

Meeting title:	Trust Board	Public Trust Board paper N1			
Date of the meeting:	11 April 2024				
Title:	Draft Fit and Proper Persons Policy				
Report presented by:	Becky Cassidy, Director of Corporate and Legal Affairs				
Report written by:	Becky Cassidy, Director of Corporate and Legal Affairs				
Action – this paper is for:	Decision/Approval	x	Assurance		Update
Where this report has been discussed previously	Audit Committee – 18 March 2024				

Acronyms used:

Purpose of the Report

The report provides the committee with the draft Fit and Proper Persons Policy which has been updated following significant changes to national guidance.

Recommendation

The Committee is asked to:

- **approve** the policy following its review and onward recommendation for Trust Board approval from the Audit Committee.

Summary

In response to the recommendations in the Kark Review, NHSE developed a FPPT framework to strengthen/reinforce individual accountability and transparency for board members, thereby enhancing the quality of the leadership within the NHS. The framework is applicable to all board members, substantive or interim.

The key changes to the policy include:

- Additional reference to cover a 6 year continuous employment history for all new board appointments
- New checks on training and development of executive directors to be undertaken alongside annual appraisals
- New Board Members Reference to be followed when board member leaves the organisation
- Improved local recording of FPPT checks on ESR

Supporting documentation

Appendix 1 – draft Fit and Proper Persons Policy

FIT AND PROPER PERSONS TEST POLICY

Approved By:	Trust Board
Date of Original Approval:	11 April 2024
Trust Reference:	
Version:	1
Supersedes:	B17/2016 Fit and Proper Persons Policy and Procedure (last reviewed March 2018 [review date extension approved at the April 2021 PGC])
Trust Lead:	Becky Cassidy Director of Corporate and Legal Affairs
Lead Board Director:	Becky Cassidy Director of Corporate and Legal Affairs
Date of Latest Approval	
Next Review Date:	April 2027

FIT AND PROPER PERSONS POLICY AND PROCEDURE

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REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW

February 2024 – updated to reflect revised national requirements

KEY WORDS

1. INTRODUCTION AND OVERVIEW

- 1.1** Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('the Regulations') places a duty on NHS organisations registered with the Care Quality Commission ('the CQC') not to appoint a person as, or allow a person to continue to be, an executive director (or any other person performing the functions of, or equivalent or similar functions to, a director, including associate directors) or a non-executive director unless they:
- a) are of good character
 - b) hold the required qualifications and have the competence, skills and experience required for the relevant office for which they are employed
 - c) are, by reason of their physical and mental health, after any reasonable adjustments if required, capable of properly performing their work
 - d) can supply relevant information as required by schedule 3 of the Regulations,
 - e) have not been responsible for or privy to, contributed to, or facilitated any serious misconduct or mismanagement¹ (whether unlawful or not) in the course of carrying out regulated activity (or providing a service elsewhere which if provided in England would be a regulated activity).
- 1.2** Under the Regulations, NHS organisations must be able to provide evidence that appropriate systems and processes are in place to ensure that all new directors and existing directors are, and continue to meet the 'fit and proper person' test ('the FPPT requirements') and that no appointments meet any of the 'unfitness' criteria set out in the Regulations.
- 1.3** The CQC has the power to take enforcement action if it considers that the NHS organisation has not complied with the requirements of the FPPT requirements.
- 1.4** In August 2023, NHS England published a new FPPT Framework ('the Framework') for board members, which came into effect on 30 September 2023, to assist NHS organisations in meeting their obligations under the Regulations. NHS England expects NHS organisations to fully implement the Framework by 31 March 2024.
- 1.5** This policy outlines the arrangements in place to ensure compliance with the above requirements.

2.0 SCOPE

- 2.1** The policy applies to all Board Directors, Board members and individuals who perform the functions equivalent to the functions of a Board Director and member (whether existing, interim, or permanent and irrespective of their voting rights) ('relevant role' or 'relevant post-holder').

3.0 DEFINITIONS AND/OR ABBREVIATIONS

FPPT – Fit and Proper Persons Test

BMR – Board Member Reference template

SID – Senior Independent Director

4.0 DUTIES AND RESPONSIBILITIES

4.1 The **Trust Board** is responsible for approval of this policy.

4.2 The **Chair** has overall responsibility and ultimate accountability for taking all reasonable steps to ensure that effective arrangements are in place for ensuring compliance with the FPPT requirements (Regulation 5).

4.3 The Chair has delegated the following to the Director of Corporate and Legal Affairs who is responsible for:-

- a) The development, implementation and regular review of this policy.
- b) Ensuring compliance with, and consistent application of, the policy during the appointment and review process
- c) Ensuring that all pre-employment/appointment checks are undertaken in line with the FPPT requirements and the NHS Employment Checking Standards, and that the appropriate documentation is completed, retained and recorded on the relevant post-holder's personal file (see Appendix 7)
- d) Ensuring that the FPPT information on ESR is complete and kept up to date
- e) Ensuring that an accurate Board Member Reference ('BMR') (Appendix 2) is completed, retained and kept up to date
- f) Ensuring that all relevant information is made available to the Care Quality Commission for inspection on request
- g) Managing the annual FPPT review process for all relevant post-holders so that the assessment can be considered as part of annual appraisal meetings. This includes ensuring that:-
 - The board appraisal framework, incorporating the NHS Leadership Competency Framework, is used for the annual appraisals of all relevant post-holders from 2023/2024.
 - All relevant post-holders complete the NHS FPPT self-attestation (Appendix 3) before appointment and on an annual basis.
 - Submitting annually to the Board an assurance of compliance with the FPPT requirements.
 - The annual FPPT submission (Appendix 5) is completed and submitted to the Chair for review and sign off, then submitted to the relevant NHS England regional director.

4.4 **Individuals** to whom this policy applies are responsible for meeting the requirements of the FPPT and this policy on a continuing basis and for declaring where they may no longer meet these requirements. Such requirements include:-

- a) Completing the NHS FPPT self-attestation (at Appendix 3) to confirm that they are a fit a proper person, both on appointment and on an annual basis

- b) Providing evidence of their qualifications, experience and identity documents on appointment or on request to confirm the competencies relevant to their position
- c) Identifying any issues which may affect their ability to meet the statutory requirements on appointment and bringing these issues on an ongoing basis and without delay to the Director of Corporate and Legal Affairs, Chief Executive or the Chair.

5.0 DELIVERING/IMPLEMENTING THE POLICY

Data processing and ESR

- 5.1** Individual FPPT information, records and supporting evidence for all relevant post-holders will be collated and retained, in compliance with GDPR and the NHS Records Management Code of Practice, in the Trust's local record systems and specific data fields in the NHS Electronic Staff Record (ESR).
- 5.2** The FPPT information within ESR is only accessible within the Trust and there is no public register.
- 5.3** The Director of Corporate and Legal Affairs shall ensure that the information in ESR is up to date and appropriately maintained.
- 5.4** Access to the FPPT fields of ESR shall be limited to the Chair, Chief Executive Officer, Senior Independent Director, Vice Chair, Director of Corporate and Legal Affairs and Chief People Officer.
- 5.5** The FPPT information, including the board member reference, will be retained for a career long period. The Privacy Notice (Appendix 6) sets out the details for relevant post-holders of the information collected and processed in relation to the FPPT and their rights (which includes the right to object to processing and the right to rectify any information which they think is inaccurate).
- 5.6** The individual FPPT information that is retained on ESR will be shared with the relevant post-holder and they shall be given the right to request a review and/or note a challenge to the fairness of that information and provide such explanation as they wish to in writing.

When FPPT assessments must be carried out

- 5.7** A documented, full FPPT assessment (detailed in Appendix 7) of relevant post-holders will be needed in the following circumstances:-
 - a) New appointments** of a board member, whether permanent or temporary, where greater than six weeks, this covers:
 - Promotions within the Trust
 - Temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis
 - Those who have been a board member at another NHS organisation
 - Those who have no previous board experience in the NHS
 - b) Change of role on the board** of their current NHS organisation (for instance, if an existing board member moves into a new board role that requires a different skillset, e.g. chief financial officer).
 - c) 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.

Procedure for new appointments

- 5.8** The Trust has in place robust recruitment practices in accordance with the NHS Employment Check Standards which ensure that we have necessary assurance that individuals are of good character and have the appropriate experience, qualifications, skills and competency to properly and safely perform the tasks required of them in their role.
- 5.9** The Leadership Competency Framework should be incorporated into the assessment process when recruiting to all relevant roles. Note: this is not required for NEDs joining an NHS board for the first time from another industry/sector.
- 5.10** The pre-appointment checks listed in the FPPT Checklist (at Appendix 7) must be completed as part of the initial FPPT assessment for relevant post-holders. The checks should take place after the acceptance of a conditional offer and before the appointment commences. Note: for the initial appoint of the Chair and Non-Executive Directors, NHS England will obtain board member references and carry out initial social media checks. If satisfactory, NHS England will then send the appointment letter subject to the remaining elements of the fit and proper person assessment carried out by the Trust.
- 5.11** Where the relevant post-holder is being recruited via an agency or executive search company, the Director of Corporate and Legal Affairs must ensure that the agency/company is aware of the FPPT requirements and that arrangements are clear about which elements are being done by the agency and by the Trust and how this will be evidenced.
- 5.12** If the relevant post-holder is being appointed jointly, the host/employing organisation (which may be the Trust or the other organisation) will provide a 'letter of confirmation' (at Appendix 4) to the other organisation to confirm that the board member in question has met the requirements of the FPPT.

Step 1

- 5.13** After the acceptance of a conditional offer and before the appointment commences, the Director of Corporate and Legal Affairs shall:-
- a) Complete the pre-employment checks listed in Appendix 7. An inter-authority transfer (an electronic way of gathering information from an employer for an applicant's previous or current NHS service using the ESR system - see [How to complete an Inter Authority Transfer \(IAT\) check in NHS Jobs user guide \(nhsbsa.nhs.uk\)](https://nhsbsa.nhs.uk)) could be used for this purpose.
 - b) Request a board member reference (BMR) from the previous NHS employer(s) (using the template at Appendix 2) if the relevant post-holder has previous board experience at an NHS organisation, the employer(s) should provide the completed BMR(s) within 14 days. Note: a BMR is not required where an existing relevant post-holder is changing to a different board (or equivalent) role.
 - c) Request further information from the supplier of the reference if the BMR is not satisfactory.
 - d) Ensure any adverse findings (breach) or mitigations are evidenced with a written record.

- e) Ensure that all the evidence is all saved to the relevant post-holder's personal file
- f) Ensure the FPPT assessment outcomes are entered into ESR
- g) Run the ESR FPPT business informatics dashboard report

Step 2

- 5.14 Where the appointment is to an Executive Director role**, the Chief Executive shall review the FPPT dashboard and conclude if the applicant meets the FPPT requirements. The Chair shall then review the results, and, if satisfied that the FPPT requirements are met, complete the sign off field on ESR.
- 5.15 Where the appointment is to the Chief Executive or a NED role**, the Chair shall review the FPPT dashboard and conclude if the applicant meets the FPPT requirements. If the Chair is satisfied that the FPPT requirements are met, they shall complete the sign off field on ESR.
- 5.16 Where the appointment is to the Chair role**, the SID/Vice Chair shall review the FPPT dashboard and conclude if the applicant meets the FPPT requirements. Any adverse findings (breach) or mitigations must be evidenced with a written record. If the SID/Vice Chair is satisfied that the FPPT requirements are met, they shall complete the sign off field on ESR.

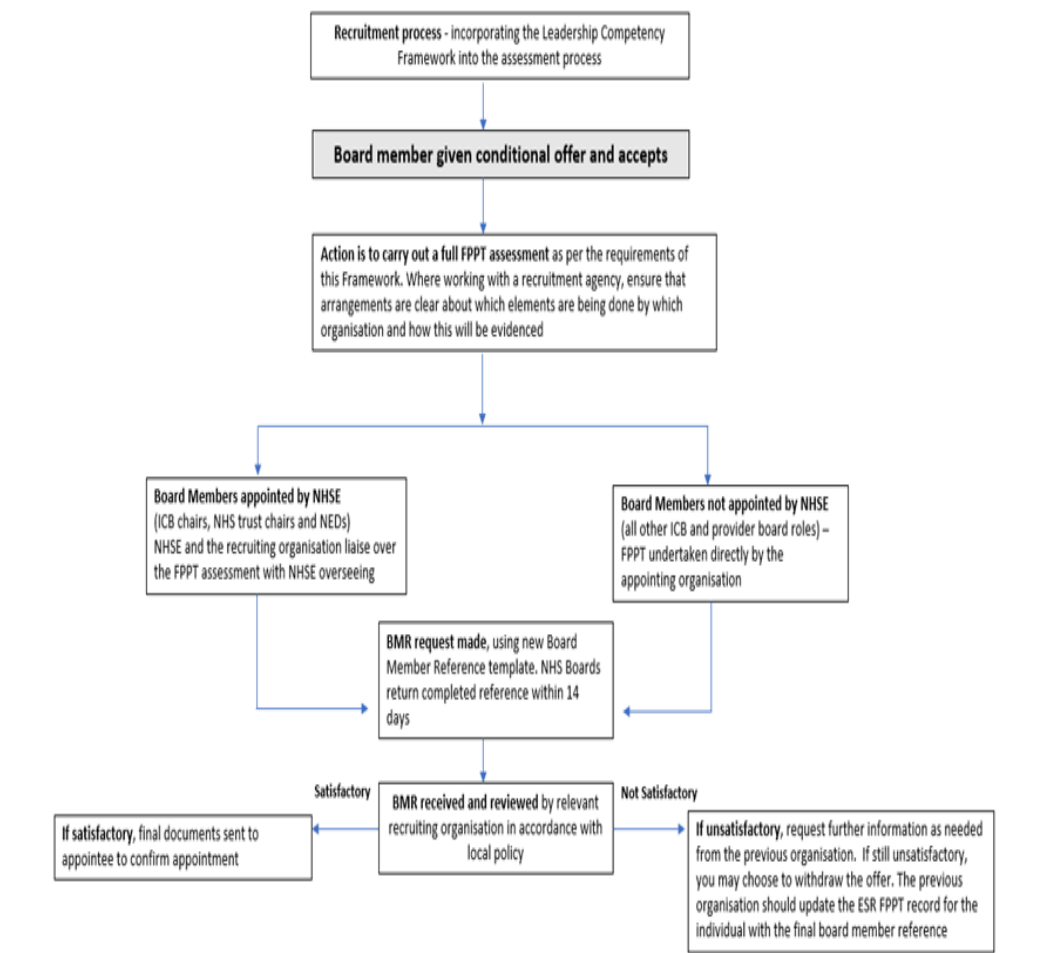
For the initial appointment of the Chair, once the NHS organisation has obtained board member references and completed the fit and proper person assessment, FPPT approval should be sought from the NHS England Appointments Team before they commence their role.

If the Chief Executive/ Chair / SID / Vice Chair concludes that the FPPT requirements are not met, they shall follow the process set out in section 5.5.

Step 3

- 5.17** The outcome of the FPPT assessment recorded on either the ad hoc or annual FPPT submission reporting template (Appendix 5) by the Director of Corporate and Legal Affairs. The Chair should review, check and sign the declaration form.
- 5.18** If all conditions of the offer are met, the applicant's appointment should be confirmed in accordance with Trust policy. Conversely, the offer should be withdrawn if the offer conditions are not met.
- 5.19** BMR Flowchart for Appointments

Board Member Reference (BMR) – for appointments



Procedure for annual reviews

5.20 A formal assessment of each relevant post-holder's continued compliance with the FPPT requirements will be undertaken annually. The outcome of the FPPT assessment will be considered as part of the relevant post-holder's annual appraisal meeting.

5.21 The Director of Corporate and Legal Affairs will be responsible for managing the annual FPPT review process for all relevant post-holders and ensuring that the Trust is compliant. This includes ensuring that:-

- a) The annual checks will be carried out in line with the checklist at Appendix 7.
- b) All relevant post-holders complete the annual NHS FPPT self-attestation (at Appendix 3).
- c) A report on completion of the annual FPPT assessment is presented to the Board [by the Chair at a public Board meeting along with an assurance of compliance with the FPPT requirements.

- d) The annual FPPT submission (Appendix 5) is completed and submitted to the Chair for review and sign off, then submitted to the relevant NHS England regional director.

Where a potential or actual FPPT breach is identified

- 5.22** The Trust will investigate as appropriate any concerns regarding a potential breach of (or failure to meet) the core elements of the FPPT (Regulation 5) in relation to a relevant post-holder's 'fitness' (within the meaning of the Regulations) or their ability to carry out their duties. Information relating to disciplinary matters/ complaints/ grievances and speak-ups against the relevant post-holder must be recorded on ESR when the concerns arise.
- 5.23** Regulation 5 will be breached if a relevant post-holder is unfit on one or more of the following grounds:
1. Character, such as:
 - an undischarged conviction
 - being erased, removed or struck-off a register of professionals maintained by a regulator of healthcare, social work professionals or other professional bodies across different industries
 - being prohibited from holding a relevant office or position
 - if they have been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether lawful or not) in the course of carrying out a regulated activity.
 2. Failing to meet the relevant qualifications or failing to have the relevant competence, skills and experience as deemed required for their role.
 3. Financial soundness, such as a relevant undischarged bankruptcy or being placed under a debt relief order.
- 5.24** Where appropriate, the investigation will be conducted in line with any other applicable Trust policy.
- 5.25** The Trust may have a duty to inform others, as appropriate, about concerns/findings relating to a relevant post-holder's failure to meet the FPPT; for example, NHS England, professional regulators, CQC and other relevant bodies, and support any related enquiries/investigations carried out by others.
- 5.26** Where the Chair (or SID/Vice Chair if the issue relates to the Chair) is satisfied that the relevant post-holder has breached or failure to meet the FPPT, they must consider whether it is possible for the breach to be resolved such that it will either permit the individual to be appointed or to continue in post.
- 5.27** There may be a limited number of exceptional cases where a relevant post-holder is deemed unfit (that is, they have breached or failed the FPPT) for a particular reason (other than qualifications) but the NHS organisation appoints them or allows them to continue their current employment. In such cases:
- a) There should be a documented explanation as to why the relevant post-holder is unfit and the mitigations taken, / action required, e.g. development of competency, which is approved by the chair.
 - b) Action(s) must be agreed with the relevant post-holder, with a reasonable timescale for review and completion.
 - c) Chair records the relevant post-holder as fit and proper with an agreed action plan.

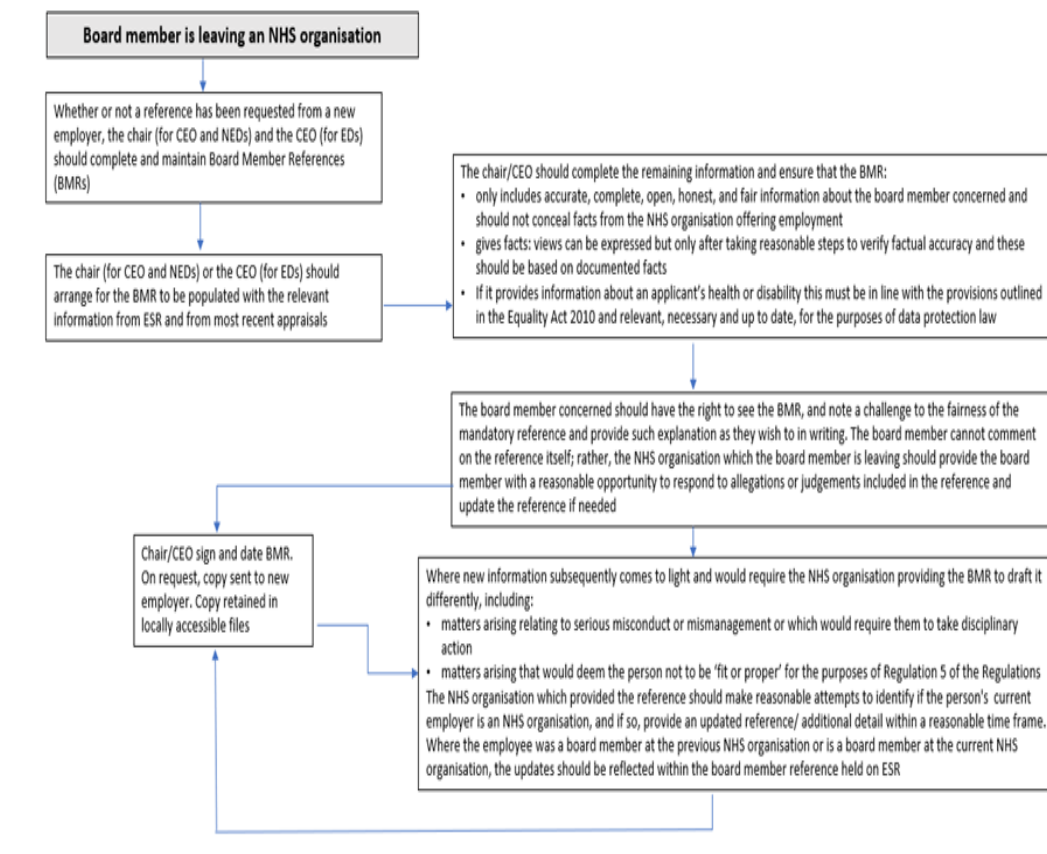
- 5.28** If the issue cannot be resolved, as the breach is so serious that the relevant post-holder will never be considered fit and proper, e.g. a criminal conviction, safeguarding incident, etc., then they are not appointed or their appointment shall be terminated in accordance with any other applicable policy. (Note – dispute resolution process at section 5)
- 5.29** In either case, the process is concluded by the Director of Corporate and Legal Affairs updating the FPPT register and notifying the Regional Director of the finding and the name of the individual as part of an ad hoc or the annual FPPT submission (Appendix 5).
- 5.30** The individual FPPT information that is retained on ESR and/or included in the annual FPPT submission will be shared with the relevant post-holder and they shall be given the right to request a review and/or note a challenge to the fairness of that information and provide such explanation as they wish to in writing.

The Board Member Reference (BMR): Leavers

- 5.31** A BMR (in the standard format at Appendix 2) must be created and signed off by the Chair within 28 days of a relevant post-holder leaving the Trust.
- 5.32** The BMR must be factual, accurate, up to date and stored on the individual's personal file.
- 5.33** The BMR should be shared with the relevant post-holder and they shall be given the right to note a challenge to the fairness of the mandatory reference and provide such explanation as they wish to in writing.

5.34

Board Member Reference (BMR) – for leavers



5.35 The board member reference is based on the standard NHS reference and includes the following additional requests for information relevant to the FPPT:

BMR section no.	Request	Guidance (from Appendix 2 of NHSE's Guidance for Chairs)
12	Is there any relevant information regarding any outstanding, upheld or discontinued complaint(s) tantamount to gross misconduct or serious misconduct or mismanagement including grievances or complaint(s) under any of the trust's policies and procedures (for example under the trust's equal opportunities policy)?	This is a key question for anyone applying for a board role. It relates only to matters relevant to the FPPT. It requires a 'yes' or 'no' answer and a brief outline which should be no more than 2-3 sentences setting out the type of complaint (and which policy and procedure it aligns to) and the reason for the complaint. Further details of the case should not be included and are for local record retention. No third party should be identifiable in the information provided. Organisations may wish to take their own legal advice in relation to the potential risk of a claim from the board member leaving

		or a prospective employer for matters relating to outstanding or discontinued complaints. Information provided in the reference must be based on fact.
13	<p>Is there any outstanding, upheld or discontinued disciplinary action under the trust's disciplinary procedures including the issue of a formal written warning, disciplinary suspension, or dismissal tantamount to gross or serious misconduct that can include but not be limited to:</p> <ul style="list-style-type: none"> • Criminal convictions for offences leading to a sentence of imprisonment or incompatible with service in the NHS • Dishonesty • Bullying • Discrimination, harassment, or victimisation • Sexual harassment • Suppression of speaking up • Accumulative misconduct 	Same guidance as for Q12.
14	Please provide 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?	This is a concluding question and covers the history of FPPT for the person. Other factors which are relevant to the FPPT but not covered above should be included here, for example whether there is a settlement agreement in place, whether there have been any discontinued investigations into a complaint or disciplinary matter. Did the person resign prior to disciplinary action? The information should be limited to fact, and where possible, the person would have had sight of the reference and know what had been included.

- 5.36** Investigations (irrespective of reason for discontinuance) should be limited to those which are applicable and potentially relevant to the FPPT, and examples are as follows (this is not an exhaustive list and consideration will be needed on a case-by-case basis):
- a) Relating to serious misconduct, behaviour or not being of good character (as described in the FPPT Framework).
 - b) Dishonesty.
 - c) Suppression of the ability of people to speak up about serious issues in the NHS, eg whether by allowing bullying or victimisation of those who speak up or blow the whistle, or any harassment of individuals.
 - d) Any behaviour contrary to the professional Duty of Candour, which applies to health and care professionals, e.g. falsification of records or relevant information.
- 5.37** The reason for discontinuing (including not commencing) an investigation should be recorded, including whether an investigation was not started or stopped because a compromise, confidentiality or settlement agreement was then put in place (recognising that such an agreement is not necessarily a conclusion that someone is not fit and proper for the purposes of the FPPT).
- 5.38** If there is a historical settlement agreement in place that includes a confidentiality clause, and this agreement is relevant to the FPPT, the Trust should seek permission from all parties prior to including any such information in a BMR. Going forward, the Trust shall ensure that any settlement agreement includes a term that information about the settlement agreement will be included in ESR and may be included in the BMR, neither of which will be a breach of confidence.
- 5.39** If the Trust has provided a reference and new information comes to light that would require it to be drafted differently, reasonable attempts should be made to identify if the person is still employed within the NHS, and, if so, an updated reference/additional detail should be provided to that employer within a reasonable timeframe.

Dispute resolution

Data and information

- 5.40** Where a relevant post-holder identifies an issue with data held about them in relation to the FPPT, they should request a review which shall be conducted in accordance with the trust policy.
- 5.41** Where this does not lead to a satisfactory resolution for the relevant post-holder, they may decide to take further action outside of the Trust (their options are set out in 3.12 of the Framework).

Outcome of FPPT assessment or the proposed BMR

- 5.42** Where a relevant post-holder disagrees with the outcome of the FPPT assessment and they have been deemed to have not met the FPPT requirements, the matter

should be escalated to the NHS England Appointments Team for investigation in accordance with extant policy and procedure.

5.43 Where this does not lead to a satisfactory resolution for the relevant post-holder, they may decide to take further action outside of the Trust (their options are set out in 3.12 of the Framework).

5.44 Where this results in the relevant post-holder being terminated from their appointed role, a BMR must be completed and retained by the Trust in accordance with the Framework.

6.0 EDUCATION AND TRAINING

There is no specific training or education requirements for this policy.

7.0 PROCESS FOR MONITORING COMPLIANCE

Audit and review

7.1 The arrangements set out in this policy will be audited every 3 years as part of the Trust internal audit programme. The outcome will be reported to the Audit Committee and Trust Board.

7.2 The audit criteria for this policy and the process to be used for monitoring compliance are given in the table below:

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements
Compliance with national requirements	Internal Audit	Internal Audit review as part of core audit	Every 3 years	Audit Committee and Trust Board

8.0 EQUALITY IMPACT ASSESSMENT

The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.

As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

9.0 SUPPORTING DOCUMENTS, EVIDENCE BASE, AND RELATED POLICIES

[The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014 \(legislation.gov.uk\)](http://legislation.gov.uk)

Care Quality Commission Regulation 5: Fit and proper persons: directors, Guidance for providers and CQC inspectors. Available at: [Fit and proper persons: directors - Care Quality Commission](#)

[Employment standards and regulation | NHS Employers](#)

NHS England Framework and Guidance:-

- [NHS England » NHS England Fit and Proper Person Test Framework for board members](#)
- [NHS England » Guidance for chairs on implementation of the Fit and Proper Person Test for board members](#)
- [NHS England » Fit and Proper Person Test for board members: guidance on electronic staff record](#)
- [A summary of NHS England's Fit and Proper Person Test Framework | NHS Employers](#)

10. PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING, AND REVIEW

- 10.1 Once this Policy has been approved by the UHL Policy and Guideline Committee, Corporate and Committee Services will allocate the appropriate Trust Reference number for version control purposes.
- 10.2 The updated version of the Policy will then be uploaded and available through INsite Documents and the Trust's externally-accessible Freedom of Information publication scheme. It will be archived through the Trust's PAGL system.
- 10.3 This Policy will be reviewed every three years and it is the responsibility of the Trust Lead for this Policy to commission the review.

Appendix 1 – Extracts from the CQC Guidance Regulation 5 Fit and proper persons: directors

Determining misconduct and mismanagement

CQC does not determine what is and what is not misconduct or mismanagement. But, when we consider whether Regulation 5 has been breached, we will make a judgement about the provider's decision; for example, whether or not the provider acted reasonably when it made its determination.

Regulation 5(3)(d) states that, *“the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity”*.

It is the responsibility of the provider to ensure that the requirement is met. Our new guidance about the meaning of misconduct and mismanagement is intended to help providers to interpret and implement the regulation (please see the *_appendix [set out below]*).

In determining what amounts to "serious misconduct or mismanagement" beyond the decision by a court or professional regulators regarding individuals, we recognise that context is paramount. Directors may personally be accused and found guilty by a court of serious misconduct in respect of a range of already proscribed behaviours set out in legislation, such as being placed on the children's or adults' barred list, being undischarged bankrupts or convicted by a court for offences under the Sexual Offences Act 2003. A professional regulator may remove an individual from a register for breaches of codes of conduct.

Providers need to consider the mismanagement and misconduct behaviours in relation to the services they provide, the role of the employee and the possible adverse impact on the provider or confidence in its ability to carry out its mandate and fulfil its duties in the public interest.

In relation to being "privy to", the provider must be assured, through its recruitment and ongoing performance management processes, that directors have not been complicit with serious misconduct or mismanagement. They should be able to demonstrate this through appropriate records and information that they hold about the individual.

We will not use the fact that a provider is in special measures as evidence or an indication that a director is unfit. However, if necessary because of special measures, we would assess the effectiveness and robustness of its processes for appointing its directors.

Appendix: Serious misconduct or mismanagement

What is misconduct?

"Misconduct" means conduct that breaches a legal or contractual obligation imposed on the director. It could mean acting in breach of an employment contract, breaching relevant regulatory requirements (such as mandatory health and safety rules), breaching the criminal law or engaging in activities that are morally reprehensible or likely to undermine public trust and confidence.

What is mismanagement?

“Mismanagement” means being involved in the management of an organisation or part of an organisation in such a way that the quality of decision making and actions of the managers falls below any reasonable standard of competent management.

The following are examples of behaviour that may amount to mismanagement:

- Transmitting to a public authority, or any other person, inaccurate information without taking reasonably competent steps to ensure it was correct.
- Failing to interpret data in an appropriate way.
- Suppressing reports where the findings may be compromising for the organisation.
- Failing to have an effective system in place to protect staff who have raised concerns.
- Failing to learn from incidents, complaints and when things go wrong.
- Failing to model and promote standards of behaviour expected of those in public life, including protecting personal reputation, or the interests of another individual, over the interests of people who use a service, staff or the public.
- Failing to implement quality, safety and/or process improvements in a timely way, where there are recommendations or where the need is obvious.

When proven misconduct or mismanagement should be assessed as “serious”

Providers will have to reach their own decision as to whether any facts that are alleged reach the threshold of being “serious misconduct or mismanagement”. The Shorter Oxford English Dictionary defines serious as:

“Important, grave, having (potentially) important especially undesired consequences, giving cause for concern of significant, degree, amount, worthy of consideration”.

Misconduct differs from mismanagement, in that a single incident of misconduct may be so serious that it amounts to serious misconduct, whether the provider also concludes that this was incompatible with continued employment or not. However, any serious misconduct renders a director unfit within the terms of the fit and proper person requirement.

However, an isolated incident is unlikely to constitute serious mismanagement unless it is so serious that it calls into question the confidence of the organisation and the public in the individual concerned.

Serious mismanagement is likely to consist of a course of conduct over time. Any assessment of its seriousness needs to consider the impact of the mismanagement on the quality and safety of care for people who use the service, the safety and wellbeing of staff, and the effect on the viability of the provider.

Not all misconduct or mismanagement in which a director has had some involvement will reach the threshold of “serious”. Where there is evidence of misconduct or mismanagement that is not judged to be “serious”, the provisions of Regulation 5(3)(d) do not apply. However, it will be for the provider (as the employer) to determine the most appropriate response, in order to ensure that performance is managed and the quality and safety of services is assured.

A provider could consider isolated incidences of the following types of behaviour to amount to misconduct or mismanagement that does not reach the required threshold of seriousness:

- intermittent poor attendance
- minor breaches of security
- minor misuse of an employer's assets
- failure to follow agreed policies or processes when undertaking management functions where the failures had limited repercussions or limited effects, or were for a benevolent or justifiable purpose.

The following are examples of misconduct and mismanagement that providers would be expected to conclude amounted to serious misconduct or mismanagement, unless there are exceptional circumstances that make it unreasonable to determine that there is serious misconduct or mismanagement:

- fraud or theft
- any criminal offence other than minor motoring offences
- assault
- sexual harassment of staff
- bullying
- victimisation of staff who raise legitimate concerns
- any conduct that can be characterised as dishonesty, 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.

As part of reaching an assessment as to whether any actions or omissions of the director amount to "serious misconduct or mismanagement", providers should consider whether an individual director played a central or peripheral role in any wider misconduct or mismanagement. The more central the role of the director, the more likely it is that the conduct of the director should be assessed to be serious misconduct or mismanagement. The provider should also consider whether there are any mitigating factors that could be relied on to downgrade conduct that should otherwise be assessed to be serious misconduct or mismanagement so that the conduct did not meet that threshold of seriousness.

Factors to consider around concerns regarding serious misconduct or mismanagement

Please note the following points:

- The relevant matters can arise either in the director's current role, in a former role within the provider's organisation, when the director carried out any role where he or she was concerned with a service that is regulated by CQC or which, if provided outside the UK, would be a regulated activity if the activity was carried out within the UK.
- Allegations about a director's conduct while engaged in any other type of business or non-business activity is not relevant for Regulation 5(3)(d), but it is likely to be relevant

to the director's good character (Regulation 5(3)(a)) and/or his or her competence, skills and experience (Regulation 5(3)(b)).

- A director's conduct comes within Regulation 5(3)(d) if he or she has been "responsible for" serious misconduct or mismanagement – namely that he or she was one of the decision-makers that led to the serious misconduct or mismanagement.
- A director's conduct comes within Regulation 5(3)(d) if he or she has "contributed to" serious misconduct or mismanagement – namely where the director was not one of the lead decision-makers that led to the serious misconduct or mismanagement but where, by action or omission, the director took some significant step or steps to assist the lead decision-makers who were responsible for that misconduct or mismanagement.
- A director's conduct comes within Regulation 5(3)(d) if he or she has "facilitated" any serious misconduct or mismanagement – namely that he or she took steps or failed to take steps that he or she ought to have taken that enabled those primarily responsible for the misconduct or mismanagement to carry out the acts or omissions that constituted the serious misconduct or mismanagement.
- A director's conduct also comes within Regulation 5(3)(d) if he or she has been "privity to" serious misconduct or mismanagement, in that the director was aware that misconduct or mismanagement was happening in an organisation and failed to respond to that knowledge by acting in an appropriate manner. An appropriate response to serious misconduct or mismanagement will depend on the circumstances and the internal governance arrangements of the organisation in which the director worked, but it could include:
 - drawing the serious misconduct or mismanagement to the attention of an appropriate senior member of staff
 - making a formal complaint
 - drawing the serious misconduct or mismanagement to the attention of a suitable person outside the provider's organisation.
- Providers would be entitled to conclude a director had been "privity to" serious misconduct or mismanagement if the director knew sufficient details of that misconduct or mismanagement (or the circumstances were such that it was reasonable to conclude that the director ought to have known of that mismanagement or misconduct) to require appropriate action by the individual and failed to take any appropriate action in a timely manner.

Good character

There is no statutory guidance as to how 'good character' in Regulation 5(3)(a) of the 2014 Regulations should be interpreted.

However, the following are some of the features that are normally associated with 'good character':

- honesty
- trustworthiness
- integrity
- openness (also referred to as transparency)
- ability to comply with the law.

To consider that a director is of 'good character', the registered provider should be able to regard the director as a person in whom the provider, CQC, people using services and the wider public can have confidence, and who will comply with the law.

Factors for providers to take into account when assessing 'good character'

Providers must have regard to the following matters specified in part 2 of schedule 4 to the 2014 Regulations when assessing whether a director is of good character:

- convictions of any offence in the UK
- convictions of any offence abroad that constitutes an offence in the UK; and
- whether any regulator or professional body has made the decision to erase, remove or strike off the director from their register.

Other things to look for in assessing good character

When making decisions about character, providers would also be expected to consider:

- the prior employment history of the director, including the reasons for leaving
- whether the director has ever been the subject of any investigations or proceedings by a professional or regulatory body
- whether the director has ever breached any of the Nolan Principles of Public Life
- whether the director has ever breached any of the duties imposed on directors under the Companies Act
- the extent to which the director has been open and honest with the provider
- any other information that may be relevant, such as disciplinary action taken by an employer.

Appendix 2 - The board member reference template
Board Member Reference

STANDARD REQUEST: To be used only AFTER a conditional offer of appointment has been made.

[Date]

Human resources officer/name of referee

Recruitment officer

External/NHS organisation receiving request

HR department initiating request

Dear [HR officer's/referee's name]

Re: [applicant's name] - [ref. number] – [Board Member position]

The above-named person has been offered the board member position of [post title] at the [name of the NHS organisation initiating request]. This is a high-profile and public facing role which carries a high level of responsibility. The purpose of NHS boards is to govern effectively, and in so doing build patient, staff, public and stakeholder confidence that the public's health and the provision of healthcare are in safe hands.

Taking this into account, I would be grateful if you could complete the attached confirmation of employment request as comprehensively as possible and return it to me as soon as practically possible to ensure timely recruitment.

Please note that under data protection laws and other access regimes, applicants may be entitled to information that is held on them.

Thank you in advance for your assistance in this matter.

Yours sincerely

[Recruitment officer's name]

Board Member Reference request for NHS Applicants:

To be used only AFTER a conditional offer of appointment has been made.

Information provided in this reference reflects the most up to date information available at the time the request was fulfilled.

1. Name of the applicant (1)	
2. National Insurance number or date of birth	
3. Please confirm employment start and termination dates in each previous role <i>A: (if you are completing this reference for pre-employment request for someone currently employed outside the NHS, you may not have this information, please state if this is the case and provide relevant dates of all roles within your organisation)</i> <i>B: (As part of exit reference and all relevant information held in ESR under Employment History to be entered)</i>	
<p><u>Job Title:</u></p> <p><u>From:</u></p> <p><u>To:</u></p> <p>Job Title</p> <p><u>From:</u></p> <p><u>To:</u></p> <p>Job Title:</p> <p><u>From:</u></p> <p><u>To:</u></p> <p>Job Title:</p> <p><u>From:</u></p>	

<p><u>To:</u></p> <p>Job Title:</p> <p><u>From:</u></p> <p><u>To:</u></p>		
<p>4. Please confirm the applicant's current/most recent job title and essential job functions (if possible, please attach the Job Description or Person Specification as Appendix A):</p> <p><i>(This is for Executive Director board positions only, for a Non-Executive Director, please just confirm current job title)</i></p>		
<p>5. Please confirm Applicant remuneration in current role (this question only applies to Executive Director board positions applied for)</p>	<p><u>Starting:</u></p>	<p><u>Current:</u></p>
<p>6. Please confirm all Learning and Development undertaken during employment:</p>		

(this question only applies to Executive Director board positions applied for)

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7. How many days absence (other than annual leave) has the applicant had over the last two years of their employment, and in how many episodes? <u>(only applicable if being requested after a conditional offer of employment)</u>	<u>Days Absent:</u>	<u>Absence Episodes:</u>
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8. Confirmation of reason for leaving:

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<p>9. Please provide details of when you last completed a check with the Disclosure and Barring Service (DBS)</p> <p>(This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board)</p>		
<p>Date DBS check was last completed.</p> <p>Please indicate the level of DBS check undertaken (basic/standard/enhanced without barred list/or enhanced with barred list)</p> <p>If an enhanced with barred list check was undertaken, please indicate which barred list this applies to</p>	<p>Date</p> <p>Level</p> <p>Adults <input type="checkbox"/></p> <p>Children <input type="checkbox"/></p> <p>Both <input type="checkbox"/></p>	
<p>10. Did the check return any information that required further investigation?</p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>

If yes, please provide a summary of any follow up actions that need to/are still being actioned:

11. Please confirm if all annual appraisals have been undertaken and completed

Yes

No

(This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board)

Please provide a summary of the outcome and actions to be undertaken for the last 3 appraisals:

<p>12. Is there any relevant information regarding any outstanding, upheld or discontinued complaint(s) or other matters tantamount to gross misconduct or serious misconduct or mismanagement including grievances or complaint(s) under any of the Trust’s policies and procedures (for example under the Trust’s Equal Opportunities Policy)?</p> <p>(For applicants from outside the NHS please complete as far as possible considering the arrangements and policy within the applicant’s current organisation and position)</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>If yes, please provide a summary of the position and (where relevant) any findings and any remedial actions and resolution of those actions:</p>		
<p>13. Is there any outstanding, upheld or discontinued disciplinary action under the Trust’s Disciplinary Procedures including the issue of a</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

<p>formal written warning, disciplinary suspension, or dismissal tantamount to gross or serious misconduct that can include but not be limited to:</p> <ul style="list-style-type: none"> • Criminal convictions for offences leading to a sentence of imprisonment or incompatible with service in the NHS • Dishonesty • Bullying • Discrimination, harassment, or victimisation • Sexual harassment • Suppression of speaking up • Accumulative misconduct <p>(For applicants from outside the NHS please complete as far as possible considering the arrangements and policy within the applicant's current organisation and position)</p>		
<p>If yes, please provide a summary of the position and (where relevant) any findings and any remedial actions and resolution of those actions:</p>		

14. Please provide any further information and concerns about the applicant's fitness and propriety, not previously covered, relevant to the Fit and Proper Person Test to fulfil the role as a director, be it executive or non-executive. Alternatively state Not Applicable. (Please visit links below for the CQC definition of good characteristics as a reference point) (7)(12)

Regulation 5: Fit and proper persons: directors - Care Quality Commission (cqc.org.uk)

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (legislation.gov.uk)

15. The facts and dates referred to in the answers above have been provided in good faith and are correct and true to the best of our knowledge and belief.

Referee name (please print):

Signature:

Referee Position Held:

Email address:

Telephone number:

Date:

Data Protection:

This form contains personal data as defined by the Data Protection Act 2018 and UK implementation of the General Data Protection Regulation). This data has been requested by the Human Resources/ Workforce Department for the purpose of recruitment and compliance with the Fit and Proper Person requirements applicable to healthcare bodies. It must not be used for any incompatible purposes. The Human Resources/Workforce Department must protect any information disclosed within this form and ensure that it is not passed to anyone who is not authorised to have this information.

Appendix 3 - New starter/annual NHS FPPT self-attestation

Every board member should complete the template (over the page) annually and this attestation should be submitted to [complete as applicable, eg the company secretary] on behalf of the chair.

Fit and Proper Person Test annual/new starter* self-attestation
UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST

I declare that I am a fit and proper person to carry out my role. I:

- am of good character
- have the qualifications, competence, skills and experience which are necessary for me to carry out my duties
- where applicable, have not been erased, removed or struck-off a register of professionals maintained by a regulator of healthcare or social work professionals
- am capable by reason of health of properly performing tasks which are intrinsic to the position
- am not prohibited from holding office (eg directors disqualification order)
- within the last five years:
 - I have not been convicted of a criminal offence and sentenced to imprisonment of three months or more
 - been un-discharged bankrupt nor have been subject to bankruptcy restrictions, or have made arrangement/compositions with creditors and has not discharged
 - nor is on any 'barred' list.
- have not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.
 - The legislation states: if you are required to hold a registration with a relevant professional body to carry out your role, you must hold such registration and must have the entitlement to use any professional titles associated with this registration. Where you no longer meet the requirement to hold the registration, any if you are a healthcare professional, social worker or other professional registered with a healthcare or social care regulator, you must inform the regulator in question.
 - Should my circumstances change, and I can no longer comply with the Fit and Proper Person Test (as described above), I acknowledge that it is my duty to inform the chair.

• Name and job title/role:	•
• Professional registrations	•

held (ref no):	
• Date of DBS check/re-check (ref no):	•
• Date of last appraisal, by whom:	•
• Signature of board member:	•
• Date of signature of board member:	•
• For chair to complete	
• Signature of chair to confirm receipt:	•
• Date of signature of chair:	•

*Delete as appropriate

Appendix 4 - Letter of confirmation

The following wording is given as an example. It may not be applicable in every case and may consequently need addition or amendment. For example, a confirmation at the time of initial appointment may be different to the annual core testing.

[LEAD EMPLOYING ORGANISATION² LETTERHEAD]

[DATE]

Dear [CHAIR NAME³],

Fit and Proper Person Test

This confirmation letter is provided in connection with [name of board member, job title of board member, organisations that the joint board member post covers] for [year of test, eg 2023/24] as at [date of conclusion of annual⁴ FPPT for the individual] for the purpose of the Fit and Proper Person Test.

As Chair of [lead employer], I confirm that I have carried out the Fit and Proper Person Test for [name of board member].

The process and the evidence used by me in carrying out the Fit and Proper Person Test and in being able to reach a conclusion as to whether [name of board member] is fit and proper, is appropriate to reach that conclusion in the context of the Fit and Proper Person Framework.

In accordance with the Fit and Proper Person Test Framework requirements and in reaching my conclusion that [name of board member] is fit and proper as at [date of conclusion of test], I have assumed that you know no reason that this is not an appropriate conclusion to reach.

Please would you sign and return this letter as confirmation of receipt and that there are no further matters which should be taken into consideration.

Yours sincerely,

..... (signature)

..... (chair of lead employer organisation)

Date.....

I confirm that I have received the outcome for the FPPT for [name of board member] and that I have provided any necessary information for you to reach this conclusion.

..... (signature)

..... (chair of lead employer organisation)

Date.....

² This is the organisation which holds the contract/employs the board member who works jointly across more than one organisation.

³ This is the name of the chair of the other organisation that the joint board appointment is made with.

⁴ It should be noted that while there will be an annual assessment of being fit and proper, it is a pervasive and ongoing process at all times. Any relevant matter related to the board member being fit and proper should be reported as soon as it arises.

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:

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	Add 'Yes' only if issues have been identified and an action plan and timescale to complete it has been agreed	Number of leavers	Board member reference completed and retained? Yes/No
Chair/NED board members						
Executive board members						
Partner members (ICBs)						
Total						

Part 2: FPPT reviews / inspections

Use this section to record any reviews or inspections of the FPPT process, including CQC, internal audit, board effectiveness reviews, etc.

Reviewer inspector	/ Date	Outcome	Outline of key actions required	Date actions completed
CQC				
Other, eg internal audit, review board, etc.				

Add additional lines as needed

Part 3: Declarations

DECLARATION FOR [name of organisation] [year]				
For the SID/deputy chair to complete:				
FPPT for the chair (as board member)	Completed by (role)	Name	Date	Fit and proper? Yes/No
For the chair to complete:				
Have all board members been tested and concluded as being fit and proper?	Yes/No	If 'no', provide detail:		
Are any issues arising from the FPPT being managed for any board member who is considered fit and proper?	Yes/No	If 'yes', provide detail:		
<p><i>As Chair of [organisation], I declare that the FPPT submission is complete, and the conclusion drawn is based on testing as detailed in the FPPT framework.</i></p>				
Chair signature:				
Date signed:				
For the regional director to complete:				
Name:				
Signature:				
Date:				

Appendix 6 - Template Board Member FPPT Privacy Notice

[organisation name] is required to provide you with details on the type of personal information which we collect and process. In addition to any other privacy notice which we may have provided to you, this notice relates to the information collected and processed in relation to the FPPT.

The FPPT in ESR is commissioned by NHS England.

Contact: [name in organisation who leads on this, eg SIRO]
Address: [for the person or team above]
Phone Number [for the person or team above]
E-mail: [for the person or team above]

The type of personal information we collect is in relation to the FPPT for board members and is described below, much of which is already collected and processed for other purposes than the FPPT:

1. Name, position title (unless this changes).
2. Employment history – This would include detail of all job titles, organisation, departments, dates, and role descriptions.
3. References.
4. Job description and person specification in their previous role.
5. Date of medical clearance.
6. Qualifications.
7. Record of training and development in application/CV.
8. Training and development in the last year.
9. Appraisal incorporating the leadership competency framework has been completed.
10. Record of any upheld, ongoing or discontinued disciplinary, complaint, grievance, adverse employee behaviour or whistle-blow findings.
11. DBS status.
12. Registration/revalidation status where required.
13. Insolvency check.
14. A search of the Companies House register to ensure that no board member is disqualified as a director.
15. A search of the Charity Commission's register of removed trustees.
16. A check with the CQC, NHS England and relevant professional bodies where appropriate.
17. Social media check.
18. Employment tribunal judgement check.
19. Exit reference completed (where applicable).
20. Annual self-attestation signed, including confirmation (as appropriate) that there have been no changes.

Processing of this data is necessary on the lawful basis set out in Article 6(1)(e) UK GDPR as the foundation for the database. This is because it relates to the processing of personal data which is necessary for the performance of the fit and proper person test which is carried out in the public interest and/or in the exercise of official authority vested in the controller.

For CQC-registered providers, ensuring directors are fit and proper is a legal requirement for the purposes of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, and organisations are required to make information available connected with compliance to the CQC.

How we get the personal information and why we have it

Most of the personal information we process is provided to us directly by you as part of your application form and recruitment to satisfy recruitment checks and the FPPT requirements.

[If applicable] We may also receive personal information indirectly, from the following sources in the following scenarios:

1. References when we have made a conditional offer to you.
2. Publicly accessible registers and websites for our FPPT.
3. Professional bodies for FPPT to test registration and or any other 'fitness' matters shared between organisations.
4. Regulatory bodies, eg CQC and NHS England.

We use the information that you have given us to:

- conclude whether or not you are fit and proper to carry out the role of board director
- inform the regulators of our assessment outcome.

We may share this information with NHS England, CQC, future employers (particularly where they themselves are subject to the FPP requirements), and professional bodies.

Under the UK General Data Protection Regulation (UK GDPR), the lawful bases we rely on for processing this information are:

- We need it to perform a public task.

How we store your personal information

Your information is securely stored. We keep the ESR FPPT information including the board member reference, for a career long period. We will then dispose of your information in accordance with our policies and procedures [insert].

Your data protection rights

Under data protection law, you have rights including:

- Your right of access – You have the right to ask us for copies of your personal information.
- Your right to rectification – You have the right to ask us to rectify personal information you think is inaccurate. You also have the right to ask us to complete information you think is incomplete.
- Your right to erasure – You have the right to ask us to erase your personal information in certain circumstances.
- Your right to restriction of processing – You have the right to ask us to restrict the processing of your personal information in certain circumstances.
- Your right to object to processing – You have the right to object to the processing of your personal information in certain circumstances.
- Your right to data portability – You have the right to ask that we transfer the personal information you gave us to another organisation, or to you, in certain circumstances.
- You are not required to pay any charge for exercising your rights. If you make a request, we have one month to respond to you.

Please contact us at [insert email address, phone number and or postal address] if you wish to make a request.

How to complain

If you have any concerns about our use of your personal information, you can make a complaint to us at [Insert your organisation's contact details for data protection queries]. You can also complain to the ICO if you are unhappy with how we have used your data.

The ICO's address

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire

SK9 5AF

Helpline number: 0303 123 1113 ICO website: <https://www.ico.org.uk>

Appendix 7 - FPPT Checklist

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
First Name	✓	✓	✓	x – unless change	✓	✓	Application and recruitment process.	Recruitment team to populate ESR. For NHS-to-NHS moves via ESR / Inter- Authority Transfer/ NHS Jobs. For non-NHS – from application – whether recruited by NHS England, in-house or through a recruitment agency.	
Second Name/Surname	✓	✓	✓	x – unless change	✓	✓			
Organisation (ie current employer)	✓	x	✓	N/A	✓	✓			
Staff Group	✓	x	✓	x – unless change	✓	✓			
Job Title Current Job Description	✓	✓	✓	x – unless change	✓	✓			
Occupation Code	✓	x	✓	x – unless change	✓	✓			

⁵ Information in this column taken from Appendix 1 of the Guidance for Chairs

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
Position Title	✓	x	✓	x – unless change	✓	✓			
Employment History Including: <ul style="list-style-type: none"> • job titles • organisation/ departments • dates and role descriptions • gaps in employment 	✓	x	✓	x	✓	✓	Application and recruitment process, CV, etc.	Any gaps that are because of any protected characteristics, as defined in the Equality Act 2010, do not need to be explained. The period for which information should be recorded is for local determination, taking into account relevance to the person and the role. It is suggested that a career history of no less than six years and covering at least two roles would be the minimum.	

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
								Where there have been gaps in employment, this period should be extended accordingly.	
Training and Development	✓	✓	✓	✓	✓	*	<p>Relevant training and development from the application and recruitment process; that is, evidence of training (and development) to meet the requirements of the role as set out in the person specification.</p> <p>Annually updated records of training and development completed/ongoing progress.</p>	<p>* NED recruitment often refers to a particular skillset/experience preferred, eg clinical, financial, etc, but a general appointment letter for NEDs may not then reference the skills/ experience requested. Some NEDs may be retired and do not have a current professional registration.</p> <p>At recruitment, organisations should assure themselves that the information provided by the</p>	<p>Does this work towards/complete specific issues in the board member's personal development plan as well as participation in wider board development and training?</p> <p>Has it been completed satisfactorily?</p> <p>Does the board member's competency training and development follow the NHS Leadership Competency Framework (LCF)?</p> <p>Any other training and development needs, eg was there anything included in a previous FPPT that needed mitigation through training</p>

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
								<p>applicant is correct and reasonable for the requirements of the role.</p> <p>For all board members: the period for which qualifications and training should look back and be recorded is for local determination, taking into account relevance to the person and the role.</p> <p>It is suggested that key qualifications required for the role and noted in the person specification (eg professional qualifications) and dates are recorded however</p>	<p>and development? Was the development plan updated and was the training completed on time?</p>

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
								far back that may be. Otherwise, it is suggested that a history of no less than six years should be the minimum. Where there have been gaps in employment, this period should be extended accordingly.	
References Available references from previous employers	✓	✓	✓	x	✓	✓	Recruitment process	Including references where the individual resigned or retired from a previous role	
Last Appraisal and Date	✓	✓	✓	✓	✓	*	Recruitment process and annual update following appraisal	* For NEDs, information about appraisals is only required from their appointment date forward. No information about appraisals in	Has a satisfactory outcome to the appraisal been achieved and the personal development plan and objectives set for the following year? Has progress against the LCF competencies been

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
								previous roles is required.	reviewed and is it satisfactory?
Disciplinary Findings That is, any upheld finding pursuant to any NHS organisation policies or procedures concerning employee behaviour, such as misconduct or mismanagement	✓	✓	✓	✓	✓	✓	Reference request (question on the new Board Member Reference). ESR record (high level)/ local case management system as appropriate.	The new BMR includes a request for information relating to investigations into disciplinary matters/ complaints/ grievances and speak-ups against the board member. This includes information in relation to open/ ongoing investigations, upheld findings and discontinued investigations that are relevant to FPPT.	Have there been investigations completed in the last year involving or raising concerns about the board member which have been upheld? If so, does the outcome impact the FPPT? In what way does it impact the FPPT? Does it prevent a positive FPPT conclusion being reached?
Grievance against the board member	✓	✓	✓	✓	✓	✓			Are there any ongoing investigations which involve the board member and that relate to FPPT that you need to be aware of?
Whistleblowing claim(s) against the board member	✓	✓	✓	✓	✓	✓			Have there been any discontinued investigations that relate to the FPPT during the year that you need to be aware of?
Behaviour not in accordance with organisational	✓	✓	✓	✓	✓	✓		This question is applicable to board members recruited both from inside and	

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
values and behaviours or related local policies								outside the NHS.	Maintain a clear record of reasons for and actions taken in mitigation and how you have reached your conclusion in relation to the FPPT.
Type of DBS Disclosed	✓	✓	✓	✓	✓	✓	ESR and DBS response.	<p>Frequency and level of DBS in accordance with local policy for board members. Check annually whether the DBS needs to be reapplied for.</p> <p>Maintain a confidential local file note on any matters applicable to FPPT where a finding from the DBS needed further discussion with the board member and the resulting conclusion and any actions</p>	<p>Local policy decision re frequency and level.</p> <p>For any matters relating to the board member and their FPP status, and which can be managed, does this remain appropriate, has anything changed, does anything more need to be done?</p> <p>Keep a record of annual (or more frequent if appropriate) consideration on this area – by signing off a board member as fit and proper, there is an assumption that this has been reviewed and considered and a conclusion met in relation to the impact on the FPPT</p>

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
								taken/required.	outcome. The annual self-attestation will also help with this.
Date DBS Received	✓	✓	✓	✓	✓	✓	ESR		
Date of Medical Clearance* (including confirmation of OHA)	✓	x	✓	x – unless change	✓	✓	Local arrangements		
Date of Professional Register Check (eg membership of professional bodies)	✓	x	✓	✓	✓	x	Eg NMC, GMC, accountancy bodies.		<p>For those board members who are required (in their job description or person specification) to be registered with a professional body – check their professional register.</p> <p>If a non-executive director has been appointed specifically for their professional background, and if this requirement is included in the role outline/specification and letter of appointment, then the check should also be carried out, but take into account that a retired professional may no longer be registered with a</p>

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
									professional body.
Insolvency Check	✓	✓	✓	✓	✓	✓	Bankruptcy and Insolvency register	Keep a screenshot of check as local evidence of check completed.	Consider impact of check on assessment of the board member as fit and proper.
Disqualified Directors Register Check	✓	✓	✓	✓	✓	Companies House			
Disqualification from being a Charity Trustee Check	✓	✓	✓	✓	✓	Charities Commission			
Employment Tribunal Judgement Check	✓	✓	✓	✓	✓	Employment Tribunal Decisions	No additional considerations unless there are findings of dishonesty or discrimination/victimisation within the judgment		
Social Media Check	✓	✓	✓	✓	✓	Various – Google, Facebook, Instagram, etc.	Are there any matters which impact the reputation of the board member in relation to the FPPT? How much does this impact the reputation of the board and the organisation as a whole in relation to FPPT?		
Self-Attestation Form	✓	✓	✓	✓	✓	✓	Template self-attestation form	Appendix 3	

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
Signed									
Sign-off by Chair/CEO	✓	x	✓	✓	✓	✓	ESR	Includes free text to conclude in ESR fit and proper or not. Any mitigations should be evidence locally.	
Other Templates to be Completed									
Board Member Reference	✓	✓	x	x	✓	✓	Template BMR	To be completed when any board member leaves for whatever reason and retained career-long or 75th birthday whichever latest (Appendix 2)	When a board member (permanent/interim; voting/non-voting; exec/non-exec) leaves for any reason (eg a temp board member stepping down; retirement; going to a new position elsewhere; sabbatical; secondment; any other reason), the board member reference (BMR) should be completed whether or not it has been requested by a future employer. Organisations are encouraged to share the reference when complete

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
									with the individual for transparency. The facility to upload the BMR template to ESR for retention and future reference, is under development. In the interim it should be retained locally
Letter of Confirmation	x	✓	✓	✓	✓	✓	Template	For joint appointments only - Appendix 4 in Framework.	
Annual Submission Form	x	✓	✓	✓	✓	✓	Template	Annual summary to Regional Director - Appendix 5.	
Privacy Notice	x	✓	x	x	✓	✓	Template	Board members should be made aware of the proposed use of their data for FPPT – Example in Appendix 6.	
Settlement	x	✓	✓	✓	✓	✓	Board member reference at	It is acknowledged	Are you aware whether the board member came

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes	What to consider as part of the FPPT assessment ⁵
Agreements							recruitment and any other information that comes to light on an ongoing basis.	that details may not be known/disclosed where there are confidentiality clauses.	<p>to the organisation with a settlement agreement which is relevant to the FPPT, in place from elsewhere? Are you satisfied that the FPPT and other recruitment checks provided sufficient assurance and evidence for the person to be considered a fit and proper person prior to becoming a board member?</p> <p>Were any mitigations put in place in response to this? If yes, have you maintained a clear record of reasons for, and reasonable steps/actions taken in mitigation, and how you have reached your conclusion in relation to the FPPT?</p>