Fit and proper persons guidance

2021-22

Authors: Governance Assistant, Office of the Vice-Chancellor
Publication date: 1 August 2021
Version: 2.0
# Table of Contents

<table>
<thead>
<tr>
<th>Fit and Proper guidance</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declaration</td>
<td>3</td>
</tr>
<tr>
<td>Additional information</td>
<td>5</td>
</tr>
</tbody>
</table>
Fit and Proper guidance

1. INTRODUCTION

As a charity, and as part of our initial and continued registration with the Office for Students (OfS), we are required to demonstrate that members of our governing body are ‘fit and proper persons’. This is because our trustees are able to determine how a significant proportion of the University’s funds are spent. We therefore ask each member of Council to complete and return a ‘fit and proper persons’ declaration form annually, and to notify us if their circumstances change mid-year. The form can be found below.

2. 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.

3. 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 objectives1 and for the purposes for which they were given2. It also means that the person3 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 properly perform 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 misalignment (whether unlawful or not) in their employment or in the conduct of any entity with which they are or have been associated.

4. WHAT DO I NEED TO DO?

Once you have signed the declaration below, you should return it to the Governance Office, governance@essex.ac.uk. If you wish or need to provide any additional information as part of your declaration, there is a space at the end of the form – you should specify to which element(s) of the declaration your additional information relates.

In signing the declaration you are confirming that you will ensure that funds will be used appropriately in support of our charitable objectives and for the purposes for which they were given, and you are disclosing certain information about your past that may impact on whether or not you are considered to be ‘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.

If you need to disclose information in support of your declaration, this will not necessarily exclude you from continuing as a member of Council. However, we are required to disclose this to the OfS and provide evidence that we have investigated and considered the appropriateness of your behaviour and that of any associated companies.

---

1 Based on the guidance from the Charity Commission
2 A former condition of funding from HEFCE, the previous sector regulator
The investigation will be conducted by Nominations Committee, the body responsible for making recommendations to Council on the appointment of External and Appointed members of Council.

5. I’VE SIGNED THE DECLARATION SO WHAT HAPPENS NEXT?

It may be necessary for the University to submit your signed declaration to the Office for Students, as evidence that our trustees have been deemed ‘fit and proper persons’; they will hold and process your information as part of their 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 Secretary at the earliest opportunity.

Declarations will be retained by the Governance Office until the term of your appointment to Council ends and for a subsequent seven years. Declarations will not be disclosed outside of the Governance Office, Office for Students, other relevant University persons, External Auditors or otherwise as required by law.
Declaration

I, the undersigned, declare that:

- I am not disqualified from acting as a company director or charity trustee, as set out in the Company Directors Disqualification Act 1986 or the Charities Act 2011, 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.

- 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 ('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, where the arrangements featured charitable

---

4 Information on what counts as a spent conviction in England and Wales, in accordance with the Rehabilitation of Offenders Act 1974, is available online. There are different rehabilitation periods (from the end of sentence) in Scotland and Northern Ireland, and it may be different again if the conviction was obtained abroad.
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 or section 10 National Insurance Contributions Act 2014, 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 named by HMRC under the Promoters of Tax Avoidance Schemes (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.

---

5 The meaning of ‘promoter’ in this context is explained in the Promoters of Tax Avoidance Schemes Guidance.

6 The Office for Students’ OfS Privacy page provides full details regarding the use of personal information to fulfil its statutory functions and duties.
**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  ……………………………………. 

Date  ……………………………………. 

Updated: 10 May 2022