



Shropshire, Telford
and Wrekin

Fit and Proper Person Test (FPPT) Framework Policy

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The formally approved version of this document is that held on the NHS Shropshire, Telford and Wrekin website:

www.shropshiretelfordandwrekin.nhs.uk

Printed copies or those saved electronically must be checked to ensure they match the current online version.

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Section 1: Introduction

1.1 Background

The Kark Review (2019) was commissioned by the government in July 2018 to review the scope, operation and purpose of the Fit and Proper Person Test (FPPT) as it applies under the current Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

This included looking at how effective the FPPT is:

“... in preventing unsuitable staff from being redeployed or re-employed in the NHS, clinical commissioning groups, and independent healthcare and adult social care sectors.”

The recommendations arising from the review can be found here:

<https://www.england.nhs.uk/long-read/appendix-1-recommendations-from-the-kark-review-2019/>

1.2 Purpose and Benefits of this Policy

This Policy document for NHS Shropshire, Telford and Wrekin ICB is derived from the Framework and supports the implementation of the recommendations from the Kark Review which was implemented in September 2023. The purpose of the Framework is to strengthen/reinforce individual accountability and transparency for board members, thereby enhancing the quality of leadership within the NHS and will be used for all new board level appointments or promotions and for annual assessments going forward.

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. The aim of strengthening the FPPT is to prioritise patient safety and good leadership in NHS organisations. The Policy will help board members build a portfolio to support and provide assurance that they are fit and proper.

Ensuring high standards of leadership in the NHS is crucial – well-led NHS organisations and better-led teams with both strong teamwork and strong governance translate into greater staff wellbeing and better clinical care. This requires accountable board members with both outstanding personal conduct and professional capabilities to effectively oversee NHS organisations that are often under significant financial restraint and operating in a highly regulated environment with public and political scrutiny.

All NHS organisations have been reminded of their obligations not to appoint any individual as a Board director unless they fully satisfy all FPPT requirements – including that they have not been responsible for, been privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether lawful or not), as a result of the Letby trial verdict.

A letter from NHS England outlining its commitment to do everything possible to prevent anything like this happening again and noting the decisive steps being taken towards strengthening patient safety monitoring can be found here:

<https://www.england.nhs.uk/publication/verdict-in-the-trial-of-lucy-letby/>

Ensuring that board members are demonstrating the right behaviours will help the NHS drive its cultural initiatives: namely, to foster a culture of compassion, respect and inclusion, and a feeling of belonging; as well as setting the tone at the top to encourage a listening and speaking up culture.

1.3 Applicability

This Policy applies to the Board Members of NHS Shropshire, Telford and Wrekin. Within this guidance, the term “Board Member” is used to refer to:

- 1.3.1 both executive directors and non-executive directors (NEDs), irrespective of voting rights
i.e. it includes any associate non executive directors.
- 1.3.2 interim (all contractual forms) as well as permanent appointments
- 1.3.3 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 Framework if they are a board member at an NHS organisation. The Policy is designed to assess the appropriateness of an individual to effectively discharge their duties in the capacity of a board member.

The annual submission requirement is limited to voting board members.

The ICB chair 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.

1.4 Personal data

Personal data relating to the FPPT assessment will be retained in local record systems and specific data fields in the NHS Electronic Staff Record (ESR). The information contained in these records will not routinely be accessible beyond an individual’s own organisation. There will be no substantive change to the data controller arrangements from those already in place for ESR.

Although, NHS England will not have day-to-day access to the system or its content, NHS England recognises that it may be considered a (joint) controller of the ESR fields because as the commissioner of the ESR module and author of the Framework, it has a role in determining the nature and purposes of processing.

NHS Shropshire, Telford and Wrekin ICB is required to provide those Board members required to meet the requirements of the FPPT, with details on the type of personal information held, processed and collected. A privacy notice will be provided relating to the information collected and processed in relation to the FPPT.

The FPPT Privacy Notice can be found attached as appendix 1 to this policy.

Section 2: Context

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:

- a) the individual is of a good character
- b) the individual has the qualifications, competence, skills and experience that are necessary for the relevant office or position or the work for which they are employed
- c) the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks that are intrinsic to the office or position for which they are appointed or to the work for which they are employed
- d) the individual has not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) while carrying out a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity
- e) none of the grounds of unfitness specified in part 1 of Schedule 4 apply to the individual.

The good character requirements referred to above in Regulation 5 are specified in [Part 2 of Schedule 4 to the Regulated Activities Regulations](#), and relate to;

- a) 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
- b) 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.

ICBs, together with the CQC and NHS England, are within scope of this Framework.

Section 3: FPPT Framework

Ultimate responsibility for adhering to the Framework through implementation of this policy will reside with the ICB Chair. S/he will be supported by those responsible for implementing, carrying out and signing off the FPPT. The duty to take account of 'fit and proper person' requirements is continuous and ongoing.

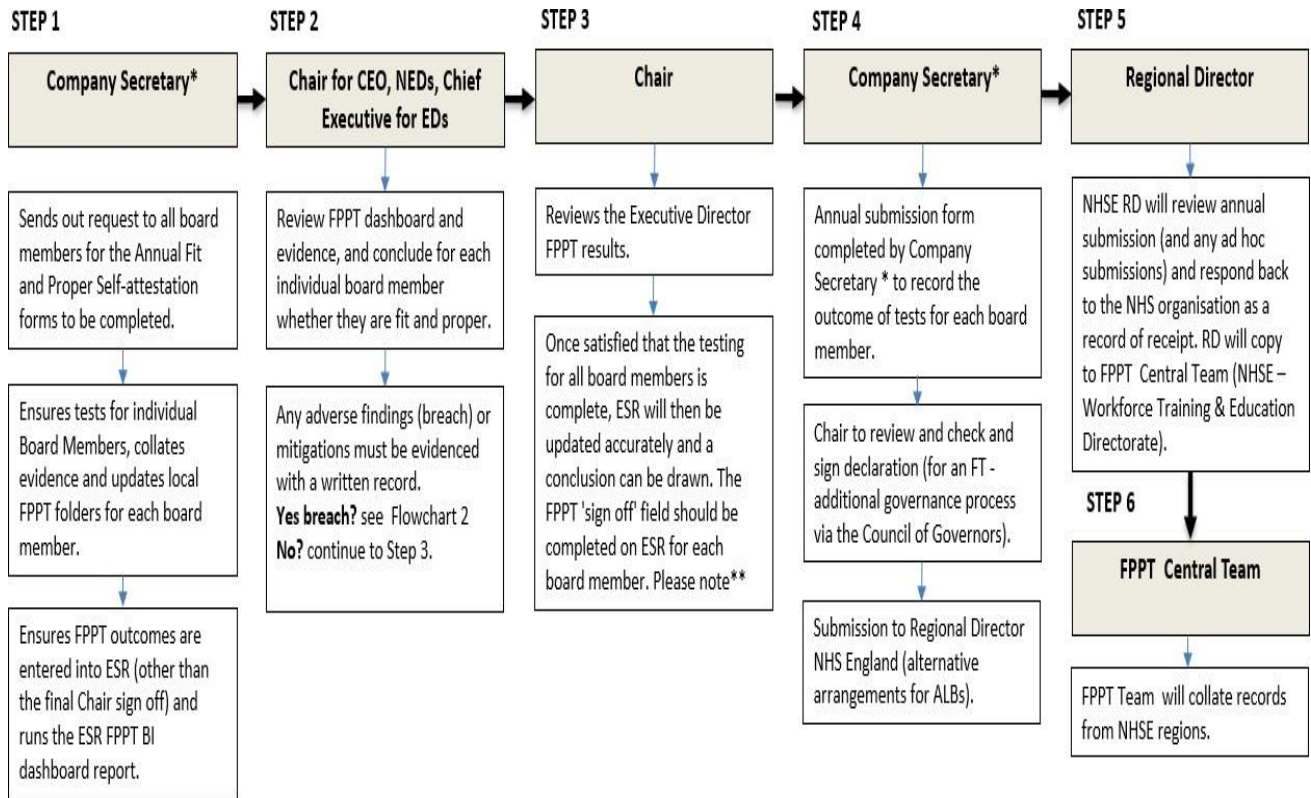
The Chair should ensure that the ICB can show evidence that appropriate systems and processes are in place to ensure that all new and existing board members are, and continue to be, fit and proper (that is, the board members meet the requirement of [Regulation 5](#)), and that no appointments breach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

As such, the ICB Chair will be responsible for ensuring that the organisation conducts and keeps under review a FPPT to ensure that its board members are, and remain, suitable for their role. In evaluating a board member's fitness, a decision is expected to be reached on the fitness of the board member that is in the range of decisions that a reasonable person would make.

3.1 FTTP Process

The process is illustrated below by two flow charts;

Flow Chart 1



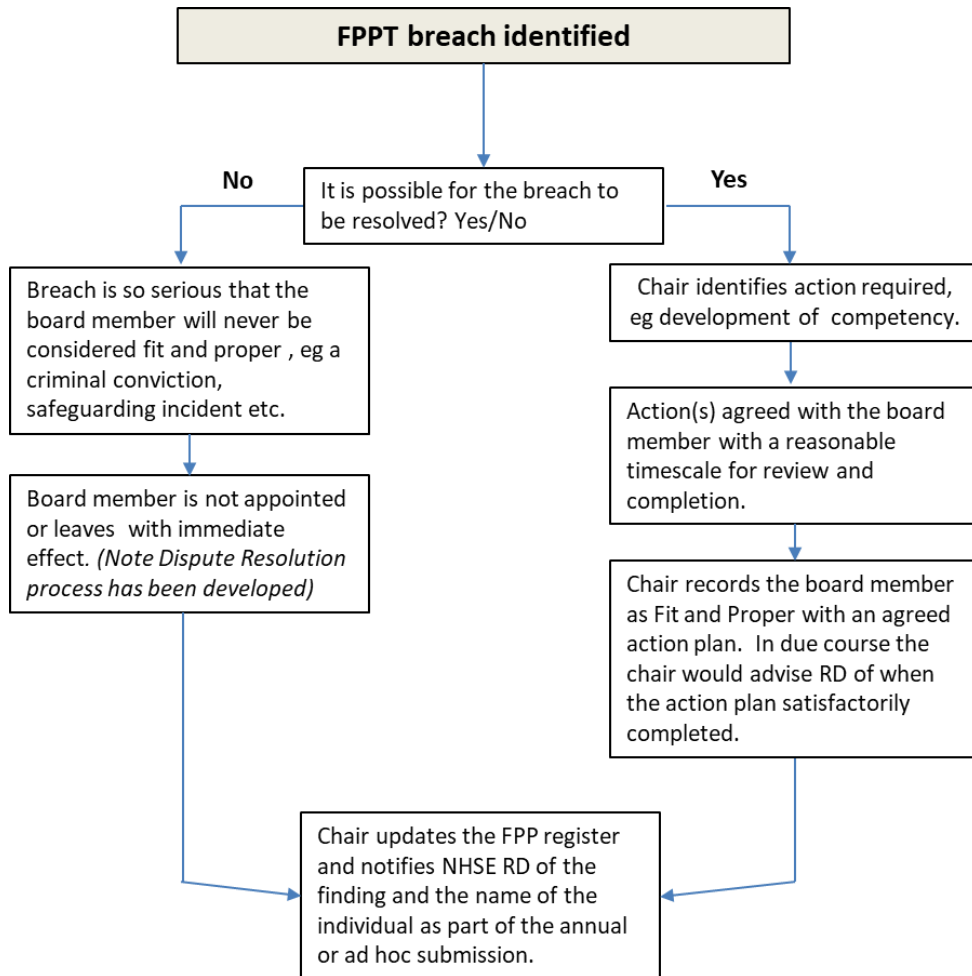
*Or senior member of staff nominated by and behalf of, the Chair, eg HRD

** SID/Deputy Chair to carry out FPPT on the Chair and 'sign off'

SID = Senior Independent Director

ESR= Electronic Staff Record

Flow Chart 2



3.2 Full FPPT Assessment

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

1. New appointments to board member roles, whether permanent or temporary, where greater than six weeks unless where, this covers:
 - a. new appointments that have been promoted within the organisation
 - b. temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis, unless the individual is already substantively employed at a Board level in a comparable role and is already subject to FPPT in their substantive employment and assurance can be provided by the substantive employer in lieu of undertaking a full FPPT assessment.
 - c. existing board members at one NHS who move to another NHS organisation in the role of a board member
 - d. individuals who join the ICB in the role of board member for the first time from an organisation that is outside the NHS.

- e. When an individual board member changes role within the ICB (for instance, if an existing board member moves into a new board role that requires a different skillset, e.g. chief financial officer).
- f. 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.

A FPPT Checklist is attached as appendix 2.

2. Where an individual is already subject to FPPT for their appointment and/or then annually by an existing substantive NHS employer, the ICB will avoid duplication of effort by seeking written assurance that the individual has been subject to a FPPT in the last 12 months and was deemed to be fit and proper by the employing NHS organisation's Chair, in lieu of the ICB undertaking the FPPT for a full or annual check.

3.3 Self Attestation

Every board member within the ICB will need to complete an annual self-attestation subject to 3.2.1 (b) and 3.2.2 above, 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.

An annual self attestation will not be required if the board member has already completed a full FPPT during the last 12 months.

A self attestation template is attached as appendix 3.

3.4 New Appointments

The ICB 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 elsewhere in this policy.

Where an interim appointment is required to cover a period of time when a Board role is vacant following resignation, then the FPPT must commence but the individual may be appointed and start the role subject to their FPPT outcome.

For the initial appointment of the ICB chair, once the ICB 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.

3.5 Additional Considerations

3.5.1 Joint appointments across different NHS organisations

Additional considerations are needed where there are joint appointments to support closer working between 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:

- two or more NHS organisations want to create a combined role;
- two or more NHS organisations 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' 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 FPP at the other organisation.

3.5.2 Shared roles within the same NHS organisation

Where two individuals share responsibility for the same board member role (e.g. a job share) within the same NHS organisation, both individuals should be assessed against the FPPT requirements in line with sections 3.2 and 3.3.

3.5.3 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 the NHS organisation 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 HR director/company secretary 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, the NHS organisation should 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, the NHS organisation should look to commence the FPPT assessment as soon as possible. Where the period of temporary absence is extended beyond six weeks, the FPPT assessment should commence as soon as the NHS organisation is aware of the extension. This FPPT assessment should be carried out in line with the requirements under section 3.2.

3.6 The role of the Chair in overseeing FPPT

The ICB Chair will be accountable for taking all reasonable steps to ensure the FPPT process is effective and that the desired culture of the ICB is maintained to support an effective FPPT regime. As such, the Chair's responsibilities are as below:

- a) Ensure that the ICB has proper systems and processes in place so it can make the robust assessments required by the FPPT.
- b) Ensure the results of the full FPPT, including the annual self-attestations for each board member, are retained by the ICB.
- c) Ensure that the FPPT data fields within ESR are accurately maintained in a timely manner.

- d) Ensure that the board member references/pre-employment checks (where relevant) and full FPPT (including the annual self-attestation) are complete and adequate for each board member.
- e) Ensure an appropriate programme is in place to identify and monitor the development needs of board members.
- f) On appointment of a new board member, consider the specific competence, skills and knowledge of board members to carry out their activities, and how this fits with the overall board.
- g) Conclude whether the board member is fit and proper.
- h) The Chair should also complete an annual self attestation that they themselves are in continued adherence with the FPPT requirements. On an annual basis, the chair should confirm that all board members have completed their own FPPT self-attestation and that the FPPT is being effectively applied in the ICB.
- i) 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 about whether a board member might not be fit and proper and the measures taken to address this. A local record of this should be retained. A summary of this should also be included in the annual FPPT submission form to the relevant NHS England Regional Director.

Accountability for ensuring a new board member meets the FPPT assessment criteria will reside with the ICB chair. In making such decisions the chair will be supported by existing processes.

In considering their overall assessment of board members, the Chair should confirm points d) and g) are adequately addressed, and where relevant for point i), appropriate action has been taken to address any concern.

A draft confirmation letter can be found in appendix 4.

The Chair will present a report on completion of the annual FPPT, to a public board meeting, for information.

3.7 Overseeing the role of the Chair

The ICB Chair will be subject to the same FPPT requirements as identified above. In completing their own annual self-attestation, the Chair will effectively be confirming that they have adequately addressed points made earlier in the document.

The accountability for ensuring that the ICB Chair meets the FPPT assessment criteria will reside with NHS England regional directors, as is also the case for the chairs' annual appraisals.

Annually, the senior independent director (SID) or deputy chair will review and ensure that the chair is meeting the requirements of the FPPT.

Once the NHS organisation has completed their annual FPPT assessment of the chair, they should sign this off within ESR. The annual FPPT submission, which summarises the results of the FPPT for all board members in the organisation, is then sent to the relevant NHS England regional director.

3.8 FPPT Assessment Core Elements

The full FPPT assessment will constitute an assessment against each of the core elements detailed below.

The ICB should 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 ICB'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.

3.9 Good Character

The ICB should be aware of the elements to consider when assessing good character (as detailed below).

To encourage openness and transparency, these should not be considered as a strict checklist for compliance, but rather as points for a conversation between the chair (or chief executive for executive board members) and a prospective board member during the appointment process. This will in turn emphasise the ongoing benefits of openness and transparency among board members.

As such, ICB should conduct:

- A search of the Companies House register to ensure that no board member is disqualified as a director.
- A search of the Charity Commission's register of removed trustees.

- A [Disclosure and Barring Service \(DBS\)](#) check in line with their local policy requirements:
 - each NHS organisation should outline within their local policy the relevant DBS check (basic, standard, enhanced or enhanced with barred lists) required for each individual board member role;
 - in defining the required DBS level, NHS organisations should identify those board roles that fall within the definition of a ‘regulated activity’, as defined by the Safeguarding Vulnerable Groups Act 2006, as required barred list checks.
- A check with the relevant professional bodies where appropriate.

It is not possible to outline every character trait that a person should have, but it is expected that processes followed take account of a person's honesty, trustworthiness, reliability, integrity, openness (also referred to as transparency), respectfulness and ability to comply with the law.

Furthermore, in considering that a board member is of ‘good character,’ the ICB should also consider a range of issues in relation to the individual in question including:

- Compliance with the law and legal processes.
- Employment tribunal judgements relevant to the board member’s history.
- Settlement agreements relating to dismissal or departure from any healthcare related service or NHS organization for any reason other than redundancy.
- A person in whom the ICB, CQC, NHS England, people using services and the wider public can have confidence.
- Adherence to the Nolan Principles of Standards in Public Life.
- Social Media check
- The extent to which the board member has been open and honest with the ICB and its partner organisations within the ICS.
- Whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate.
- Whether the person has been involved – as a director, partner or concerned in management – with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession.
- Whether the person has been a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.
- Whether the person involved as a director, partner or concerned with management of a

company has been investigated, disciplined, censured, suspended, or criticised by a regulatory or professional body, a court or tribunal, whether publicly or privately.

- Any other information that may be relevant, such as an upheld/ongoing or discontinued (including where a board member has left the NHS organisation prior to an investigation being completed):
 - disciplinary finding
 - grievance finding against the board member
 - whistleblowing finding against the board member
 - finding pursuant to any trust policies or procedures concerning board member behaviour.

3.10 Serious mismanagement and misconduct

To comply with Regulation 5, consideration of good character should also ensure, as far as possible, the individual has not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of delivering CQC-regulated activity, in England or equivalent activities elsewhere.

In determining what amounts to 'serious misconduct or mismanagement,' beyond the decision by a court or professional regulators regarding individuals, context is paramount. Normally these would require to be findings of serious misconduct or mismanagement that are upheld after a disciplinary process.

The ICB should consider the mismanagement and misconduct behaviours in relation to the services they provide, the role of the board member/individual and the possible adverse impact on the organisation or confidence in its ability to carry out its mandate and fulfil its duties in the public interest.

As part of reaching an assessment as to whether any actions or omissions of the board member amount to 'serious misconduct or mismanagement', the ICB should consider whether an individual board member played a central or peripheral role in any wider misconduct or mismanagement.

The ICB should also consider whether there are any aggravating or mitigating factors; for instance (including but not limited to):

- The extent to which the conduct was deliberate and reckless.
- The extent to which the conduct was dishonest.
- Whether the issues are frequent or have continued over a long period of time.

- If lack of experience contributed to the issue that has been remediated through training.
- The extent to which the board member (or aspirant board member) demonstrates insight and self-reflection in relation to the conduct/issues identified.

Although NHS organisations have information on when convictions, bankruptcies or similar matters are to be considered 'spent', there is no time limit for considering serious misconduct or responsibility for failure in a previous role, for the purposes of Regulation 5.

Below are some examples of misconduct and mismanagement that NHS organisations would be expected to conclude as amounting to serious misconduct or mismanagement, unless there are exceptional circumstances that make it unreasonable to determine that there is serious misconduct or mismanagement.

It is impossible to produce a definitive list of all matters that would constitute serious misconduct or mismanagement and, as such, the list below is not exhaustive.

This list sets the minimum expectations and should be read in conjunction with local policy expectations/requirements to determine whether or not a board member has been involved in serious misconduct or mismanagement:

- Fraud or theft.
- Any criminal offence other than minor motoring offences at work (although this and the issues set out in this section may be relevant to assessing whether an individual is of good character more generally).
- Assault.
- Sexual harassment of staff.
- Bullying or harassment.
- Discrimination as per the Equality Act 2010.
- Victimisation (which falls within the scope of the Equality Act 2010) of staff who raise legitimate concerns.
- Any conduct that can be characterised as dishonest, including:
 - deliberately transmitting information to a public authority or to any other person, which is known to be false
 - submitting or providing false references or inaccurate or misleading information on a CV.
- Disregard for appropriate standards of governance, including resistance to accountability and the undermining of due process.

- Failure to make full and timely reports to the board of significant issues or incidents, including clinical or financial issues.
- Repeated or ongoing tolerance of poor practice, or failure to promote good practice, leading to departure from recognised standards, policies or accepted practices.
- Continued failure to develop and manage business, financial or clinical plans.

In assessing whether misconduct or mismanagement was 'serious', regard should be had to all the circumstances. For instance, an NHS organisation could consider isolated incidences of the following types of behaviour to amount to misconduct or mismanagement that does not reach the threshold of seriousness:

- Intermittent poor attendance
- Failure to follow policies or procedures when undertaking management functions where failures had limited repercussions or limited effects or were for a benevolent or justifiable purpose.

3.11 Qualifications, competence, skills required and experience

The ICB requires appropriate processes for assessing and checking that the candidate holds the required qualifications and has the competence, skills and experience required.

For instance, where possible, checking the websites of the professional bodies to confirm that where required the board member holds the relevant and stated qualification.

Where the ICB considers that a board member role requires specific qualifications (for example, the chief financial officer being an accredited accountant, or the chief medical officer being a GMC-registered doctor), they should make this clear and should only appoint those candidates who meet the required specification, including any requirements to be registered with a professional body.

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

In assessing competence, skills and experience for the purposes of the FPPT, the ICB will use the Leadership Competency Framework as a basis for appraisal: a framework that will apply to all NHS organisations.

Given the appraisal process will feed into the full FPPT assessment, the appraisal process should be of an appropriate frequency and should give due consideration to assessing good character and conduct (that is, a behavioural assessment).

3.12 Reasonable Adjustments

In assessing if a board member can properly perform tasks to the requisite level of competence and skill for the office or position for which they are appointed, consideration will be given to their physical and mental health in accordance with the demands of the role and good occupational health practice.

This means all reasonable steps must be made to make adjustments for people to enable them to carry out their role. As a minimum, these must be in line with requirements to make reasonable adjustments for employees under the Equality Act 2010; to prevent discrimination as defined by the Act.

3.13 Contents of the references

A standardised board member reference has been introduced to ensure greater transparency, robustness and consistency of approach when appointing board members within the NHS.

The aim of this is to help foster a culture of meritocracy, ensuring that only board members who are fit and proper are appointed to their role, and that there is no recycling of unfit individuals within the NHS.

References will be kept for a minimum of six years.

The reference template can be found as appendix 5.

3.14 Electronic Staff Records and Record Retention

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

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

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 each individual NHS organisation.

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.

Section 4: Quality Assurance and Governance

4.1 CQC Quality Assurance

To ensure that the FPPT is being adequately embedded within NHS organisations there will need to be quality assurance checks conducted by the CQC, NHS England and an external/independent

review.

The 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 ICB 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.

4.2 NHS England Quality Assurance

NHS England will have oversight through receipt and review of the annual FPPT submissions to the relevant NHS Regional Director for the ICB.

4.3 Internal Audit/External Review

Every three years, the ICB should 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.

4.4 Governance

For good governance, the ICB should be clear about the reporting arrangements across the FPPT cycle. This will 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

4.5 Future Considerations

The FPPT Framework will be reviewed by NHSE to assess how effectively it has been embedded and its impact on NHS organisations.

APPENDIX 1 – PRIVACY NOTICE FOR FPPT

Board Member FPPT Privacy Notice

NHS Shropshire, Telford and Wrekin Integrated Care Board 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 Fit and Proper Person Test (FPPT).

The FPPT in ESR is commissioned by NHS England.

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 includes details of all job titles, organisations, 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.

We may also receive personal information indirectly, from the following sources in the following scenarios:

- References when we have made a conditional offer to you.
- Publicly accessible registers and websites for our FPPT.
- Professional bodies for FPPT to test registration and or any other 'fitness' matters shared between organisations.

- Regulatory bodies, e.g. 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: [Information Governance Policies - NHS Shropshire, Telford and Wrekin \(shropshiretelfordandwrekin.nhs.uk\)](https://www.shropshiretelfordandwrekin.nhs.uk).

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.

Requesting Access to your Personal Data

Under data protection legislation, you have the right to request access to information about you that we hold. To make a request for your personal information, should you have any further queries on the uses of your information, or should you wish to lodge a complaint about the use of your information please contact the ICB's Data Protection Officer:

Hayley Gidman
MLCSU Information Governance Lead
Email: mlcsu.dpo@nhs.net
Telephone: 01782 872648.

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 2 – FPPT CHECKLIST

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 / 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	✓	✓		
Position title	✓	x	✓	x – unless change	✓	✓		
Employment history Including: <ul style="list-style-type: none"> job titles organisations/ 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.

NHS Shropshire, Telford and Wrekin

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes
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 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 far back that may be.</p> <p>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.</p>
References Available references from previous employers	✓	✓	✓	x	✓	✓	Recruitment process	Including references where the individual resigned or retired from a previous role

NHS Shropshire, Telford and Wrekin

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes
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.
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	

NHS Shropshire, Telford and Wrekin

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes
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.	
Insolvency check	✓	✓	✓	✓	✓	✓	Bankruptcy and Insolvency register	Keep a screenshot of check as local evidence of check completed.
Disqualified Directors Register check	✓	✓	✓	✓	✓	✓	Companies House	
Disqualification from being a charity trustee check	✓	✓	✓	✓	✓	✓	Charities Commission	
Employment Tribunal Judgement check	✓	✓	✓	✓	✓	✓	Employment Tribunal Decisions	
Social media check	✓	✓	✓	✓	✓	✓	Various – Google, Facebook, Instagram, etc.	
Self-attestation form signed	✓	✓	✓	✓	✓	✓	Template self-attestation form	Appendix 3 in Framework
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								

NHS Shropshire, Telford and Wrekin

FPPT Area	Record in ESR	Local evidence folder	Recruitment Test	Annual Test	ED	NED	Source	Notes
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 in Framework.
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 in Framework.
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 Agreements	X	✓	✓	✓	✓	✓	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.

APPENDIX 3 – SELF ATTESTATION TEMPLATE

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, e.g. 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)

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):	
Signature:	
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

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 ORGANISATION¹ LETTERHEAD]

[DATE]

Dear **[CHAIR NAME²]**,

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 annual³ 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.....

¹ This is the organisation which holds the contract/employs the board member who works jointly across more than one organisation.

² This is the name of the chair of the other organisation that the joint board appointment is made with.

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.

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 5 – REFERENCE TEMPLATE

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

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 Title

From:

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:

<p>6. Please confirm all Learning and Development undertaken during employment: <i>(this question only applies to Executive Director board positions applied for)</i></p>		
<p>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? <i>(only applicable if being requested after a conditional offer of employment)</i></p>	<p><u>Days Absent:</u></p>	<p><u>Absence Episodes:</u></p>
<p>8. Confirmation of reason for leaving:</p>		
<p>9. Please provide details of when you last completed a check with the Disclosure and Barring Service (DBS)</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>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>	Date	
	Level	
	Adults <input type="checkbox"/>	Children <input type="checkbox"/>
	Both <input type="checkbox"/>	
<p>10. Did the check return any information that required further investigation?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>If yes, please provide a summary of any follow up actions that need to/are still being actioned:</p>		
<p>11. Please confirm if all annual appraisals have been undertaken and completed</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>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<p>Please provide a summary of the outcome and actions to be undertaken for the last 3 appraisals:</p>		
<p>12. Is there any relevant information regarding any outstanding, upheld or discontinued complaint(s) or</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

<p>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>		
<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 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>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></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.