

### Employee Policy People Directorate

#### 1. Policy Statement

NHSBT strives to ensure that Board Directors and individuals who perform the functions equivalent to the functions of a board director, are 'fit and proper' for their roles, and accountable with both outstanding personal conduct and professional capabilities to effectively oversee the business of the organisation.

In accordance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the "Regulations"), Executive (including those attending executive and board meetings with decision making authority) and Non-Executive Directors of NHSBT are required to be fit and proper persons as well as the Chief of Staff. In addition, the CQC has issued guidelines (the "Guidelines") which supplement the Regulations.

Following the Kark Review (2019) to strengthen the existing Fit and Proper Person regime, NHS England has established the Fit and Proper Person Test Framework (also known as the 'Framework') to assist NHS organisations in the implementation of the recommendations and to promote the effectiveness of the underlying legal requirements.

#### Purpose and Objectives

This policy sets out how NHSBT will adhere to the Fit and Proper Person Test Framework and the procedures for assessing whether its executive and non-executive directors are compliant with the requirements. The purpose is to strengthen and or reinforce individual accountability and transparency for board members, thereby enhancing the quality of leadership within the NHSBT.

#### Scope

The policy applies to:

- Executive Directors and Non-Executive Directors (NEDs), irrespective of voting rights
- interim (all contractual forms) as well as permanent appointments
- those individuals who are called 'directors' within Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Individuals who by virtue of their profession are members of other professional registers, such as the General Medical Council (GMC) or Nursing and Midwifery Council (NMC), should still also be assessed against this Framework if they are board members.

Where an employee or officer has difficulty in communicating, whether verbally or in writing, arrangements will be put in place as necessary to ensure that the processes to be followed are understood and that the employee is not disadvantaged during the application of this policy.

In line with the Equality Act 2010, NHSBT will make reasonable adjustments to the processes to be followed where not doing so would disadvantage an employee or officer with a disability during the application of this policy and associated processes.

## Postholders with duties

**Chair** –The Chair has ultimate responsibility for ensuring that NHSBT can show evidence that appropriate systems and processes are in place to ensure that all new and existing board members are, and continue to be, fit and proper (that is, the board members meet the requirement of Regulation 5), and that no appointments breach any of the criteria set out in Schedule 4 of the regulations. The systems and processes include (but are not limited to) recruitment, induction, training, development, performance appraisal, governance committees, disciplinary and dismissal processes.

**Company Secretary** – The Company Secretary will monitor compliance with this policy and will be responsible for conducting, on an annual basis, a formal assessment of fitness and properness for each board member and make submissions to DHSC. In addition, they will:

- ensure that Board appointees are of good character by conducting:
  - A search of the Companies House Register to ensure that no board member is disqualified as a director.
  - A search of the Charity Commission's register of removed trustees.
  - A Disclosure and Barring Service (DBS) check in line with their local policy requirements:
  - A check with the relevant professional bodies where appropriate.
- assessing board members in relation to bankruptcy, sequestration, insolvency and arrangements with creditors. This, as a minimum, will include search of the insolvency and bankruptcy register and checks over county court judgement (CCJ) or high court judgement for debt.

**Chief People Officer** - The Chief People Officer will ensure that directors' service contracts will contain appropriate clauses in accordance with this policy and NHSBT has appropriate processes for assessing and checking that the candidate holds the required qualifications and has the competence, skills and experience required.

**All Directors** - All Directors are responsible for making the annual attestations to the Company Secretary.

## Fit and Proper Persons Test Assessment

Regulation 5 recognises that individuals who have authority in NHS organisations that deliver care are responsible for the overall quality and safety of that care. The regulation requirements are that:

- a) the individual is of good character.
- b) the individual has the qualifications, competence, skills and experience that are necessary for the relevant office or position or the work for which they are employed.
- c) the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks that are intrinsic to the office or position for which they are appointed or to the work for which they are employed.

- d) the individual has not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) while carrying out a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity
- e) none of the grounds of unfitness specified in part 1 of Schedule 4 apply to the individual

## Good character

NHSBT will consider the person's honesty, trustworthiness, reliability, integrity, openness (also referred to as transparency), respectfulness and ability to comply with the law and in particular:

- Compliance with the law and legal processes.
- Employment tribunal judgements relevant to the board member's history.
- Settlement agreements relating to dismissal or departure from any healthcare- related service or NHS organisation for any reason other than redundancy.
- A person in whom the NHS organisation, CQC, NHS England, people using services and the wider public can have confidence.
- Adherence to the Nolan Principles of Standards in Public Life.
- The extent to which the board member has been open and honest with the NHS organisation.
- Whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate.
- Whether the person has been involved – as a director, partner or concerned in management – with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession.
- Whether the person has been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.
- Whether the person involved as a director, partner or concerned with management of a company has been investigated, disciplined, censured, suspended, or criticised by a regulatory or professional body, a court or tribunal, whether publicly or privately.
- Any other information that may be relevant, such as an upheld/ongoing or discontinued (including where a board member has left the NHS organisation prior to an investigation being completed):
  - o disciplinary finding
  - o grievance finding against the board member
  - o whistleblowing finding against the board member
  - o finding pursuant to any trust policies or procedures concerning board member behaviour.

The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:

- i. Are not an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged;
- ii. Are not the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;

- iii. Are not a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- iv. Have not made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- v. Are not included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
- vi. Are not prohibited from holding this position by or under any enactment;
- vii. Are not prevented by your health, after reasonable adjustments are made from properly performing tasks which are intrinsic to this position.

The good character requirements referred to above in Regulation 5 are specified in Part 2 of Schedule 4 to the Regulated Activities Regulations, and relate to:

- i. Have not been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence.
- ii. Have not been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.

### **Serious mismanagement or misconduct**

Consideration of good character will also ensure the individual has not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of delivering CQC-regulated activity, in England or equivalent activities elsewhere.

Examples of misconduct and mismanagement that could amount to serious misconduct or mismanagement are in Appendix one. In assessing whether misconduct or mismanagement was 'serious', regard should be had to all the circumstances.

### **Qualifications, competence, skills required and experience**

NHSBT will ensure that job descriptions and person specifications are clear in detailing required skills and relevant qualifications and/or memberships. These will be reviewed to ensure that they are appropriate and tailored for each board role.

### **Financial soundness**

NHSBT will seek appropriate information to assure themselves that board members do not meet any of the elements of the unfit person test set out in Schedule 4 Part 1 of the regulations.

## 2. The Process

### Appointments

NHS organisations should be able to demonstrate that appointments of new board members are made through a robust and thorough appointment process.

As such, no new appointments should be made to the post of board director unless the appointee concerned can demonstrate they have met the FPPT requirements. A fully documented FPPT assessment will be undertaken in the following appointments:

1. New appointments in board member roles, whether permanent or temporary. Where greater than six weeks, this covers:
  - a. new appointments that have been promoted within an NHSBT
  - b. temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis
  - c. existing NHSBT board members who move to another NHS organisation in the role of a board member
  - d. individuals who join NHSBT in the role of board member for the first time from an organisation that is outside the NHS.
2. When an individual board member changes role within NHSBT.

The FPPT assessment on initial appointment of a board member will cover all points mentioned below:

- First name\*
- Second name/surname\*
- Organisation\* (that is, current employer)
- Staff group\*
- Job title\* (that is, current job description)
- Occupation code\*
- Position title\*
- Employment history:\*
  - This would include detail of all job titles, organisation departments, dates, and role descriptions.
  - Any gaps that are because of any protected characteristics, as defined in the Equality Act 2010, would not need to be explained.
- Training and development
- References:\*
  - Available references from previous employers, board member references, including resignations or early retirement.
  - Last appraisal and date
  - Disciplinary findings
    - That is, any upheld finding pursuant to any trust policies or procedures concerning employee behaviour, such as misconduct or mismanagement, this includes grievance (upheld) against the board member, whistleblowing claims against the board member (upheld) and employee behaviour upheld finding.
- Any ongoing and discontinued investigations relating to Disciplinary/ Grievance/ Whistleblowing/ Employee behaviour should also be recorded.
- Type of DBS disclosed\* †
- Date DBS received\* †
- Disqualified directors register check
- Date of medical clearance\* (including confirmation of OHA)
- Date of professional register check (e.g. membership of professional bodies)

- Insolvency check
- Self-attestation form signed
- Social media check
- Employment tribunal judgement check
- Disqualification from being a charity trustee check
- Board member reference\*
- Sign-off by chair/CEO.

## Self-attestation

NHS England considers it appropriate for NHS organisations to be able to consistently demonstrate, on an annual basis, that a formal assessment of fitness and propriety for each board member has been undertaken.

NHSBT will carry out the assessment alongside the annual appraisal. Annually, that is, within a 12-month period of the date of the previous FPPT to review for any changes in the previous 12 months. Existing Directors and non-executive Directors will affirm in writing their continued compliance with the requirements, using the [New starter/annual NHS FPPT self-attestation template](#). An annual submission will be made to the Department of Health and Social Care on the outcome of the assessment, using the [Annual NHS FPPT submission reporting template](#).

## Board member references

A standardised board member reference has been introduced to ensure greater transparency, robustness and consistency of approach when appointing board members within the NHS. The aim of this is to help foster a culture of meritocracy, ensuring that only board members who are fit and proper are appointed to their role, and that there is no recycling of unfit individuals within the NHS.

The competency domains in the Leadership Competency Framework should be taken into account when the board member reference is written. Six competency domains will be incorporated into all senior leader job descriptions and recruitment processes. This will form the core of board appraisal frameworks, alongside appraisal of delivery against personal and corporate objectives.

The board member reference is based on the standard NHS reference and includes additional requests for information as follows (relevant to the FPPT):

- Information regarding any discontinued, outstanding, or upheld complaint(s) tantamount to gross misconduct or serious misconduct or mismanagement including grievances or complaint(s) under any of the organisation's policies and procedures (for example, under the trust's equal opportunities policy).
- Confirmation of any discontinued, outstanding or upheld disciplinary actions under the trust's disciplinary procedures including the issue of a formal written warning, disciplinary suspension, or dismissal tantamount to gross or serious misconduct.
- Any further information and concerns about the applicant's fitness and propriety, not previously covered, relevant to the FPPT to fulfil the role as a director, be it executive or non-executive.

NHSE board member reference [template](#) should be used for board member references.

## Overseeing the role of the chair

The NHSBT chair will be subject to the same FPPT requirement as above, and accountability for ensuring that the chair meet the FPPT assessment criteria resides with the Department of Health and Social Care.

## Data Security and Protection

NHSBT is committed to ensuring the security and protection of all personal information that we store, record, process, share and access and in all of our activities to provide a compliant and consistent approach to data privacy and confidentiality. NHSBT fully recognises our obligations in meeting the requirements of the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018.

NHSBT is dedicated to safeguarding the personal information under our remit and in ensuring that our data protection regime is robust, effective, fit for purpose and demonstrates an understanding of, and appreciation of the current legislation.

The organisation's Data Privacy Notice can be accessed at the link below:

<https://peoplefirst.nhsbt.nhs.uk/NHSBT-DOCUMENT-LIBRARY/PoliciesandSupportingDocs/NHSBT-Staff-Privacy-Notice.pdf>

### 3. Monitoring compliance with and effectiveness of this policy

An annual report will be made to the Board via the People Committee on the effectiveness of this policy.

### 4. Review, approval and archiving

The policy will be reviewed every three, or earlier if national policy or guidance changes are required to be considered.

### 5. Associated Documents

This policy is to be read in conjunction with NHSBT's Code of Conduct and relevant policies as set out in the associated terms and conditions of employment. The organisation's Code of Conduct, Disciplinary Policy, Capability Policy, and Attendance Policy, together the "Policies".

### 6. Electronic Staff Record

NHS Business Services Authority (NHSBSA) hosts ESR on behalf of the NHS, as commissioned by the Department for Health and Social Care.

New data fields in ESR will hold individual FPPT information for all board members operating in the NHS and will be used to support recruitment referencing and ongoing development of board members. The FPPT information within ESR is only accessible within the board member's own organisation and there is no public register.

## 7. Policy Approval and Review

Policy version	UCD/People/
Title	Fit and Proper Persons Policy
Approved by SPC	n/a
EIA completed	
Counter Fraud check	

This document replaces	n/a
Effective Release Date	
Review Date	August 2026 or earlier if necessary
Author	Company Secretary
Filepath	G/HR/HR/Everyone/Policies
Distribution	All Staff and Managers; available on the Intranet

## Appendix 1

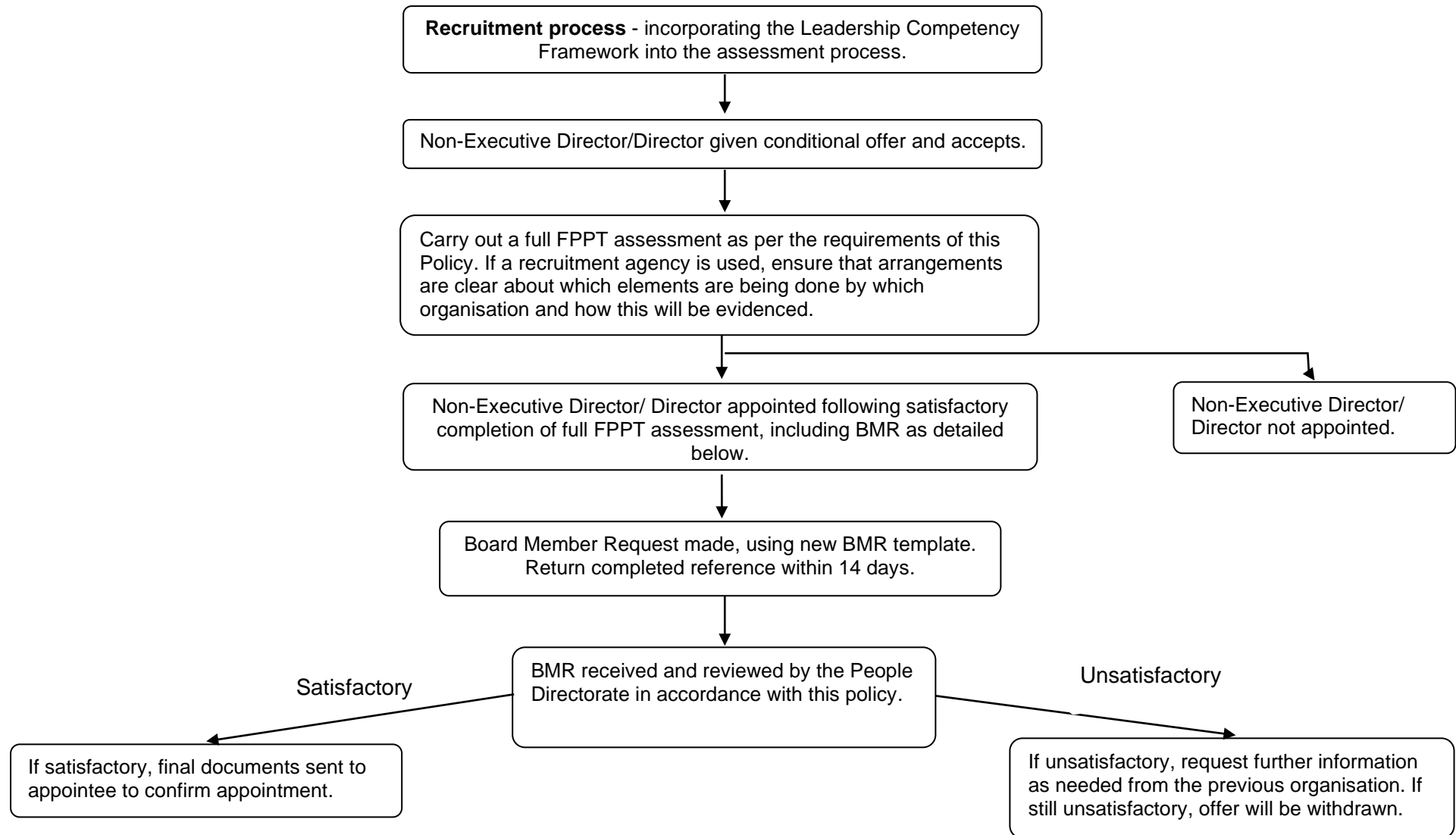
### Examples of misconduct and mismanagement that could amount to serious misconduct or mismanagement

- Fraud or theft.
- Any criminal offence other than minor motoring offences at work (although this and the issues set out in this section may be relevant to assessing whether an individual is of good character more generally).
- Assault.
- Sexual harassment of staff.
- Bullying or harassment.
- Discrimination as per the Equality Act 2010.
- Victimisation (which falls within the scope of the Equality Act 2010) of staff who raise legitimate concerns.
- Any conduct that can be characterised as dishonest, including:
  - deliberately transmitting information to a public authority or to any other person, which is known to be false
  - submitting or providing false references or inaccurate or misleading information on a CV.
- Disregard for appropriate standards of governance, including resistance to accountability and the undermining of due process.
- Failure to make full and timely reports to the board of significant issues or incidents, including clinical or financial issues.
- Repeated or ongoing tolerance of poor practice, or failure to promote good practice, leading to departure from recognised standards, policies or accepted practices.
- Continued failure to develop and manage business, financial or clinical plans.



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## Appendix 2: Board Member Reference (BMR) – for appointments



### Appendix 3: Board Member Reference (BMR) – for leavers

