

**Meeting:** Trust Board Meeting in Public

**29 March 2023**

<b>Agenda item</b>	Fit and Proper Persons Regulation (FPPR)
<b>Board Lead</b>	Bridget O'Kelly, Chief People Officer
<b>Type name of Author</b>	Joanna James, Trust Board Business Manager
<b>Attachments</b>	Submission Template 2023/24
<b>Purpose</b>	Assurance
<b>Previously considered</b>	n/a

### Executive Summary

The Fit and Proper Persons Regulation (FPPR) requires all organisations to seek assurance that all directors are fit to undertake the responsibilities of their role. The Trust is held to account by the CQC in relation to FPPR through Regulation 5.

In August 2023, NHS England (NHSE) developed a Fit and Proper Person Test (FPPT) Framework in response to the recommendations made by the Kark Review in 2019. It introduces a number of changes including a means of retaining information relating to testing the requirements of the FPPT for individual directors, a set of standard competencies for all board directors and a new way of completing references with additional content whenever a director leaves an NHS board.

All healthcare providers are required to show evidence that appropriate systems are in place to ensure that all new and existing directors are, and continue to be, fit for employment.

Trust processes are in line with those recommended to ensure compliance and are conducted on an annual basis. The paper reports full compliance for all Board directors for the current financial year. The submission template for 2023/24 is available in Appendix 1. This will be signed by the Chair and Senior Independent Director and submitted to the Regional Director prior to 31 March 2024.

<b>Decision</b>	The Board is requested to take assurance that processes are in place to ensure Board directors meet the requirements of the FPPR and that all current Board members are compliant.
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### Relevant strategic priority

Outstanding Care <input checked="" type="checkbox"/>	Healthy Communities <input type="checkbox"/>	Great Place to Work <input checked="" type="checkbox"/>	Net Zero <input type="checkbox"/>
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### Relevant objective

<input type="checkbox"/> Improve waiting times	<input type="checkbox"/> Improve access and effectiveness of Trust services for communities experiencing the poorest outcomes	<input type="checkbox"/> Improve the experience of our new starters
<input checked="" type="checkbox"/> Improve safety		<input type="checkbox"/> Upskill operational and clinical managers
<input type="checkbox"/> Improve productivity		

### Implications / Impact

<b>Patient Safety</b>	CQC Regulation 5 recognises that individuals who have authority in NHS Trusts are responsible for the overall quality and safety of that care.
<b>Risk: link to Board Assurance Framework (BAF) and local or Corporate Risk Register</b>	n/a
<b>Financial</b>	Any director deemed as 'fit' must not contravene any elements of the Unfit

	Persons Test which considers bankruptcy and insolvency.
<b>Compliance CQC Standards Fit and Proper staff Partnership: consultation / communication</b>	CQC Regulation 5; Fit and Proper Persons
<b>Equality</b>	The Trust Board Business Manager and Chief People Officer work collaboratively with Board colleagues to ensure the requirements of this regulation are met
<b>Quality Impact Assessment [QIA] completion required?</b>	No

## 1. Introduction

The Fit and Proper Person Regulation (FPPR) came into force for all NHS Trusts in November 2014 and requires all organisations to seek assurance that all directors are fit to undertake the responsibilities of their role.

In August 2023, NHS England (NHSE) developed a Fit and Proper Person Test (FPPT) Framework in response to the recommendations made by the Kark Review in 2019. This was commissioned to establish why the FPPT was not being applied effectively and consistently and built upon the Francis Report which called for better regulation of NHS Board level directors.

## 2. CQC Regulation 5

The Care Quality Commission (CQC) holds NHS Trusts to account in relation to FPPR through Regulation 5. This is about ensuring that individuals are fit and proper to carry out the important role of director and ensure healthcare providers meet the requirements of the Health and Social Care Act.

The regulation applies to Executive and Non-Executive Directors who are responsible and accountable for delivering care including associate directors and any other Board members, irrespective of their voting rights.

Components of the regulation include any relevant individual;

- Being of good character.
- Having the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed.
- Being able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or the position for which they are appointed or to the work for which they are employed.
- Not having been responsible for, privy to, contributed to or facilitated any serious mismanagement (whether unlawful or not) in the course of carrying out a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.
- Not contravening any elements of the 'Unfit Persons Test' (Part 1, Schedule 4) related to bankruptcy or safeguarding.
- Not having been prohibited from holding the relevant office or position under such law as the Companies Act.
- Not having been convicted of any offence or removed/struck off of a register of professionals maintained by a regulator of health or social care professionals.

The CQC expect providers to be able to demonstrate robust recruitment, management, appraisal, disciplinary and dismissal processes in place supported by relevant policies.

Whilst it is the Trust's duty to ensure fit and proper directors are in post, CQC has the power to take enforcement action against the Trust if it considers that requirements of FPPR have not been complied with.

### **3. FPPT Framework**

The purpose of the framework is to strengthen individual accountability and transparency for board members, enhancing the quality of leadership within the NHS and ultimately impacting on patient safety. It introduces the following:

- a means of retaining information relating to testing the requirements of the FPPT for individual directors
- a set of standard competencies for all board directors
- a new way of completing references with additional content whenever a director leaves an NHS board

The framework is effective from 30 September 2023. NHS organisations are not expected to use the framework retrospectively but to use it for all new board level appointments and for annual assessments going forwards. The first annual submission is required by 31 March 2024.

The framework applies to all executive and non-executive directors regardless of voting rights or whether an individual is permanent or interim. Some organisations may wish to extend this to other key roles but this is not compulsory.

#### **3.1 Personal Data**

A key change is that personal data relating to the FPPT assessment will be retained within local record systems including specific data fields in the NHS Electronic Staff Record (ESR). However, the information contained in these records will not routinely be accessible beyond the individual's own organisation and access will be restricted appropriately within that organisation.

### **4. Annual Process**

Every board member will need to complete an annual self-attestation to confirm that they comply with the full FPPT requirements.

The Chair will be accountable for ensuring the FPPT process (both annually and for new appointments) is effective and that the desired culture of their NHS organisation is maintained to support an effective regime.

### **5. Compliance**

To ensure compliance with the FPPR, the Trust must be able to demonstrate that robust processes are in place to determine whether all new and existing directors are, and continue to be, fit. These include:

- A process to ensure all new director-level appointments are fit and proper as part of the recruitment process (as outlined within Regulation 19 and determined by the NHS Employment Standards).
- An annual process for regularly monitoring and reviewing the ongoing fitness of existing directors to ensure that they remain fit for their role, including consideration of serious mismanagement.
- Principles for conducting investigations into concerns about the fitness of a director.
- A process for the right of appeal for directors.

NHS Providers recommend the following methods for ensuring ongoing compliance:

- a) The annual appraisal process which provides an opportunity to discuss and assess a director's continued fitness including their competence, values and behaviour.

- b) Completion of self-declaration forms by directors to confirm they are fit and proper.
- c) Periodic and sufficiently detailed checks e.g. for bankruptcy, registration and convictions.

Processes related to FPPR at BHT are aligned with NHS Providers recommendations as well as broader HR processes. They are well documented and completed on an annual basis.

The Trust now has a process in place to ensure references are completed for leavers.

The CQC considered Trust compliance with FPPR during their well-led inspection in March 2022 and had no subsequent concerns.

#### **6. Annual Submission 2023/24**

Within BHT, the Chair is supported by the Chief People Officer and the Trust Board Business Manager to ensure appropriate processes are followed. The Trust made the decision to include the Board Affiliates within this process in view of their active role within board business.

For the year 2023/24, each individual director has completed their annual self-attestation. Ahead of this, the changes to the process were outlined including the need to retain data within ESR. All directors gave their consent for this to occur.

Appendix 1 demonstrates full compliance for all Board level directors at the Trust for the current financial year. The full submission template will be signed by the Chair and Senior Independent Director and submitted to the Regional Director ahead of 31 March 2024.

#### **7. Next Steps**

It is recommended that, every three years, NHS organisations should have an internal audit to assess the processes, controls and compliance supporting the FPPT assessments. The Trust will ensure FPPT is included within the internal audit plan for 2025/26.

In February 2024, the NHS Leadership Competency Framework for Board members was published. This document lists six leadership domains and is designed to support appointments and appraisals of board members. The Board Member Appraisal Framework is due to be published later in the year. The Trust will consider these documents as part of the annual appraisal process.

#### **8. Action required from the Board**

The Board is requested to take assurance that processes are in place to ensure Board directors meet the requirements of the FPPR and that all current Board members are compliant with this regulation.

## Appendix 5: Annual NHS FPPT submission reporting template

NAME OF ORGANISATION	NAME OF CHAIR	FIT AND PROPER PERSON TEST PERIOD / DATE OF AD HOC TEST:
Buckinghamshire Healthcare NHS Trust	David Highton	2023/24

### Part 1: FPPT outcome for board members including starters and leavers in period

Role	Number Count	Confirmed as fit and proper?			Leavers only	
		Yes	No	How many Board Members in the 'Yes' column have mitigations in place relating to identified breaches? *	Number of leavers	Number of Board Member References completed and retained
Chair/NED board members	10	10	0		3	0 (all left prior to August 2023)
Executive board members	8	8	0		1	
Partner members (ICBs)	0					
Total	18					

\* See 3.8 'Breaches to core elements of the FPPT (Regulation 5)' in the Framework.