

The FPPT framework – New Guidance and what NHS organisations need to know

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NHS England's revised [FPPT Framework](#) responds to the recommendations of the [Kark review](#) and takes into account the requirements of the Care Quality Commission (CQC) in relation to directors being fit and proper for their roles.

The requirements came into force on 30 September. The Framework will also be reviewed after 18 months to assess how effectively it has been embedded and its impact within NHS organisations.

Summary of the requirements for Fit and Proper Persons: legal framework

In 2014 the Government introduced the "fit and proper person" requirement to ensure that directors (and those performing similar functions) in all NHS organisations registered with the CQC (in the main, NHS trusts and NHS foundation trusts, collectively referred to here as "NHS trusts") were of good character and had suitable skills, qualification and competency to carry out their roles. This was done through regulations, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the Regulations").

According to the Regulations, NHS trusts must not appoint a person to an executive or non-executive director level post unless, as stated in Regulation 5 (3), they meet the following criteria:

- are of good character
- have the necessary qualifications, competence, skills and experience
- are able to perform the work that they are employed for after reasonable adjustments are made
- have not been responsible for, 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
- can supply information as set out in Schedule 3 of the Regulations.

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

When assessing whether a person is of good character, Regulation 5 (4) states that trusts should make every effort to ensure that, as a minimum, they seek all information to confirm the matters listed in Part 2 of Schedule 4.

In accordance with Part 2 of Schedule 4, a person will fail the good character test if they:

- have been convicted in the United Kingdom or elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence, and
- have been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

Part 1 of Schedule 4 lists categories of 'unfitness' that would prevent people from holding office or necessitate their removal from their position as a director, and for whom there is no discretion.

The Kark review

In 2018, the Kark Review was commissioned by the Government to review the scope, operation and purpose of the Fit and Proper Person Test (FPPT) which included looking at how effective the FPPT is at preventing unsuitable staff from being redeployed or re-employed in the NHS, clinical commissioning groups, and independent healthcare and adult social care sectors. The review published in 2019 highlighted areas that needed improvement to strengthen the existing regime. The revised NHS England framework is the response to the Kark review and builds on the Regulations, which continue to apply.

What is the purpose of the Framework?

The Framework is designed to assess the appropriateness of an individual to discharge their duties effectively in their capacity as a board member. This will ensure that board members are fit and proper to carry out their roles whilst also ensuring that any unfit board members are prevented from moving between NHS organisations. It has been designed to be fair and proportionate but also to avoid unnecessary bureaucratic burden on NHS organisations.

The Framework effectively sets out how NHSE will implement the four Kark proposals which were largely accepted by the government, namely the creation of:

- Specified standards of competence for board directors.
- A database of directors.
- A mandatory reference requirement for each director; and
- The extension of the FPPT to arms-length bodies including NHSE and the Care Quality Commission.

Who does it apply to?

The FPPT applies to executive and non-executive directors of Integrated Care Boards, NHS Trusts and Foundation Trusts, NHS England and Care Quality Commission (including those who are members of other professional registers, such as the General Medical Council or Nursing and Midwifery Council and who should additionally be assessed against FPPT under the new Framework if they are a board member at an NHS organisation). The Framework states that “ICBs will need to consider FPPT assessment on a member-by-member basis and take into account assurance received from other recruiting/appointing organisations, for example, in the case of partner members”.

It includes both permanent and interim appointments of over six weeks duration.

As with the Regulations, it also applies to those who are performing the functions or functions equivalent or similar to the functions of such a director. There is also specific guidance around joint appointments/host responsibilities and shared roles.

How does the framework work?

The Framework provides for an assessment of NHS board members “fitness” to undertake their role when they are appointed to the board, whether through promotion or an external recruitment process.

Existing board members will also be required to undertake an annual self-attestation process during which they will have to confirm that they comply with the FPPT. This “attestation” would then be checked by the director’s line manager, usually the Chief Executive or Chair. It is suggested that this is completed alongside the appraisal process. A board member appraisal framework is due to be published by March 2024 ahead of the 2023/2024 appraisal process.

The assessment both at recruitment and appraisal stage will be based on a new “Leadership Competency Framework” (“LCF” - which is due to be published imminently). The LCF should be incorporated into all senior leader job descriptions and recruitment processes and will also “form the core of board appraisal frameworks, alongside appraisal of delivery against personal and corporate objectives”.

The six competencies contained in the LCF are:

- Setting strategy and delivering long term transformation.
- Leading for equality.
- Driving high quality, sustainable outcomes.
- Providing robust governance and assurance.

- Creating a compassionate and inclusive culture, and
- Building trusted relationships with partners and communities.

However, the guidance stresses that it is not expected that board members will be able to demonstrate how they meet all the competencies in the LCF. Instead, what is required is evidence of broad competence across each of the six competency domains and to ensure that there are “no areas of significant lack of competence which may not be remedied through a development plan”.

The ESR is being revised to add new data fields which will capture the information required by the new FPPT Framework. This data should only be accessible only to the organisation’s Chair, Chief Executive, Chief People Officer, Company Secretary and a senior independent director.

Information held on the ESR will include employment history, references from previous employers or other board members, upheld disciplinary findings that include misconduct or mismanagement, and any ongoing or discontinued investigations relating to disciplinary, grievance, whistleblowing or employee behaviour.

Who is responsible for ensuring the FPPT is implemented?

NHS Chairs will be responsible for ensuring the new fit and proper person test is implemented at their organisations. The FPPT is carried out on an individual board member basis, and in the annual submission to the NHS England regional director, the Chair will provide the overall summary of the FPPT outcome for their board.

A useful flowchart setting out each step of the process and who is responsible for undertaking it is contained in the Framework together with guidance on completing the board member reference.

The CQC will continue to ensure NHS organisations have robust processes in place to adequately perform the FPPT assessments as part of their Well Led reviews. Therefore, NHS organisations should maintain sufficient evidence of the checks carried out. It is likely that the CQC will consider compliance with the framework to be a measure of whether an organisation is Well-Led, even where that compliance goes beyond the requirements of the Regulations.

It is anticipated that Chairs and Directors of Governance will work closely together to ensure that their organisation complies with the FPPT requirements

What about references?

A new standard reference has been introduced which aims to ensure “greater transparency, robustness and consistency of approach” when appointing NHS board members. The annual appraisals of the past three years will be used to guide the board member’s reference, with the ESR data used to populate the reference whenever a board director leaves their role (even if they are not moving to a new role or in circumstances where no reference is requested). The ESR data and accompanying references should be kept career long, which at a minimum should be until the 75th birthday of the board member.

NHS organisations will have 14 days to provide a reference to another NHS organisation from the date the request was made. There is also the provision to revise a reference where new information comes to light. Chairs will be responsible for writing and signing off all non-executive director references, whilst CEO’s will write and sign off all executive director references. Guidance also provides that “Where possible, the person would have had sight of the reference and know what had been included.” In addition, NHS organisations will need to establish a process for individuals to access and exercise their rights in connection with the information held about them, in accordance with data protection laws. There will also be an annual review of ESR to ensure that information is up to date.

Is there any opportunity for a director to challenge the data held?

Guidance specifically produced for chairs states: “NHS organisations, as data controllers, must communicate to all directors whose details will be included in ESR and local records from October 2023 onwards”. It is also suggested that directors are advised of the areas that will be considered under the FPPT assessment, what details will be stored and where, who will have access and the purpose. This will therefore give directors the opportunity to object if they have concerns regarding the proposed use of their data. Whilst there is discussion about local disputes procedures, in practice unless organisations already have a Fit and Proper Persons Policy or Disputes Procedure

Trusts may find that they need to implement a new policy for handling disputes of this nature. An example board member FPPT privacy template is included at Appendix 6 of the Framework.

What is the timeline for implementation?

The Framework is partially effective from 30 September 2023 with full implementation required by 31 March 2024. However, there is no expectation that NHS organisations will collect historic information to populate ESR or local records, rather it is expected that the Framework will be used for all new board level appointments or promotions and for annual assessments going forward. Therefore, NHSE expect organisations to implement the FPPT Framework in line with the following timetable:

- As soon as possible, communicate with all board members whose details will be included in ESR for the purpose of FPPT in the organisation.
- From 30 September 2023, use the new board member reference template for references for all new board appointments.
- From 30 September 2023, complete and retain locally the new board member reference for any board member who leaves the board for whatever reason and record whether or not a reference has been requested
- From 30 September 2023, use the LCF as part of the assessment process when recruiting to all board roles
- By 31 March 2024, fully implement the FPPT Framework incorporating the LCF, including updating the ESR database
- Q1 2024, incorporate the LCF into annual appraisals of all board directors for 2023/2024, using the board appraisal framework

What should NHS organisations do to implement the Framework?

Those with responsibility for overseeing the new process will need to familiarise themselves with the Framework, and the accompanying documents which can be found on [NHSE's website](#).

Organisations should also ensure that appraisal information is up to date and that individuals are aware of any issues which may lead to an adverse reference being provided. It would also be advisable to have a means for addressing any disputes about the content of references.

With regard to investigations involving board members, organisations need to ensure these are appropriately robust and there is opportunity for board member to challenge factual accuracy. Any dispute about an investigation's findings should be resolved by the investigator selected to carry out the investigation process at the time, or if not via the organisation with input from professional advisors and not at the point of disclosure in a reference.

In addition to the above timeline, it would also be prudent for organisations to comply with the new Framework in relation to any reference requests they receive – even if the board member left before the framework came into effect. As such, we would recommend NHS organisations carry out an audit of director departures over the last six years and identify any of those where disclosures may be needed if there is a request for a reference. The framework suggests that they should look back at historical settlement agreements and seek consent from all parties prior to including information in a board member reference so a review of historical settlement agreements would be advisable.

Alongside the guidance, NHSE will also be running a series of roadshows and has published [the first suite of board level learning and development offers](#) for executive and non-executive board directors to assist with compliance.

If you would like to discuss the impact of the FPPT in your organisation, then please contact either Jacqui Atkinson, Helen Badger, Carl May-Smith or Charlotte Harpin.

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