

Implementation of the New Fit and Proper Person Requirements

NHSE has developed a FPPT Framework (referred to in this paper as the “new Framework”) for board members in response to recommendations from the Kark Review that reported in 2019 intended to strengthen and reinforce individual accountability and transparency for board members, thereby enhancing the quality of leadership within the NHS leading to positive impacts on patient safety.

This new Framework was published on 2nd August 2023 and went live on 30th September 2023. It applies to both executive and non-executive directors, both interim and permanent, irrespective of voting rights. The Framework does not apply to the Council of Governors.

In response to the requirements set out in the Framework the Trust has:

- Updated the FPP Requirements Policy (HR0012) to include the requirements of the new Framework and issued new associated FPP Recording and Reporting Guidance
- Issued a specific Board Member FPPT Privacy Notice (based on the template at Appendix 6 of the new Framework) to all those currently covered by the new Framework. All current Board Members, and the Director of Corporate Affairs as a regular board meeting attendee, have signed a copy of the Privacy Notice to confirm receipt, and this has been placed on each individual’s file. The same process has and will continue to be applied to all new Board Members. The Privacy Notice provides details of the types of personal information the Trust collects and processes in relation to the FPPT and informs members that their FPPT information is kept on the ESR system for a career long period (to the member’s 75th birthday).
- Implemented the new starter/annual FPPT self-attestation process. All the Trust’s Board Members have now completed their annual self-declaration of on-going fitness in the format prescribed in Appendix 3 of the new Framework. The Trust’s Recruitment Manager is currently in the process of entering the information from the self-declarations, and the results from the annual Insolvency, bankruptcy and social media checks, into ESR that is a specified requirement in the process. The new Framework mandates ESR as the recording repository for all FPPT checks and information. In addition, as noted above, the Director of Corporate Affairs maintains an individual file for each Board member and regular attendee (referred to as a local evidence folder) with the files kept in a designated, locked metal filing cabinet.
- Is preparing, once the updated annual checks have been entered on to ESR, for the Associate Director of People (Transformation) to run the Annual Reporting Template Report (in the format contained in Appendix 2 of the FPP Recording and Reporting Guidance). This report comprises a comprehensive record of all checks carried out plus Training & Development compliance, last appraisal date, any ongoing and discontinued disciplinary investigations and any disciplinary findings, as detailed in the FPPT checklist at Appendix 7 of the new Framework. The Director of Corporate Affairs will share this report

with the Chair and, using the data from it, complete the Annual NHS FPPT submission to the NHSE Regional Director using the template at Appendix 5 of the new Framework that must be approved and signed by the Chair. This Annual submission includes in Part 1 the FPPT outcome for board members including starters and leavers in the period covered. Part 2 records any reviews or inspections of the FPP process, including by CQC, internal audit and Board effectiveness reviews. Its final section, Part 3, requires the SID or Deputy Chair to complete a Declaration regarding the Chair being Fit and proper and for the Chair to complete the same Declaration in respect of all other Board members. The process then requires the Chair to sign the overall declaration that the FPPT submission is complete.

The Director of Corporate Affairs will then send this first annual submission to the NHSE Regional Director by 30th June 2024. The Regional Director will review it and respond back as a record of receipt. The Regional Director will copy the submission to the NHSE Central FPPT Team where it will be collated with all the returns from other NHSE England regions.

It should also be noted that with the agreement of the Executive Committee the Trust has:

- Revised its arrangements for obtaining social media checks to ensure wide and consistent coverage via an external service provider, replacing the ad hoc checks previously carried out in-house.
- Begun the process whereby all Board members will become subscribers to the DBS updating service rather than having a single DBS check on appointment only.

NHSE has published a leadership competency framework for board members based on six domains each with a range of competencies. The six domains are:

- Driving high-quality, and sustainable outcomes
- Setting strategy and delivering long-term transformation
- Promoting for equality and inclusion, and reducing health inequalities
- Providing robust governance
- Creating a compassionate, just and positive culture
- Building a trusted relationship with partners and communities

NHSE acknowledged that it is unlikely all NHS board members will be able to fulfil all of the competency examples all of the time and that first time directors may need time to develop proficiency. The Trust is required to incorporate the six competency domains into its board member role descriptions and recruitment processes from April 2024.

A revised Chair appraisal framework has been published and has been used in the 2023/24 Trust Chair appraisal. NHSE has announced that a new Board Member Appraisal Framework will be launched in Autumn 2024.

Assurance on the practical application of the new Framework since 30th September 2023 can be taken from the following:

- One externally recruited new Board member has been appointed since the new Framework went live. The FPP checks were completed in accordance with the new Framework and included obtaining references covering the mandated minimum six previous year period.
- To date the Trust has received three requests for references from staff covered by the new Framework, and these have been issued on the board member reference template (Appendix 2 in the new Framework) and stored on ESR and the People Directorate system.
- The Trust has complied with the requirement to prepare a reference on the prescribed Board Member Template Reference form following the resignation of an Executive Director. The reference was completed at the point the employment ended, as required by the Framework. The completed reference has been stored in ESR and the original placed on the former Executive Director's personal file ready for issue, if requested.
- The information provided to the Remuneration & Nomination Committee at its meeting on 4th April 2024, chaired and comprised exclusively of Board members, to assure the Committee that the Trust was compliant with the FPP requirements both at the time of the appointment of that Executive Director in 2022 (prior to introduction of the new Framework from 30th September 2023) and subsequently.
- The FPP process currently being run in respect of the Interim Board member appointee to ensure they meet the requirements of the new Framework, including the issue and signature of the board member Privacy Notice, further references being sought to cover the period of at least six years, and a new DBS check. In order to have the other designated Executive Director deputies ready to take up Board appointments, if required, it was proposed to the Board at its meeting on 2nd May 2024 that the new FPP requirements are extended to the existing Deputy cohort and all new Deputy Executive Director appointments with immediate effect. This proposal was agreed.
- That arrangements have been made for the Internal Auditor to discuss with the Director of Corporate Affairs, the scope of the FPPT review included in the 2024/25 Internal Audit Plan. Outline terms of reference for this review have been prepared and an initial scoping meeting held on 30th April 2024.

Recommendations:

That the Council of Governors

- takes assurance from the details in this paper describing the implementation of the new FPP Framework process,
- notes the arrangements, responsibilities, and timescale for the submission of the Trust's first annual submission to the NHSE Regional Director confirming compliance with the new Framework (by 30th June 2024), and
- notes the voluntary extension of the application of the FPP requirements of the new Framework to each Executive Director's designated deputy.