

REPORT TITLE:	Fit and Proper Person Test (“FPPT”) Framework		
SPONSORING EXECUTIVE:	Sir David Nicholson, Group Chair		
REPORT AUTHOR:	Kam Dhami, Chief Governance Officer		
MEETING:	Public Trust Board	DATE:	13 th September 2023

1. Suggested discussion points *[two or three issues you consider the Trust Board should focus on in discussion]*

NHS England (NHSE) published a new Fit and Proper Person Test (FPPT) Framework on 2 August 2023 alongside guidance for chairs and staff on implementation. A directory of board level learning and development opportunities was published at the same time. NHSE expect elements of the framework to be used from 30 September 2023 with full implementation by 31 March 2024.

This briefing sets out the key elements of the Framework and gives an overview of its contents. NHS provider trust chairs are accountable for ensuring this Framework is implemented effectively and nominated senior individuals responsible for taking actions set out in the framework. Priority actions are proposed to support local implementation of the new requirements.

The Fit and Proper Person Test (FPPT) Framework is available to Board members in the iBabs reading room.

2. Alignment to our Vision *[indicate with an ‘X’ which Strategic Objective[s] this paper supports]*

OUR PATIENTS		OUR PEOPLE		OUR POPULATION
To be good or outstanding in everything that we do	X	To cultivate and sustain happy, productive and engaged staff	X	To work seamlessly with our partners to improve lives

3. Previous consideration *[at which meeting[s] has this paper/matter been previously discussed?]*

Fit and Proper Person Test: Chair’s Annual Declaration – May 2023 Trust Board

4. Recommendation(s)

The Public Trust Board is asked to:

- FAMILIARISE** with the new FPPT Framework and individual Board member responsibilities
- AGREE** to the People and OD Committee approving a FPPT Standard Operating Procedure
- SUPPORT** the proposed priority areas for local implementation of the new Framework

5. Impact *[indicate with an ‘X’ which governance initiatives this matter relates to and, where shown, elaborate in the paper]*

Board Assurance Framework Risk 01	X	Deliver safe, high-quality care.					
Board Assurance Framework Risk 02	X	Make best strategic use of its resources					
Board Assurance Framework Risk 03		Deliver the MMUH benefits case					
Board Assurance Framework Risk 04		Recruit, retain, train, and develop an engaged and effective workforce					
Board Assurance Framework Risk 05		Deliver on its ambitions as an integrated care organisation					
Corporate Risk Register [Safeguard Risk Nos]							
Equality Impact Assessment	Is this required?	Y		N	X	If ‘Y’ date completed	n/a
Quality Impact Assessment	Is this required?	Y		N	X	If ‘Y’ date completed	n/a

SANDWELL AND WEST BIRMINGHAM NHS TRUST

Report to the Public Trust Board on 13th September 2023

Fit and Proper Person Test (“FPPT”) Framework

1. Introduction

- 1.1 In August 2023 NHS England published a revised Fit and Proper Person Test (FPPT) Framework in response to the recommendations made by Tom Kark KC in his 2019 Review of the FPPT as it applies under Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. The review highlighted areas that needed improvement to strengthen the existing regime.
- 1.2 The new Framework is effective from 30 September 2023 and NHS organisations are expected to use it for all new board level appointments or promotions and for annual assessments for all board members going forward from that date.

2. Purpose

- 2.1 The purpose of the new Framework is to strengthen individual accountability and transparency for board members, thereby enhancing the quality of leadership within the NHS.
- 2.2 It is 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.
- 2.3 The Framework will help board members build a portfolio to support and provide assurance that they are fit and proper, while demonstrably unfit board members will be prevented from moving between NHS organisations.

3. Applicability

- 3.1 The Framework applies to executive and non-executive directors of integrated care boards (ICBs), NHS trust and foundation trusts, NHS England and the CQC, interim as well as permanent appointments where greater than six weeks and those who are called “directors” within Regulation 5. If they wish, trusts can extend the Framework to cover other senior managerial positions for example, to those who regularly attend board meetings or otherwise have significant influence on board decisions. The annual submission requirement is, however, limited to board members only.

4. Key changes

- 4.1 As part of the new process the following will be applied:

- | |
|---|
| <ul style="list-style-type: none">a. Updates in the NHS Electronic Staff Record (ESR) to record the testing of relevant information about board members’ qualifications and career history. |
|---|

- b. A new standard board member reference template for references for all new appointments. For board members who leave their position, organisations must complete and retain locally the new board member reference, whether or not a reference has been requested by a prospective employer.
- c. An NHS Leadership Competency Framework will provide guidance for the competence categories against which a board member should be appointed, developed, and appraised.
- d. The annual assessment needs to be in line with the FPPT checklist, which is set out at appendix 7 of the framework, so organisations should ensure they are familiar with this document.
- e. The duty to store information relevant to the annual assessment (as set out in the checklist) will apply to existing directors (as they will have to comply with the assessment each year) and not only new appointees/promotions.

5. FPPT overview

- 5.1 NHS organisations must be able to demonstrate, annually, that they have carried out a formal assessment of the FPPT for each board member and should consider carrying out the assessment alongside the appraisal cycle.
- 5.2 The chair of an NHS organisation is accountable for taking all reasonable steps to ensure the Framework is effectively implemented in their organisation. NHSE regional directors are responsible for ensuring chairs of provider trusts/FTs and ICBs meet the requirements. The Framework (section 3.6) outlines the responsibilities of the chair. Chairs will be subject to the same FPPT requirement.
- 5.3 Section 3.1 of the Framework contains 3 flowcharts on suggested approaches to the assessment, including the board member reference process. The flowchart that illustrates the main process is shown in **Annex 1**.

6. FPPT assessment

- 6.1 A documented, full FPPT assessment will need to be completed by NHS organisations from **30 September 2023**, against the core elements (outlined below) in the following circumstances:

- a. New appointments in board member roles, whether permanent or temporary, where great than six weeks, this covers:

- new appointments that have been promoted within an NHS organisation.
- temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis.

- Existing board members at one organisation who move to another NHS organisation in the role of a board member.
- individuals who join an organisation in the role of board member for the first time from within or outside the NHS.

b. When an individual board member changes role and remains on the board within their current NHS organisation.

c. Within a 12-month period of the date of the previous FPPT.

6.2 Every board member will need to complete an annual self-attestation (see section 3.3 of the Framework), to confirm that they comply with the FPPT requirements. Self-attestations will be a necessary step that forms a part of the full FPPT assessment.

6.3 Section 3.5 of the Framework contains information on additional considerations when applying the FPPT for joint appointments across NHS organisations, shared roles within the same NHS organisation and periods of temporary absence.

6.4 Section 3.6 of the Framework has information on dispute resolution in relation to the data and information held about a board member and where a board member disagrees with the outcome of the FPPT assessment.

6.5 It is good practice for an organisation to report on its high-level outcomes of the FPPT assessment in its annual report and/or on its website.

7. Board member references

7.1 A standardised board member reference is being introduced to ensure greater transparency, robustness and consistency of approach when appointing board members within the NHS. The template is based on the standard NHS reference and includes additional requests for information (relevant to the FPPT). The six competency domains outlined in the forthcoming NHS Leadership Competency Framework should be considered when the board member reference is written.

7.2 Board member references will apply as part of the FPPT assessment:

a. When there are new board member appointments, either internal to a particular NHS organisation, internal to the NHS, or external to the NHS. NHS organisations should obtain references before the start of the board member's appointment, in writing (either via hardcopy or email) and organisations will need to satisfy themselves that both the referee and the organisation are bona fide.

b. When any board member leaves an organisation for any reason NHS organisations should use the board member reference template and maintain the accuracy of the reference where the board member departs, irrespective of whether there has been a

request from another NHS employer for the reference. The completed reference should be retained locally in an accessible archive.

- 7.3 A future development in ESR will enable the reference to be retained in ESR (at a local level) on a career long basis and up to the age of 75 for the individual in question.

8. Obtaining references

- 8.1 Under the Framework, the board member reference is required to validate a period of six consecutive years of employment immediately prior to the application for a reference being made.
- 8.2 **Where the individual is from outside the NHS, or from within the NHS but moving into the board role for the first time:** The new employing organisation should make every effort to obtain a reference which fulfils the requirements of the board member reference. A minimum of two references using the board member reference template should be obtained from different employers, where possible.
- 8.3 **Where an individual 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 board member reference 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.
- 8.4 Where references from previous employers are unattainable for the previous six years, additional character or personal references should be sought. Character and personal references should be sought from personal acquaintances who are not related to the applicant, and who do not hold any financial arrangements with that individual.
- 8.5 Where an NHS organisation is unable to fully evidence that the incoming board member is fit and proper because of gaps in the board member reference, they may continue to hire the individual but should clearly document within ESR the gaps in relation to the board member reference, any mitigation for this, and the reasons for being comfortable with employing/appointing the board member.

9. Electronic Staff Record (ESR)

- 9.1 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. Directors will be afforded the opportunity to object to their data being held on ESR and the guidance sets out the process to follow should this happen.
- 9.2 The chair will be accountable for ensuring that the information in ESR is up to date for their organisation. As a minimum, it is expected that each NHS organisation conducts an annual review to verify that ESR is appropriately maintained.

9.3 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 compliance with GDPR and the NHS Records Management Code of Practice.

9.4 There should be limited access to the FPPT fields of ESR, but it is reasonably expected that the following will have access:

- chair
- chief executive officer
- senior independent director
- deputy chair
- chief governance officer / company secretary
- chief people officer / director of human resource

10. Quality assurance and governance

10.1 Every three years, organisations should undertake an internal audit to assess the processes, controls and compliance supporting the FPPT assessments.

10.2 External quality assurance checks will be conducted by the CQC, NHS England and an external/independent review. The CQC's role is to ensure NHS organisations have robust processes in place to adequately perform the FPPT assessments and adhere to the requirements of Regulation 5 of the Regulations. NHS England has oversight through receipt and review of the annual FPPT submissions to the relevant NHS England regional director from NHS organisations.

11. Local implementation of the new FPPT Framework

11.1 A new standard operating procedure (SOP) is being developed to ensure the Trust has robust processes in place to adequately perform FPPT assessments, and to adhere to the requirements of Regulation 5 of the Regulations. The Chief Governance Officer will present the draft SOP to the People and OD Committee for discussion and approval.

11.2 A standardised board member reference will be created whenever a board member leaves the Trust, regardless of whether they are moving immediately to another NHS role, and should be sought by employing NHS organisations when making a job offer. This responsibility will sit with the Trust Chair and Chief Executive for NED and Executive Director roles, respectively.

11.3 Appointment processes for board members will be in line with the Framework to ensure that potential appointees have demonstrated they have met the FPPT requirements. The Chief People Officer and Chief Governance Officer will review and revise current arrangements.

11.4 New data fields in ESR will be used to store information related to FPPT checks and references, in line with the criteria detailed in the Framework. This will provide a standard way to record and report compliance internally. The Associate Director of Corporate Governance will hold responsibility for collating the information in an accurate, complete,

and timely manner for updating on ESR on behalf of the Trust Chair. System testing for readiness will be carried out. Retrospective population of data is not proposed.

- 11.5 The related principles and values that underpin the Framework and provide additional context to understand the aims will be included in the existing Board Development programme, and cover: the NHS Constitution, the seven NHS guiding principles, the core NHS values and the Nolan Principles of Standards in Public Life.

12. Recommendations

12.1 The Public Trust Board is asked to:

- a. **FAMILIARISE** with the new FPPT Framework and individual Board member responsibilities
- b. **AGREE** to the People and OD Committee approving a FPPT Standard Operating Procedure
- c. **SUPPORT** the proposed priority areas for local implementation of the new Framework

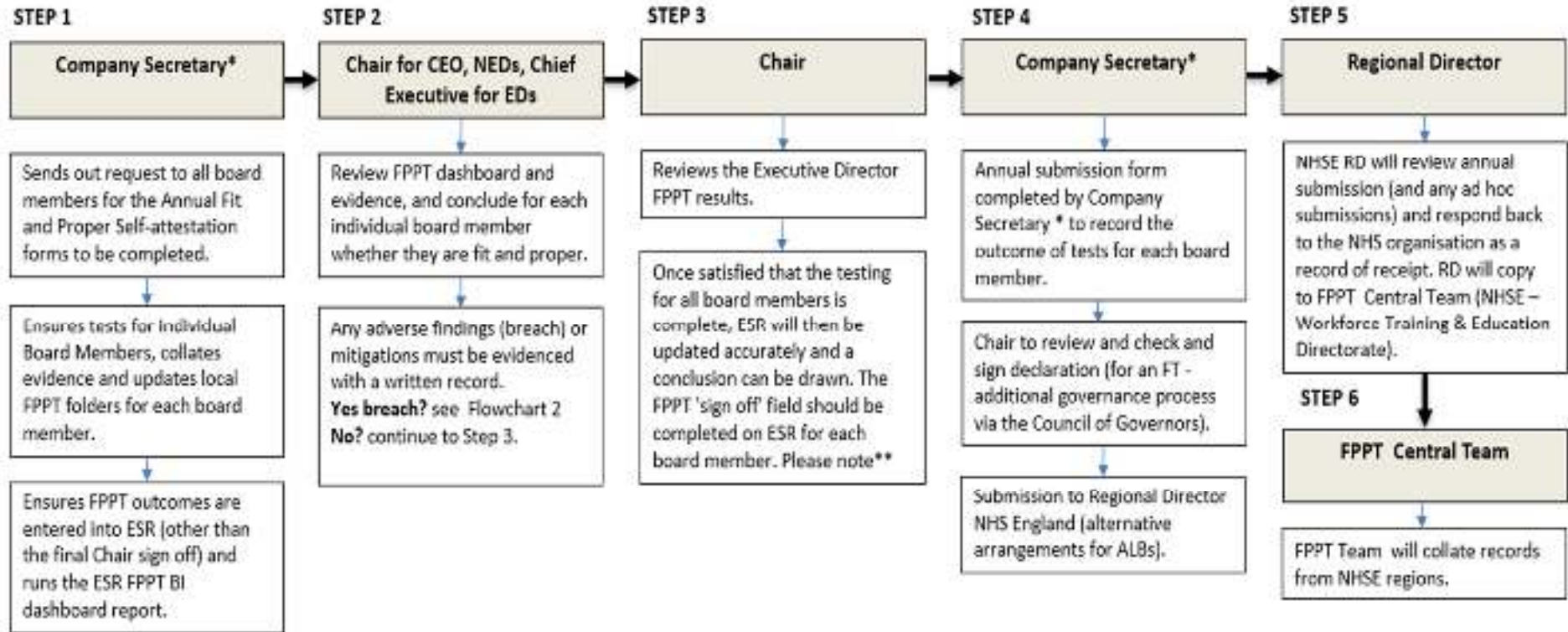
Kam Dhami
Chief Governance Officer

5th September 2023

Annex 1: Fit and Proper Person Test: Main Process Flow Chart

Annex 2: Fit and Proper Person Test Framework [in the Reading Room]

Fit and Proper Person Test: Main Process



* On behalf of the Board and on behalf of the Trust, as CEO
 ** All/Some Chair to complete FPPT on the Chairman's sign-off
 RD = Senior Independent Director
 CS = Director of Staff Support