

**Meeting Title: Board of Directors (Public)**  
**Meeting Date: 30 May 2024**  
**Agenda Item 4.1**



Report Title	<b>Fit and Proper Person Policy</b>
Author (name and title)	David O'Brien, Director of Corporate Services and Company Secretary
Accountable Director	David O'Brien, Director of Corporate Services and Company Secretary
Previous committees/groups	Trust Executive Group, People Committee
Recommended action(s) Approval, Assurance, Information	Approval
Purpose of the paper	This document presents an updated Fit and Proper Person Policy for approval by the Board of Directors.
Recommendation(s)	The Board approves the policy.

**Executive Summary**

Enclosed is a draft updated policy document for approval by the Board of Directors. The document enshrines in policy the various changes made to the Fit and Proper Person Test framework following the Kark Review. These changes have been implemented in the Trust, and cover aspects of the recruitment and appointment of Board members and other directors, ongoing annual compliance requirements, and the retention of local records.

Note that compared to the previous version of the Fit and Proper Person policy various elements of operational or procedural process detail have been removed and these will be captured in a separate Procedures document. This updated document is presented a policy (what the Trust will do) rather than a set of operational procedures (how the Trust will do it).

Strategic ambition(s) this supports. Provide brief bullet point details of link to Trust strategy.	Our Patients	Achieve the highest possible rating of 'outstanding' by the health and social care regulator (Care Quality Commission, CQC).
	Our People	Ensure our culture is one where our people are listened to, encouraged, and enabled to speak up when they have concerns about patient or colleague safety and wellbeing, or when they have suggestions for how the Trust might be better run
	Our Partners	Listen and respond to patients, partners, and our communities to develop and deliver high-quality care, which is continuously improving.
	Our Planet and Pounds	Use our resources wisely and ensure value for money
Link with the BAF Include reference number. (board and level 2 committees only)		2c: Ability to promote and embed a positive and inclusive workplace culture. 3a: Capacity and capability to plan, govern, and deliver Trust strategy and business priorities

**Board of Directors (in Public)  
Fit and Proper Person Policy**

**30 May 2024**

**David O'Brien**

**Director of Corporate Services and Company Secretary**

**1. Purpose**

- 1.1 This paper presents an updated Fit and Proper Person Policy for approval by the Board of Directors.

**2 Background**

- 2.1 Since November 2014 NHS provider organisations have been required to meet regulatory requirements regarding director-level appointments to ensure that individuals appointed to such positions are 'fit and proper persons.'
- 2.2 The Fit and Proper Person Test (FPPT) is applied under Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Requirements relating to FPPT are integrated into the Care Quality Commission (CQC) registration requirements and fall within the CQC regulatory and inspection framework under the 'Well-Led' domain. The Trust has reported compliance with this framework since its inception and has an agreed policy setting out the local FPPT processes.
- 2.3 The Kark Review (2019) was commissioned by the government to assess the scope, operation, and purpose of the existing FPPT and to recommend improvements. The review included evaluation of 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 review highlighted areas that required improvement to strengthen the existing arrangements.
- 2.4 At its meetings on 28 September and 26 October the Trust Board received an update on the changes to the FPPT that are now being implemented following the Kark Review. These updates were presented in the context of the Trust's response to lessons about leadership, governance and accountability emerging from high-profile incidents involving the Counter of Chester Hospital ('the Lucy Letby trial'). In addition, at its meeting on 28 November 2023 the People Committee received an update regarding the roles to be included in the scope of the FPPT in this trust.
- 2.5 As part of this process the Trust needs to adopt an updated Fit and Proper Person Policy. Approval of the Trust's Fit and Proper Person is a matter reserved to the Board of Directors. A draft policy document is attached at Appendix A. The content of the updated policy aligns with guidance and other material issued by NHS England to support implementation of the stronger FPPT framework.

2.6 Compared to previous versions of the Trust's Fit and Proper Person policy various elements of operational or procedural process detail have been removed and these will be captured in a separate procedures document. This updated document is presented a policy (what the Trust will do) rather than a set of operational procedures (how the Trust will do it).

### **3 Fit and Proper Person Policy: Key Points**

3.1 The key points in the updated policy are as follows:

- 3.2 Section 2.2 confirms the scope of the FPPT as set out in the legislation and associated regulations and guidance. The roles to which the FPPT framework applies in this organisation are set out in Appendix A to the policy. These roles have been updated to align with the Trust's new leadership structure and are consistent with the arrangement reported to the People Committee on 28 November 2023.
- 3.3 Section 3.2 confirms the instances in which the Trust will undertake the full FPPT assessment. As mentioned in 2.6 above, details of the operational processes required to carry out the assessment will be set out in a separate procedures document.
- 3.4 Section 3.3 confirms the importance of the annual self-attestation process and the requirement to report on the completion and outcome of this annually to the NHSE Regional Director.
- 3.5 Section 3.4 outlines the arrangements for carrying out FPPT assessments for new board members. This includes the need to carry out pre-employment checks in line with the Trust's existing recruitment policies and includes social media checks and Disclosure and Barring Service checks (where directly relevant to the role).
- 3.6 Section 3.5 outlines the strengthened arrangements for undertaking reference checks for prospective Board members. This includes use of a new standard reference template issued by NHS England, arrangements for local retention of information received via references, and the completion and retention of references when board members leave their role.
- 3.7 Section 3.6 sets out new arrangements for using the Electronic Staff Record (ESR) to hold and manage information about board members. This includes the Trust's approach to reviewing and updating the information held in ESR and the restrictions in place regarding access to this information.
- 3.8 Section 3.7 and Appendix D set out the role of the Trust Chair in the FPPT framework. The Chair is accountable for ensuring that the Trust has in place effective FPPT arrangements and that these are completed each year as required. The Chair is accountable for concluding on whether each board member does meet the requirement of the FPPT framework. The Senior Independent Director will ensure that the Chair meets the FPPT requirements.

- 3.9 Section 4 confirms the Trust's approach to carrying out the various annual checks required by the FPPT framework. This includes the arrangements for annual appraisals and objective-setting for all board members, both executive and non-executive. 4.2.5 confirms that the Trust will utilise any guidance, frameworks or other tools issued by NHS England or regulators to support the appraisal and development review of board members. This is required to achieve compliance with the strengthened FPPT framework.

## **4 Financial Implications**

- 4.1 There are no direct financial implications associated with this paper.

## **5 Risk**

- 5.1 Failure to apply the FPPT framework would represent statutory and regulatory non-compliance, with potential implications to the Trust's reputation and operating license.
- 5.2 Failure to apply the FPPT framework well would represent a regulatory risk under the CQC 'Well-Led' domain, with potential implications to inspection outcomes and reputation.
- 5.3 Failure to operate rigorous and effective FPPT arrangements could result in the Trust appointing individuals who are not demonstrably 'fit and proper' to significant roles, with potential implications for governance, accountability, assurance, reputation, and patient safety.

## **6 Communication and Involvement**

- 6.1 This draft policy has been reviewed by the Trust Executive Group and the People Committee.

## **7 Equality Analysis**

- 7.1 An Equalities Impact Assessment is in place for the existing policy. This will be reviewed and updated as required.

## **8 Recommendation**

- 8.1 The Board is asked to approve the updated policy.

## **9 Supporting Information**

Appendix 1: Fit and Proper Person Policy (draft for approval)

David O'Brien  
**Director of Corporate Services and Company Secretary**

May 2024