconduct or misalignment (whether unlawful or not) in my employment or in the conduct of any entity with which I am or have been associated.
* I am not disqualified from acting as a company director or charity trustee, as set out in the [Company Directors Disqualification Act 1986](https://www.legislation.gov.uk/ukpga/1986/46/contents) or the [Charities Act 2011](https://www.legislation.gov.uk/ukpga/2011/25/contents), respectively.
* I have not been removed from serving as a charity trustee, been stopped from acting in a management position within a charity, or dismissed from a position of trust or similar.
* I have not been convicted of a criminal offence either in the UK or abroad, or any such conviction is legally regarded as spent[[7]](#footnote-7).
* I have not been subject to any adverse findings in civil proceedings, in the last three years.
* I have not been subject to any adverse findings in any disciplinary proceedings by any regulatory authorities or professional bodies.
* I have not been involved with a higher education provider that has had its registration refused or revoked by the Office for Students or has had similar action taken against it by another regulator (this includes, but is not limited to, serving on a board/governing body, having voting rights, being a significant shareholder/owner, serving in a senior position, etc.)
* I have had no involvement with any entity that has been refused registration to carry out a trade or has had that registration terminated.
* I have not been connected with any business that has gone into insolvency, liquidation or administration, or been associated with that business within a year of it going into insolvency, liquidation or administration.
* I am not an undischarged bankrupt person and I have not made compositions or arrangements with my creditors from which I have not been discharged.
* I have not been involved in fraudulent behaviour including misrepresentation and/or identity theft, tax fraud or the abuse of tax systems, including:
* I have not used arrangements notified under the [Disclosure of Tax Avoidance Schemes](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/179265/disclosure_of_tax_avoidance_schemes.pdf.pdf) (‘DOTAS’) rules in Part 7 Finance Act 2004 in respect of which a reference number has been issued under [section 311 of Finance Act 2004](http://www.legislation.gov.uk/ukpga/2004/12/section/311), where the arrangements featured charitable reliefs or which used a charity, and where my tax position has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final.
* I have not used tax arrangements which have been successfully counteracted under the general anti-abuse rules (see [Part 5 of Finance Act 2013](http://www.legislation.gov.uk/ukpga/2013/29/part/5/enacted) or [section 10 National Insurance Contributions Act 2014](http://www.legislation.gov.uk/ukpga/2014/7/section/10/enacted), as enacted or as amended from time to time) where such counteraction has become final.
* I have not been actively involved in designing and/or promoting tax avoidance schemes featuring charitable reliefs or which used a charity, and I am not:
  + a promoter[[8]](#footnote-8) named by HMRC under the [Promoters of Tax Avoidance Schemes](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454865/POTAS.pdf) (POTAS) legislation in Part 5 of Finance Act 2014, or
  + a promoter of any tax arrangements designed or intended to obtain for any person a tax advantage and such tax advantage has successfully counteracted by HMRC under the general anti-abuse rule (see Part 5 of Finance Act 2013 and section 10 National Insurance Contributions Act 2014 as enacted or as amended from time to time) and such counteraction has become final, or
  + a promoter of arrangements notified under DOTAS, in respect of which a reference number has been issued under section 311 of Finance Act 2004, and the tax position of all or any of the users of the arrangements has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final
* I consent to the University of Essex sharing my declaration with the Office for Students, as evidence that I am a fit and proper person. I understand that the Office for Students will hold and process my data as part of their regulation of the University[[9]](#footnote-9).

### Additional information

If you need to disclose any information relating to your declaration, please use the space below. Please ensure that it is clear which element(s) of the declaration your additional information relates to.

Signed[[10]](#footnote-10) …………………………………………

Name ……………………………………………

Date ………………………………………….

Updated: 1 December 2022

1. <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/public-interest-governance-principles/> [↑](#footnote-ref-1)
2. [Based on the guidance from the Charity Commission](https://www.gov.uk/government/publications/example-charitable-objects) [↑](#footnote-ref-2)
3. <https://www.essex.ac.uk/governance-and-strategy/governance/council> [↑](#footnote-ref-3)
4. Defined by the Office for Students, <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/public-interest-governance-principles/> (Feb 2022) [↑](#footnote-ref-4)
5. <https://www.officeforstudents.org.uk/media/1231efe3-e050-47b2-8e63-c6d99d95144f/regulatory_framework_2022.pdf> (.pdf) [↑](#footnote-ref-5)
6. Defined by the Office for Students, <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/public-interest-governance-principles/> (Feb 2022) [↑](#footnote-ref-6)
7. Information on [what counts as a spent conviction in England and Wales](https://www.gov.uk/exoffenders-and-employment), in accordance with the [Rehabilitation of Offenders Act 1974](https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974), is available online. There are different rehabilitation periods (from the end of sentence) in [Scotland](https://www.gov.scot/publications/disclosure-periods-previous-convictions-alternatives-prosecution-scotland-under-rehabilitation-offenders-act-1974/) and [Northern Ireland](https://www.nibusinessinfo.co.uk/content/employing-someone-criminal-record), and it may be different again if the conviction was obtained abroad.

   [↑](#footnote-ref-7)
8. The meaning of ‘promoter’ in this context is explained in the [Promotors of Tax Avoidance Schemes Guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454865/POTAS.pdf). [↑](#footnote-ref-8)
9. The Office for Students’ [OfS Privacy page](https://www.officeforstudents.org.uk/ofs-privacy/) provides full details regarding the use of personal information to fulfil its statutory functions and duties. [↑](#footnote-ref-9)
10. Electronic signatures are preferred. Where an electronic signature is not possible, a separate original email confirmation will be accepted. [↑](#footnote-ref-10)