

Board Meeting in Public Tuesday, 26 September 2023

Title of Report	Fit and Proper Persons Regulations Policy	Agenda No.	4.4.2
Nature of Report (tick one)	<input checked="" type="checkbox"/> Official	<input type="checkbox"/> Official Sensitive	
Author(s)	Brenda Thomas, Interim Company Secretary		
Lead Executive	Deborah McKenzie, Chief People Officer Helen Gillan, Director of Quality		
Non-Executive Director Sponsor (if applicable)	Peter Wyman, NHSBT Chair		
Presented for (tick all that applies)	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Assurance	<input type="checkbox"/> Information <input type="checkbox"/> Update	
Purpose of the report and key issues			
<p>NHS England has developed a Fit and Proper Person Test (FPPT) Framework in response to recommendations made by Tom Kark KC in his 2019 review of the FPPT (the Kark Review). This also takes into account the requirements of the Care Quality Commission (CQC) in relation to directors being fit and proper for their roles. The FPPR Framework was published on 2 August 2023 alongside guidance for chairs and for staff on implementation. NHSE expect elements of the framework to be used from 30 September 2023 with full implementation by 31 March 2024.</p> <p>The FPPR Policy has been updated to reflect the published Framework and general administrative tidying up to ensure the sections flow well.</p> <p>The People Committee at its meeting on 6 September 2023 reviewed the policy and subject to adding a paragraph that accountability for ensuring that the NHSBT chair meet the FPPT assessment criteria resides with the Department of Health and Social Care, recommended the policy to the Board for approval. This paragraph has been included in the policy.</p>			
Previously Considered by			
People Committee on 6 September.			
Recommendation	The Board is asked to approve the Fit and Proper Persons Policy, as recommended by the People Committee at its meeting on 6 September 2023.		
Risk(s) identified (Link to Board Assurance Framework Risks)			
BAF Risk 09 - Regulatory compliance. <i>There is a risk that the organisation will become non-compliant with current or emerging regulations which could result in NHSBT being subject to significant regulatory action and/or licences being revoked.</i>			
Strategic Objective(s) this paper relates to: [Click on all that applies]			
<input type="checkbox"/> Collaborate with partners <input checked="" type="checkbox"/> Invest in people and culture <input type="checkbox"/> Drive innovation <input type="checkbox"/> Modernise our operations <input type="checkbox"/> Grow and diversify our donor base			
Appendices:	Fit and Proper Persons Regulations Policy		

Fit and Proper Persons Regulations Policy

1. Background

The Fit and Proper Persons Test (FPPT) was originally introduced in 2014 via Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

NHS England has developed a Fit and Proper Person Test (FPPT) Framework in response to recommendations made by Tom Kark KC in his 2019 review of the FPPT (the Kark Review). This also takes into account the requirements of the Care Quality Commission (CQC) in relation to directors being fit and proper for their roles. The [FPPT Framework](#) was published on 2 August 2023 alongside guidance for chairs and for staff on implementation. NHSE expect elements of the framework to be used from 30 September 2023 with full implementation by 31 March 2024.

The legislation has not changed but the new framework aims to support NHS organisations' compliance with the regulations and makes some changes to the checks and balances that are intended to ensure directors satisfy the regulatory requirements.

2. Summary of the requirements for fit and proper persons

The majority of the requirements echo those that already existed in previous FPPT guidance. Core elements that continue to be assessed are: good character; possessing the qualifications, competence, skills and experience required; and financial soundness. The main changes are around recruitment and levels of assurance received from other NHS organisations for both non-executive directors (NEDs) and executive directors who have served in other NHS organisations.

Board Member References

The framework introduces a new standardised board member reference. These should be created whenever a board member leaves an NHS organisation, regardless of whether they are moving immediately to another NHS role and should be sought by employing NHS organisations when making a job offer. The reference is based on the NHS standard reference template but includes additional questions relevant to the FPPT. The framework also sets out the number and type of references required prior to appointment depending on what type of organisation the individual is moving from.

From 30 September, the board member reference template should be used for all new board appointments, and new references completed and retained locally for any board member leaving after this date.

Electronic Staff Record

The Electronic Staff Record system (ESR) will be used as a central database to hold individual FPPT information for all NHS board members. New data fields will be added to enable this.

Blood and Transplant

There is no public-facing register proposed at this time. While the framework states that the information within ESR is only accessible within the board member's own organisation, individuals within the CQC will also be able to access it to assess compliance during inspection.

Access to these records internally should be limited in accordance with local policy and in compliance with data protection law. This will provide a standard way to record and report compliance internally. Retrospective population of data is not proposed.

A full FPPT against the core elements of the framework should be undertaken whenever new appointments are made, if a board member moves to a new board role in their current organisation, and annually thereafter.

Annual self-attestations by board members to confirm adherence to the regulations will continue.

The full framework should be fully implemented by 31 March 2024.

Quality assurance

The framework states that embedding of the FPPT within NHS organisations will be quality assured by the CQC, NHSE and external/independent review. The CQC will consider the processes in place as part of their well-led reviews and will check evidence as to whether the board members meet the FPPT.

In cases where the CQC has concerns, it will notify the organisation and the individual concerned. The organisation will be expected to detail the steps taken to assure itself of the individual's fitness within ten days. If the CQC remains unsatisfied, they can take further action up to and including regulatory action if there has been a clear breach of regulation.

Appendices

The framework is published alongside eight appendices. These include a board member reference template, self-attestation template, privacy notice for sending to board members, a FPPT checklist and a statement about 'future considerations' for the FPPT framework.

Links have been provided to the relevant appendices referenced within the policy.