## Reference:

**Fit and Proper Person Policy**

**Version: 0.1**

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| **Summary** | The Fit and Proper Persons Test of Trust Board members in compliance of regulation 5 of the Health & Social Care Act 2008 (regulated activities) Regulations 2014.  |
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1. **Introduction**

 NHS England has developed a Fit and Proper Person Test (FPPT) Framework in response to recommendations made by Tom Kark KC in his 2019 review of the FPPT (the Kark Review). This also takes into account the requirements of the Care Quality Commission (CQC) in relation to directors being fit and proper for their roles under the current Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

 In the foreword to his review, Tom Kark KC stated that “The culture and management of each hospital Trust flows from the management team. Thus, the quality and culture of the management team is of the greatest significance to the ethos and success of the hospital, the effectiveness, and the working conditions (in the widest sense) of its staff, and ultimately the care, comfort, and safety of the patients to whom the Trust provides health services.” The specific recommendations from the Kark Review (2019) relevant to York and Scarborough Teaching Hospitals NHS Foundation Trust (Y&STHFT) are:

* + - All directors should meet specified standards of competence to sit on the board of any health-providing organisation. Where necessary, training should be available.
		- That a central database of directors should be created to hold relevant information about qualifications and history.
		- A mandatory reference requirement for each director should be introduced.

This policy should be read in conjunction with associated guidance documents.

1. **Purpose**

 This policy supports the implementation of the recommendations from the Kark Review, and promotes the effectiveness of the underlying legal requirements by establishing a Fit and Proper Person Test (FPPT) Policy. The purpose is to strengthen/reinforce individual accountability and transparency for board members, thereby enhancing the quality of leadership within Y&STHFT. The Framework was effective from 30 September 2023 and this policy supports its implementation by the Board going forward from that date. Y&STHFT is not expected to collect historic information to populate ESR or local records, but to use the Policy for all new board level appointments or promotions and for annual assessments going forward.

 The Policy should be read in conjunction with the [Y&STHFT Constitution](https://www.yorkhospitals.nhs.uk/seecmsfile/?id=7105), [NHS People Plan](https://www.england.nhs.uk/ournhspeople/), [People Promise](https://www.england.nhs.uk/ournhspeople/online-version/lfaop/our-nhs-people-promise/) and forthcoming [NHS Leadership Competency Framework](https://www.england.nhs.uk/leaders/) (LCF) for leaders at board level. This Policy supports transparency and should be the start of an ongoing dialogue between board members about probity and values. It should be seen as a core element of a broader programme of board development, effective appraisals and values-based (as well as competency-based) appointments – all of which are part of the good practice required to build a ‘healthy’ board.

#### Scope

This Policy applies to the board members of Y&STHFT. Within this guidance, the term ‘board member’ is used to refer to:

* + - both 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.

 Those 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 be assessed against this Policy if they are a board member at Y&STHFT.

 The Policy will ensure assessment of the appropriateness of an individual to effectively discharge their duties in the capacity of a board member.

Y&STHFT may extend the FPPT assessment to other key roles, for example, to those individuals who may regularly attend board meetings or otherwise have significant influence on board decisions. The annual submission requirement is, however, limited to board members only.

A documented, full FPPT assessment – a complete assessment by the employing NHS organisation against the core elements will be needed in the following circumstances:

 1. New appointments in board member roles, whether permanent or temporary, where greater than six weeks, this covers:

1. new appointments that have been promoted within an NHS organisation
2. temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis
3. existing board members at one NHS organisation who move to another NHS organisation in the role of a board member
4. individuals who join an NHS organisation 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 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).

 3. 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.

 Note: for points 1a – 1d above (new appointments) the full FPPT will also include a board member reference check (see section 3.9).

 For points 2 and 3 above, the board member reference check will not be needed.

#### Current Fit and Proper Persons Regulations

In 2014, the government introduced a ‘fit and proper person’ requirement, via [Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the ‘Regulations’)](https://www.legislation.gov.uk/uksi/2014/2936/regulation/5).

This sets out the requirements for a FPPT which applies to directors and those performing the functions of, or functions equivalent or similar to the functions of, a director in all NHS organisations registered with the CQC, which includes all licence holders and other NHS organisations to which licence conditions apply. For the purposes of this guidance, we have referred to these individuals as ‘board members’.

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:

* the individual is of good character
* 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.
* 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.
* 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.
* none of the grounds of unfitness specified in part 1 of Schedule 4 apply to the individual.

The grounds of unfitness specified in [Part 1 of Schedule 4 to the Regulated Activities Regulations](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4) are:

* the person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged
* the person is 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
* the person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986
* the person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
* the person is 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
* the person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment.

The good character requirements referred to above in Regulation 5 are specified in [Part 2 of Schedule 4 to the Regulated Activities Regulations](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4), and relate to:

* whether the person has 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
* whether the person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

#### FPPT Framework

#### The framework introduces 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 standard way of completing references with additional content whenever a director leaves an NHS board, and extension of the applicability to some Foundation Trusts, NHS England and the CQC.

 The FPPT framework sets out:

* When the full FPPT assessment is needed, which includes self-attestations
* New appointment considerations
* Additional considerations in specific situations such as joint appointments, shared roles and temporary absences
* The role of the chair in overseeing the FPPT
* The FPPT core elements to be considered in evaluating board members
* The circumstances in which there will be breaches to the core elements of the FPPT (regulation 5)
* The requirements for a board member reference check
* The requirements for accurately maintaining FPPT information on each board member in the ESR record
* The record retention requirements
* Dispute resolution
* Quality assurance over the Framework

#### Duties

#### 6.1 Chair

* Ultimately responsible for ensuring the Trust has proper systems and processes in place to comply with the FFPT requirements.
* Ensure an appropriate programme is in place to identify and monitor the development needs of board members.
* On appointment of a new board member, consider the specific competence, skills and knowledge of board members to carry out their activities, and how these fits with the overall board.
* Conclude whether the board member is fit and proper.
* Complete an annual self-attestation that they themselves are in continued adherence with the FPPT requirements.
* Confirm, on an annual basis, that all board members have completed their own FPPT self-attestation.
* Ensure that for any board member approved to commence work or continue in post despite there being concerns about a particular aspect of the FPPT, they document the reason(s) as to why there has been an issue.

#### 6.2 Deputy Chair/Senior Independent Director

* Complete an annual self-attestation that they themselves are in continued adherence with the FPPT requirements.
* Confirm, on an annual basis, that the Chair has completed their own FPPT self-attestation.
* Conclude whether the Chair is fit and proper and provide “sign off” for the annual submission.

#### 6.3 Chief Executive

* Ensure that the executive director references/pre-employment checks (where relevant) and full FPPT (including the annual self-attestation) are complete and adequate for each individual.
* Ensure an appropriate programme is in place to identify and monitor the development needs of executive directors.
* On appointment of a new executive director, consider the specific competence, skills and knowledge required to carry out their activities and, where appropriate, how these fits with the board.
* Conclude whether the executive director is fit and proper and provide “sign off” for the annual submission.
* Complete an annual self-attestation that they themselves are in continued adherence with the FPPT requirements.
* Ensure that for any executive director approved to commence work or continue in post despite there being concerns about a particular aspect of the FPPT, they document the reason(s) as to why there has been an issue.

#### 6.4 Those within scope of FPPT:

* Hold and maintain suitability for the role they are undertaking.
* Respond promptly to any requests for information or evidence of their ongoing suitability.
* Disclose any issues which may call into question their suitability for the role they are undertaking.

#### 6.5 Recruitment Team

* Undertake all recruitment checks and ensure results are recorded on ESR.
* Forward all supporting evidence/documentation to the Corporate Governance to be saved on local records.
* Notify HR and Corporate Governance of any issues identified.
* Provide information and reports in relation to the FPPT as required.
* Support internal FPPT audits including preparation and presentation of evidence and development and implementation of any recommendations.
* Support CQC in their inspection and provide evidence where required.

#### 6.6 Corporate Governance Team

* Ensure all board members and executive directors have returned a signed self-attestation form annually.
* Ensure the full FPPT assessment is completed before board members are appointed.
* Undertake annual FPPT checks for all board members, ensure results are recorded on ESR and ensure any supporting documentation is saved on the relevant personnel file.
* Support the Chair in discharging their duties in relation to the FPPR.
* Prepare reports for presentation to the board in public.
* Support CQC inspection and provide evidence where required.
* Support internal FPPT audits including preparation and presentation of evidence and development and implementation of any recommendations.
* Maintain the FPPT Policy.

#### 6.7 ESR Support team

* Ensure ESR fields are configured correctly for the Trust.

Enter the outcome of FPPT tests on ESR – at recruitment and on behalf of the Corporate Governance teams for annual checks.

* Provide technical support and guidance to the Trust where required.
* Provide information and reports in relation to the FPPT as required.
* Support the Trust with ongoing validation of FPPT information within ESR.
* Support audits where required.

#### 6.8 Recruitment agencies and agency providers

* Ensure the necessary checks have been completed as outlined in this policy.
* Report any issues in a timely manner to the Trust’s Corporate Governance Team
* Promptly provide scanned copies of any evidence of checks undertaken/supporting documentation.

####  Roles and responsibilities relating to the FPPT process are shown in a checklist at Appendix 1.

#### FPPT Assessment

The Chair is ultimately responsible for ensuring the Trust can evidence that appropriate systems and processes are in place to ensure that all new and existing board members and executive directors are, and continue to be, fit and proper. Such systems and processes include (but are not limited to) recruitment, induction, training, development, appraisal, governance committees, disciplinary and dismissal processes.

The annual assessment will be made as part of the well-led review key question “Is there the leadership capacity and capability to deliver high-quality, sustainable care? With the related prompt “Do leaders have the skills, knowledge, experience and integrity that they need – both when they are appointed and on an ongoing basis?”. The FPPT assessment should be aligned to the annual appraisal process.

The FPPT assessment process covers the following:

|  |  |  |
| --- | --- | --- |
|  | Tested at Initial Recruitment | Annual Check Required |
| First name | ✓ | N/A |
| Second name/surname | ✓ | N/A |
| Organisation | ✓ | N/A |
| Staff group | ✓ | N/A |
| Job title | ✓ | N/A |
| Occupation code | ✓ | N/A |
| Position title | ✓ | N/A |
| Employment history | ✓ | N/A |
| Training and development | ✓ | ✓ |
| References | ✓ | N/A |
| Last appraisal and date | ✓ | ✓ |
| Disciplinary findings | ✓ | ✓ |
| Grievance (upheld against the board member) | ✓ | ✓ |
| Whistleblowing | ✓ | ✓ |
| Behaviour – actions or investigations relating to any ongoing or discontinued matters relevant to FPPT | ✓ | ✓ |
| Type of DBS disclosed | ✓ | ✓ three-yearly |
| Date of DBS received  | ✓ | ✓ three-yearly |
| Date of medical clearance | ✓ | N/A unless change |
| Date of professional register check | ✓ | ✓ |
| Insolvency check | ✓ | ✓ |
| Disqualified directors register check | ✓ | ✓ |
| Disqualification from being a charity trustee check | ✓ | ✓ |
| Employment tribunal judgement check | ✓ | ✓ |
| County Court Judgement (undertaken by Corporate Governance for VSMs and Board members as chargeable) | ✓ | ✓ |
| Social media checks | ✓ | ✓ |
| Signed self-attestation form | ✓ | ✓ |
| Board Member Reference | ✓ | N/A |
| Letter of appointment (joint appointments only) | ✓ | N/A |
| Settlement Agreement | ✓ | N/A |
| National Insurance number | ✓ | N/A unless change |
| Sign-off by Chair/CEO | ✓ | ✓ |

 FPPT checks are undertaken in addition to the standard NHS pre-employment checks.

#### Self-Attestation

 Every board member will need to complete an annual self-attestation, to confirm that they are in adherence with the FPPT requirements. Self-attestations will be a necessary step that forms a part of the full FPPT assessment (see Appendix 2). The self-attestation should be completed aligned to the annual appraisal process.

## New appointments

Y&STHFT 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 member unless the appointee concerned can demonstrate they have met the FPPT requirements as detailed in this policy.

As part of conducting the initial appointment process for a board member, an inter- authority transfer (IAT) could be submitted to identify any of the applicant’s previous or current NHS service/employment history. Alternatively, other arrangements could be made to collate the relevant information. This should also help identify any potential duplicate employment accounts for the appointee, e.g. when someone has more than one NHS role on ESR.

## Additional considerations

There are additional considerations when applying the FPPT for joint appointments, shared roles within Y&STHFT and periods of temporary absence. These additional considerations have been detailed below.

## Joint appointments across different NHS organisations

Additional considerations are needed where there are joint appointments to support closer working between Y&STHFT and other NHS organisations in the health and care system.

For instance, where joint appointments of a board member can help foster joint decision-making, enhance local leadership and improve the delivery of integrated care. Joint appointments may occur where:

* + - * Y&STHFT and another (or more) NHS organisation(s) want to create a combined role
			* Y&STHFT and another (or more) NHS organisation(s) want to employ an individual to work across the different NHS organisations in the same role.

In the scenario of joint appointments, the full FPPT would need to be completed by the designated host/employing NHS organisation and in concluding their assessment they will need input from the Chair of the other contracting NHS organisation to ensure that the board member is fit and proper to perform both roles.

The host/employing NHS organisation will then provide a ‘letter of confirmation’ (Appendix 5) to the other contracting NHS organisation to confirm that the board member in question has met the requirements of the FPPT.

The Chair of the other contracting NHS organisation has the responsibility to keep the host/employing NHS organisation abreast of changes and any matters that may impact the FPPT assessment of the board member.

Where there is a joint appointment, the host/employing NHS organisation responsible for the FPPT should also lead on conducting the joint appraisal and ensure adequate input from the other contracting NHS organisation.

Where the joint appointment results in a new board member (for the NHS organisation in question), it will constitute a new appointment and as such, the host/employing NHS organisation should provide a ‘letter of confirmation’ to the other NHS organisation(s).

For the avoidance of doubt, where two or more organisations employ or appoint (in the case of a Chair or NED) an individual for two or more separate roles at the same time, each organisation has a responsibility to complete the FPPT.

If the FPPT assessment at one organisation finds an individual not to be FPP, the Chair should update their counterpart of any other NHS organisation(s) where the individual has a board-level role and explain the reason. To note, the issue at one organisation may be one of role-specific competence, which may not necessarily mean the individual is not a FPP at the other organisation.

## Shared board roles within Y&STHFT

Where two individuals share responsibility for the same board member role (e.g. a job share) within Y&STHFT, both individuals should be assessed against the FPPT requirements.

## Temporary absence

For the purpose of the FPPT process, a temporary absence is defined as leave for a period of six consecutive weeks or less (e.g. sick leave, compassionate leave or parental leave) and where Y&STHFT is leaving the role open for the same board member. As such there is no requirement to approve another permanent individual for the role of board member.

Where there is a temporary absence, it is expected that the Director of Workforce and Organisational Development/Associate Director of Corporate Governance will liaise with the Chair and Chief Executive to ensure temporary cover is provided; and to ensure that local internal systems are adequately updated to record the start and projected end date of the temporary absence.

Where an individual is appointed as temporary/interim cover and is not already assessed as fit and proper, Y&STHFT will ensure appropriate supervision by an existing board member.

A full FPPT assessment should be undertaken for an individual in an interim cover role exceeding six weeks. Therefore, if the interim cover is expected to be in post for longer than six weeks, Y&STHFT will look to commence the FPPT assessment as soon as possible. Where the period of temporary absence is extended beyond six weeks, the FPPT assessment will commence as soon as Y&STHFT is aware of the extension. This FPPT assessment should be carried out in line with the requirements in this policy.

## FPPT core elements

This section of the Policy details the core elements that should be included in an FPPT assessment. The checks that underpin the core elements reflect the assessment criteria per [Regulation 5](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/5) and [Schedule 4](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4) of the Regulations.

The full FPPT assessment will constitute an assessment against each of the core elements detailed below and should be conducted in accordance with section 3. Individual board members should complete self-attestations to confirm they are fulfilling the core elements of the FPPT assessment, as described in section 8.

Y&STHFT will assess board members against the following three core elements when considering whether they are a fit and proper person to perform a board role:

* Good character.
* Possessing the qualifications, competence, skills required and experience.
* Financial soundness.

Note: the FPPT checks relating to these core elements will be in addition to standard employment checks, as per the Trust’s recruitment and selection procedures and NHS Employers’ pre-employment check standard. This can include CV checks, self-declarations, Google searches, proof of qualifications, proof of identity, right to work, etc.

The section below, which considers both [Regulation 5](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/5) and [Schedule 4](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4) of the Regulations, explains matters that Y&STHFT take account of in relation to the three core elements.

When Y&STHFT assesses a board member against these core elements in relation to being a fit and proper person, consideration will be given to the nature, complexity and activities of the organisation.

## Breaches to core elements of the FPPT (Regulation 5)

[Regulation 5](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/5) will be breached if:

1. A board member is unfit on the grounds of 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.
2. A board member is also unfit on the grounds of character 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.
3. A board member is unfit should they fail to meet the relevant qualifications or fail to have the relevant competence, skills and experience as deemed required for their role.
4. A board member is unfit on grounds of financial soundness, such as a relevant undischarged bankruptcy or being placed under a debt relief order.
5. The Trust does not have a proper process in place to make the robust assessments required by the Regulations.
6. On receipt of information about a board member’s fitness, a decision is reached on the board member that is not in the range of decisions a reasonable person would be expected to reach.

With regards to the above points, it is acknowledged that there could be circumstances where, for instance, board members are deemed competent but do not hold relevant qualifications. In such circumstances there should be a documented explanation, approved by the Chair, as to why the individual in question is deemed fit to be appointed as a board member, or fit to continue in role if they are an existing board member. This should be recorded in the annual return to the NHS England regional director (Appendix 6). Furthermore, there may be a limited number of exceptional cases where a board member is deemed unfit (that is, they failed the FPPT) for a particular reason (other than qualifications) but the Trust appoints them or allows them to continue their current employment as a board member.

In such circumstances there will be a documented explanation as to why the board member is unfit and the mitigations taken, which is approved by the Chair. This should be submitted to the NHS England regional director for review, either as part of the annual FPPT submission for the Trust, or on an ad hoc basis as a case arises.

It should be noted that the Trust shall determine breaches based on points 1 to 4, whereas any regulatory inspections, such as a CQC inspection will determine breaches of points 5 and 6.

In the event of a breach, the following process will be followed:

 

 Any investigations will be undertaken in line with Trust’s disciplinary policy.

## Board member references

The Board Member Reference (BMR) template (see Appendix 3) is based on the standard NHS reference template, applies to all board members and executive directors and is a mandatory requirement from 30 September 2023.

## The BMR process for new appointments and leavers is set out in Appendix 4.

## New Appointments

Board member references will be requested in writing before appointment, as part of the FPPT assessment, for new board and executive director appointments - either internal to an NHS organisation, internal with the Trust or external to the NHS. This applies whether permanent or temporary where greater than six weeks; specifically:

a. New appointments that have been promoted within an NHS organisation.

b. Existing board members at one NHS organisation who move to another NHS organisation in the role of a board member.

c. Individuals who join an NHS organisation in the role of board member for the first time from an organisation that is outside of the NHS.

d. Individuals who have been a board member in an NHS organisation and join another NHS organisation not in the role of board member, that is, they take a non-board level role.

References for a potential candidate applies irrespective of how the previous employment ended, for instance, resignation, redundancy, dismissal or fixed term work or temporary work coming to an end.

Obtaining references:

|  |
| --- |
| **For board members/executive directors:**  |
| • The Trust will obtain a minimum of two board member references (using the BMR template) where the individual is from outside the NHS, or from within the NHS but moving into the board role for the first time. • These two references should come from different employers, where possible.  |
| **For an individual who moves from one NHS board role to another NHS board role, across NHS organisations:**  |
| • Where possible one reference from a separate organisation in addition to the board member reference for the current board role will suffice. This is because their BMR template should be completed in line with the requirements of the framework so that NHS organisations can maintain accurate references when a board member departs.  |
| **For a person joining from another NHS organisation:**  |
| • The new employing/appointing NHS organisation should take reasonable steps to obtain the appropriate references from the person's current employer as well as previous employer(s) within the past six years. • These references should establish the primary facts as per the board member reference template.  |
| **Where an employee is entering the NHS for the first time or coming from a post which was not at board/executive director level:**  |
| • The new employing NHS organisation should make every practical effort to obtain such a reference which fulfils the board member reference requirements. • In this scenario, the NHS organisation will determine their own reasonable steps to satisfy themselves they have pursued relevant avenues to obtain the information on potential incoming individuals through alternative means. • For example, if a Director of Finance is joining from financial services, they can check the financial services register, or request for a mandatory reference under the financial services regulations.  |

## Settlement Agreements

References will not ask for specific information on settlement agreements or non-disclosure agreements but will request any further information and concerns about an applicant’s fitness and propriety, relevant to the FPPT to fulfil the role as a director, be it executive or non-executive.

If there is a historical settlement agreement/non-disclosure agreement already in place which includes a confidentiality clause, the ICB will seek permission from all parties prior to including any such information in a board member reference.

The existence of a settlement agreement does not, in and of itself determine that a person is not fit or proper to be a board member.

## Investigations

Investigations (irrespective of reason for discontinuance) will be limited to those which are applicable and relevant to the FPPT for example:

* Relating to serious misconduct, behaviour and not being of good character.
* Reckless mismanagement which endangers patients.
* Deliberate or reckless behaviour
* Dishonesty.
* Suppression of the ability of people to speak up about serious issues in the NHS, e.g. allowing bullying or victimisation of those who speak up or blow the whistle, or any harassment of individuals.
* Any behaviour contrary to the professional Duty of Candour which applies to health and care professionals, e.g. falsification of records or relevant information.

Discontinued investigations are included in the reference request to identify issues around serious misconduct and mismanagement and to deliberately separate them from issues around qualifications, competence, skills, and experience and health, unless such competence and/or health issues could potentially lead to an individual not meeting the requirements of the FPPT.

## Providing references

The Trust will aim to provide a reference to another NHS organisation within 14 days of the date that the request is received for VSM’s (past or present).

The standard Board Member Reference template will be used for VSM and board member references. References relating to board Members (past or present) will be completed by Governance Team and the Chair. Where a current board member moves between different NHS organisations, a board member reference form following a standard format will be completed by the employer and signed off by the Chair of that NHS organisation.

A board Member Reference must be completed for all leavers (VSMs and board members) whether or not a reference has been requested. This should be retained on the personnel file and forwarded to another organisation as requested.

## Revising references

If an NHS organisation has provided a reference to another NHS organisation about an employee or former employee, and has subsequently:

* become aware of matters or circumstances that would require them to draft the reference differently.
* determined that there are matters arising relating to serious misconduct or mismanagement.
* determined that there are matters arising which would require them to take disciplinary action.
* concluded there are matters arising that would deem the person not to be ‘fit or proper’ for the purposes of Regulation 5 of the Regulations,

The NHS organisation that provided the reference should make reasonable attempts to identify if the person's current employer is an NHS organisation and, if so, provide an updated reference/additional detail within a reasonable timeframe.

Revised references between NHS organisations should cover a six-year period from the date the initial board member reference was provided, or the date the person ceased employment with the NHS organisation, whichever is later.

## Leavers

A reference will be completed when a board member or executive director leaves the ICB irrespective of whether a reference has been requested by a future employer and including in the circumstances of retirement. This can be completed as part of the exit interview and the individual has the right to have sight of any reference that has been written for them.

The competency domains in the LCF should be taken into account when the board member reference is written.

## Disclosure and Barring Service (DBS) Checks

 There are three types of DBS checks. These are:

|  |  |
| --- | --- |
| **Basic check**  | To be eligible for a standard level DBS certificate, the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.  |
| **Enhanced checks**  | To be eligible for an enhanced level DBS certificate, the position must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) regulations.  |
| **Enhanced checks with children’s and/or adults’ barred list check(s)**  | To be eligible to request a check of the children’s or adults’ barred lists, the position held must be eligible for an enhanced level DBS check and undertake ‘regulated activities’ that are covered by the barred list. The regulated activities are contained in the Protection of Freedoms Act 2012, which can be accessed here.  |

Basic checks will be completed for all board members and executive directors (at VSM grade).

Enhanced checks will be completed for the Medical Director and Chief Nurse.

All DBS checks will be conducted at initial recruitment by the recruitment team and then on a 3 yearly cycle thereafter.

## Electronic Staff Record (ESR)

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

The ESR FPPT data fields need to be maintained to ensure information about the serving board member is current. This will mean that ESR is specifically updated for:

* all board members within the Trust
* new board members who have been appointed within an NHS organisation
* whenever there has been a relevant change to one of the fields of FPPT information held in ESR
* updates for annual completion of the full FPPT
* annual completion of FPPT confirmed by Chairs.

It will be the responsibility of the Trust to ensure that ESR remains current and is updated for relevant changes in a timely manner. As a minimum it is expected that the Trust conducts an annual review to verify that ESR is appropriately maintained.

The Chair will be accountable for ensuring that the information in ESR is up to date for the Trust.

The Associate Director of Corporate Governance is responsible for establishing a process for collating the relevant information in an accurate, complete and timely manner for updating to ESR.

The Trust will establish a process for individuals to access and exercise their rights in connection with the information held about them, in accordance with the requirements of data protection law.

## Information held in ESR

The information that ESR will hold about board members is detailed 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.

It should also be noted that the national insurance number is an additional check where there may have been a change of name highlighted in the initial or annual assessment.

The annual FPPT requires the Trust to validate all fields above – except for:

\* Fields marked with an asterisk (\*) – these do not require validation as part of the annual FPPT unless a specific reason arises. However, these fields should still be updated in the event of a change to the information held.

## Record retention

The ESR FPPT data fields will retain records of completed tests to support the FPPT assessments. All supporting documents/records in relation to the FPPT will be held locally by the Trust. As such, the Trust will establish, implement and maintain adequate policies and procedures to comply with data protection legislation and the [NHS Records Management Code of Practice](https://transform.england.nhs.uk/information-governance/guidance/records-management-code/). The NHS Records Management Code of Practice sets out expectations in relation to retaining actual staff documents/records for a period of six years. However, the Trust case documents/records may be retained for longer than the standard six years, based on the facts of the case. When determining how long to retain documents/records in relation to disciplinary and similar cases and where applicable, NHS organisations should make an assessment as to the severity of the misconduct and/or mismanagement and its impact to the FPPT. The more serious the issue the longer the retention period should be. In relation to ESR, the information and accompanying references should be kept career long, which at a minimum should be until the 75th birthday of the board member.

## Dispute Resolution

Data and information

Where a board member identifies an issue with data held about them in relation to the FPPT, they should contact the Corporate Governance Team. Where this does not lead to a satisfactory resolution for the board member, the following options are available:

* For Chairs – a further request for review can be made to the SID or Deputy Chair who would establish a process proportionate to the matter being considered; for example, establishing a panel with at least one independent member
* For all other board members (including Chairs where the above processes have not led to a satisfactory conclusion), the options could include:
	+ referring the matter to the ICO
	+ (For executive director roles only\*) taking the matter to an employment tribunal (ET)
	+ instigating civil proceedings.

Outcome of FPPT assessment

Where a board member disagrees with the outcome of the FPPT assessment and they have been deemed ‘not fit and proper,’ the following options are available:

* Executive and non-executive – local policy and constitution arrangements should be followed first and the Trust may wish to take their own legal advice or seek advice from NHS England.

At any point, employees have the right to take the matter to an ET\*.

\* Chair and non-executive board members cannot take their organisation to ET unless in relation to discrimination, but they can instigate civil proceedings.

## Monitoring Compliance

## Quality assurance and governance

To ensure that the FPPT is being adequately embedded within the Trust there will need to be quality assurance checks conducted by the CQC, NHS England and an external/independent review. The quality assurance checks over the various parts of the FPPT Framework have been detailed below.

## CQC quality assurance

The CQC’s role is to ensure the Trust has robust processes in place to adequately perform the FPPT assessments, and to adhere to the requirements of Regulation 5 of the Regulations. As such, as part of the Well Led reviews, CQC will consider the:

* quality of processes and controls supporting the FPPT
* quality of individual FPPT assessments
* board member references, both in relation to the new employing NHS organisation but also in relation to the NHS organisation which wrote the reference
* collation and quality of data within the database and local FPPT records.

In doing so the CQC will have regard to the evidence that exists as to whether the board members meet the FPPT. For example, this includes, but is not limited to, checking the following forms of evidence:

* That the Trust is aware of the various guidelines on recruiting board members and that they have implemented procedures in line with this best practice.
* Personnel files of recently appointed board members (including internal appointments of existing staff).
* Information or records relating to appraisals for board members.
* References and personal development plans.

The CQC may intervene where there is evidence that proper processes have not been followed or are not in place for FPPT. While the CQC does not investigate individual board members, it will pass on all information of concern that is received about the fitness of a board member to the relevant NHS organisation.

The CQC will notify the Trust of all concerns relating to their board member and ask them to assess the information received. The board member to whom the case refers will also be informed. The Trust will then detail the steps they have taken to assure the fitness of the board member and provide the CQC with a full response within 10 days. The CQC will then carefully review and consider all information. Where the CQC finds that the Trust’s processes are not robust, or an unreasonable decision has been made, they will either:

* contact the Trust for further discussion
* schedule a focused inspection
* take regulatory action in line with their enforcement policy and decision tree if a clear breach of regulation is identified.

## NHS England quality assurance

NHS England will have oversight through receipt and review of the annual FPPT submissions to the NHS England regional director from the Trust.

## Internal audit/external review

Every three years, the Trust will have an internal audit to assess the processes, controls and compliance supporting the FPPT assessments. The internal audit should include sample testing of FPPT assessment and associated documentation. The Trust will include FPPT process and testing in the specification for any commissioned Well-Led/board effectiveness reviews.

## Governance

For good governance, the Trust will be clear about the reporting arrangements across the FPPT cycle. This is to include:

* an update to a meeting of the board in public to confirm that the requirements for FPPT assessment have been satisfied at least annually
* consideration by the Audit Committee, for example where there is a related internal or external audit review included in the audit programme
* relevant information to the Council of Governors (CoG) as described in section 16.6 below.

## NHS foundation trusts – appointment and removal of the chair and non- executive directors

The document [‘Your statutory duties- A reference guide for NHS foundation trust governors’](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284473/Governors_guide_August_2013_UPDATED_NOV_13.pdf) refers to the role of the CoG in appointing and removing the Chair and NEDs. This policy should be considered alongside this document and the Trust’s constitution. The CoG in the Trust:

* Should continue to make chair and NED appointments in accordance with statutory duties and the Trust constitution. These continue to be subject to satisfactory recruitment checks, and this will now include consideration of the initial FPPT assessment.
* Should continue to ‘…receive performance information for the chair and other non-executive directors as part of a rigorous performance appraisal process …’ in accordance with the Trust constitution. Performance appraisals will include application of the LCF in accordance with the framework.
* Should be advised of any outcome from a Non-executive board member (including the Chair) FPPT assessment as ‘not fit and proper.’ Dependent on the circumstances and in accordance with the Trust constitution, the CoG would be involved as appropriate with any subsequent removal process, where applicable.

The CoG should receive support from the SID and/or the Associate Director of Corporate Governance (Trust secretary) and use the governance arrangements such as the Nomination Committee.

## Document Review

This policy shall be reviewed every three years and at such intervening time when new guidance is released regarding the FPPT.

## Associated Trust Documents

The following documents are related to this policy:

[Y&STHFT Constitution](https://www.yorkhospitals.nhs.uk/seecmsfile/?id=7105)

Recruitment and Selection Policy

Disciplinary Policy

Equality, Diversity and Inclusion Policy

Records Management Policy

Data Protection Policy

## References

NHS England Fit and Proper Person Test Framework for board members

[NHS People Plan](https://www.england.nhs.uk/ournhspeople/)

[People Promise](https://www.england.nhs.uk/ournhspeople/online-version/lfaop/our-nhs-people-promise/)

[NHS Leadership Competency Framework](https://www.england.nhs.uk/leaders/)

[Article 26 UK GDPR](https://www.legislation.gov.uk/eur/2016/679/article/26)

[Article 6(1)(e) UK GDPR](https://www.legislation.gov.uk/eur/2016/679/article/6)

[Article 9 UK GDPR](https://www.legislation.gov.uk/eur/2016/679/article/9) Articles 9(2)(b) – employment; 9(2)(g) – statutory/public functions; and 9(2)(h)

[Schedule 1, paragraph 2 of the Data Protection Act 2018](https://www.legislation.gov.uk/ukpga/2018/12/schedule/1/enacted#:~:text=2%20%281%29%20This%20condition%20is%20met%20if%20the,%28d%29%20the%20provision%20of%20health%20care%20or%20treatment%2C)

[Article 5(1) UK GDPR](https://www.legislation.gov.uk/eur/2016/679/article/5)

[NHS Electronic Staff Record (ESR) privacy notice](https://my.esr.nhs.uk/dashboard/web/esrweb/privacy)

Freedom of Information Act [section 40(1)](https://www.legislation.gov.uk/ukpga/2000/36/section/40)

[section 7 of the DPA](https://www.legislation.gov.uk/ukpga/2018/12/section/7/enacted)

[Regulation 5(3)](https://www.legislation.gov.uk/uksi/2004/3391/regulation/5/made) of the EIR

NHS England [guidance document for chairs](https://www.england.nhs.uk/long-read/guidance-for-chairs-on-implementation-of-the-fit-and-proper-person-test-for-board-members/)

[Regulation 5](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/5) and [Schedule 4](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4) of the Regulations

[Schedule 4 Part 1](https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4)

[Disclosure and Barring Service (DBS)](https://www.gov.uk/government/organisations/disclosure-and-barring-service/about)

[NHS Records Management Code of Practice](https://transform.england.nhs.uk/information-governance/guidance/records-management-code/)

## Appendices

**Appendix 1:** FPPT Checklist

**Appendix 2:** Annual NHS FPPT self-attestation

**Appendix 3:** Board Member Reference Template

**Appendix 4:** Board Member Reference process for new appointments and leavers

**Appendix 5:** Letter of confirmation

**Appendix 6:** Annual NHS FPPT submission reporting template

**Appendix 1: FPPT checklist**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **FPPT Area**  | **Record in ESR**  | **Local evidence** **folder**  | **Recruitment** **Test**  | **Annual Test**  | **ED**  | **NED**  | **Source**  | **Notes**  |
| **First Name**   | ✓  | ✓  | ✓  | x – unless change  | ✓  | ✓  | Application and recruitment process.  | Recruitment team to populate ESR. For NHS-to-NHS moves via ESR / InterAuthority 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  | ✓  | ✓  |
| **Position Title**   | ✓  | x  | ✓  | x – unless change  | ✓  | ✓  |
| **Employment History**  Including: * 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. Where there have been gaps in employment, this period should be extended accordingly.  |
| **FPPT Area**  | **Record in ESR**  | **Local evidence** **folder**  | **Recruitment** **Test**  | **Annual Test**  | **ED**  | **NED**  | **Source**  | **Notes**  |
| **Training and** **Development**  |  ✓  |  ✓  |  ✓  |  ✓  |  ✓  |  \* | 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. Annually updated records of training and development completed/ongoing progress.  | \* 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. At recruitment, organisations should assure themselves that the information provided by the applicant is correct and reasonable for the requirements of the role. 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. It is suggested that key qualifications required for the role and noted in the person specification (eg professional qualifications) and dates are recorded however 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 previous roles is required.  |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **FPPT Area**  | **Record in ESR**  | **Local evidence** **folder**  | **Recruitment** **Test**  | **Annual Test**  | **ED**  | **NED**  | **Source**  | **Notes**  |
| **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. This question is applicable to board members recruited both from inside and outside the NHS.  |
| **Grievance** against the board member   | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  |
| **Whistleblowing** claim(s) against the board member  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  |
| **Behaviour** not in accordance with  |  |  |  |  |  |  |
| organisational values and behaviours or related local policies   |  ✓  |  ✓  |  ✓  |  ✓  |  ✓  |  ✓  |  |  |
| **Type of DBS Disclosed**  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ESR and DBS response.  | Frequency and level of DBS in accordance with local policy for board members. Check annually whether the DBS needs to be reapplied for. 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 taken/required.  |
| **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.  |   |
| **Settlement Agreements**  |  ✓ |  ✓  |  ✓  |  ✓  |  ✓  |  ✓  | Board member reference at recruitment and any other information that comes to light on an ongoing basis.  | Chair guidance describes this in more detail. It is acknowledged that details may not be known/disclosed where there are confidentiality clauses.  |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **FPPT Area**  | **Record in ESR**  | **Local evidence** **folder**  | **Recruitment** **Test**  | **Annual Test**  | **ED**  | **NED**  | **Source**  | **Notes**  |
| **Insolvency Check**  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | [Bankruptcy and Insolvency register](https://www.gov.uk/search-bankruptcy-insolvency-register)  | Keep a screenshot of check as local evidence of check completed.   |
| **Disqualified Directors Register Check**   | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | [Companies House](https://www.gov.uk/government/organisations/companies-house)   |
| **Disqualification from being a Charity Trustee** **Check**   |  ✓  |  ✓  |  ✓  |  ✓  |  ✓  |  ✓  | [Charities Commission](https://www.gov.uk/government/organisations/charity-commission)  |
| **Employment Tribunal Judgement Check**   | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | [Employment Tribunal](https://www.gov.uk/employment-tribunal-decisions) [Decisions](https://www.gov.uk/employment-tribunal-decisions)  |
| **Social Media Check**  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | Various – Google, Facebook, Instagram, etc.  |
| **Self-Attestation Form Signed**   | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | Template self-attestation form  | Appendix 2 in Policy |
| **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 3 in Policy.  |
| **Letter of Confirmation**  | x  | ✓  | ✓  | ✓  | ✓  | ✓  | Template  | For joint appointments only - Appendix 5 in Framework.  |
| **Annual Submission Form**  | x  | ✓  | ✓  | ✓  | ✓  | ✓  | Template  | Annual summary to Regional Director - Appendix 5 in Policy.  |
| **FPPT Area**  | **Record in ESR**  | **Local evidence** **folder**  | **Recruitment** **Test**  | **Annual Test**  | **ED**  | **NED**  | **Source**  | **Notes**  |
| **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 of Framework.  |

## Appendix 2: 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[NAME OF NHS ORGANISATION] |
| 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)
* 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
* I do not appear 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 3: 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 refereeExternal/NHS organisation receiving request  | Recruitment officer 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** *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)**B: (As part of exit reference and all relevant information held in ESR under Employment History to be entered)* |
| Job Title:From: To:Job TitleFrom:To:Job Title:From:To:Job Title:From:To:Job Title:From:To: |
| **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):** *(This is for Executive Director board positions only, for a Non-Executive Director, please just confirm current job title)* |
|  |
| **5. Please confirm Applicant remuneration in current role** (*this question only applies to Executive Director board positions applied for)* | Starting: | Current: |
| **6. Please confirm all Learning and Development undertaken during employment:** *(this question only applies to Executive Director board positions applied for)* |
|  |
| 1. **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?*(only applicable if being requested after a conditional offer of employment)***
 | Days Absent: | Absence Episodes: |
| **8. Confirmation of reason for leaving:**  |
|  |
| 1. **Please provide details of when you last completed a check with the Disclosure and Barring Service (DBS)**

(This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board) |
| **Date DBS check was last completed.****Please indicate the level of DBS check undertaken (basic/standard/enhanced without barred list/or enhanced with barred list)****If an enhanced with barred list check was undertaken, please indicate which barred list this applies to** | Date Level Adults □ Children □Both □ |
| 1. **Did the check return any information that required further investigation?**
 | Yes □ | No □ |
| If yes, please provide a summary of any follow up actions that need to/are still being actioned: |
| 1. **Please confirm if all annual appraisals have been undertaken and completed**

(This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board) | Yes □ | No □ |
| Please provide a summary of the outcome and actions to be undertaken for the last 3 appraisals: |
| 1. **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)?**

(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) | Yes □ | No □ |
| If yes, please provide a summary of the position and **(where relevant)** any findings and any remedial actions and resolution of those actions: |
| 1. **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:**
* **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**

(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) | Yes □ | No □ |
| If yes, please provide a summary of the position and **(where relevant)** any findings and any remedial actions and resolution of those actions: |
| 1. **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)**](https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-5-fit-proper-persons-directors)[**The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (legislation.gov.uk)**](https://www.legislation.gov.uk/uksi/2014/2936/schedule/4/made) |
|  |
| 1. **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 4: Board Member Reference Process for New Appointments and Leavers**





## Appendix 5: 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 ORGANISATION**[[1]](#footnote-1) **LETTERHEAD**]

[**DATE**]

Dear [**CHAIR NAME**[[2]](#footnote-2)],

**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 annual**[[3]](#footnote-3) **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](https://www.england.nhs.uk/leaders/) requirements and in reaching my conclusion that [**name of board member**] is fit and proper/is fit and proper with mitigation(s) sign off 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……………………………..

## Appendix 6: 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** | **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 |  |  |  |  |  |  |
| Executive board members |  |  |  |  |  |  |
| Partner members (ICBs) |  |  |  |  |  |  |
| Total |  |  |  |  |  |  |

***\* See section 12 ‘Breaches to core elements of the FPPT (Regulation 5)’ in the Policy.***

## 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, e.g., 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: |
|  |  |
| *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.* |
| Chair signature: |  |
| Date signed: |  |
| **For the regional director to complete:** |
| Name: |  |
| Signature: |  |
| Date: |  |

1. This is the organisation which holds the contract/employs the board member who works jointly across more than one organisation. [↑](#footnote-ref-1)
2. This is the name of the chair of the other organisation that the joint board appointment is made with. [↑](#footnote-ref-2)
3. 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. [↑](#footnote-ref-3)