

Meeting name:	WY ICB Board
Agenda item no.	17
Meeting date:	24 September 2024
Report title:	Fit and Proper Person Policy
Report presented by:	Laura Ellis, WY ICB Director of Corporate Affairs
Report approved by:	Laura Ellis, WY ICB Director of Corporate Affairs
Report prepared by:	Aimee Willett, Head of Corporate Governance

Purpose and Action			
Assurance <input type="checkbox"/>	Decision <input checked="" type="checkbox"/> (approve/recommend/ support/ratify)	Action <input checked="" type="checkbox"/> (review/consider/ comment/discuss/ escalate)	Information <input type="checkbox"/>
Previous considerations:			
Circulated by email for review and comment to members of the Audit Committee and the Remuneration and Nomination Committee.			
Executive summary and points for discussion:			
<p>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the “2014 Regulations”) place a duty on all NHS providers not to appoint, or have in place, an individual as a Director (Executive of Non-Executive), or “performing the functions of, or functions equivalent or similar to the functions of a Director” unless they satisfy a series of Fit and Proper requirements.</p> <p>Following a review of the Fit and Proper Person requirements (known as ‘the Kark Review’, 2019), a series of recommendations have been incorporated in the ‘NHS England Fit and Proper Person Test (FPPT) Framework for board members’ that came into effect on 30 September 2023, including broadening the scope of the FPPT applicability to include NHS commissioners, including Integrated Care Boards (ICBs) and relevant Arm’s Length Bodies (ALBs).</p> <p>The attached policy outlines the WY ICB approach to ensure compliance with the NHS England policy, and specifies the following:</p> <ul style="list-style-type: none"> • Scope of the policy. • Roles and responsibilities of those in scope of the policy, and those with 			

<p>responsibility for implementation.</p> <ul style="list-style-type: none"> • Processes for existing, new and joint appointments. • Process for ICB partner members. • Processes for dealing with positive disclosures or where a concern is identified. • How policy compliance will be monitored, audited and reviewed.
<p>Which purpose(s) of an Integrated Care System does this report align with?</p>
<p><input checked="" type="checkbox"/> Improve healthcare outcomes for residents in their system</p> <p><input checked="" type="checkbox"/> Tackle inequalities in access, experience and outcomes</p> <p><input checked="" type="checkbox"/> Enhance productivity and value for money</p> <p><input checked="" type="checkbox"/> Support broader social and economic development</p>
<p>Recommendation(s)</p>
<p>To APPROVE the Fit and Proper Person Policy.</p>
<p>Does the report provide assurance or mitigate any of the strategic threats or significant risks on the Corporate Risk Register or Board Assurance Framework? If yes, please detail which:</p>
<p>None</p>
<p>Appendices</p>
<p>Appendix 1 – WY ICB Fit and Proper Person Policy</p>
<p>Acronyms and Abbreviations explained</p>
<p>FPPT – Fit and Proper Person Test</p> <p>WY ICB – West Yorkshire Integrated Care Board</p>

What are the implications for?

Residents and Communities	None directly arising from this report.
Quality and Safety	None directly arising from this report.
Equality, Diversity and Inclusion	None directly arising from this report.
Finances and Use of Resources	None directly arising from this report.
Regulation and Legal Requirements	None directly arising from this report.
Conflicts of Interest	None directly arising from this report.
Data Protection	None directly arising from this report.
Transformation and Innovation	None directly arising from this report.
Environmental and Climate Change	None directly arising from this report.

Future Decisions and Policy Making	None directly arising from this report.
Citizen and Stakeholder Engagement	None directly arising from this report.

FIT AND PROPER PERSON POLICY

Version: 0.3

Approved by: ICB Board

Date Approved: TBC

Author: Director of Corporate Affairs

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Category of Document in the Policy Framework	Corporate Governance ICB Wide
Author(s)	Director of Corporate Affairs
Contact for further information	westyorkshireics.governance@nhs.net
This document should be read in conjunction with	<ul style="list-style-type: none"> • NHS England Fit and Proper Person Test Framework for board members • WYICB Standards of Business Conduct Policy • WYICB Conflicts of Interest Policy • WYICB Constitution
Copies of this document are available from	https://www.westyorkshire.icb.nhs.uk/about-west-yorkshire-integrated-care-board/governance

Version Control Sheet

Version	Date	Author	Status	Comment
0.1	August 2024	Head of Corporate Governance	Draft	Circulated to Director of Corporate Affairs and Associate Director of People for review
0.2	August 2024	Director of Corporate Affairs	Draft	Circulated to Audit Committee and Remuneration and Nomination Committee members for comment
0.3	September 2024	Head of Corporate Governance	Draft	Equality Impact Assessment summary completed at appendix A. Draft submitted for approval at Board.

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1.0 Purpose

- 1.1 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the “2014 Regulations”) place a duty on all NHS providers not to appoint, or have in place, an individual as a Director (Executive or Non-Executive), or “performing the functions of, or functions equivalent or similar to the functions of a Director” unless they satisfy a series of Fit and Proper requirements.
- 1.2 Following a review of the Fit and Proper Person requirements (known as ‘the Kark Review’, 2019), a series of recommendations have been incorporated in the ‘NHS England Fit and Proper Person Test (FPPT) Framework for board members’ that came into effect on 30 September 2023, including broadening the scope of the FPPT applicability to include NHS commissioners, including Integrated Care Boards (ICBs) and relevant Arm’s Length Bodies (ALBs).
- 1.3 The FPPT Framework provides a fair and proportionate approach to the implementation of new and more comprehensive requirements around board appointments, and introduces a means of retaining information relating to:
- Testing the requirements of the FPPT for individual directors.
 - A set of standard competencies for all board members.
 - A new way of completing board member references with additional content whenever a director leaves an NHS board.
 - Extension of the applicability to some other organisations including NHS England, Integrated Care Boards and the CQC.

2.0 Scope

- 2.1 Within the NHS England FPPT Framework guidance, the term ‘board member’ is used to refer to:
- Both executive directors and non-executive members (NEMs), irrespective of voting rights.
 - Interim (all contractual forms) as well as permanent appointments.
 - Those individuals who are called ‘directors’ within Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 2.2 The Framework requirements apply on an individual basis, rather than in relation to the Board as a whole. The individual does not have to be an employee of the ICB to fall within the scope of this policy.
- 2.3 All members of the Board fall within this policy under the term ‘board members’.
- 2.4 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 the Framework if they are a board member.

2.5 This policy is supported by a suite of operational procedure documents.

Local Determination

2.5 The Framework recognises that some organisations may want to extend the FPPT assessment to other key roles, for example, to those individuals who may regularly attend board meetings or otherwise have significant influence on board decisions.

2.6 The ICB has determined that this policy will be extended to:

- All other executives who report directly to the Chief Executive and regularly attend the board as a participant, namely the Director of Corporate Affairs, Director of Planning and Performance, and Chief Digital and Information Officer.
- Those deputising for Executive Directors or for roles regularly attending and contributing to the Board. These individuals will be reviewed by the Chair on an annual basis.
- The chairs of Place Committees.

The annual submission requirement is, however, limited to board members only.

3.0 Roles and Responsibilities

Chair of the ICB

3.1 The Chair has ultimate accountability for ensuring that the ICB conducts and keeps under review a FPPT regime to ensure board members are, and remain, suitable for their role. The Chair will 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.

3.2 As such, the Chair will:

- Ensure the ICB has proper systems and processes in place to comply with the FPPT requirements.
- 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.
- Ensure an appropriate programme is in place to identify and monitor the development needs of board members.
- On appointment of a new board member, consider the specific competence, skills and knowledge of board members to carry out their activities, and how these fit with the overall board.
- Conclude whether the board member is fit and proper.
- Confirm, on an annual basis, that all board members have completed their own FPPT self-attestation.
- 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.

- 3.3 In considering their overall assessment of board members, the Chair will confirm the above points are adequately addressed, and where relevant, any appropriate action has been taken to address any concern.
- 3.4 The Chair will present a report on completion of the annual FPPT in accordance with local policy, to the Board in a public meeting. The report will be shared with the Audit Committee prior to the Board for assurance.
- 3.5 The Chair will also complete an annual self-attestation that they themselves are in continued adherence with the FPPT requirements.

Senior Independent Director (SID)

- 3.6 Annually, the Senior Independent Director (SID) will review and ensure that the Chair is meeting the requirements of the FPPT and will sign off the completion of the annual assessment within ESR.
- 3.7 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 Chair's annual appraisals.

ICB Chief Executive

- 3.8 The Chief Executive will review the FPPT evidence and conclude for each Executive Director who is a board member or where they are a direct report to the Chief Executive in scope of this policy, whether they are fit and proper, prior to the annual submission.
- 3.9 The Chief Executive will take appropriate action to address any issues which may affect the fitness of any of the Executive Directors, their deputies, or other direct reports who fall within the scope of this policy.

Director of Corporate Affairs / Head of Corporate Governance

- 3.10 The Director of Corporate Affairs, supported by the Head of Corporate Governance, will be responsible for implementation of this policy, ensuring all relevant systems and processes are in place, and that FPP checks are completed for all individuals within the scope of this policy.
- 3.11 The Director of Corporate Affairs / Head of Corporate Governance will support the Chair to ensure the ICB is compliant with all elements of the policy and timely submission to the NHS England Regional Director and reporting to the ICB Board.
- 3.12 The Director of Corporate Affairs / Head of Corporate Governance will lead the appointment process for the Chair, Non-Executive Members and Partner Members of the Board, in line with regulations, NHS England Frameworks and the ICB's constitution.
- 3.13 In conjunction with the Chair, the Director of Corporate Affairs / Head of Corporate Governance will ensure action is taken in the event of non-compliance with the policy by any individual in scope.

Director of People / Associate Director of People

- 3.14 The Director of People / Associate Director of People will ensure that there are robust HR policies, systems and processes in place that align to the FPP Framework, where appropriate.
- 3.15 The Director of People / Associate Director of People will support the ICB Chief Executive with ensuring compliance with the policy during recruitment and selection of Executive Directors and other direct reports, and with taking appropriate action should any compliance issues arise.

Individuals in Scope of the Policy

- 3.16 All individuals in scope of the Policy will:
- Ensure that they provide all required information to satisfy the Fit and Proper Person Test, including completion of the annual Self Attestation Form, and respond promptly to requests for information or evidence of their ongoing suitability.
 - Declare any information to the Chair which may call into question their continued fitness to undertake their role as soon as reasonably possible.

4.0 Policy Detail

4.1 The Fit and Proper Person Test

- 4.1.1 A documented, full FPPT assessment will be needed in the following circumstances:
1. New appointments in board member roles, whether permanent or temporary, where greater than six weeks, this covers:
 - a. New appointments that have been promoted within an NHS organisation.
 - b. Temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis.
 - c. Existing board members at one NHS organisation who move to another NHS organisation in the role of a board member.
 - d. Individuals who join an NHS organisation in the role of board member for the first time from an organisation that is outside the NHS.

Individuals will also require completion of a board members reference check.

2. When an individual board member changes role within their current NHS organisation.
3. Review within a 12-month period of the date of the previous FPPT for any changes.

4.2 Self-Attestation

- 4.2.1 Every board member will need to complete an annual self-attestation to confirm that they are in adherence with the FPPT requirements.

4.3 New Appointments

- 4.3.1 The ICB will demonstrate that appointment of new board members are made through a robust and thorough appointment process, and no new

appointments will be made unless the appointee can demonstrate they have met the FPPT requirements.

4.4 Joint Appointments

4.4.1 Executive Directors / Directors / Non-Executive Members

In the scenario of joint appointments, the full FPPT should 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 be requested to 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.

In addition, and to ensure the ICB can demonstrate that all board members are fit and proper, all joint appointees will be required to complete the self-attestation form for the ICB in line with its annual FPPT cycle, regardless of the designated host/employing organisation.

4.4.2 ICB Partner Members

The ICB will adopt the FPPT Framework guidance on 'Joint Appointments across different NHS organisations where the employer as the 'host' organisation will provide a letter of confirmation from the relevant organisation confirming that the annual FPPT has been undertaken and any conclusions. In the absence of this, the ICB will be responsible for ensuring that the full FPPT assessment process has been completed.

In addition, and to ensure the ICB can demonstrate that all board members are fit and proper, all partner members will be required to complete the self-attestation form for the ICB in line with its annual FPPT cycle.

4.5 Process for dealing with positive disclosures, or where a concern is identified

4.5.1 An individual may disclose information during the appointment process, or during the course of their employment, which may affect their fitness to undertake the role.

4.5.2 Alternatively, concerns may be raised directly to the ICB Chair from third parties including the CQC, or individuals utilising the ICB Freedom to Speak Up procedure.

4.5.3 Where a concern is raised, the ICB Chair and / or the ICB Chief Executive, with support from the Director of Corporate Affairs / Head of Corporate Governance, will follow the procedure for considering and responding to

concerns set out in the regulations ([Regulation 5: Fit and proper persons: directors](#)), regardless of whether the concern has been raised through the CQC or another party.

4.6 Breaches to Core Elements of the FPPT (Regulation 5)

4.6.1 The Framework outlines the following points:

The Regulation will be breached if a board member:

- Is unfit on the grounds of character, such as:
 - An undischarged conviction.
 - Being erased, removed or struck off a register of professionals maintained by a regulator of healthcare, social work professionals or other professional bodies across different industries.
 - Being prohibited from holding a relevant office or position.
- Is also unfit on the grounds of character if they have been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether lawful or not) in the course of carrying out a regulated activity.
- Is unfit should they fail to meet the relevant qualifications or fail to have the relevant competence, skills and experience as deemed required for their role.
- Is unfit on grounds of financial soundness, such as a relevant undischarged bankruptcy or being placed under a debt relief order.
- An NHS organisation does not have a proper process in place to make the robust assessments required by the Regulations.
- On receipt of information about a board member's fitness, a decision is reached on the board member that is not in the range of decisions a reasonable person would be expected to reach.

4.6.2 If a board member or executive director is deemed competent but does not hold the relevant qualifications there should be a documented explanation, approved by the Chair, as to why the individual in question is deemed fit to be appointed, or fit to continue in role if they are an existing board member or executive director. This should be recorded in the annual return to the NHS England regional director.

4.6.3 In an exceptional case, where an individual is deemed unfit (that is, they failed the FPPT) for a particular reason (other than qualifications) but the ICB appoints them or allows them to continue their current employment there should be a documented explanation as to why the individual is unfit and the mitigations taken, which is approved by the Chair. This should be submitted to the relevant NHS England regional director for review, either as part of the annual FPPT submission for the NHS organisation, or on an ad hoc basis as a case arises.

4.7 Outcome where an individual is deemed to be unfit

4.7.1 Where it is deemed that an issue renders an applicant unfit and unsuitable for office, the offer of employment will be withdrawn.

4.7.2 Where an existing post holder breaches the regulation and is deemed unfit, the ICB Chair and / or the ICB Chief Executive, with support from the Director

of Corporate Affairs / Head of Corporate Governance, will take action in accordance with Regulation 5 and ICB policy.

- 4.7.3 Where an individual is no longer deemed fit by reason of the breach, they will be relieved of their directorial office. This extends to circumstances where an individual has been found to have been “responsible” for behaviour amounting to serious misconduct or mismanagement, even if not a direct participant.

5.0 Implementation and Dissemination

- 5.1 Following approval by the Board, the policy will be disseminated to all individuals within scope of the policy and will be added to the ICB website and internal Shareboard.

6.0 Monitoring Compliance, Audit and Review

- 6.1 The Director of Corporate Affairs / Head of Corporate Governance will ensure relevant systems and processes are in place, and that FPP checks are completed for each individual in scope of the Policy.
- 6.2 The evidence will be reviewed annually by the ICB Chief Executive (for Executive Directors, their deputies, or other direct reports who fall within the scope), the ICB Chair (for the ICB Chief Executive, Non-Executive Members, Partner Members and Place Committee Chairs), and the Senior Independent Director (for the ICB Chair).
- 6.3 A report will be presented to the Board on an annual basis, with assurance provided to the Remuneration and Nomination Committee.
- 6.4 NHS organisations should have an internal audit to assess the processes, controls and compliance supporting the FPPT assessments every three years. The internal audit should include sample testing of FPPT assessment and associated documentation. NHS organisations should consider inclusion of FPPT process and testing in the specification for any commissioned Well-Led/board effectiveness reviews. The Audit Committee will review the assurance provided by this audit.
- 6.5 NHS England will have oversight through receipt and review of annual FPPT submissions to the relevant NHS England regional director.
- 6.6 The CQC’s role is to ensure NHS organisations have robust processes in place to adequately perform the FPPT assessments, and to adhere to the requirements of Regulation 5 of the 2014 Regulations. This will be assessed as part of the CQC Well Led reviews.

Appendix A – Equality Impact Assessment Summary

Equality Impact Assessment Summary

Directorate: Corporate Affairs	Area: Corporate Governance
Policy: Fit and Proper Person Policy	

<p>What are you seeking to achieve with this work? What has prompted this change? What are the intended outcomes of this work?</p>	<p>The Policy has been developed to ensure WYICB is aligned to the NHS England Fit and Proper Person Test (FPPT) framework for board members.</p> <p>The Policy will ensure that WYICB board members, and others in scope, meet the requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.</p>
<p>Who will be affected by it and why? (e.g. Public, patients, service users, staff, etc.)</p>	<p>Board members, and others in scope of the policy will be subject to the fit and proper person test.</p> <p>Internal Audit and the Care Quality Commission will test as part of internal audits and well led reviews.</p>

Information
<p>What information is available about the current situation to assist decision making? (e.g. data, intelligence, research or national guidelines; staff and patient experience)</p> <p>NHS England Fit and Proper Person Test (FPPT) framework for board members.</p>

Impact Analysis			
<p>Based on the information available, an assessment of the current situation and the changes being proposed is there the possibility of a differential impact (positive or negative) on the groups listed below? (Enter Y/N against each characteristic and a rationale with evidence)</p>			
	Y/N		Y/N
Disability	N	Gender Reassignment & Transgender	N
Gender/Sex	N	Religion or Belief	N
Race	N	Pregnancy and Maternity	N
Age	N	Marriage & Civil Partnerships:	N
Sexual Orientation	N	Carers	N

Rationale for Answers Above:

(Explain for each characteristic, why it is considered that there may or may not be an impact)

The fit and proper person test is the same for all individuals and is performed in line with the NHS England Fit and Proper Person Test (FPPT) framework for board members.

Summary of Actions Planned as a Result of the Assessment

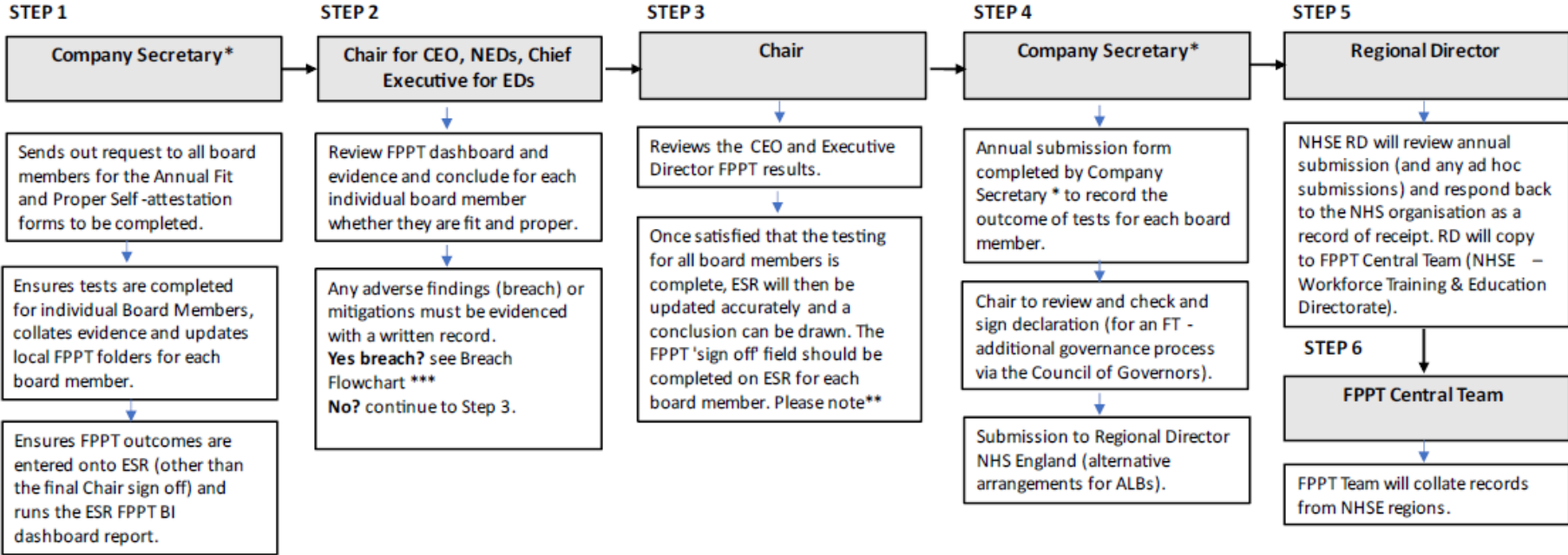
(Indicate timescales and lead officers for each action)

N/A

Assessed by:

Aimee Willett, Head of Corporate Governance
September 2024

Appendix B – FPPT Assessment Process



*Or senior member of staff nominated by and behalf of, the Chair, e.g., HRD
 ** SID/Deputy Chair to carry out FPPT on the Chair and 'sign off'
 *** Please refer to the Chairs Guidance for the Breach Flowchart
 SID = Senior Independent Director
 ESR= Electronic Staff Record