

Fit and Proper Person Test - Compliance

Public Board

30 May 2024

Presented for:	Information and Assurance
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Previous Committees:	Annual report to Board (March 2023)

Our Annual Commitments for 2024/25 are:	
Reduce wait for patients	✓
Reduce Healthcare Acquired Infections by 15%	✓
Reduce our carbon footprint through greener care	✓
Use our existing digital systems to their full potential	✓
Strengthen participation and growth in research and innovation	✓
Deliver the financial plan	✓
Be in the top 25% performing Trusts for staff retention	✓

Trust Risks (Type & Category)				
Level 1 Risk		Level 2 Risks	(Risk Appetite Scale)	Tolerance
Workforce Risk				
Operational Risk				
Clinical Risk				

Financial Risk				
External Risk	✓	Regulatory Risk We will comply with or exceed all regulations, retain its CQC registration and always operate within the law.	Averse	↔ (same)

Key points	
1. For Directors of the Board to understand the requirements of the Care Quality Commission (CQC) Fit and Proper Person Test, alongside the new framework published in August by NHS England in response to the recommendations from the Kark review.	Information
2. For the Trust Chair to confirm compliance of the Board (and the additional local requirement of the group of senior staff the tier below Executive Directors – noting one exception to be confirmed) to the Fit and Proper Person Test, in preparation for the required return to NHS England regional director.	Assurance
3. The public and to the CQC can be assured the Board at LTHT meet the FPPT.	Assurance

1. Summary

The Care Quality Commission (CQC) introduced new requirements regarding the ‘Fit and Proper Person Tests’ (FPPT) for Directors in November 2014, which became law from 1 April 2015. This approach was to ensure that providers meet Government regulations about the quality and safety of care, to ensure an open, honest and transparent culture within the NHS to ensure accountability of Directors to NHS Bodies.

Historically, the Trust has extended the definition of the CQC requirement beyond the Board to include; all direct reports to Executive Directors and/or authors of reports to Board and our Assurance Committees, as they hold with significant influence in reporting information for decision making within our governance structures. This is a group of 60 senior staff.

The Board at Leeds Teaching Hospitals NHS Trust (LTHT) and extended senior staff tier have historically self-certified compliance against the FPPT, with the Company Secretary manually checking Companies House for insolvency and disqualification as a director, compliance with appraisal process and DBS checks, noting professional qualifications and registration checks are carried out as part of the on-boarding process.

In August 2024 the FPPT compliance was amended following the recommendations of the Kark Review and a new framework was issued by NHS England.

2. Background

The Fit and Proper Person Test is a regulation to ensure that providers meet their obligations to only employ individuals who are fit for their role and to ensure that appropriate steps have been taken to ensure they are of good character, are physically and mentally fit, have the necessary qualifications, skills and experience for this role and can supply certain information (including a Disclosure and Barring Service (DBS) check and full employment history, if required). The regulations also extend to individuals who are prevented from holding the office (for example, under a Director's disqualification order) and significantly, excluding people who:

'Have been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity, or providing a service elsewhere which, if provided in England, would be a regulated activity'.

As part of the recruitment and annual process (and compliance for the Fit and Proper Person Test) for the defined senior group of staff, a number of checks have taken place;

- Checks on the individuals
 - Qualifications
 - Competence, skills required, relevant experience and ability
 - Good character
- Consideration to the physical and mental health in line with the role and good occupational health practice
- Ensure, as far as possible the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful or not) in the course of carrying on a regulated service; this includes any allegations of such
- Only individuals who will be acting in a role that falls within the definition of a 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006 will be eligible for a check by the Disclosure and Barring Service (DBS) but checks will be made against other relevant barring lists

The recommendations from the Kark review have strengthened the above, with the additional requirements of checks for of disqualification as a Trustee from the Charity Commission Register, employment tribunal history, and social media. Each Board member is required to sign and return a self-attestation that they are fit and proper (see Appendix A). For any Board member who left the Trust after the 30 September 2023, we are now required to retain an exit reference on file and hold until the age of 75 years, to be supplied up on request (this is set out within an NHS England a defined template).

Due to the changes in the requirements in checking employment tribunal records and identifying individuals clearly, as these often only use initials, along with the wide scope of social media checks, added to the time burden of the manual processes for a large group. The Trust commissioned a professional service to carryout all checks which are underpinned by algorithms.

With these new requirements there is also the addition of an annual return to the NHS England Regional Director, for the Trust Chair to report the compliance of the Board. This return was originally required at the end of March and has now been aligned to the Chairs Appraisal return, hence the end of June each year. Therefore, the return for LTHT is attributed to the financial year 2023/24 and with any updates up to the end of June, thus modelling the Annual Governance statement timeline and submission to NHS England, hence will cover the new appointment of the Director of Finance and the change to the nominated Non-Executive Director from the University of Leeds.

Historically at LTHT we have modelled a similar process (as now required following the Kark recommendations) in the belief that the Trust Chair could not satisfactorily comply with her own appraisal return to the Chair of NHS England, if she could not report compliance of her own Board within her appraisal return.

There is clear governance set out with the new framework for the review of the self-attestation of the Chair, with the review of the compliance checks by the Deputy Chair to retain objectivity, as the appraisal of the Chair is carried out by the Senior Independent Director (SID). Gillian Taylor as deputy Chair has reviewed and confirmed compliance of the FPPT of the Trust Chair in preparation of the appraisal to be carried out by Chris Schofield, SID.

From the checks carried out against the requirements of the of the FPPT applied to the Board and the tier of 60 senior managers as already defined. Four members of staff were informally reminded of the use of social media. At the time of writing this report, one member of staff is still to complete their DBS submission, but it is hope that a verbal update can be provided on 30 May to report compliance.

3. Proposal

See recommendation.

4. Financial Implications and Risk

N/A

5. Risk

Internal Audit have previously reviewed the processes in place for compliance against the FPPT and this is set out in the Internal Audit Plan for 204/25 in Q2. The previous review was a low risk report.

The Trust continues to operate within the averse risk appetite with regard to regulatory risk set by the Board requiring the Trust “ We will comply with or exceed all regulations, retain it CQC registration and always operate in the law.”

6. Communication and Involvement

The FPPT Board register is maintained by the Company Secretary, with the supporting evidence files of the checks carried out to validate the self-attestation readily available for inspection as required by the CQC. Those below Board are held in a separate FPPT register with the same supporting information.

The NHS England framework sets out a privacy notice that explains the data held on individuals and has been supplied to all staff alongside the self-attestation.

7. Equality Analysis

There are no issues regarding equality.

8. Publication Under Freedom of Information Act

This paper has been made available under the Freedom of Information Act 2000.

9. Recommendation

Board Directors are asked to;

- Receive the update to understand the requirements of the Care Quality Commission (CQC) Fit and Proper Person Test, alongside the new framework published by NHS England in response to the recommendations from the Kark review
- Be assured the Trust Chair can confirm compliance of the Board in the return to the Regional Director of NHS England at the end of June
- The tier of defined senior managers below Board are also compliant, with the exception of one submission of a DBS (anticipating a verbal update can be provided at the Board meeting to confirm full compliance)
- The public and to the CQC can be assured the Board at LTHT meets the requirements of the FPPT.

Jo Bray
Company Secretary
23 May 2024

Supporting information

- Appendix A – Self-attestation Appendix 3 of NHS England Fit and Proper Persons Test Framework for Board Members Aug 2023

Appendix A

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 (Needs DBS)

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- 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 respective Executive Director, my line manager.