Title:
Fit and Proper Persons Requirement for Directors

IA No: 6111

Lead department or agency:
Department of Health

Other departments or agencies:
CQC

Impact Assessment (IA)

Date: 06/01/2014

Stage: Consultation

Source of intervention: Domestic

Type of measure: Secondary legislation

Contact for enquiries: Sheila Evans

Summary: Intervention and Options

RPC Opinion: Amber

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
-£18.6m	-£10m	-£0.94m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

Directors of health and social care organisations play a crucial role in determining the safety and quality of care provided by the organisation through the decisions that they make and the culture that they set for the organisation as a whole. However, there are currently no requirements to ensure that directors of these organisations are, and continue to be, fit and able to carry out their role. It is at the discretion of the provider to ensure that the directors they appoint are of the right character and possess the necessary skills to carry out the role and to remove those who are not. In some cases this does not occur. Government intervention is required to close this gap in regulations.

What are the policy objectives and the intended effects?

The policy objective is to ensure providers take proper steps to ensure that their directors are fit and proper for their role. Requirements will be placed on providers to undertake the necessary checks to ensure that all directors exhibit the correct types of personal behaviour, technical competence and business practices required for their role. This is expected to have a positive impact on the quality of care by reducing the risk of there being unfit directors in post who negatively impact on the safety and quality of care. This will also strengthen the performance of directors by increasing the incentives on providers to scrutinise their performance and will enable CQC to take action against unfit directors including barring them from individual posts..

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing: The existing regulations and requirements placed on health and social care providers are insufficient to address the risks that poor governance might have on safety and care quality. Although the directors of the provider organisation can have significant influence over the level of safety and quality of care delivered by the provider, there are currently insufficient regulations governing the standards that a director must meet to be able to carry out the role effectively.

Option 2 (preferred option): A fit and proper persons requirement for directors: CQC requirements will be amended to place a clear duty on service providers to make sure that all directors who are appointed to the boards of any health or care organisation regulated by CQC are of the right character and fit for their role, as is already the case for other staff members at the organisation, including senior managers.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline

Other key non-monetised costs by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline

Other key non-monetised benefits by 'main affected groups'

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

In line with impact assessment guidance the do nothing option has zero costs or benefits as impacts are assessed as marginal changes against the do nothing baseline. Under the do nothing option there would continue to be a risk to the safety of service users and the quality of care posed by the lack of requirements to ensure that directors of health and social care providers are fit for the role.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Fit and Proper Persons Test

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** -£18.6m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional	1	Optional	**Optional**
Best Estimate	£1.5m		£2m	**£18.6m**

Description and scale of key monetised costs by 'main affected groups'

Providers who do not currently carry out the necessary checks on their directors will face the costs of the additional actions they must take to do so. CQC will face the costs of undertaking the necessary monitoring and enforcement activity associated with the new requirement. Both providers and directors will be able to appeal against any enforcement action[to be confirmed in depending on CQC decision on warning notices]

Other key non-monetised costs by 'main affected groups'

There may be a personal cost to a director if they are judged to be unfit and are removed for their duties. There could be other impacts on the labour market for directors that subsequently impact on providers

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional	1	Optional	**Optional**
Best Estimate	unquantified		unquantified	**unquantified**

Description and scale of key monetised benefits by 'main affected groups'

It has not been possible to monetise any benefits

Other key non-monetised benefits by 'main affected groups'

The main benefits are the reduction in the risks of poor quality care for health and social care service users associated with poor management or governance from an unfit director and the increase in accountability of directors for their actions arising from the increased incentives for providers to scrunitise the performance of their directors. Providers may also benefit where poor director choice would otherwise impact on business performance

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

It remains unclear how many providers might currently be failing to undertake the necessary checks on whether their directors are fit and proper and thus what the true extent of the problem might be.
CQC are also making changes to their regulatory model which will have an impact on the levels of enforcement and compliance and the costs of regulation. It has not been possible to take into account these changes in the analysis as the policies are still under development.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.94m	**Benefits:** unquantif	**Net:** £0.94m	Yes	IN

Evidence Base (for summary sheets)

Section A: Definition of the underlying problem and rationale for government intervention

Policy Background

1. The Care Quality Commission (CQC) is the independent regulator of health and adult social care providers in England and has a key responsibility in the overall assurance of safety and quality of health and adult social care services. Under the Health and Social Care Act 2008 all providers of regulated activities, including NHS and independent providers, have to register with CQC and meet a set of requirements of safety and quality.
2. CQC forms part of the wider quality framework, having responsibility for:
    - providing independent assurance and publishing information on the safety and quality of services;
    - registering providers of regulated activities (including NHS, adult social care and independent sector healthcare providers), ensuring the care they can provide is of a sufficient standard to allow them to enter the market safely;
    - monitoring compliance with a set of registration requirements;
    - using enforcement powers (where appropriate) to ensure service providers meet requirements or, where appropriate, to suspend or cancel registrations;
    - undertaking special reviews and investigations of particular services, looking across providers and commissioners of health and adult social care;
    - monitoring the use of the Mental Health Act; and
    - operating a proportionate regulatory system that avoids imposing unnecessary burdens on providers and on the regulator itself, and helping to manage the impact of regulation more generally on health and adult social care service providers and commissioners.
3. CQC's purpose is to improve care by regulating and monitoring services. CQC ensures that only providers who have made a legal declaration that they meet the standards of quality and safety are allowed to provide care. Once services are registered, CQC continues to monitor and inspect them against these standards. It acts quickly in response to any concerns and takes swift enforcement action where services are failing people. This can include issuing a warning notice that requires improvement within a specified time, prosecution, or cancelling a provider's registration and removing its ability to provide regulated activities, or for the NHS, triggering the quality failure regime.

The evidence base of this impact assessment is structured as follows:

Section A: Definition of the underlying problem and rationale for government intervention

Section B: Policy objectives and intended effects

Section C: Description of the options

Section D: Costs and benefits assessment of the options (including specific impacts)

Section E: Summary of specific impact tests

Section F: Summary and conclusion

Section A: Definition of the underlying problem and rationale for government intervention

4. The government is committed to ensuring that users of health and social care receive high quality and safe services. In order for a health and social care provider to provide a high quality and safe service, it is vital that the organisation has the right values and culture, and the people who work for them are of a sufficiently high standard and are fit to be entrusted with delivering these services. Failure of an individual at any level of the organisation can have significant impacts on the health and safety of service users.

5. There are many policies, initiatives and levers in place to ensure that only those with the right character, qualifications and skills are involved in the delivery of care, such as through professional regulation and voluntary codes of conduct.

6. As part of the system of regulation for health and social care providers, CQC requires those involved in managing or carrying out a regulated activity to remain fit to provide services and to be accountable for the actions that they take as set out below. Fitness is judged based on whether the individual is of good character and possesses the necessary skills and qualifications in order to carry out their role.

    - Providers: The service provider is registered with CQC and CQC itself makes a judgement about their fitness. Where the service provider is an individual or partnership this includes the fitness of the individuals involved. For other organisations, there is a fitness test for the nominated individual who is responsible for supervising the management of the regulated activity.
    - Registered managers: The registered manager is assessed and granted registration by CQC, who makes a judgement about their fitness. The role of the registered manager is designed to ensure that an individual is personally accountable for ensuring that the registration requirements are complied with in each location. (NHS Trusts are not required to have a registered manager).
    - Staff: The service provider and registered manager are required to ensure that the staff they employ are fit to fulfil the function for which they are employed. This includes the fitness of senior managers, but only includes directors or other company officers if they are employed for the purposes of carrying out the regulated activity.

    There is no registration requirement specifying that all Directors of Boards or members of the governing body of non-corporate associations have to be fit and proper persons. As such Directors are the only part of a registered provider's hierarchy where a fitness test does not apply – be that assessed by the service provider or by CQC. This is a gap in the current regulations.

7. Although the directors of the organisation are unlikely to be involved in carrying out regulated activities on a day-to-day basis, we would still expect that they will have significant influence over the safety and quality of care provided. The directors of a provider organisation have responsibility for leadership, providing oversight and making decisions and setting policies for the organisation as a whole. These decisions will influence how the organisation operates, and the culture, values and behaviours expected from all staff. Where directors fail to carry out their role properly, there can be significant and wide ranging risks to safety and care quality across the whole of the organisation. The events at both Mid-Staffordshire Hospital and Winterbourne View Hospital demonstrate the severe effects that poor governance can have on the quality of care and the impact that this can have on service users. As such, it is important that there are appropriate safeguards in place to ensure that directors are fit and proper for their role. As the regulations currently stand, there is a significant mismatch between the potential risk to care quality posed by an unfit director, and the level of scrutiny and safeguards in place to prevent this.

8. Although it is expected that the vast majority of health and social care providers are likely to make proper provisions to ensure the directors that they appoint are suitable and fit for the job, there must be safeguards in place where this process fails. There is a risk that some providers may fail to undertake the appropriate checks to determine whether a director is fit and proper for the job, or base their decision on alternative criteria, such as family ties. When it comes to monitoring and appraising the performance of the director to ensure that they continue to remain fit for the role, the owner of the provider may be too far removed from the running of the organisation[1] or, in other cases, too close[2], to be able to monitor and make effective judgements, and hold the director to account for their actions and decisions. Where directors have previously been found to be unfit in their role, they should be prevented from moving into a similar role elsewhere in the health and social care system for which they are also unfit.

9. As a result of this, this gap in the regulations presents a real risk to the safety and quality of care. It is currently at the discretion of the provider as to whether the directors that they appoint are, and continue to remain, fit for their role, and what action is to be taken where this is not the case. Some providers may face incentives not to, or are otherwise unable to, carry out the appropriate and

[1] For example, shareholders for a large company

[2] Such as in a family run business

necessary checks to ensure directors are and remain fit for their role, and there is currently no route for CQC to take enforcement action where a director is found to be unfit.

10. The government signalled its intention to develop proposals for a fit and proper person requirement for board level directors in its response to the events at Winterbourne view hospital[3] and reaffirmed this commitment in its initial response to the Francis Inquiry *Patients First and Foremost*[4]. An initial consultation examining the principles of introducing such a test via CQC's registration requirements was carried out by the Department of Health between July and September 2013. The final Francis Response published in November 2013[5], confirmed the government's commitment to introducing a fit and proper person's requirement for directors, and suggested that this could also act as a mechanism for barring unfit directors from individual posts. The consultation accompanying this impact assessment now focuses on the detail of the draft regulations that will introduce this requirement.

The case for government intervention:

11. Asymmetry of information between health and social care providers and consumers, and the potential incentives for providers to provide sub-optimal care means that there may be market failure that could be addressed by independent regulation. In this particular case, service users do not know the quality of governance arrangements of the provider and how this might impact on the quality of care, whilst provider incentives may be such that they fail to ensure the board of directors are fit for the job. Regulation of health and social care is a public good, and as such, the market does not always naturally provide it, and has not done so in this area, hence government intervention is required to close the gap in requirements identified above.

12. As providers are already under strong incentives to ensure that their directors are suitable for the role (as this will affect the success of the organisation as a whole), we do not feel that further non-regulatory approaches, such as voluntary codes of conduct, would provide sufficient additional incentives to change the behaviour of those providers who do not carry out the appropriate checks.

Section B: Policy objectives and intended effects

13. The policy objective is to strengthen corporate accountability in health and social care and close the current gap in the regulations by ensuring that providers take proper steps to ensure that their directors are fit and proper for their role. Where directors have previously been found to be unfit in their role, they should be prevented from moving into a similar role elsewhere in the health and social care system. This is part of a wider set of proposals to strengthen corporate accountability, which include measures to ensure that the requirements placed on providers are as clear and easy to understand as possible and to allow CQC to take stronger and faster enforcement action where necessary, including prosecutions where there are clear failures to meet basic standards of care; and introducing a new statutory duty of candour. The impacts of these policies have been assessed separately and are also subject to a consultation.

14. Under these proposals a requirement will be placed on providers that they must have directors who are fit and proper for their role. Providers will be expected to undertake the necessary checks to ensure that all directors are fit and proper for their role. This will close the existing gap in the regulation of health and social care whereby the service provider and registered manager are accountable to CQC and are subject to a test of fitness, but the directors of the organisation are not.

15. The intended effect of this is to reduce the risks of poor quality care for health and social care service users associated with poor management or governance and to make directors more accountable for their actions. Providers will be expected to carry out the necessary checks to ensure that their directors are of the right character and are fit to carry out their roles. This will compel the minority of providers who currently do not carry out these checks to begin to do so. Newly registering providers will also be expected to carry out similar checks in order to make assurances to CQC about the fitness of their directors. Overall, the risk that a director who is not suitable or able to carry out the role is appointed will be reduced as a result, and this will in turn reduce the risk of

[3] *Transforming care: A national response to Winterbourne View hospital* Department of Health (December 2012)

[4] *Patients First and Foremost* Department of Health (February 2013)

[5] Hard Truths: https://www.gov.uk/government/publications/mid-staffordshire-nhs-ft-public-inquiry-government-response

quality failings relating to poor governance occurring. By creating a requirement in statute and determining a set of standards, providers will be able to exercise less discretion when deciding if directors are fit for the role. This is expected to reduce the potential variation in the quality of directors.

16. Providers will also be expected to continue to monitor their directors to ensure that they continue to remain fit and able to carry out their role. Where it becomes apparent that a director is no longer fit for their role, providers will be expected to take appropriate action, including removing the director from their role. As above, this is expected to have a positive impact on the quality of care by reducing the risk that directors who are no longer fit for their role remain undetected and able to continue providing poor quality leadership. This requirement is also expected to strengthen the accountability of directors by increasing the incentives on providers to scrutinise the performance and actions of their directors, and to ensure that there are appropriate consequences for the director where this is not satisfactory.

17. As an unfit director will also impact on the performance of a provider organisation, providers are also expected to benefit from the policy proposal. For the minority of providers, who may act myopically and fail to carry out appropriate checks on their directors, the proposed requirement may incentivise some additional checking of directors and thus lead to better decisions being made about director level appointments. Reducing the risks associated with poor quality care resulting from unfit directors might also benefit the health and care sector as a whole, for example, by lowering risks in the sector, this might lead to reductions in insurance premiums for providers.

Section C: Description of the options

Option 1: do nothing

18. The existing regulations and requirements placed on health and social care providers are insufficient to address the risks that poor governance might have on safety and care quality. Although the directors of the provider organisation can have significant influence over the level of safety and quality at the provider, there are currently insufficient regulations governing the standards that a director must meet to be able carry out the role. It is currently at the discretion of the provider as to whether the directors that they appoint are, and continue to remain, fit for their role, and what action is to be taken where this is not the case. Providers may face incentives not to, or be otherwise unable to, carry out the appropriate and necessary checks to ensure directors are and remain fit for their role.

19. There is a gap in the current regulations. Providers of health and social care face requirements for all other individuals within their organisation hierarchy to be fit and proper for their role.

20. As discussed previously, although CQC requires providers, registered managers and staff to be fit and proper to carry out their role, there is no such requirement for directors. The existing requirements are unlikely to offer sufficient coverage for directors for the reasons below:

    - Providers: Where the service provider is an individual or partnership CQC tests the fitness of the individuals involved. For other organisations, a fitness test applies for a nominated individual who is responsible for supervising the management of the regulated activity. The fitness of a director would therefore only be judged if they also carried out one of the roles listed above. Any other directors in the organisation would not be subject to the fitness test.

    - Registered managers: The registered manager is the individual who is personally accountable for ensuring that the registration requirements are complied with in each location. A director is unlikely to undertake this role because the role of the director is to provide oversight and make policy and organisational decisions rather than day-to-day management.

    - Staff: The service provider and registered manager are required to ensure that the staff they employ are fit to fulfil the function for which they are employed. This includes the fitness of senior managers, but only includes directors or other company officers if they are employed for the purposes of carrying out the regulated activity. This is unlikely to be the case as the role of the director rarely involves carrying out day-to-day activities. However it could capture executive directors overseeing the regulated activities.

21. Directors of NHS organisations may face requirements on their fitness from other sources, for example, Monitor includes a fit and proper person's test for directors as part of its licence conditions for providers of NHS services, which currently applies to all Foundation Trusts. The NHS Trust Development Authority (TDA) will also enforce appropriate requirements equivalent to licence conditions on NHS Trusts. However, their definition of unfitness mainly relates to bankruptcy and criminal convictions. There are no considerations of other factors that might signal a director's overall fitness to lead a health and social care providing organisation. It is unlikely that these requirements will be sufficient to fully meet the policy objective to ensure that directors are fit and proper and able to lead a health and social care provider. These requirements will not apply to other healthcare sectors or adult social care at all.

22. While the Companies Act 2006 sets out the statutory duties falling on all directors and the Company Directors Disqualification Act 1986 allows for the removal and disqualification of directors if their conduct is found to be unfit, these provisions are not directly concerned with the fitness to provide health and social care services. Rather, the Companies Act 2006 sets out the general duties on a director, which are to work in the best interests of the company and to carry out the necessary formal processes required to run a company. There is no duty that a director is fit and proper for their role and there are no limits in law on who can be appointed as a director so long as they are over 16 years of age and have not been previously disqualified from being a director. Other types of organisations may face additional requirements on their directors e.g. the Charities Act 2011 sets out the conditions which disqualify people from acting as a trustee and undischarged bankrupts are prohibited from being company directors or charity trustees. However, none of these existing requirements will specifically concern the fitness of a director to lead a health and social care provider. To protect the safety and quality of services, we would expect directors of health and social care organisations to display specific skills and behaviours beyond those required generally in connection with running a company.

23. The Company Directors Disqualification Act 1986 allows the courts to disqualify directors for up to 15 years if their conduct is found to be unfit, however the definition of unfitness is focussed on compliance with companies legislation, conduct in relation to an insolvent company and compliance with competition law. This is unlikely to be a sufficient provision to enable CQC to remove unfit directors as it is unlikely that the appropriate test of fitness to provide health and social care services would only be concerned with compliance with existing laws. As is the case for CQC's fit and proper requirements on providers, registered managers and staff, the character, personal behaviours and technical skills (as demonstrated by their past performance and other relevant criteria set out in the proposed regulations) of the individual will also be relevant to the judgement of whether the individual is fit and proper for their role in the health and social care sector.

24. Although in some circumstances CQC will consider a director unfit to take up another post in the health and social care sector, the Company Directors Disqualification Act 1986 is unlikely to be the best tool for doing this. The definition of fitness of a director for health and social care is likely to be such that a director could be unfit for one role, but remain fit for another. In these situations, it would not be appropriate to fully bar the director from all possible posts, including those outside of the health and social care sector.

25. Thus the do nothing option would allow the current gap in the requirements to remain. This creates a risk to the safety and quality of care since directors play an important role within the provider organisation and will influence how care is provided through the decisions that they make and policies that they set for the organisation as a whole. Without requirements to ensure that these directors are of a suitable standard and fit for their role, providers may face incentives not to, or be otherwise unable to, carry out the appropriate and necessary checks to ensure directors are and remain fit for their role and CQC would be unable to take action where a provider has appointed an unfit director. Where unfit directors are appointed or remain in their role, this poses a risk to the quality of care provided. Governance failings at this level can lead to wide scale impacts on care quality for the whole organisation.

Option 2: Fit and proper persons requirement for directors

26. Under this option, the CQC registration requirements will be amended to place a clear duty on service providers to make sure that all directors who are appointed to the Boards of any health or care organisation regulated by CQC are fit for their role, as is already the case for other staff members at the organisation, including senior managers. The provider will be expected to undertake

the necessary checks to assure themselves and CQC that their directors exhibit the correct types of personal behaviour, technical competence and business practices to undertake their role (as evidenced by the fit and proper requirements for directors set out in the proposed regulations). These checks are expected to occur both in the recruitment of new directors, and as part of on-going monitoring of existing directors to ensure that they continue to remain fit and proper for their role. Where it becomes apparent that a director is no longer fit for their role, the provider would be expected to take appropriate action to remedy the situation, including removing the director from their role.

27. It is intended that this requirement will apply to all those individuals who sit on the board of directors of a provider organisation and who currently are not covered by any of the existing fit and proper persons requirements specified in the CQC regulations. This will include both executive and non-executive directors and trustees (eg of charitable bodies and members of the governing body of non-corporate associations)

28. The duty to ensure that directors are fit and proper would rest with the service provider and would be signed off by the Chair of the provider. The requirement will apply as follows in the three scenarios below:

    a. **On registration of a new provider**: all providers seeking registration with CQC would need to provide an assurance to CQC that its directors were 'fit and proper', as defined in the regulations. This responsibility will lie with the Chair of the provider, who will need to make a declaration on the registration application about the fitness of the directors. As part of CQC's assessment of the ability of the provider to meet the registration requirements, CQC will check each director against CQC's record of inspections and decisions taken in relation to directors to assess their suitability. Where there is doubt about the suitability of a director, CQC may choose to interview the provider and the director to better assess the suitability of the individual for the role, as they currently have the power to do so in relation to the other registration requirements. CQC cannot grant registration if a provider cannot meet the registration requirements so a provider with a director judged to be unfit could not be registered. This provides an incentive for newly registering providers to carry out appropriate checks on their directors to ensure that the directors that they appoint are fit and proper for their role prior to registration.

    b. **At inspection:** CQC will inspect providers for compliance against all registration requirements and, where there are concerns about governance and poor quality care, consider whether the relevant directors are fit for their role. If a director is found to be unfit for their role, CQC can take enforcement action to ensure that the director is removed from the role that they are unfit for. The inspection process therefore acts as an incentive for providers to assess directors on a continuing basis to ensure that they remain fit and proper for their role.

    c. **On appointment of a new director**: providers will be expected to carry out the necessary checks to ensure that the directors that they appoint are fit and proper for their role and this would need to be signed off by the Chair of the provider. On notification of the Director's appointment, CQC would look at their records of inspections and conditions relating to Directors and would then consider in the light of all relevant evidence, whether this individual was fit to hold the Director post. If a director is found to be unfit for their role, CQC can take enforcement action to ensure that the director is removed from the role that they are unfit for.

29. CQC would keep a record of inspections and decisions taken in relation to directors, which it will then use as evidence in judging the fitness of directors as above. This will prevent directors who have previously been judged to be unfit for their role from taking up another similar role elsewhere in the health and social care system, where they are unfit to do so. Both CQC and providers will be expected to consider the past employment history and judgements about the fitness of the director in forming their judgement of whether the director is fit for their new role.

30. There will be a right of appeal by the provider against any condition imposed on its registration to the Health, Education and Social Care Chamber of the First-Tier Tribunal, as applies to other decisions taken by CQC to impose conditions on registration. It is anticipated that directors themselves will also have a right to appeal against any conditions imposed on the provider that directly name them. An amendment will be introduced to the Care Bill 2013 at Commons committee stage to provide this right of appeal.

31. CQC already have fit and proper requirements for providers, registered managers and staff. Adding in a fit and proper requirement for directors closes the current regulatory gap for directors excluded from these requirements.

32. In developing the fit and proper requirements for directors, we revisited the current criteria for fitness and identified a number of areas where there are clear implications for an individual's fitness to lead a health or social care organisation that do not formally figure in the current fitness requirements for individuals and partners. As a result, we propose that the regulations will set~~s~~ out a new unfitness test for directors, including where a person is an undischarged bankrupt, and those on any list maintained by the Secretary of State under section 1 of the Protection of Children Act 1999 (list of persons considered unsuitable to work with children) or section 81 of the Care Standards Act 2000 (list of persons considered unsuitable to work with vulnerable adults) or other such barring lists. We propose that these additional criteria should also apply to sole traders and partnerships. This would formalise CQC's current practice in relation to these criteria and ensure consistency in application of the fitness requirements for all senior leaders of health and care providers registered with CQC. As CQC advise that these aspects are already taken into account when considering the fitness of an individual or partner, there would be very little change in practice from formalising these criteria in the regulations.

Alternatives to regulation and other options considered

33. The government signalled its intention to develop proposals for a fit and proper person test for board level directors in *Transforming Care*, the response to the events at Winterbourne view hospital and reaffirmed this commitment in its initial response to the Francis Inquiry *Patients First and Foremost,'* an initial consultation examining the principles of introducing such a test via CQC's registration requirements was carried out by the Department of Health between July and September 2013.

34. In *Patients First and Foremost,* the Government also announced it would establish a barring mechanism to ensure NHS leaders and senior managers whose conduct or competence makes them unsuitable to work in the health and care system are prevented from working and moving to a similar job within the sector. This option would allow a designated regulatory body to bar senior managers (executive and non-executive directors) from working at the same level in the health sectors. *Hard Truths* announced that the Government would be taking this forward through the new fit and proper person requirement for directors of providers registered with the CQC.

35. This is a more proportionate and appropriate response to the risks to public protection posed by managers. It does not require the setting up of new infrastructure to support it, and it extends the scope of the system beyond NHS bodies to all providers of health and adult social care registered with the Care Quality Commission – be they public, private or voluntary sector providers.

36. As discussed previously, we expect that the vast majority of health and social care providers are likely to already take care and make proper provisions to ensure that the directors that they appoint are suitable and fit for the job. However, due to the potentially significant risks posed to service users when the leadership of a healthcare organisation fails, there must be safeguards in place where this process fails. There is a risk that some providers may fail to undertake the appropriate checks to determine whether a director is fit and proper for the job, or base their decision on alternative criteria, such as family ties. As providers are already under strong incentives to ensure that their directors are suitable for the role (as this will affect the success of the organisation as a whole), we do not believe that further non-regulatory approaches, such as voluntary codes of conduct, would provide sufficient additional incentives to change the behaviour of those providers who do not carry out the appropriate checks.

Section D: Costs and benefits assessment of the options (including specific impacts)

Costs:

37. As is already the case for providers, registered managers and staff, CQC will be responsible for monitoring and enforcement to ensure that providers adhere to their duty to ensure that their directors are fit and proper persons for their role. It will remain the responsibility of the provider to carry out the necessary checks to ensure that their directors are and remain fit and proper for their role. CQC will not carry out independent checks on directors or individually approve and monitor all directors. CQC will inspect and make judgements on the overall quality of governance of a provider

as part its investigation of the five domains over which provider will be examined and awarded a rating. As part of this process, if concerns about an existing director are raised, this will be further investigated and looked into, with CQC taking a judgement about the fitness of a director as necessary. On registration of a provider, or notification of a new appointment, CQC will make checks to see if they hold existing information of relevance on the director, however they will not carry out any additional independent checking of the director or review any other evidence. Thus, it is the responsibility of the provider to ensure that their director is, and remains, fit and proper for their role.

38. Below we provide initial estimates of the potential time requirements and costs associated with this process. These figures will be further investigated and confirmed through further work with providers and CQC at public consultation.

Numbers of providers affected by the Fit and Proper Persons requirement

39. Starting from the total number of providers registered with CQC of approximately 30,000, we first remove those providers who are sole traders or partnerships, as the analysis above suggests that the managers of these providers will already be covered by existing fit and proper requirements. Based on the assumption that the large majority of GPs and dentists will be partnerships, and undertaking some rough analysis based on the names of provider organisations currently registered with CQC to identify other sole traders, we estimate that there are approximately 12,150 CQC registered providers whose managers are not currently covered by existing requirements to be fit and proper.

40. Of these 12,150 providers, we further make the distinction between those providers who are likely to be newly registering providers (i.e. registered with CQC in the past year) and those who might be considered existing providers (i.e. those who have been registered with CQC for more than one year). This distinction is important as the description of the proposed policy above indicates that newly registering providers and existing providers are likely to be impacted by the fit and proper person's requirement in different ways. Further analysis of the date of registration of the 12,150 providers identified indicated that approximately 1,800 could be classed as newly registered providers in any given year (i.e. 1,800 new providers who would fall under the fit and proper person's requirement register with CQC each year). This leaves approximately 10,350 existing providers per year who would fall under the scope of the proposed fit and proper person's requirement (analysis of CQC figures indicates that the number of providers that CQC regulates is relativity stable so we assume no growth in the size of the market).

41. Of these 12,150 providers, approximately 250 were NHS trusts or NHS foundation trusts and so would be considered public sector organisations. Data from 31st March 2010 (under CSA care sector) on providers by ownership type in the adult social suggests that approximately 90% of adult social care providers are voluntary or private organisations. Applied to the 10,500 social care providers in the sample, this implies that approximately 9,450 would be a private or voluntary organisation. Of the remaining 1,400 organisations who we estimate are unlikely to be covered by existing fit and proper requirements on their directors, the 90% estimate applied to adult social care is unlikely to be appropriate as the other major owner of social care services – local authorities – is not likely to be applicable for the remaining organisation types (independent healthcare and independent ambulance services). Thus, in the absence of any other evidence, we make the assumption that all of these organisations are private or voluntary. Overall, we estimate that of the 12,150 providers identified above, 10,850 might be private or voluntary organisations, and 1,300 might be public organisations. Employing similar analysis on the numbers of new and existing providers within the 12,150, we also estimate that approximately 9,200 of the 10,350 existing CQC registered providers and 1,600 of the 1,800 newly registering providers would be private or voluntary sector organisations.

42. We expect that the large majority of providers will already be carrying out the appropriate checks to ensure that the directors that they appoint are, and remain, fit and proper persons for the role. Consequently we would not anticipate that there would be any additional cost burdens from this requirement for those providers, save for some additional transitional costs incurred by these providers in taking the time to inform themselves and understand the new requirement, and to assure themselves that they are already compliant. There is currently little evidence to suggest what proportion of providers might already be carrying out adequate checks. Although we have previously speculated that very large or very small providers may find it most difficult to adequately

hold their directors to account and ensure that they are fit and proper, evidence is lacking to make a firm estimate on this basis. For illustrative purposes, and in the spirit of quantification, we consider the cost implications of the proposed fit and proper persons requirement based on the scenario that as many as 20% of providers do not currently carry out adequate checks. However, there does remain the risk that the new requirement will cause already compliant providers to take additional unnecessary action and go above and beyond to ensure compliance and avoid enforcement action. These costs and risks are examined further in the sections below. The consultation accompanying this impact assessment will seek provider's views on the assumptions below and additional evidence on the potential costs and benefits of the proposals.

Newly registering providers:

43. Newly registering providers will need to make a declaration to CQC that their directors are fit and proper in the application process. In their application to CQC they will be required to list their directors and the Chair of the provider must provide a declaration that these directors are fit and proper for their roles.
44. As previously estimated there are around 1,800 new providers who register with CQC each year; however the total number of applications will exceed this, as CQC advise that they reject approximately half of all applications. We therefore make the assumption that around 3,500 organisations apply to register with CQC each year, from which approximately 1,800 new providers are successful in their application (note that this figure will not include GP and dental practices, which are out of scope of the fit and proper requirements, as discussed above).
45. The new fit and proper person's requirement will increase the paperwork for all applicants as they will need to provide a list of their directors along with a declaration by the Chair that the directors are fit and proper to CQC. It is not clear how long this additional paperwork is likely to take to complete, but we assume that the additional time requirement is likely to be minimal. If this were to take 30 minutes of extra time for a manager to gather the evidence and complete the application the additional cost per applicant would be £12 (based on the median gross hourly wage for Corporate Managers and Directors of £26 (including 30% on costs) from the provisional 2012 Annual Survey of Hours and Earnings (ASHE) results). Across the 3,500 or so applications each year this will total around £46,500. If we assume that the proportion of applicants from the private or voluntary sector reflects the proportion of successful newly registered providers from the private or voluntary sector (i.e. the success rate of applications between the private and public sector organisations is the same), this would suggest that approximately £42,000 of this additional cost could fall on private or voluntary sector applicants.
46. As discussed above, we expect that the large majority of providers will already be carrying out the appropriate checks to ensure that the directors that they appoint are fit and proper persons for the role, and we use the working assumption that only 20% of providers might be currently failing to carry out appropriate checks. If we were to apply this figure to the number of applications for registration discussed above, it would suggest that up to 700 applications may be failing to make appropriate checks on their directors. However, as we know that up to 50% of these applications are currently being rejected by CQC for failing to demonstrate compliance with the existing registration requirements, we consider it unlikely that these providers would make the necessary changes to carry out proper checks on their directors (given that they are already unable to demonstrate how they will comply with existing registration requirements). As a result, it is likely that only currently successful applicants might change their behaviour to carry out checks on the directors where they do not already do so. This group of successful applicants are the ones who would be at risk of moving from a successful to unsuccessful registration application due to the introduction of the fit and proper person's requirement, if they do not carry out appropriate checks on their directors. Consequently, they face the greatest incentive to change their behaviour and begin to carry out these checks if they do not already do so.
47. Based on the above analysis, we would therefore expect that up to 360 new providers might change their behaviour and undertake additional checks on their directors prior to applying to register with CQC (20% of the 1,800 newly registering i.e. successful providers).
48. The cost burden of undertaking appropriate appointment checks on a director is likely to vary by different types of organisations and the role of the director. However, it has been possible to gain

an indicative view of the likely costs of undertaking checks based on the prices charged by companies specialising in undertaking pre-employment vetting on behalf of other organisations. A survey of prices published on the websites of such vetting organisations suggested this would range from between £200 to £500 for a full suite of checks, including a criminal records check, employment references and character checks. This roughly equates to between 6 and 17 hours of a HR manager's time[6].

49. Based on figures on the total number of director and company registrations at Companies House as of April 2012, the average number of directors per organisation was estimated to be approximately 2. While this figure might appear low for large organisations, small providers acting as private companies[7] are only required to have a single director and no requirement for a company secretary under corporate law. Thus the overall average number of directors per organisation could be relatively low and in accordance with the figure above.

50. Taking the mid-point for the costs of carrying out checks of £350 and applying to the 720 directors (2 directors to be checked per provider) that might be subject to additional checks gives an estimate of just under £250,000. Using the estimates of the number of newly registering providers derived earlier, and assuming that there would be no other differences between the costs and other assumptions used above between the public and private sector, we estimate that the total additional cost of these checks to private and voluntary sector providers is around £230,000.

51. Finally, as a part of the application process CQC may decide to interview the provider and director at the applicant organisation if there are any concerns about the director's possible fitness. It is difficult to predict how often this might occur, however based on an initial advice from CQC we use a starting estimate that up to 2.5% of applications could be interviewed. Again, we apply this figure against the base of 1,800 new providers rather than the full 3,500 of applications. This is based on the fact again that 50% of applications are likely to be rejected in any given year, regardless of the fit and proper requirement on directors. For these applications, CQC will continue to scrutinise the applicant's ability to comply with the existing registration requirements as before. Whilst the fitness of the applicant's director is likely to form a part of this scrutiny, the focus is likely to be reduced and so the additional cost burden on both the applicant and CQC would be minimal.

52. We assume that an interview to assess the fitness of a director could last up to an hour on average and be attended by a panel of one registration manager and two registration assessors at CQC, and a provider representative and the director in question on the provider side. Based on CQC hourly wage costs (including on costs) of £35 for a registration assessor and £52 for a registration manager, and the median wage for a corporate manager or director (from ASHE, including 30% on costs) of £26, this gives a total cost of unfit director interviews of £2,300 for providers and £5,400 for CQC. Apportioning provider costs to the private and/or voluntary sector only, this would be £2,100 for the private sector assuming that the above assumptions apply equally to the private and public sectors.

Transitional costs for Existing Providers

53. All providers registered with CQC will need to take time to review and understand the change in legislation. While we estimate that most providers will already be undertaking sufficient checks there will still be a cost of provider's time in reviewing the change in legislation. Providers will incur some transitional costs associated with providers taking time to understand the new requirements and determine whether they need to take any additional action to comply with the requirements. If these actions were to require one hour of a senior manager's time to carry out, then based on the median gross wage of £26 for a corporate manager or director from the ASHE survey (plus 30% on costs), this would imply a total transitional cost of £780,000 across all 30,000 or so providers that CQC regulates with around £340,000 cost to private and voluntary sector providers.

54. Existing providers who have not already carried out appropriate checks of their directors may wish to undertake one off retrospective checks to reassure themselves that their directors are fit and proper and meet the new requirement. The cost of carrying out a background check as explained

[6] Based on the median gross hourly wage for a human resources director or manager of £30 (including 30% on costs) from the provisional results of the 2012 Annual Survey of Hours and Earnings (ASHE)

[7] Note that 87% of registered social care providers have fewer than 50 staff (Skills for care, the size and structure of the adult social care sector and workforce in England, Aug 2012)

previously is estimated to be between £200 and £500. As discussed above we estimate that there are currently 10,350 existing registered providers who are not currently covered by FPP requirements and that up to 20% of these may not currently be carrying out checks on their directors. This gives an estimate of roughly 2,070 existing providers who may not currently be undertaking checks on their directors' fitness. However, given that these directors may have been with the provider for a long period of time, some of these providers may feel that through the director's past performance, they can already be assured that they are fit and proper and so no additional checking is required. It is therefore difficult to determine how many providers might choose to take retrospective checks on their directors. If 50% of the 2,070 providers were to undertake retrospective checks, then assuming again an average of 2 directors per provider and an average cost of checking of £350, the total cost of these retrospective checks might be in the region of £750,000. Applying the same methodology and assumptions to the estimated numbers of existing providers in the private or voluntary sector only, gives an estimated total cost of around £640,000.

On-going costs for existing providers

55. Existing providers will be required to ensure that their directors continue to be fit and proper. It is likely that many existing providers are already reviewing their directors but again assuming that 20% of providers are not currently undertaking proper reviews of the fitness of their directors, we estimate that approximately 2,070 providers will face an additional cost of doing so under the new requirements. It will be at the discretion of the provider how they choose to monitor the continuing fitness of their directors and this may take a number of different forms. For the purposes of illustration, we assume that this process might take place within the formal performance appraisal of director. Where such a process is not already in place, we assume that this might consist of a formal discussion between the director and the provider and both would require time to reflect and gather evidence on the director's performance beforehand Based on the assumption that this might require around 2 hours each for evidence gathering, followed by an hour's discussion and using a median gross hourly wage for corporate managers and directors from the provisional results of the 2012 ASHE survey of £26 (including 30% on costs), this gives a cost per appraisal of £156 per director (6 hours in total of staff time).

56. Applying our estimate above that there are 2 directors per provider on average from the Companies House Register to our estimate of a possible 2070 organisations who might currently be failing to monitor and appraise their directors, this implies an additional annual cost of just under £650,000 to providers, of which around £575,000 will fall on the private or voluntary sector.

Monitoring and Inspection – CQC costs

57. Under CQC's proposed new regulatory model and the introduction of ratings for providers, CQC will hold comprehensive inspections of all providers in the future for the purposes of providing a rating. The fitness of directors is likely to be scrutinised as a part of this comprehensive inspection, as one of the five domains used to produce ratings will be whether the organisation is well led. CQC may also focus on the fitness of directors as part of any follow-up inspections that they carry out under their new model, for example if there are existing concerns about the leadership of an organisation. The final type of inspection that CQC will carry out will be themed inspections which will concentrate on different themes, and are less likely to be focus on the fitness of directors.

58. As a result of these changes to CQC's inspection model, it is difficult to separate out the changes to CQC's inspection costs due to the new fit and proper person's requirement, and those arising from provider ratings. Additionally, it is difficult to determine what the marginal impact of an additional registration requirement is on the total time required for an inspection. There is unlikely to be a one to one relationship between the number of registration requirements and the amount of time required for an inspection, as this will depend on the complexity of the requirement, and whether CQC choose to focus on the issue during a particular inspection, which will be in part be driven by their findings and vary between providers. Additionally, the assessment of compliance across a number of different requirements may be based on the same sources of evidence and so require minimal additional inspection time.

59. If the additional time required came to an average of half an hour per inspection, then based on the average hourly rate of a compliance inspector of £36 supplied by CQC (inclusive of on costs), this implies an additional cost to CQC of approximately £18 per inspection. Based on the 28,000

inspections CQC carried out in 2012[8], this implies an additional annual cost to CQC of approximately £0.5m for inspection and monitoring.

60. CQC will produce increased guidance to inform providers of their requirements under the FPPT. CQC estimate that the cost of producing additional guidance is approximately £4,000 based on an assumption that on average guidance requires 3 days to prepare, 2 days to review, 2 days for quality assurance, 2 days for sign-off and 5 days to publish, with a daily staff rate of £277, which includes on-costs and absorbed overheads. This estimate is an average across all types of guidance CQC produce, and does not take into account the differing time requirements that there might be for producing guidance of different lengths or complexity.

Appointment of new directors

61. When a new director is appointed there will need to be checks that the director is fit and proper. We previously estimated that the cost of checking a director's fitness is between £200 and £500 (mid-point estimate of £350).

62. In terms of the number of new director appointments expected, we estimate a potential board turnover of 10-12% as previously detailed in our assumptions. Applying the mid point of 11% to the total number of directors gives us around 2,200 new directors a year.

63. Applying this estimate (and assuming an average of 2 directors per provider) to the 2070 existing providers who may not be carrying out checks on their directives, we estimate that there may be around 450 new directors who do not already face checks on their fitness on appointment. Costing the checking of these directors as we have done previously at £350, the total cost of checking these 450 or so directors would be just under £160,000 per year. As above, applying the same methodology and assumptions to our estimates of the number of private providers and voluntary sector providers only gives a total cost estimate of approximately £140,000 per year.

64. Providers are currently required by the CQC regulations to notify CQC of any appointment of a new director. This will not be affected by the fit and proper requirement. However on receipt of a notification CQC will now check the new director against their records to determine whether there are any existing concerns about the director. We assume that this would take approximately ten additional minutes of a CQC staff member's time to do. Across all existing providers, and based on the assumptions about the number of directors and labour turnover as above, we estimate that there would be approximately 2,300 notifications for CQC to process. Based on the hourly cost of a registration assessor of £35 (inclusive of on costs), this give a total cost estimate of just over £13,200 per year to CQC.

65. Finally, as in the case of registration, upon notification of a new director CQC may decide to interview these newly appointed directors if there are concerns about the director's possible fitness. It is difficult to predict how often this might occur, and we make a similar initial estimate that 2.5% of new director appointments may require an interview. Similarly, we assume that an interview at this stage would have the same time requirements as for an interview for to check the fitness of a director on registration. Thus the total cost of each interview is estimated to be almost £175. If this is undertaken for 2.5% of the above 2,300 notifications of new director appointments the total cost will be around £3,000 to providers (of which around £2,600 will be to private and voluntary providers) and almost £7,000 for the CQC.

Costs of removing a director

66. The proposed policy requires providers to ensure that their directors are fit and proper. Thus, where a provider has an unfit director, they would be expected to remove this director from their role. This has associated costs for the provider, the individual director concerned and potentially other bodies.

67. In terms of replacing the unfit director, the 2013 survey of recruitment and retention carried out by the Chartered Institute of Personnel and Development suggested that the median cost of recruitment (advertising, agency or search fees) for senior managers or directors was £6000. However, there is little evidence available on the administrative and time costs associated with

[8] CQC are planning to change their model of inspections going forward to create a more proportionate and responsive system. The frequency and number of inspections will be linked to the provider ratings and CQC assessment of risk and so it is not possible to predict at this point the total number of inspections likely. As result we use the number of inspections carried out in 2012 as a proxy.

removing an unfit director as this is highly dependent on the process by which providers use to remove a director[9]. More evidence will be sought at consultation on these costs.

68. The removal (or prevention of appointment) of an unfit director also has the effect of constraining the choice providers have over their directors. In some cases, providers might feel that their first choice of (unfit) director remains the best choice for the organisation, and being prevented from having this director would have adverse effects on the provider's performance. However, in the majority of cases, it is difficult to see how a director judged to be unfit might positively impact the performance of an organisation. Evidence from the NAO report on the Companies Director's Disqualification Scheme found that 15% of directors who were involved in a company failure were likely to be involved in one or more subsequent failures. Where a company failure was sufficiently serious to have involved the barring of a director under this scheme, the average debt left behind by these organisations was £150,000. As a result, it is likely that the decision by a provider to appoint an unfit director is usually due to lack of information or improper checking of the director or myopia. On balance, it is far more likely that the removal of an unfit director would positively impact the provider's performance, rather than harm it. This is discussed more in the benefits section below.

69. Additionally, where a provider removes a director from their post, this could potentially lead to the director initiating an unfair dismissal claim. Previous estimates from the Department of Business Innovation and Skills suggest that an employment tribunal case would post the following costs on the provider, claimant, and the exchequer:

Table 1.3: Summary of costs incurred throughout employment tribunal process, by outcome

	Employment Tribunal Hearing	Individual Conciliation	Average across ET claim outcome
Employer	£4,200	£3,300	£3,700
Claimant	£1,500	£1,100	£1,300
Exchequer	£4,450	£640	

Source: BIS estimates from Acas, HMCTS, SETA and ASHE data in 2011 prices. Figures are rounded.

70. The costs to the provider include the time costs of managers and directors spent on the case, as well as legal costs, whilst the cost to the claimant includes loss of earnings, legal costs and communication and travel costs. The cost to the exchequer consists of the costs to HMCTS in the court time required for an employment tribunal hearing[10].

71. Since July 2013 a new charging system introduced in 2013 requires that for unfair dismissal and discrimination claims be subject to a £250 issue fee with a further £950 hearing fee. This has the effect of shifting some of the cost of an employment tribunal from the exchequer to the director bringing about the appeal, and the costs are adjusted accordingly.

72. Overall, we therefore estimate the costs of an employment tribunal in 2012 prices to be £4,260 for providers, £2,720 for directors and £3,315 for HMCTS.

73. If a tribunal finds in favour of the director, the provider would have to pay the director a compensatory award for unfair dismissal. As this is a transfer payment for from the provider to the director, there is no overall economic impact.

74. In terms of assessing the burden of business, the risks associated with an employment tribunal are considered to be indirect costs rather than direct costs associated with the proposal, and so are out of scope of the analysis in accordance with the BIS Better Regulation Framework Manual.

[9] Where there is gross misconduct of a director, it may be justifiable to dismiss the director on the spot, however it is more likely that if a director is suspected of being unfit, there would have to be a more lengthy period of investigation in order for the provider to determine this. The director may be suspended pending the outcome of this investigation. Additionally other contractual and statutory procedures would need to be taken into account.

[10] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32182/11-1381-resolving-workplace-disputes-final-impact-assessment.pdf

75. Based on our estimate of 12,150 providers that would potentially fall in scope of the fit and proper person's requirement, and assuming that 20% of providers are not currently checking the fitness of their directors, this suggests that there may be approximately 2,400 providers at risk of having an unfit director. If we again assume an average of 2 directors per provider and apply our estimate of a rate of unfitness of directors of 0.15% (as detailed in the assumptions section) this suggests that there may be a total of up to 7 unfit directors per year who would be removed from CQC registered providers. We make no assumptions about the distribution of these potentially unfit directors over the number of newly registering and existing providers, or whether the directors are newly appointed or existing directors. Instead we make the assumption that based on the discussion of the likely costs of removing a director above, these costs are unlikely to change based on when in the process a director is removed[11].

76. However, the above analysis does not take into account the risk that other directors who are fit and proper for their role may potentially be judged to be unfit by providers (or even CQC) and removed from their role. If this were to occur then there could be more than 7 directors removed from their role per year. It is currently difficult to determine how likely this risk is to occur, as it will depend in part how the regulations are interpreted by providers and the quality of the guidance available on what constitutes a fit and proper director, how risk averse directors are to potentially being in breach of the regulations (i.e. do they tend to err on the side of caution?), and how stringently CQC choose to apply the regulations. As an initial working assumption, we allow for an additional 3 potential directors to be wrongly removed. There is currently little evidence to indicate whether this assumption is likely to be too high or too low and we test this further in the sensitivity analysis, as well as seeking further evidence at consultation. Overall intuition would suggest that providers would tend to be reluctant to remove their directors without good reason to do so, and so the number of unintended director removals is unlikely to be high.

77. Applying this number to the cost estimates above, this would suggest that the total potential cost associated with replacement of directors is £60,000. Apportioning the number of director removals equally between the public and private or voluntary sector, this would suggest that approximately 9 of the 10 director removals would occur in the private or voluntary sector. The associated cost of replacement would therefore be approximately £55,000.

78. In terms of the additional costs associated with the risk of a director bringing an employment tribunal case against the provider, analysis by BIS suggests that there are approximately 400,000 dismissals a year, relative to a steady state of roughly 50,000 unfair dismissal cases per year on average[12]. Based on this overall rate of unfair dismissal claims is approximately 12.5%, this would imply that 1.25 directors might make an unfair dismissal case per year (i.e. 5 cases every 4 years). However, as this figure for the risk of employment tribunal is based on all dismissals and is likely to include clear cut cases of fair (where a tribunal is highly unlikely to ever occur) and unfair dismissal (where appeals would be much more likely) it is not clear if it is appropriate to apply it to the full 10 director removals. We might consider that where a director is wrongly judged to be unfit and removed, they would be more likely to take the case to the employment tribunal. We therefore make the assumption that whilst 12.5% of potentially unfit directors choose to bring an unfair dismissal case in line with the national average, 100% of the directors who are wrongly judged to be unfit would bring a case to tribunal. This gives the total estimated number of tribunals as just under 4 cases per year and, based on the costs discussed above, this gives total associated costs of approximately £17,000 for providers (after uprating the figures in the table to 2012 prices using the GDP deflator), £11,000 for directors and £13,000 for HMCTS.

79. In terms of assessing the burden of business, the risks associated with employment tribunal are considered to be indirect costs rather than direct costs associated with the proposal, and so are out of scope of the analysis in accordance with the BIS Better Regulation Framework Manual.

Costs to directors of removal

80. Those directors who are removed from their post will suffer a personal cost as they will no longer be able to act as a director for the provider organisation and will have to seek alternative

[11] We only count directors of registered CQC providers. Where a provider unsuccessfully applies to register with CQC and subsequently takes action to ensure that it meets the registration requirements, we assume that the costs of any action taken in relation to the fit and proper requirement would be captured within subsequent years of the analysis, when the provider is successful in its application and thus becomes a newly registered provider

[12] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32137/12-626-dismissal-for-micro-businesses-call.pdf

employment. One way to value the cost of this might be in terms of the earnings forgone by the individual due to the enforcement action. However, it is difficult to quantify this as it will depend on what alternative employment the director might be able to find and how long this would take. It may be the case that the director is unable to find a role as a director again, or it may be that the director may be judged still to be suitable for other director roles, depending on the circumstances of the breach.

81. Although it is not possible to quantify these costs as it is not possible to predict the likely impacts of the proposed policy on director's subsequent earnings, and other policy proposals may also impact on these costs in the future, it is possible to gain a sense of the size of these impacts based on information on the average earnings of directors from the 2012 Annual Survey of Hours and Earnings (ASHE). This survey found that the median gross annual pay for the Standard Occupation Class (SOC2010) Corporate managers and directors was £39,000, whilst for Chief executives and senior officials it was £75,000 and for Health and social services managers and directors it was £41,000, compared to the median gross pay across all employees of £21,500.

Risks and other potential impacts

82. The fit and proper requirement on directors may also have other secondary impacts on the labour market for directors of health and social care organisations, which will impact on providers. For example, it could be the case that making requirements on the provider to ensure that their directors are fit and proper for the role effectively shrinks the pool of potential directors that are available. This may drive up the costs of recruitment for providers due to the increased search costs required to locate a suitable director. Additionally, as the supply of suitable directors is reduced, this could increase the price of a director via the increased wages that would need to be paid to attract a director of the required standard. It has not been possible to find any evidence on what the likely size of these effects might be and the size of any impact is likely to depend on the size of the existing labour market for directors and the proportion of potentially unfit directors within this.

83. Over the 12,150 CQC registered providers who are likely to have directors, and based on our estimate of approximately 2 directors per provider, this suggests that the size of the market for health and social care directors consists of just under 25,000 individuals. Of these individuals, we have suggested that up to 10 might be prevented from operation under the fit and proper person's requirement. If a further 100 individuals are deterred from the market due to these requirements, this suggests a total reduction in the size of the market by less than 0.5%. Assuming that there is a unitary elasticity of supply in the labour market for directors, this suggests that the average wage for directors would similarly need to increase by 0.5%. Based on the median gross annual pay for Corporate Managers and Directors of £39,000 from the ASHE survey, this implies an average wage increase of £195 per director. Applying a similar cost increase to the search costs of recruitment (previously estimated at £6,000) suggests that these might increase by £30.

84. However, it is not clear whether these changes in the labour market would be likely to occur. As we expect that the majority of providers to already be carrying out the necessary checks to ensure that their directors are fit and proper, we would expect demand for high quality directors to already be high, so any additional change in demand due to the proposed policy is likely to be limited. As these are secondary impacts of the policy they have not been quantified further in accordance with BIS guidelines.

85. When we consulted on the principles of introducing a fit and proper requirement for directors, some providers expressed some concern that for charitable organisations, a significant proportion of the board would be made up of volunteers, who might be put off volunteering in future by the fit and proper requirement. If providers are no longer able to find volunteers for their boards, they would need to appoint additional directors, at considerable additional cost. It has not been possible to quantify this at this stage. However, we will do more work to consider these potential costs with providers at the next consultation stage.

Costs of Enforcement

86. We previously speculated that 0.15% of directors might be unfit to lead a health and social care organisation, as these directors are picked up at registration, inspection, and notification giving a total estimate of around 7 unfit directors from the 2,400 providers estimated to not currently be checking their directors to the FPPT level. As discussed above, if the introduction with the fit and

proper requirement for directors led to 100% compliance, we would expect that providers would take the necessary steps to replace these unfit directors and carry out the necessary checks to ensure that their directors remained fit going forward.

87. However, in reality we would not expect there to be 100% compliance with the requirement and CQC may be required to take enforcement action against a provider where it becomes apparent that a director is unfit for their role and the provider has failed to meet its duty to ensure that their directors are fit and proper. CQC will be able to take enforcement action against the provider to remove the director by placing conditions on the provider's registration. Other further enforcement action may also be taken for more serious breaches, or if the provider fails to comply with the requirement to remove the director from their duties.

88. Based on information on the number of inspections and enforcement action taken by CQC in 2012, approximately 4% of inspections led to further enforcement action being needed, or in other words, a 96% compliance rate. If this compliance rate can be applied to the figures above, this would imply that CQC would need to take less than one case of enforcement action per year against an unfit director. However, it is not clear if this 96% figure is applicable in this case. The 96% figure is an average across all different types of providers inspected by CQC, and is likely to include some providers who would meet the registration requirements even in the absence of regulation. On the other hand, the providers we would be applying this figure to have specially been identified as those who are least likely to already be in compliance with the requirements and so we would expect that the rate of compliance is likely to be lower. Further, it is possible to argue that non-compliance will be further focused on those providers whose directors are actually unfit, as these providers might be those who have taken the least effort to ensure that their directors are fit, or have purposely made the decision to appoint someone unfit, and thus are least likely to change their behaviour.

89. It was not possible to find further evidence to suggest what the most appropriate rate of compliance might be. Thus we consider the worst case scenario, where CQC would need to take enforcement action against up to 7 unfit directors, compared to the best case, where less than one case per year might require enforcement action. In the absence of evidence to the contrary, we take the mid-point of these estimates of just over 3 cases a year as our best estimate for the potential number of enforcement cases for CQC.

90. It is difficult to cost CQC enforcement activity as enforcement activity cuts across many CQC functions and requires input from various different departments and staff. As a result, the costs of enforcement activity by CQC are difficult to disentangle. CQC advise that the budget for legal fees is £800,000 per annum and that approximately 75% of this might be related to enforcement activity (CQC will also use legal services for other activities such as debt collection). Based on this fairly basic measure of total enforcement costs, and using the fact that there were approximately 1100 cases involving some enforcement activity by CQC in 2012, we estimate that the average cost of an additional case of enforcement activity could be in the region of £550. Thus the total additional cost of additional enforcement action could be as high as £3,850, with a best estimate of approximately £1,650.

Costs of appealing against the removal of a director:

91. There would be a right of appeal by the provider against any condition imposed on its registration to the Health, Education and Social Care Chamber of the First-Tier Tribunal, as applies to other decisions taken by CQC to impose conditions on registration. It is anticipated that directors will also have a right to appeal against any conditions imposed on the provider that directly name them. This will have a cost implication for CQC, the appellants, and the justice system.

92. In terms of the costs to the justice system of a tribunal, the HMCTS 2012/13 Annual Report suggests average staff and judicial costs per sitting day are £1060 (£722 judiciary, £338 staff). This is an average for all tribunals not specific to Care Standards.

93. Based on information from the Annual Tribunal Statistics published by the Ministry of Justice for 2012-13 on the number of sitting days for the Health, Education and Social Care Chamber of the First-Tier Tribunal (209) and the number of receipts and disposals (75 and 82 respectively) the average number of sitting days per case was calculated to be between 2.5 and 2.8.

94. Overall, this suggests that the costs to HMCTS are approximately £3,000 per Health, Education and Social Care Chamber of the First-Tier Tribunal.

95. As discussed above, it is difficult to estimate accurate unit costs for different types of enforcement action due to the integrated approach that CQC take towards enforcement activity. Based on details from a recent case that ended in a tribunal, CQC estimate that the costs of responding to an appeal could be as high as £45,000, although it is not clear how representative this particular case might be of a 'typical' case. This particular case was heard twice in court and CQC had to instruct a barrister rather than a solicitor so the day rates are likely to have been higher. Consequently, these costs should be treated as an estimate of the worst case scenario tribunal costs rather than a representation of the average costs. It has not been possible to provide a more accurate estimate of the costs to CQC of a tribunal at this stage, although work is on-going with CQC to better understand their costs.

96. In the absence of other evidence on the average legal costs that an individual or provider might face, we assume that the provider and/or director would face similar costs in bringing about their appeal.

97. It is difficult to determine how many appeals we might expect to have. The analysis above indicates that there could potentially be up to 7 organisations facing additional enforcement action, with a best estimate of 3. Based on a comparison of the total number of cases in 2012 where CQC took enforcement action beyond issuing a warning notice (110) against the total number of receipts and disposals in the Health, Education and Social Care Chamber of the First-Tier Tribunal (but we note that this will also cover cases other than appeals against CQC enforcement) this suggests an appeal rate of up to 75%, or up to 5 cases, with a best estimate of 2.

98. Consequently, we estimate that the total additional costs associated with appealing the proposed fit and proper requirement on directors to be up to £15,000 for HMCTS, with a best estimate of £6,000. For CQC and providers the total additional annual costs could be as high as £225,000, with a best estimate of £90,000.

99. This analysis is likely to be further complicated when we consider the potentially different combinations of appeals that might arise. The above analysis makes the assumption that each appeal case would consist of a provider and a director jointly appealing against CQC's decision to place a condition on the provider's registration to remove the director. Even if the director and the provider were to put in separate appeals, as the facts of the case are the same it is likely that CQC and the courts would treat the case as a single case so that the above costs are still applicable. In terms of the legal costs incurred by the provider and the director, we also assume that these costs would be jointly shared between the provider and the director. However, other potential situations might also be possible. For example, if multiple directors at a provider organisation were considered to be unfit, this could result in fewer, more complex cases for CQC and the courts.

Impacts on Individuals and Partnerships

100. In order to ensure consistency, the regulations concerning the fitness of individuals and partnerships will also be brought into line with the proposed requirements on directors. Due to the existing requirements of fitness relating to individuals and partnerships, it is not expected that this will have any material impacts for these types of providers. The new requirements will be to make clear that individuals who are undischarged bankrupts and those on any list maintained by the Secretary of State under section 1 of the Protection of Children Act 1999 (list of persons considered unsuitable to work with children) or section 81 of the Care Standards Act 2000 (list of persons considered unsuitable to work with vulnerable adults) or other such barring lists, should not be considered fit to be a director, a partner or a sole trader in a health or social care organisation.

101. CQC advise that, in the case of individuals and partnerships, this information is already considered as part of the application to register and it would be highly unlikely that such an applicant is successful. As a result we anticipate that formalising such restrictions would have little practical implication for providers. CQC would lose their ability to act with discretion against the new criteria, but we anticipate that this would not have any actual impact on which individuals and partners are judged fit, since it would be very rare currently for CQC judge such an individual to be fit in any case. This will be tested further at consultation.

Costs - summary:

102. The costs above are summarised in the table below:

£('000)s	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	
Description of Costs	**2014/15**	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24**	**Total**
Providers:											
Registration costs	300	300	300	300	300	300	300	300	300	300	3,000
Transitional costs	1,500	-	-	-	-	-	-	-	-	-	1,500
New director appointments	160	160	160	160	160	160	160	160	160	160	1,600
Ongoing monitoring	650	650	650	650	650	650	650	650	650	650	6,500
Removing unfit director	79	79	79	79	79	79	79	79	79	79	790
Appeal cost	90	90	90	90	90	90	90	90	90	90	900
Total Provider Costs	**2,800**	**1,300**	**1,300**	**1,300**	**1,300**	**1,300**	**1,300**	**1,300**	**1,300**	**1,300**	**14,300**
Directors:											
Removing unfit director - director	11	11	11	11	11	11	11	11	11	11	110
Total Director Costs	**11**	**11**	**11**	**11**	**11**	**11**	**11**	**11**	**11**	**11**	**110**
CQC:											
Registration costs	68	68	68	68	68	68	68	68	68	68	675
Transitional costs	4	-	-	-	-	-	-	-	-	-	4
New director appointments	20	20	20	20	20	20	20	20	20	20	200
Ongoing monitoring and inspection	505	505	505	505	505	505	505	505	505	505	5,050
Enforcement costs	2	2	2	2	2	2	2	2	2	2	16
Appeal costs	90	90	90	90	90	90	90	90	90	90	900
Total CQC Costs	**690**	**685**	**685**	**685**	**685**	**685**	**685**	**685**	**685**	**685**	**6,850**
Appeal costs - HMCTS	6	6	6	6	6	6	6	6	6	6	60
Removing unfit director - HMCTS	13	13	13	13	13	13	13	13	13	13	135
Total HMCTS Costs	**19**	**19**	**19**	**19**	**19**	**19**	**19**	**19**	**19**	**19**	**195**
Total cost (undiscounted)	**3,500**	**2,000**	**2,000**	**2,000**	**2,000**	**2,000**	**2,000**	**2,000**	**2,000**	**2,000**	**21,400**
Discount adjustment	1	0.97	0.93	0.90	0.87	0.84	0.81	0.78	0.75	0.73	
Total Present Cost (discounted)	**3,500**	**1,900**	**1,850**	**1,800**	**1,750**	**1,650**	**1,600**	**1,550**	**1,500**	**1,450**	**18,550**

NB: figures may not sum due to rounding

Benefits:

103. The policy objective is to ensure providers take proper steps to ensure that their directors are fit and proper for their role. Requirements will be placed on providers to undertake the necessary checks to ensure that all directors exhibit the correct types of personal behaviour, technical competence and business practices required for their role. This will close the existing gap in the regulation of health and social care whereby the service provider and registered manager are accountable to CQC and are subject to a test of fitness, but the directors of the organisation are not. Even if the majority of providers already take the necessary steps to ensure that their directors remain fit and proper, there can be a huge risk to patient safety and health where this does not happen and thus it is important that the appropriate safeguards are in place. As explored below, the potential health gains associated with avoiding a single incident of serious care failings is highly significant.

104. The intended effect of this is to reduce the risks of poor quality care for health and social care service users associated with poor management or governance and to make directors more accountable for their actions. Providers will be required to carry out the necessary checks and make assurances to CQC that their directors are of the right character and are fit to carry out their roles. This will compel the minority of providers who currently do not carry out these checks to begin to do so. It is difficult to quantify the number of providers where we might expect there to be such behavioural change. Our previous analysis suggests that there could be in the region of 2,400 providers who do not currently carry out the necessary checks.

105. Where it becomes apparent that a director is unfit for their role, CQC will have the power to place conditions on the provider to remove the director. This will help to ensure that bad practices are not allowed to continue.

106. It is difficult to quantify the potential health benefits that could arise due to these behavioural changes. By reducing the risk that an unsuitable director is appointed, this in turn reduces the risk that Boards have ineffective governance mechanisms in place and that quality failings relating to poor governance occur. By requiring providers to better monitor and appraise the performance of their directors, this might lead to an increase in the effort that directors put in, leading to improved performance and care quality generally. It is not possible to predict how this reduction in risk or improvements in performance might translate into health benefits. The overall impact could be

relatively small, leading to only small marginal increases in the quality of care, and averted safety incidences for a small number of service users, or the impact may be much larger, for example if the proposed policy is able to prevent the type of significant governance failure that enabled a incident such as Winterbourne View hospital to develop.

107. On the more modest end of the scale, we can calculate the impact of a small change in health outcomes using the EQ-5D framework for calculating health states[13]. This framework asks individuals to rate their health from 1 to 3 in five different domains, including the experience of pain, mobility and anxiety. A score of 1 means the individual has no problems whereas a response of 3 indicates serious or severe problems. These scores can then be turned into a health state by assigning values to each of the possible combination of scores and converted into a Quality Adjusted Life Year (QALY) [14] by also considering the duration of the health state. Based on this methodology, any move away from perfect health in any of the five domains leads to a reduction in an individual's health state of at least 0.155 points. Thus if one service user is able to avoid one month's worth of less than perfect health due to poor quality care, there would be a 0.013 QALY gain. Summing this over the 2,400 CQC registered providers who we have identified as those most likely to be affected by the policy, this would lead to a total QALY gain of 31. Based on a societal willingness to pay of £60,000 per QALY, the total societal value of this modest change in health outcomes would be at least £1.8m per annum.

108. Providers will also be expected to continue to monitor and appraise the performance of their directors to ensure that they continue to remain fit and able to carry out their role. Where it becomes apparent that a director is no longer fit for their role, providers will be expected to take appropriate action, including removing the director from their role. This is expected to strengthen the accountability of directors by increasing the incentives on providers to scrutinise the performance and actions of their directors, and to ensure that there are appropriate consequences for the director where this is not satisfactory. The fitness of directors will also face additional scrutiny from CQC as part of their assessment of the provider's compliance with the registration requirement. The increased accountability of directors is a benefit to society. Where directors make mistakes and are found to be unfit for their role, they should and must be properly held account for their actions. It is not possible to quantify this benefit.

109. Other potential benefits accrue to the provider. An unfit director might have a direct financial impact for the organisation via poor management leading to poor company performance, as well as having an adverse effect on the quality of care for service users. As discussed above, evidence from the NAO report on the Companies Director's Disqualification Scheme found that 15% of directors who were involved in a company failure were likely to be involved in one or more subsequent failures. Where a company failure was sufficiently serious to have involved the barring of a director under this scheme, the average debt left behind by these organisations was £150,000. In the case where care quality suffers, organisations might be at risk of remedial or legal action[15] which would adversely impact on the organisation, and there may also be reputational risks. The large scale changes that are currently being made to the regulatory architecture of the health and social care sector as a result of the Francis Inquiry is likely to ensure that poor quality care is more easily detected in the future, and consequently, providers of poor quality care are more likely to face consequences for their action. As discussed above, although it is unlikely that a poor director will ever be solely responsible for care failings, they play a potentially important role in influencing care quality through the decisions that they make.

110. Where the fit and proper person's requirement is able to prevent a provider from appointing an unfit director through improper checking and a lack of information about the quality of the director or just myopia surrounding the possible negative consequences that a poor director could have, the adverse effects above are likely to be mitigated, leading to benefits for providers. Even where providers already carry out adequate checks, there may be spillover benefits. For example by reducing the legal risk of poor quality care, provider insurance premiums might reduce, which

[13] As developed by the EuroQol Group. Please see Appendix 4 of the supplementary Green Book guidance for more information. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191503/policy_appraisal_and_health.pdf

[14] The QALY approach weights life years (saved or lost) by the quality of life experienced in those years. Years of good health are more desirable than years of poor health. A value of 1 is equivalent to one additional year of perfect health. Please see Appendix 4 of the supplementary Green Book guidance for more information. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191503/policy_appraisal_and_health.pdf

[15] Such as from CQC, local authorities, commissioners or Monitor or the NHS Trust Development Authority, depending on the type of provider

would benefit all providers in the sector. It is difficult to quantify what the potential size of these impacts might be. We will further examine these potential benefits and attempt to quantify these at consultation.

Value for money:

111. The table below shows the profile of the net present value of identified impacts over a 10 year period. All figures are based on assumptions and should be treated as such, however this represents our best understanding of the likely impacts:

	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	
£('000)s	**0**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	
Description of Costs	**2014/15**	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24**	**Total**
Providers:											
Registration costs	300	300	300	300	300	300	300	300	300	300	3,000
Transitional costs	1,500	-	-	-	-	-	-	-	-	-	1,500
New director appointments	160	160	160	160	160	160	160	160	160	160	1,600
Ongoing monitoring	650	650	650	650	650	650	650	650	650	650	6,500
Removing unfit director	90	90	90	90	90	90	90	90	90	90	900
Appeal cost	79	79	79	79	79	79	79	79	79	79	790
Total Provider Costs	2,800	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	14,300
Directors:											
Removing unfit director - director	11	11	11	11	11	11	11	11	11	11	110
Total Director Costs	11	11	11	11	11	11	11	11	11	11	110
CQC:											
Registration costs	68	68	68	68	68	68	68	68	68	68	675
Transitional costs	4	-	-	-	-	-	-	-	-	-	4
New director appointments	20	20	20	20	20	20	20	20	20	20	200
Ongoing monitoring and inspection	505	505	505	505	505	505	505	505	505	505	5,050
Enforcement costs	2	2	2	2	2	2	2	2	2	2	16
Appeal costs	90	90	90	90	90	90	90	90	90	90	900
Total CQC Costs	690	685	685	685	685	685	685	685	685	685	6,850
HMCTS:											
Appeal costs	6	6	6	6	6	6	6	6	6	6	60
Removing unfit director	13	13	13	13	13	13	13	13	13	13	135
Total HMCTS Costs	19	19	19	19	19	19	19	19	19	19	195
Total cost (undiscounted)	3,500	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	21,400
Discount adjustment	1	0.97	0.93	0.90	0.87	0.84	0.81	0.78	0.75	0.73	
Total Present Cost (discounted)	3,500	1,900	1,850	1,800	1,750	1,650	1,600	1,550	1,500	1,450	18,550
Description of Benefits											
Increased accountability of directors	UNQUANTIFIED										
Improvements in care quality	UNQUANTIFIED										
Improved provider performance	UNQUANTIFIED										
Total benefit	UNQUANTIFIED										
Net Present Value	- 3,500	- 1,900	- 1,850	- 1,800	- 1,750	- 1,650	- 1,600	- 1,550	- 1,500	- 1,450	**- 18,550**

NB: figures may not sum due to rounding

112. The table below reflects the direct impacts to businesses only.

	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	
£('000)s	0	1	2	3	4	5	6	7	8	9	
Description of Costs	**2014/15**	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24**	**Total**
Registration costs - new providers	270	270	270	270	270	270	270	270	270	270	2,700
Transitional costs - existing providers	985	-	-	-	-	-	-	-	-	-	985
New director appointments - providers	145	145	145	145	145	145	145	145	145	145	1,450
Ongoing monitoring - providers	575	575	575	575	575	575	575	575	575	575	5,750
Removing unfit director - provider	57	57	57	57	57	57	57	57	57	57	570
Total cost (undiscounted)	2,050	1,050	1,050	1,050	1,050	1,050	1,050	1,050	1,050	1,050	11,500
Discount adjustment	1	1	1	1	1	1	1	1	1	1	1
Net Present Value	2,050	1,000	980	945	910	880	850	820	790	760	9,950

113. The figures are also presented below in 2009 prices and the present value base year is 2010/11 as required for the One In Two Out initiative. Similarly the costs associated with non-compliance with the regulation are excluded.

	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year		
£('000)s	0	1	2	3	4	5	6	7	8	9	10	11	12	13		
Description of Costs	**2010/11**	**2011/12**	**2012/13**	**2013/14**	**2014/15**	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**	**2020/21**	**2021/22**	**2022/23**	**2023/24**	**Total**	**EANCB**
Registration costs - new providers					270	270	270	270	270	270	270	270	270	270	2,700	0
Deflated to 2009 prices					255	255	255	255	255	255	255	255	255	255	2,550	0
Transitional costs - existing providers					985	-	-	-	-	-	-	-	-	-	985	0
Deflated to 2009 prices					920	-	-	-	-	-	-	-	-	-	920	0
New director appointments - providers					145	145	145	145	145	145	145	145	145	145	1,450	0
Deflated to 2009 prices					135	135	135	135	135	135	135	135	135	135	1,350	0
Ongoing monitoring - providers					575	575	575	575	575	575	575	575	575	575	5,750	0
Deflated to 2009 prices					540	540	540	540	540	540	540	540	540	540	5,400	0
Removing unfit director - provider					57	57	57	57	57	57	57	57	57	57	570	0
Deflated to 2009 prices					53	53	53	53	53	53	53	53	53	53	535	0
Total cost (undiscounted)					2,050	1,050	1,050	1,050	1,050	1,050	1,050	1,050	1,050	1,050	11,500	0
Discount adjustment	1	0.97	0.93	0.90	0.87	0.84	0.81	0.78	0.75	0.73	0.70	0.68	0.65	0.63	-	0
Total cost (discounted)					1,650	820	790	765	735	710	685	665	640	615	8,100	940

NB: figures may not sum due to rounding

114. The costs are based on information from a number of different sources and assumptions about what the likely impacts of the policy might be. The true implementation costs of the policy are not known as this depends on the number of providers who might not already be carrying out the appropriate checks. Although we have estimated that this figure could be as high as 2,400 providers, this is based on an assumption that there could be up to 20% of providers who do not carry out the appropriate checks on their directors. It is not possible to confirm whether this assumption is likely to be accurate or not.

115. As such the quantified costs are estimates only. Given this they are sensitivity tested below under different scenarios:

- If only 10% of providers do not already carry out the necessary checks, the overall net present cost would fall to £13m and the EANCB to £0.5m.
- If 30% of providers do not already carry out the necessary checks, the overall net present cost would increase to £25m and the EANCB to £1.4m.
- If the costs of undertaking checks on a director were 20% higher at an average of £420 the overall net present cost would increase to £19.4m and the EANCB to £1.0m.
- If the costs of undertaking checks on a director were 20% lower, at an average of £280, the overall net present cost would be £17.7m and the EANCB £867,000.
- If the costs of appraising a director were 20% higher, at an average of £187, the overall net present cost would be £19.7m and the EANCB £1m
- If the costs of appraising a director were 20% lower, at an average of £125, the overall net present cost would be £17.5m and the EANCB £850,000.
- If 10 directors were incorrectly judged to be unfit and removed, the overall net present cost would be £19.6m and the EANCB £970,000.

116. Overall the higher the number of providers who do not carry out the appropriate checks, the greater the burden of the proposed policy will be, but the higher the potential for the policy to induce behaviour change and so the higher the benefits of the policy. It has not been possible to quantify the benefits of the policy although illustrative examples of the potential costs have been provided above. Even if the majority of providers already take the necessary steps to ensure that their directors remain fit and proper, there can be a huge risk to patient safety and health where this does not happen and thus it is important that the appropriate safeguards are in place. The events at both Mid-Staffordshire Hospital and Winterbourne View Hospital demonstrate the severe effects that poor governance can have on the quality of care and the impact that this can have on service users and the societal value of avoiding another situation like these, even if only considering the avoided health loss, is significant.

Section E: Summary of specific impact tests

Equality Impact Assessment

117. This policy proposal impacts all CQC registered health and social care providers. The costs will not impact service users. Directors of health and social care organisations are likely to be impacted as they will face additional scrutiny over their suitability to be or remain as directors of these organisations. Those directors who are found to be unfit for the role will face costs associated with

being removed from their role. The benefits of improved quality of care through better assurances on the quality and performance of directors of health and social care providers will be realised by users of health and social care services equally. This policy will not disproportionately affect any one demographic or social group. In general, the users of healthcare services tend to be people from older age groups, lower income distribution and those with disabilities or long term conditions.

118. Responses to the consultation on strengthening corporate accountability in health and social care raised concerns about the proposed requirement for directors to be physically and mentally fit to take on the role – and in particular that this might impact on the appointment of service users to Board level appointments who have disabilities or mental health conditions. The draft regulation provides that this applies in in relation to the relevant position which will enable to provider to qualify the conditions for service user positions to avoid any adverse impact.

Competition

119. In any affected market, would the proposal:

- Directly limit the number or range of suppliers?

120. No. The proposals do not involve the award of exclusive rights to supply services, procurement will not be from a single supplier or restricted group of suppliers.

- Indirectly limit the number or range of suppliers?

121. CQC ensures that only providers who have made a legal declaration that they meet the standards of quality and safety are allowed to provide care. The proposed policy will increase the standards that providers must meet before they are able to enter the market.

- Limit the ability of suppliers to compete?

122. This duty is not expected to have any impact on suppliers. It will impact all CQC registered providers of health and social care equally.

123. This duty does not limit the scope for innovation for the introduction of new products or supply existing products in new ways. It does not limit the sales channels a supplier can use, or the geographic area in which a supplier can operate. It does not limit the suppliers' freedoms to organise their own production processes or their choice of organisational form. It does not substantially restrict the ability of suppliers to advertise their products.

- Reduce suppliers' incentives to compete vigorously?

124. The proposal does not exempt the suppliers from general competition law. They do not require or encourage the exchange between suppliers, or publication, of information on prices, costs, sales or outputs.

Small and Micro Business Assessment

- How does the proposal affect small businesses, their customers or competitors?

125. The duty would apply to all CQC registered providers of health and social care of all sizes and the impacts are as described above. We would expect that the majority of providers will already be making the necessary provisions to ensure that their directors are fit and proper for the role, and so the impact on these providers would be minimal.

126. However, we note that regulation tends to have a disproportionate impact on smaller firms. The impact of this regulation on small businesses is minimised by allowing providers discretion in how they meet the new requirements and through CQC's proportionate and risk based regulatory approach, which seeks to minimise the burdens of regulation on providers.

Legal Aid/ Justice Impact

127. The following have been considered in the main impact assessment above and in the Ministry of Justice impact test provided alongside this document:

- Will the proposals create new civil sanctions, fixed penalties or civil orders with criminal sanctions or creating or amending criminal offences? **No**

- Any impact on HM Courts services or on Tribunals services through the creation of or an increase in application cases? **Yes**

- Create a new right of appeal or route to judicial review? **Yes**
- Enforcement mechanisms for civil debts, civil sanctions or criminal penalties? **No**
- Amendment of Court and/or tribunal rules? **No**
- Amendment of sentencing or penalty guidelines? **No**
- Any impact (increase or reduction on costs) on Legal Aid fund? (criminal, civil and family, asylum) **No**
- Any increase in the number of offenders being committed to custody (including on remand) or probation? **No**
- Any increase in the length of custodial sentences? Will proposals create a new custodial sentence? **No**
- Any impact of the proposals on probation services? **No**

Sustainable Development

128. The proposals are not expected to have a wider impact on sustainable development. There will be no impact on climate change, waste management, air quality, landscape appearance, habitat, wildlife, levels of noise exposure or water pollution, abstraction or exposure to flood.

Health Impact

- Do the proposals have a significant effect on human health by virtue of their affects on certain determinants of health, or a significant demand on health service? (primary care, community services, hospital care, need for medicines, accident or emergency services, social services, health protection and preparedness response)

129. The potential impacts on health have been considered above in the cost benefit analysis of this impact assessment, see Section D above

130. There are no expected health risks in association with, diet, lifestyle, tobacco and alcohol consumption, psycho-social environment, housing conditions, accidents and safety, pollution, exposure to chemicals, infection, geophysical and economic factors, as a result of the proposals

Rural Proofing

- Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. It is a mandatory part of the policy process, which means as policies are developed, policy makers should: consider whether their policy is likely to have a different impact in rural areas because of particular circumstances or needs, make proper assessment of those impacts, if they're likely to be significant, adjust the policy where appropriate, with solutions to meet rural needs and circumstances.

131. The proposals will not lead to potentially different impacts for rural areas or people.

Wider impacts

132. The main purpose of the proposed policy is to reduce the risks of poor quality care for health and social care service users associated with poor management or governance and to make directors more accountable for their actions. This will be achieved by making requirements on providers to ensure that their directors are of the right character and are fit to carry out their roles.

Economic impacts

133. The costs and benefits of the proposals on businesses have been considered in the main cost benefit analysis of this impact assessments, see Section D above.

Environmental impacts and sustainable development

134. The proposals have not identified any wider effects on environmental issues including on carbon and greenhouse gas emissions.

Social impacts

135. No impact has been identified in relation to rural issues or the justice system

Section F: Summary and Conclusions

136. Based on the above impact assessment, the preferred option is Option 2 (preferred option): A fit and proper persons requirement for directors: CQC requirements will be amended to place a clear duty on service providers to make sure that all directors who are appointed to the boards of any health or care organisation regulated by CQC are fit for their role, as is already the case for other staff members at the organisation, including senior managers. CQC would be given the power to take enforcement action against providers where it becomes apparent that they have not taken the proper steps to ensure that their directors are and remain fit and proper for the role, including placing conditions on a provider's registration to remove the unfit director.

137. The costs of such a policy to providers are expected to be low, as it is expected that the majority of providers will already be taking the necessary steps to ensure that their directors are fit and proper. CQC will face some additional costs of enforcing the policy and there will also be costs to CQC, HMCTS and the provider and/or directors associated with both the provider and director having the right to appeal any enforcement action. Finally, where directors are found to be unfit and are removed from their roles there may be some additional costs associated with removal for the provider, director and potentially HMCTS.

138. Overall, although the policy is not expected to impact on a large number of providers, the identified benefits of improved accountability and patient safety are still expected to outweigh the costs, due to the potentially significant impact that poor leadership can have on the quality of care of an organisation. We also anticipate that there may be additional benefits to business, through improvements to business performance relating to better scrutiny and choice of directors.