Department of Health

Strengthening corporate accountability in health and social care:

Consultation on the fit and proper person regulations

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Strengthening corporate accountability in health and social care:

Consultation on the fit and proper person regulations

Prepared by the Department of Health

Contents

Foreword

When we published our consultation on strengthening corporate accountability in July, I said we needed to rebuild confidence in the health and social care system, following the Winterbourne View and Mid-Staffordshire scandals. We know that throughout the health and care sector, people do receive safe, effective and compassionate care delivered by dedicated staff, but we also need the confidence that, in all care providers, standards will not be allowed to fall below what we expect. To do this, one of the things we need is a sharper focus on holding providers to account for failures in the care they deliver.

I would like to thank everyone who took the time to respond to the consultation. We received a wide range of responses about our plans to strengthen how providers are held to account. I was pleased that most people and organisations who have written to us or contributed at meetings have agreed with the overall principle, but I know that some of you voiced concerns about how these proposals would work in practice. This consultation sets out further details on the process as well as the opportunity to comment on the draft regulations and draft impact assessment.

The inquiry into Mid Staffordshire NHS Foundation Trust made a number of recommendations around the conduct and performance of senior NHS managers and leaders. In our initial response, *Patients First and Foremost*, we said that we would establish a barring mechanism to ensure that 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.

In *Hard Truths – The Journey to Putting Patients First*, published in November, we confirmed that we would do this through the Fit and Proper Persons requirement, regulated by the Care Quality Commission (CQC), for Board directors or equivalents across public, private and voluntary sector providers of health and adult social care.

This document describes the key issues that have emerged from your feedback and how we plan to take action on these. These proposals are an important step in rebuilding trust in the safety and quality of care. I hope that providers, people who use services and their families will again respond to this consultation on the next stage, as we develop the regulations.

NORMAN LAMB
Minister for Care and Support

1. Introduction

This document tells you about the feedback we received on our proposals to introduce a fitness test for directors of health and social care providers, and how we are responding to this feedback. It sets out how we will implement a new fit and proper person requirement (FPPR) for providers registered with the Care Quality Commission (CQC)[1], asks you for further feedback on the draft regulations and impact assessment and sets out next steps.

On 4th July 2013, we published the consultation on *Strengthening corporate accountability in health and social care*, setting out proposals for all directors of providers registered with the Care Quality Commission (CQC) to meet a new "Fit and Proper Person Test". The consultation, which closed on 6th September 2013, asked for views on these proposals to enable CQC to insist on the removal of directors that fail this fit and proper person requirement (FPPR).

Together with these FPPR proposals, we also set out proposals to strengthen the ability of the CQC to address failings in the quality and safety of care, as part of the review of the registration requirements and introduction of fundamental standards. The CQC carried out its own consultation on this new regulatory model and published its response in November 2013[2].

The Department of Health published in January a separate consultation on the proposed draft regulations which will introduce fundamental standards[3]. These new standards will set in law a clear baseline below which care must never fall, and will allow CQC to take enforcement action against providers that do not meet these standards.

The proposals set out in this document need to be considered in the context of that wider consultation on the fundamental standards. This document has been published separately both to respond to the concerns raised in *Strengthening corporate accountability in health and social care* and to enable you to consider the detailed issues around corporate accountability and the new fit and proper person requirement.

[1] This consultation response refers to the fit and proper person requirement (FPPR) which will be part of the registration requirements for CQC. The consultation document, *Strengthening corporate accountability in health and social care* referred to the fit and proper person test (FPPT) which we expect providers to apply.

[2] http://www.cqc.org.uk/sites/default/files/media/documents/cqc_newstartresponse_2013_14_tagged_sent_to_web.pdf

[3] https://www.gov.uk/government/consultations/fundamental-standards-for-health-and-social-care-providers

2. Summary

The majority of the responses to the consultation (74%) were supportive of the overall principle of introducing the FPPR. A more detailed analysis is at page 10 and a break-down of numbers is at Annex A.

In the consultation document *Strengthening corporate accountability in health and social care*, we asked you four questions:

Q1: Do you have any evidence about the likely costs and benefits of these proposals?

There was a range of responses. A lot of people were unsure and felt they needed further detail on the FPPR to be able to respond. A third of those who answered this question agreed that the majority of providers are already likely to be taking steps to ensure their directors are fit and proper persons. Some thought that there could be a small additional cost to providers in making sure they understand new regulations and guidance, as well as dealing with any additional scrutiny from CQC. Many said costs could be significant. There were also some suggestions to extend the test in ways that might increase costs and concerns that additional costs for CQC would be passed on to providers.

We have estimated the costs in the impact assessment for bringing in new regulations to implement our proposals. Our analysis suggests that the costs will be low, contrary to the views of some respondents. The draft impact assessment is published alongside this consultation.

Q2: How should we define which positions the new requirements apply to? Should only directors of Boards be required to be fit and proper persons or are there other principal officers who might not be part of the Board to whom this test should also apply?

Nearly three quarters of those who answered this question agreed (71%) that the test should be applied to directors and some of you made suggestions such as extending it to governors and senior managers.

We agree that those who are responsible for leading, overseeing, making decisions and setting policies for an organisation as a whole must meet the FPPR. The new regulations we are preparing will cover all Board members or equivalents and existing registration will cover other senior managers and staff. The draft regulations are at Annex C.

Q3: What considerations should be taken into account in applying the fit and proper persons test? Do you agree this should include the concerns mentioned in paragraph 19 or are there other concerns that need to be addressed?

There was general agreement (54%) on the four concerns: honesty, integrity, competence and capability, with a further 24% who did not disagree but were uncertain. Some people also had further suggestions such as using the seven principles of standards in public life (Nolan principles).

The criteria will now be strengthened with the requirement to consider past employment history, as well as an explicit role for the provider to enquire into previous history and to sign off a director's appointment.

Q4: Do the proposed introduction of fundamental standards and a new fit and proper person test, together with existing legislation, set an adequate framework for holding providers to account for unsafe care? If not, what other measures are required?

While 65% agreed that the FPPR together with the proposed fundamental standards were adequate, many of you also said that further measures were needed. These are covered in more detail in the next section, *Your Feedback*.

Hard Truths[4], the government's response to the Francis Inquiry, confirmed that we will establish a new fit and proper person requirement for Board level appointments which will mean that CQC is able to bar directors who are unfit from individual posts. Where a director is considered by CQC to be unfit it could either refuse registration, in the case of a new provider, or require the removal of the director on inspection, or following notification of a new appointment by the imposition of a condition. If the provider failed to remove the director without reasonable excuse that would be an offence for breach of condition.

The following sections provide more detail on:

- the responses we received to the consultation, covering the key themes;
- how the revised FPPR will work;
- other actions to strengthen corporate accountability;
- the impact of the proposed changes, including under the Equality Act 2010; and
- the next steps for implementing these proposals.

[4] *Hard Truths: The Journey to Putting Patients First Department of Health (2013)* https://www.gov.uk/government/publications/mid-staffordshire-nhs-ft-public-inquiry-government-response

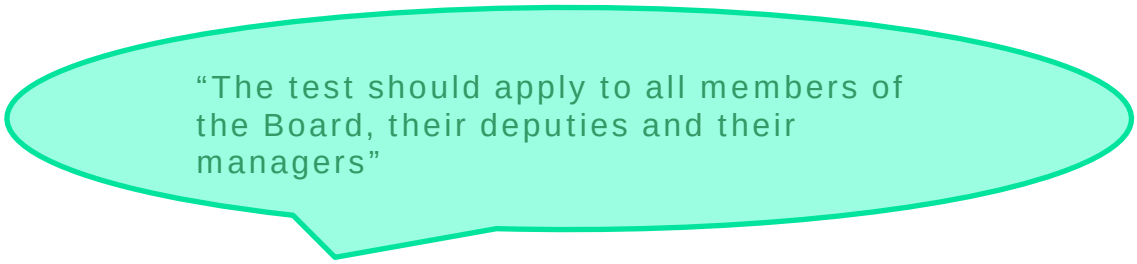
3. Your feedback

We received 54 responses to the consultation and we also held consultation meetings over September 2013 with a range of providers, family carers and people with learning disabilities. There was a good range of responses on all four of the consultation questions, as well as some additional points.

This section sets out the key themes raised and our response to these issues. There are more details about the proposed approach in the next section on page 16 and in Annex B.

Key themes

The overall themes emerging from the points you raised covered four key areas, **applying the test, other measures, potential costs and possible risks.**



(i)Applying the test

Which job roles/positions – There were varying views on this point, reflecting the diversity of provider structures and governance. There were suggestions that the test should also apply to governors, other senior managers and anyone in a senior decision-making role.

We have strengthened our proposals to ensure the FPPR will apply to all Board members including executive directors and non-executive directors and equivalents. This would include trustees of charitable bodies and members of the governing body of unincorporated associations. This means that a fitness test will apply to "the controlling mind" of the organisation or the key members of a care provider registered with CQC.

We will also apply the strengthened fitness requirement to sole traders and the partners of a partnership to ensure there is consistency of approach.

All registered managers of regulated activities regulated by CQC are already subject to a fitness test, carried out by CQC. The provider is also expected to have carried out checks, as part of CQC registration requirements, to ensure that staff including senior managers delivering the regulated activities, are fit and proper persons.

When should it apply – Some people commented that while the principle of the test was right, it would not be effective as a preventative measure and that it should not just apply at registration. Others felt that existing arrangements were sufficient and that CQC would not need to approve appointments.

We are now designing the FPPR as a pro-active checking mechanism – putting the onus on the provider to be responsible in recruitment, and to comply with criteria clearly set out in regulations.

The FPPR will not only apply at the point of registration, it is an on-going requirement. CQC may take action if it has concerns following notification of a new director appointment or where there are concerns following CQC inspection. So, the inspection process acts as an incentive for providers to assess directors on a continuing basis, and directors could be removed as a result of an inspection.

Who should apply the test – There was some concern that CQC's powers to intervene would be insufficient to prevent negligence and failure in some providers, and that it should be the responsibility of CQC to apply the test in the first place rather than providers.

We think the primary responsibility for ensuring that directors are fit and proper should rest with the service provider. Placing the onus on providers puts a sharper focus on governance and recruitment and raises awareness of accountability for safety and quality. These regulations will enable CQC to intervene where it determines that the director is unfit.

What the test should cover – A number of respondents said that it was difficult to comment without more detail about what the test would include in relation to fitness.

The draft regulations at Annex C sets out the criteria for assessing fitness as well as the conditions which will enable CQC to deem a director to be unfit.

Which organisations – Most responses agreed that all providers should be covered, that is, NHS Trusts and Foundation Trusts, independent heath care organisations and adult social care organisations regulated by CQC. There were also suggestions that local authorities who are service providers should be included.

The FPPR and the associated registration requirements will apply across all public, private and voluntary sectors to all organisations regulated by CQC, including local authorities where they provide or manage regulated activities. CQC will be developing more detailed guidance on how the FPPR will apply to different types of provider models.

Commissioners – A few respondents were concerned that commissioners should also be subject to a fit and proper person test, not just providers.

The work on the FPPR has drawn on the Professional Standards Authority's standards for NHS Board members and clinical commissioning groups. NHS England will explore the development of a parallel set of arrangements for clinical commissioning groups.

"It is paramount that....Board members are not allowed to move from one failure to another.."

(ii)Other measures

Barring – Some of you raised concerns about the possibility that owners and Board members of failed providers could move on to senior positions in other provider organisations. You suggested that we include a mechanism to bar unsuitable individuals from taking such positions of responsibility.

The new fit and proper person requirement will introduce a scheme for barring directors who are unfit from individual posts by the CQC. It will allow CQC to remove directors it deems to be unfit as a result of overseeing poor care, and keep a record of its decisions so that this will be flagged if this person is appointed to another director level role.

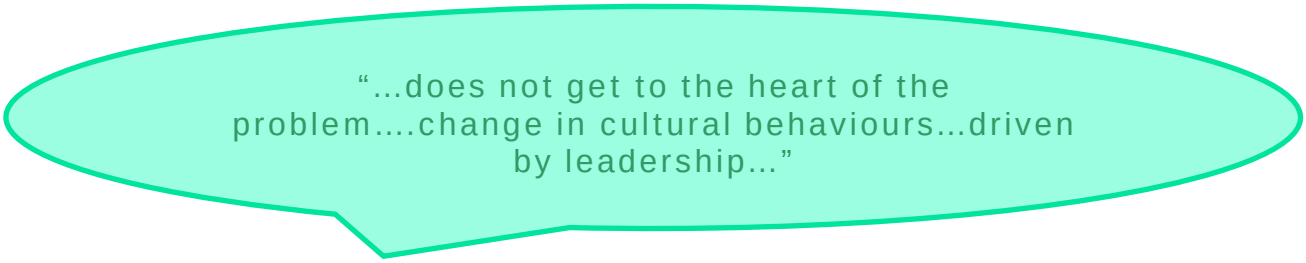
"Something to cut the path from patient to action is needed"

Speed of intervention and safeguarding – A few people felt that the proposals were not agile enough to safeguard those at risk.

Under the plans we set out in Hard Truths, CQC will have powers to act immediately if patients are at immediate risk of harm. The other registration requirements/fundamental standards also give CQC the power to act quickly to safeguard patients or service users.

Culture – A number of people highlighted the cultural factors at play in what went wrong at Winterbourne View and in Mid Staffordshire and were concerned that, for this reason, the FPPR would be inadequate.

We expect that the fit and proper person requirement will contribute to the measures to improve the ethos of providers. The FPPR is part of the wider response to the events at Winterbourne View hospital and the Francis report which seek to build a culture of compassionate care across health and care services.



Leadership – As with the cultural issues, some people pointed out that if we are to prevent another scandal like those at Winterbourne View and Mid-Staffordshire, addressing leadership and governance will be key.

These are very important issues. Hard Truths sets out a framework of measures to address both culture and leadership. We are developing leaders and leadership at every level to influence the culture and values of the NHS from 'ward to Board'. We want to build the capacity and diversity of our top leaders and we will ensure that the work of the NHS Leadership Academy gives very strong attention to developing senior clinical leaders. Further details on this are set out in the section on action to improve leadership.

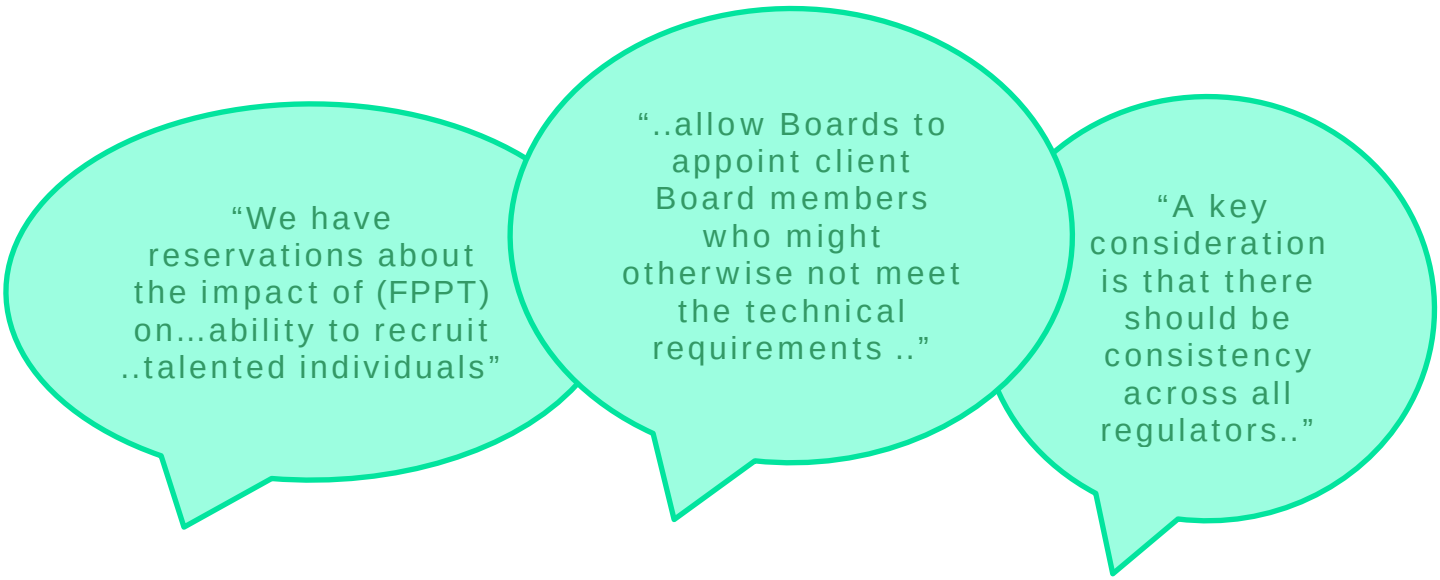
(iii)Potential Costs

No extra burden – Views were very mixed on costs. A third agreed that the test would result in no additional or minimum extra burden in costs to providers as they were already undertaking similar checks on directors but many of you thought the increase in costs could be significant.

Increased bureaucracy – Respondents also thought there could be additional costs because of the additional administration needed when recruiting directors, understanding the regulations and performing checks according to the new regulations, as well as the process of registration with CQC. You were also concerned that any additional costs for CQC would be passed on to providers.

Greater clarity –Quite a number of respondents commented that it was not possible to estimate the costs without the detail on how the test would be applied.

The draft impact assessment published alongside this document sets out estimated costs and benefits of the proposed model. We anticipate that the majority of providers will already be carrying out adequate checks on their directors or equivalents through their normal recruitment and appraisal processes. Only the minority of providers who might not already be carrying out checks are estimated to face significant additional costs of doing so. We are seeking additional comments to help verify and refine these estimates. There are specific questions about the impact assessment in Annex D.



(iv) Possible risks

Duplication – A few people mentioned the need for consistency in the criteria applied and the potential for duplication with guidance for charities, Monitor's requirements and the Companies Act 2006.

As part of the consultation, DH and CQC have discussed the proposed fit and proper person requirement with Monitor, Ofsted and the Charities Commission, as well as the Department for Business, Innovation and Skills (BIS). The intention is that the draft regulations are consistent with existing requirements as far as possible. The draft regulations specify that the FPPR would not allow directors who have been prohibited from holding the position by or under any other enactment. This would capture, for example, persons disqualified under the Company Directors Disqualification Act 1986 (which includes undischarged bankrupts) and persons prohibited from being trustees of charities under the Charities Act 2011 (which also includes undischarged bankrupts).

CQC will also ensure that wherever possible, there will not be duplication of the test where a provider is already registered, for example with the Charities Commission, or Monitor.

Development of the FPPR has also drawn on the Professional Standards Authority's standards for NHS Board members and clinical commissioning groups. The CQC guidance will draw on these existing standards to ensure consistency of approach as well as identifying ways to avoid duplication.

Recruitment and FPPR discouraging applications – Some people were worried about the FPPR putting off good candidates from applying for Board level posts. Some also thought that the test could exclude service users from Board appointments if flexibilities were not applied. For example, people with learning disabilities or mental health problems might not be viewed as fit if they had to comply with the requirement to be physically and mentally fit for the relevant position. Similarly, an ex-addict, with a criminal record relating to that addiction, might be unable to sit on the Board of a drugs rehabilitation service provider.

We have listened to the concerns raised in the consultation about the impact of the proposed regulations. The intention is not to discourage good candidates including service users or candidates from other sectors, from applying to be a Board director. The draft regulation applies in relation to the relevant position which will enable the provider to qualify the conditions which need to be met for a particular position to avoid any adverse impact. For some posts e.g. clinical director, service specific experience and skills will of course be relevant. However, for other Board posts such experience, skills or qualifications will not be required. Similarly, CQC will have discretion to allow, for example, an addiction services provider to appoint as a director a service user who may have a past criminal conviction.

4. How the revised fit and proper person requirement will work

This section sets out how we have decided the FPPR will operate in the light of the responses to the consultation. It sets out:

- further detail on the policy intention to use the FPPR, in response to the Francis Inquiry recommendations, to enable CQC to bar unfit directors from individual posts;
- how we plan to introduce similar changes for single traders and partnerships to ensure consistency;
- what the test will cover;
- how we expect the test will work for providers;
- how we expect the test will be applied by CQC, on registration and following notification of the appointment of a new director, or on inspection, or where there are concerns about quality; and
- the right of appeal for individual directors.

In summary, the new FPPR will:

- be focused on all Board directors (both executive and non-executive and including chairs) or their equivalents as well as single traders and the partners of a partnership in each sector;
- be based on a new CQC registration requirement that such persons be fit and proper persons;
- the regulations will set out clear criteria for deeming persons to be unfit to be a director;
- the responsibility for ensuring individuals are fit and proper will lie with the organisation and guidance will recommend that appointments be signed off by the chair of the provider;
- CQC will assess fitness on initial registration and could refuse to register a provider if they thought that a director was unfit; CQC could impose a condition to require the removal of an unfit director following inspection or where they were notified of a new appointment;
- Failure to comply with such a condition for an existing provider could lead to enforcement action by CQC including cancellation of registration or prosecution.

- CQC will keep a record of its past decisions of people not judged fit and proper and records of other concerns.
- There will be a right of appeal for both the service provider and individual directors.

A summary of how the FPPR will work in comparison to the original proposals set out in *Strengthening Corporate Accountability in Health and Social Care* is in **Annex B.**

Sole traders and partnerships

The consultation published in July set out the policy intention to close the legislative gap whereby single traders and partnerships are subject to a fit and proper person test but that test does not apply to directors. In developing the draft regulations on the FPPR, we have come to the view that the proposals to strengthen the FPPR for directors should also apply to sole traders and partnerships. This would ensure consistency on fitness for senior leaders in all organisations.

Barring directors from individual posts

Hard Truths,[5] the final Government Response to the Mid Staffordshire NHS Foundation Trust Public Inquiry, published in November 2013, noted that the public has the right to expect that people in leading positions in NHS organisations are fit and proper persons; and that where it is demonstrated that a person is not fit and proper, they should not be able to occupy such a position.

Hard Truths announced that the Government will establish a new fit and proper person's test for Board level appointments, which will enable the CQC to bar directors who are unfit from individual posts. This will apply to providers from the public, private and voluntary sectors. Where a Director is considered by the CQC to be unfit it could either refuse registration, in the case of a new provider, or require the removal of the director on inspection, or following notification of a new appointment.

CQC would keep a record of decisions where individuals had been barred from a specific post; and records of other concerns e.g. where a director has resigned prior to CQC imposing a condition on the provider or where records of inspections show concerns about fitness of a particular director. 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.

The Government believes that barring in this way will be a robust way of ensuring that directors whose conduct or competence makes them unsuitable for these roles are prevented from

[5] *Hard Truths: The Journey to Putting Patients First Department of Health (2013)* https://www.gov.uk/government/publications/mid-staffordshire-nhs-ft-public-inquiry-government-response

securing them. This will be kept under review to ensure that it is effective, and we will legislate in the future if this mechanism for barring is not having its desired impact.

What the test will cover

We are proposing that the regulations set out criteria for assessing both the fitness of directors or their equivalents and criteria for deeming a director or their equivalent to be deemed unfit. This means that a director must:

- be of good character;
- have the qualifications , skills and experience necessary for the relevant position;
- be capable of undertaking the relevant position, after any reasonable adjustment under the Equality Act 2010;
- not have been responsible for any misconduct or mismanagement in the course of any employment with a CQC registered provider;
- not be prohibited from holding the relevant position under any other law. e.g. under the Companies Act or the Charities Act.

A director can be deemed unfit if they meet the criteria in Schedule 1– i.e. they:

- have been sentenced to imprisonment for three months or more within the last 5 years;
- are an undischarged bankrupt;
- are subject of a bankruptcy order or an interim bankruptcy order;
- have an undischarged arrangement with creditors; or
- are included on any barring list preventing them from working with children and vulnerable adults.

We are proposing that breach of the requirement would constitute an offence.

The draft regulations are at **Annex C**. We would like your views on the following questions:

Questions for consultation:

1. Do you think the fit and proper person regulations at **Annex C** reflect the policy aims?

2. Are there any other criteria for deeming a person unfit which should be included in Schedule 1 in the draft regulations?

3. Do you agree that breach of the requirement should constitute an offence?

4. Do you have any other comments about the draft regulations?

The aim is that the FPPR will not have a long list of criteria that automatically bar someone, but will operate on the basis of judgement by the provider and CQC. For example, we have considered whether the regulations should provide that a director who has been imprisoned for more than 3 months should always be deemed to be unfit, similar to Monitor's test. However,

we think that CQC should have discretion to consider whether to emove this bar on application – for example to allow an addiction services provider to appoint as a director a service user who may provide valuable insight to the organisation's Board but would otherwise be considered unfit because of recent criminal convictions.

What the FPPR will mean for providers

Whilst there are differences in the constitution of providers, CQC would apply the FPPR equally to all registered providers across health and social care.

For NHS trusts and foundation trusts all decision making power is vested in the Board of directors and it is ultimately the Board that is accountable for all that happens in the trust. In both health and social care the test will apply to directors and those performing functions equivalent to or similar to a director. This might include for example trustees of charitable organisations as well as to other types of provider e.g. companies.

The prime responsibility would lie with the organisation making the appointment to ensure that all Board members or equivalent will be fit for the role they have been appointed to.

Whilst responsibility for meeting the requirement will lie with the appointing organisation, the expectation is that the chair, or senior person in the organisation will personally sign off all director level appointments as fit. Guidance will set out that the responsibility clearly lies with the provider for proper recruitment and to enquire about the applicant's past employment history, as well as continuing to ensure that directors are fit to undertake their roles.

The FPPR will establish an ethos amongst providers which encourages them to recruit responsibly or their registration could be refused or subject to a condition.

How we expect CQC will determine compliance with the FPPR

The FPPR will apply at the point of registration, where a director has been appointed to a new job or through CQC inspection.

1) *At registration:*

- All providers (health and adult social care) seeking registration with CQC would need to demonstrate that its directors (or equivalents, including partners) were 'fit and proper', as defined in the regulations and guidance.
- CQC will collect information about directors and seek confirmation that the provider has completed the appropriate recruitment processes;
- CQC would need to review the provider's decision and could undertake its own, independent assessment of the director to determine fitness and therefore compliance with the regulation. At the point of registration, CQC will require information about all directors on the Board (or equivalent) as part of the application. This will allow CQC to build up information about individuals over time and to determine if any of the individuals are known to CQC and if any action has previously been taken, i.e.

cancellation, refusal or other enforcement action in relation to providers they may have been associated with;

- The provider will need to declare that appropriate processes have been undertaken to ensure that all members of the Board are fit and that no director meets the unfit criteria;
- If CQC has information that a director may be unfit further investigation and assessment would be required. This may involve further liaison with the provider, interviews with the director, further information gathering or other proportionate response. The outcome will depend on the circumstances and the findings of the assessment. If the declaration by the provider was found to be flawed – e.g. because the provider was aware the director was unfit, CQC might refuse registration. If the director provided false information, it would be expected that the person making the appointment would take action. The consequences for the provider's registration or registration application would depend on the circumstances;
- CQC cannot grant registration if a provider cannot meet the registration requirements – so a provider with a director deemed to be unfit could not be registered. In this situation CQC would take the steps set out in how to refuse an application for registration, including a notice of proposal, opportunity to make representations and a notice of decision. The provider could, of course, appeal against CQC's decision.

2) *When a new director is appointed, or on inspection*

Where a provider is already registered with CQC and they notify CQC of a new director or CQC inspects and finds that appropriate recruitment processes have not been followed and/or there is an unfit director in place, CQC can take action to impose a condition requiring their removal.

If there has been a breach of the regulation CQC would consider the enforcement powers available to it in the context of its enforcement policy and the circumstances in question. It may be possible for CQC to issue a warning notice, or to impose a condition of registration that would mean the director had to be removed. In serious cases where a director was considered to put service users at risk of harm, urgent action to impose a condition meaning that the director had to be removed could be considered.

Right of appeal

There is currently a right of appeal for registered persons (service providers and registered managers) against civil enforcement action taken by CQC. Under the new fit and proper person requirement, CQC will be able to impose a condition requiring the removal of individual directors. It is only right that in such cases the individual director, as well as the service provider, has a right of appeal against CQC's decision.

The Government plans to introduce a new right of appeal to the First Tier Tribunal for individuals who are removed as a direct result of civil enforcement action to impose a condition by CQC. This is being put in place through the Care Bill.

5. Other actions to strengthen corporate accountability

The consultation published in July on strengthening corporate accountability in health and social care set out other action alongside the fit and proper person requirement. In addition Hard Truths included a number of proposals to strengthen corporate accountability.

This section provides a further update on these proposals in relation to:

- a new approach to inspections
- the statement of purpose
- fundamental standards
- duty of candour
- supporting good leadership

Inspections

CQC published its strategy for inspections over the period 2013-16 in April and consulted on its overall plans for inspection in the summer of 2013. CQC has developed its plans for specialist inspections led by the three Chief Inspectors for hospitals, adult social care and general practice, and intelligent monitoring. CQC will produce guidance for each sector, and has started to roll out its new inspection and ratings regimes, starting with hospitals from January 2014. CQC's new inspections will focus on governance and include inspecting services against the criteria "are they well led?"

Statement of purpose

The registration changes that CQC has introduced include changes to the statement of purpose for learning disability providers, guidance for registration assessors on site visits and interviews with registered managers. These raise the bar and ask that providers set out in their statement of purpose that an organisation name individuals at Board level who have day-to-day accountability and responsibility for quality, safety and compassionate care. Future inspections will link the statement of purpose with fundamental standards.[6]

[6] http://www.cqc.org.uk/organisations-we-regulate/services-people-learning-disabilities

Fundamental standards and tougher enforcement action

The Department of Health has been working with CQC to revise the registration requirements to develop a set of fundamental standards. These fundamentals will set a clear bar below which care must not fall. There will be serious regulatory consequences for providers where care falls below these levels, including the possibility of prosecution or cancellation of registration. The CQC published the responses to its public consultation on 17 October 2013, which showed that there is agreement with the new approach[7]. The Department of Health published on 23 January 2014 its consultation on the draft regulations which will set in legislation the fundamental standards of care that providers must meet[8]. The aim is that the new regulations will come into effect in October 2014, and CQC will inspect against them.

Duty of candour

The Government will introduce an explicit, statutory duty of candour as a CQC registration requirement. The duty will apply to health and adult social care providers of regulated activities and will be enforced using the CQC's powers. This duty will ensure that providers are open with patients and service users about failings in care and provide an explanation, and where appropriate, an apology. A consultation on the threshold for the new duty of candour was published on 26 March.[9]

Similarly, the General Medical Council and the Nursing and Midwifery Council are working with other regulators to agree consistent approaches to candour and reporting of errors, including a common responsibility across doctors, nurses and other health professionals to be candid with patients when mistakes occur, whether serious or not. The professional regulators will also review their guidance to panels taking decisions on professional misconduct to ensure they take proper account of whether or not professionals have raised concerns promptly.

Other action being taken to support leaders

Hard Truths sets out a framework of measures to address the important issue of ensuring good leadership. For example, the NHS Leadership Academy will initiate a new leadership programme to fast-track NHS clinicians and individuals from outside the NHS to be the next generation of senior leaders. The NHS executive fast-track programme will also develop leaders from inside the NHS. Recruitment will be values-based and staff engagement will be promoted through guidelines for employers developed by the Social Partnership Forum.

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7 http://www.cqc.org.uk/sites/default/files/media/documents/cqc_newstartresponse_2013_14_tagged_sent_to_web.pdf

8 https://www.gov.uk/government/consultations/fundamental-standards-for-health-and-social-care-providers

9 https://www.gov.uk/government/consultations/statutory-duty-of-candour-for-health-and-adult-social-care-provider

Similarly, there are a number of initiatives in social care to drive up the quality of leadership. For example the National Skills Academy for Social Care has been commissioned to work in partnership with the Social Care Institute for Excellence (SCIE) to bring together and publish a Guide for Social Care Board Members.

The Professional Standards Authority for Health and Social Care has updated its standards for members of NHS Boards and clinical commissioning group governing bodies that put respect, compassion and care for patients at the heart of leadership and good governance in the NHS. This, for the first time, brings together the essential skills that are expected of all NHS executive and non–executive leaders providing the basis for individuals to take responsibility for their own behaviour and challenge the behaviour of others. [10]

The Francis report also set out proposals for greater performance management at Board level and the rewording of contracts to make it easier for leaders to be removed when, for example, CQC ratings are unsatisfactory. Monitor, TDA and NHS Employers are developing guidance for trust Boards on the appraisal, development, performance management and disciplinary arrangements of senior executives. This is aimed at advising Boards on what action they might consider in the event that, for example, they get a poor rating from the Chief Inspector of Hospitals. One of the aims is to encourage appropriate disciplinary action where that is needed including dismissal and to prevent "poor performers" moving on to other similar appointments in the NHS.

[10] http://www.professionalstandards.org.uk/docs/default-source/psa-library/131120-standards-for-nhs-bms-v-2-0-final.pdf?sfvrsn=0

6. Equality

This Section considers the impact of the proposed changes under the Equality Act

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.

Since April 2011, public bodies have been required to comply with the Public Sector Equality Duty which is part of the Equality Act 2010. The Duty covers the following protected characteristics:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

We believe that, by improving the quality of care provided, this policy will have a positive impact on those individuals who use healthcare services, in general these are people from older age groups, lower income distribution and those with disabilities or long term conditions. It therefore meets two of the matters to have regard to under the Duty which are to:

- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

Responses to the previous 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 people to Board level appointments who have disabilities or mental health conditions. The draft regulation provides that this applies in relation to the relevant position (after reasonable adjustments are made) which will enable the provider to qualify the conditions for service users applying for Board positions to avoid any adverse impact.

Questions for consultation:

5. Do you have any concerns about the impact of the proposed regulations on people sharing protected characteristics as listed in the Equality Act 2010?

7. Impact of changes

Our draft impact assessment for the changes to the regulation sets out the estimated costs and benefits of introducing the fit and proper person requirement. This has been published alongside the consultation response.

We estimate that there will be additional costs to some providers in implementing the new fitness requirement, where they do not currently do so, but that these costs will be low, contrary to the views of some respondents. The main benefits will be a 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. Providers may also benefit where poor director choice would otherwise impact on business performance.

We would like your views about the draft impact assessment – there are some specific questions for providers in the call for evidence at **Annex D.**

8. Next Steps

The new draft regulations that will introduce the fit and proper person requirement (FPPR) are included in **Annex C.** Subject to Parliamentary approval, these will become part of the existing secondary legislation which sets requirements for registration with CQC.

This means that the FPPR will be introduced as part of the same consolidated package of regulations which include the registration requirements on fundamental standards and duty of candour. The intention is to introduce those revised regulations to the same timetable in October 2014.

CQC will consult on guidance in the light of the final regulations.

9. Responding to the consultation

We would like your views on:

- The revised proposal for a fit and proper person requirement (pages 16-20)
- The draft regulations (Annex C)
- The equality analysis (pages 24-25)
- The impact assessment published alongside this document:

The specific questions we would like you to answer are set out in **Annex D**.

Please send your comments by the closing deadline of **25/04/2014**

To respond to this consultation, you can:

Answer the questions on line:

http://consultations.dh.gov.uk/fit-and-proper-persons/corporate-accountability-in-health-and-social-care

Email your responses to: corporate.accountability@dh.gsi.gov.uk

Post your responses to:

Corporate Accountability Consultation
Sheila Evans
507, Richmond House
79 Whitehall
London
SW1A 2NS

An **Easy Read** version of the document is available online at: http://consultations.dh.gov.uk/

Comments on the consultation process itself

If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

contact Consultations Coordinator
Department of Health
2e08, Quarry House
Leeds
LS2 7UE

e-mail consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's **Information Charter** which can be found at:

https://www.gov.uk/government/organisations/department-of-health/about/personal-information-charter

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Summary of Responses Annex A

Figure 1 – Overall response and responses by question

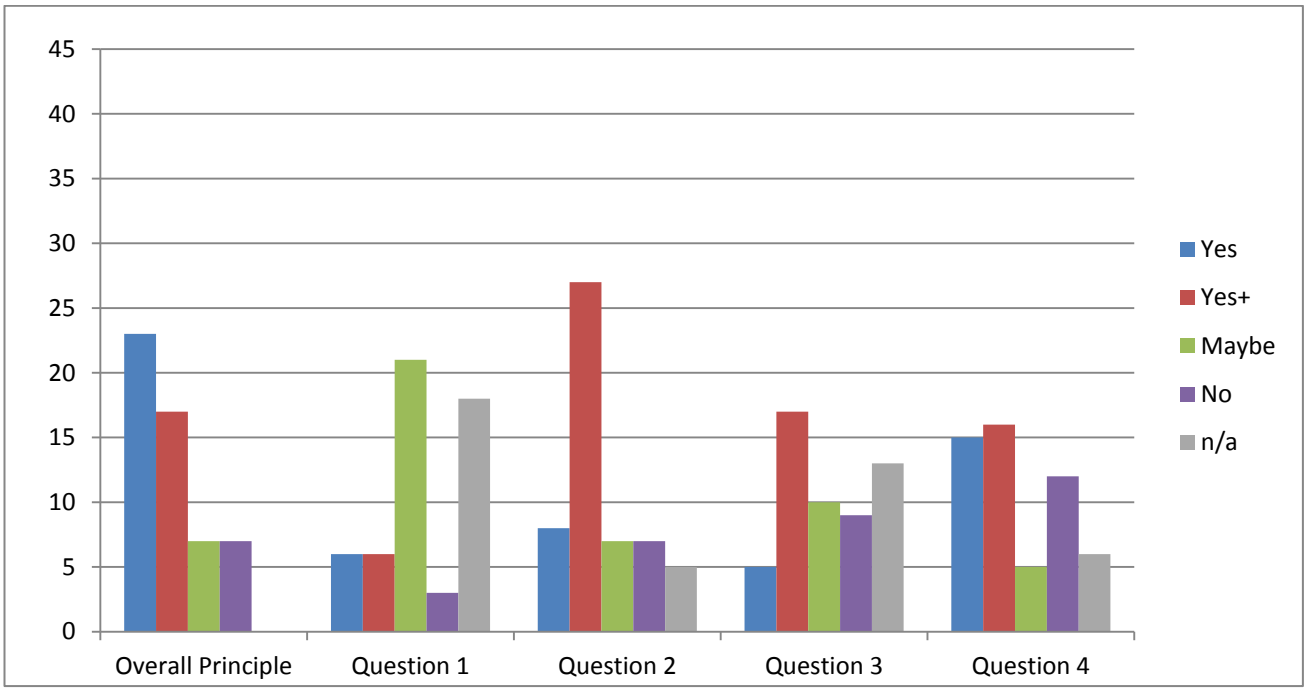
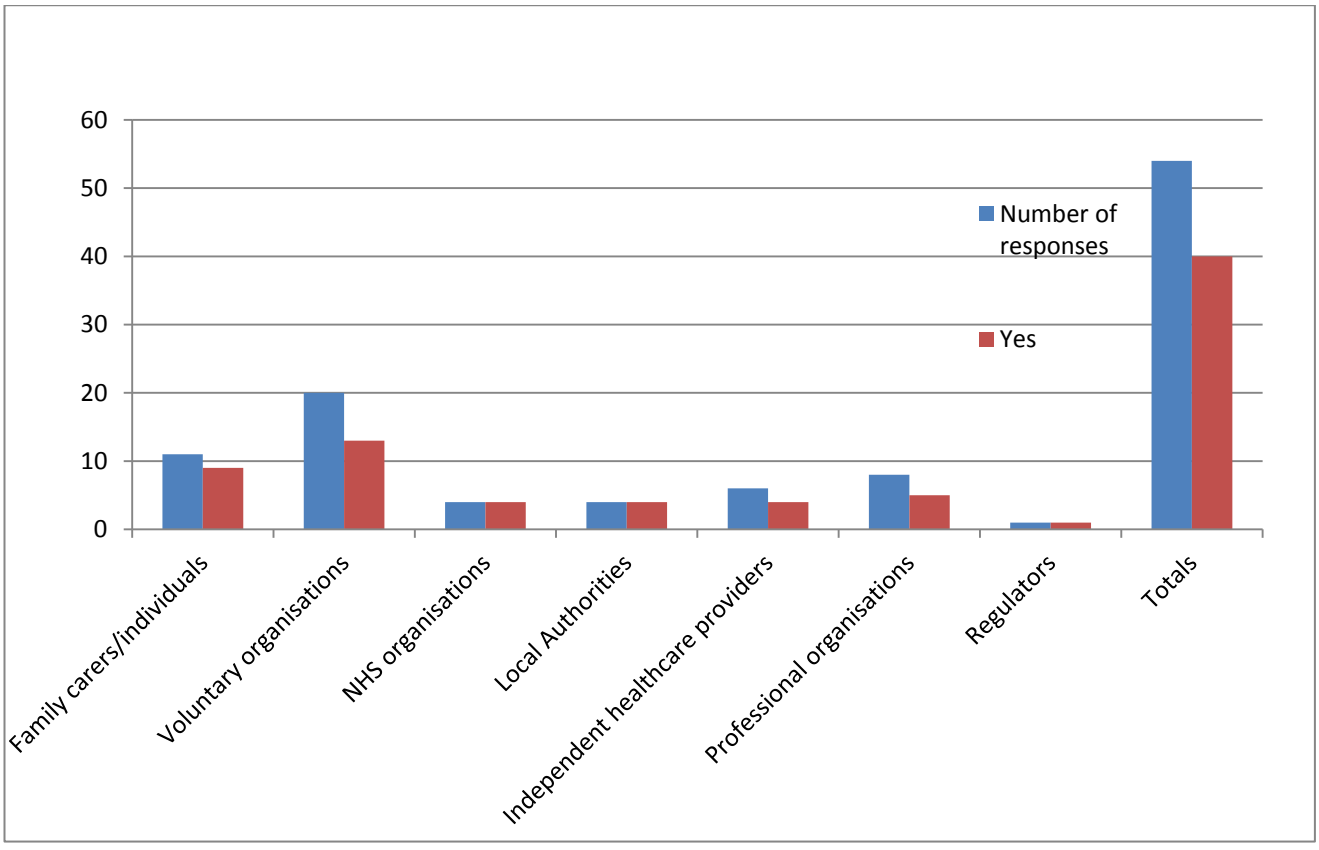


Figure 2 – Positive response to overall principle by organisation or individual



The above charts (Figure 1 and Figure 2) show how the 54 responses were split.

Figure 1 shows the breakdown of overall responses and responses to the four questions:

Overall Principle

:

- 23 responses agreed to the overall principle of introducing the test (**Yes**);
- 17 agreed but suggested additions (**Yes+**);
- 7 were not sure (**Maybe** - sometimes because they needed more information); and
- 7 did not agree at all (**No**).

The answers to the four questions are also split as follows:

Question 1 - Costs

- **Yes** - 6 responses said the majority of providers already take steps to ensure their directors are fit and proper persons, so costs should be minimal;
- **Yes+** - 6 said costs would be minimal for what was proposed but there should be additional measures which could mean further costs;
- **Maybe** - 21 said not sure or not clear (often because of the need for more detail);
- **No** - 3 said there would be significant costs and, for example, increased bureaucracy.
- **N/A** - 21 did not comment on this question, so there are less than the full number of overall responses

Question 2 – Which Positions

- **Yes** - 8 responses said the FPPT should apply to directors of Boards
- **Yes +** 27 agreed but said it should also include governors, senior managers and staff
- **Maybe -** 7 were not clear on how it would work
- **No** – 7 said no because, for example, this would cause problems in recruitment or would be a significant burden
- **N/A** - 5 did not comment on this question

Question 3 – FPPT considerations – what should be included in the test?

- **Yes** - 5 responses agreed with the proposal to base the test on honesty, integrity, competence and capability
- **Yes +** - 17 agreed but said it should also include some additional considerations
- **Maybe** - 10 were not clear on what it should include
- **No –** 9 disagreed with the proposal
- **N/A** - 13 did not comment on this question

.

Question 4 – Adequacy

- **Yes** - 15 responses agreed that the FPPR together with the proposed fundamental standards were adequate
- **Yes +** - 16 agreed but said further measures should be included
- **Maybe** – 5 were not clear on what it should include
- **No** – 12 disagreed with the proposal
- **N/A** - 6 did not comment on this question

Figure 2 shows the breakdown of responses by numbers of individuals and types of organisations and their support for the overall principle (categories as described above under Overall Principle).

- There were 11 responses from family carers and individuals. 9 of them agreed with the principle
- 7 NHS providers responded, all of which agreed with the principle
- 4 local authority responded and 4 agreed with the principle
- 1 regulator responded and agreed with the principle
- 8 professional organisations responded and 5 agreed with the principle
- 6 independent healthcare providers responded and 4 agreed with the principle
- 20 responses from voluntary sector organisations, of which 13 agreed with the principle

Overall there were 54 responses and 40 (74%) agreed with the overall principle.

List of respondents (organisations only) to the consultation

Linkage Community Trust
Patient's Association
Spire Healthcare
Birmingham Community Healthcare NHS Trust
Nuffield Health
Voluntary Organisations Disability Group (VODG)
Royal College of Physicians of Edinburgh
Association of Certified Chartered Accountants
NHS Partners Network
Hampshire County Council Adult Services
Independent Healthcare Advisory Services
Leonard Cheshire Disability
Central Bedforshire Council
Heritage Care
Walsingham
Dimensions
Sense
Independent Community Care Management (ICCM)
Institute of Chartered Secretaries Association (ICSA)
Royal College of Surgeons Edinburgh
Cornwall Care
The National LGBT Partnership
Foundation Trust Network
CLS Care Services Group
Royal College of Midwives
ECCA
Stoneham
Durham County Council
HCA International
St John's Ambulance
Real Life Options
Royal College of Nursing (RCN)
UK Home Care Association
Marie Curie
Gateshead Council
Ealing Hospital NHS Trust
Care Quality commission (CQC)
HC1
CMG
Managers in Partnership MiP
Barchester Healthcare
Residents and Relatives Association
Somerset Care
Mencap

Annex B

Summary of changes in response to consultation

	Consultation proposals	Change
The FPPT requirements		
Who it applies to	All Board members including executive directors, Non-Executive directors and trustees (no definition of Board)	Board directors **or equivalents** (including executive directors and NEDs chairs and trustees); sole traders and partnerships.
What the test includes	Financial checks, honesty, integrity, competence and capability and previous history as a director	A director must: • be of good character; • have the qualifications, skills and experience necessary for the relevant position; • be capable of undertaking the relevant position, subject any reasonable adjustment under the Equality Act 2010; • not have been responsible for any misconduct or mismanagement in the course of any employment with a CQC registered provider; • not be prohibited from holding the relevant position under any other law. e.g. under the Companies Act or the Charities Act. A director can be deemed unfit if they: • have been sentenced to imprisonment for three months or more within the last five years; • are an undischarged bankrupt; • are subject of a bankruptcy order or an interim bankruptcy order; • have an undischarged arrangement with creditors; or • are included on any barring list preventing them from working with children and vulnerable adults.

	Consultation proposals	Change
For providers		
Recruitment	Onus is on the provider to ensure it recruits directors who are fit – i.e. through checking against the criteria set out in the FPPR regulations. Provider has to notify CQC of new appointments (already meant to do this)	Guidance will set out an increased role of the chair or senior person in the organisation in confirming to CQC that directors are fit and to be responsible for proper recruitment. We expect providers to enquire about fitness including the applicant's past history before sign off by the chair.
Ongoing assessment of directors		Inspection process acts as incentive for providers to continue to assess suitability of directors. We would also expect employers to assure themselves that directors continue to be fit as part of their on-going appraisal system.
For CQC		
On registration		CQC may refuse to register a new provider on the basis that they were employing an unfit individual. Registration is normally at the end of the process for providers i.e. once they have appointed all their directors. CQC does not offer advice prior to registration.
On notification of a new appointment, or inspection		If CQC finds that appropriate recruitment processes have not been followed and/or there is an unfit director in place, CQC can take action to impose a condition requiring their removal. If there has been a breach of the regulation CQC would consider the enforcement powers available to it. CQC may seek to impose a condition of registration that would mean the director had to be removed. In serious cases it may be possible to do this urgently.
Decision process	CQC would keep a record of decisions and actions taken by it against the provider, including the involvement of the	CQC would keep a record of decisions where individuals had been barred from a specific post; and records of other concerns e.g. where a director has resigned prior

	Consultation proposals	Change
	individuals in the cases in question	to CQC imposing a condition on the provider or where records of inspections show concerns about fitness of a particular director. 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.
Sanctions	CQC would use its enforcement powers against a provider that employed an unfit person or where the provider refused to remove an unfit director	No change

Draft Regulations Annex C

Draft Order laid before Parliament under section 162(3)(b) of the Health and Social Care Act 2008, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. 000

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

Health and Social Care Act 2008 (Regulation of Regulated Activities) (Amendment) Regulations 2014

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 20 and 161(3) and (4) of the Health and Social Care Act 2008([11]).

In accordance with section 20(8) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

A draft of these Regulations was laid before Parliament in accordance with section 162(3)(b) of the Health and Social Care Act 2008, and was approved by a resolution of each House of Parliament.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Health and Social Care Act 2008 (Regulation of Regulated Activities) (Amendment) Regulations 2014.

(2) These Regulations come into force immediately after the coming into force of the Health and Social Care Act 2008 (Regulation of Regulated Activities) Regulations 2014.

([11]) 2008 c. 14.

Fit and proper persons

2.—(1) The Health and Social Care Act 2008 (Regulation of Regulated Activities) Regulations 2014 are amended as follows.

(2) After regulation 2 (interpretation) insert—

"PART 1A

Requirements Relating to Persons Carrying on or Managing a Regulated Activity

Fit and proper persons

2A.—(1) This regulation applies to—

(a) an individual who carries on a regulated activity,

(b) a partner in a partnership that carries on a regulated activity, and

(c) a person who is a director of a service provider.

(2) Persons to whom this regulation applies must—

(a) be of good character,

(b) have the qualifications, skills and experience which are necessary for carrying on the regulated activity or (as the case may be) for the relevant office or position,

(c) be capable by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the carrying on of the regulated activity or (as the case may be) the office or position for which they are appointed or, in the case of an executive director, the work for which they are employed,

(d) not have been responsible for, been privy to, contributed to or facilitated, any misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity, or discharging any functions relating to any office or employment with a service provider, and

(e) not be prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment.

(3) Where the service provider is a body, that body must have, through the combination of the qualifications, skills and experience of its partners or (as the case may be) directors, the necessary qualifications, skills and experience to carry on the regulated activity.

(4) A person cannot be a person to whom this regulation applies if any of the grounds of unfitness specified in Schedule 1 apply.

(5) The information specified in Schedule 2 and such other information as is appropriate must be available to be supplied to the Commission in relation to each person to whom this regulation applies.

(6) For the purposes of this regulation—

"director" includes any individual who performs the functions of, or functions equivalent or similar to the functions of, a director, by whatever name called, including—

(a) a director (including the chairman) of an NHS trust established under section 25 of the National Health Service Act 2006([12]),

(b) a director of an NHS foundation trust, and

(c) a trustee of a charity.

Cessation of unfitness

2B.—(1) Subject to paragraph (3), a person ("P") who is deemed unfit on a ground specified in paragraph 1 of Schedule 1, and not on any other ground specified in that Schedule, may apply in writing to the Commission to

([12]) 2006 c. 41.

remove the prohibition under regulation 2A(4), and the Commission may direct that the prohibition is to cease to apply to P.

(2) Where the Commission refuses an application under paragraph (1) to remove that prohibition, no further application may be made by P under that paragraph until the expiry of the period of two years beginning with the date of the application, and this paragraph is to apply to any subsequent application.

(3) Where the Commission proposes to refuse an application under paragraph (1), the Commission must give notice to P.

(4) A notice under paragraph (3) must—

(a) set out the grounds for the proposal to refuse the application, and

(b) state that within 28 days of service of the notice written representations with respect to the proposal may be made by P to the Commission.

(5) After the end of the period referred to in paragraph (4)(b), the Commission must decide to accept P's application or to refuse it and must give P notice of its decision."

(3) In regulation 14 (fit and proper persons employed), after paragraph (5) insert—

"(6) This regulation shall not apply in a case to which regulation 2A applies."

(4) In regulation 17(1) (offences), after "regulations" insert "2A or".

(5) The Schedule (information required in respect of persons involved in carrying on a regulated activity) is to become "Schedule 2" and before that Schedule insert—

"SCHEDULE 1 Regulation 2A

Unfit person test

1. The person has within the preceding five years—

(a) been convicted in the United Kingdom of any criminal offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence; and

(b) been sentenced to a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine), and

on appeal the conviction has not been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment or a sentence of imprisonment of less than 3 months (whether suspended or not).

2. The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.

3. The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.

4. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.

5. The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland."

Revocation

3. Regulation 4 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010([13]) is revoked.

([13]) S.I. 2010/781.

Signed by the authority of the Secretary of State for Health

Name
Minister of State
00th ***** 2014 Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for a new requirement that will apply in relation to the way in which regulated activities for the purposes of Part 1 of the Health and Social Care Act 2008 are carried on. Regulation 2 introduces a requirement for persons involved in the running of a provider of regulated activities to be a fit and proper person.

The new fit and proper person requirement will apply to an individual who carries on a regulated activity, a partner in a partnership that does so and a director of a corporate body (including a trustee of a charity) that does so. The requirement lays down criteria to be met by such persons, including that they are of good character, not prohibited from performing the role by any enactment and that none of the grounds of unfitness specified in Schedule 1 apply. A person will be prohibited from performing the relevant role if they fail the fit and proper person requirement.

The grounds of unfitness in Schedule 1 include having been sentenced to imprisonment for 3 months or more within the last 5 years, being an undischarged bankrupt and being included on the children's barred list or the adult's barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006. In a case where a person fails the first of these grounds (imprisonment for 3 months or more), that person may apply in writing to the Care Quality Commission to remove the prohibition. The Care Quality Commission will then consider whether or not the prohibition should continue to apply to that person.

A full impact assessment of the costs and benefits of this instrument is available from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS (www.gov.uk/government/organisations/department-of-health) and is published alongside this instrument and its Explanatory Memorandum at www.legislation.gov.uk.

Annex D

Questions for the consultation

1) Do you think the fit and proper person regulations [**Annex C**] reflect the policy aims we have set out?

Yes	No	Maybe
☐	☐	☐

Other comments:

2) Are there any other criteria for deeming a person unfit which should be included in Schedule 1 in the draft regulations?

Yes	No	Maybe
☐	☐	☐

Other comments:

3) Do you have any other comments about the draft regulations?

Yes	No	Maybe
☐	☐	☐

Other comments:

4) Do you agree that breach of the requirement should constitute an offence?

Yes	No	Maybe
☐	☐	☐

Other comments:

5) Do you have any concerns about the impact of the proposed regulations on people sharing protected characteristics as listed in the Equality Act 2010?

Yes	No	Maybe
☐	☐	☐

Other comments:

Fit and proper person's test - Call for evidence

The impact assessment relating to these changes is available alongside this document. To help us calculate the likely impact of these changes, we would be interested in any relevant evidence you have, in answer to the questions below.

The following questions are primarily aimed at provider organisations:

1. How many directors currently sit on your Board? (You should include all executive directors, non- executive directors and chairs or their equivalents e.g. for a non-incorporated association please include the number of trustees on your Board)

2. On average, how often would you need to recruit a new director?

   Not yet needed to recruit a new director ☐

   Less than once every 5 years ☐

   Once every 3 to 5 years ☐

   Once every 1 to 3 years ☐

   More than once a year ☐

   Other (please give details) ☐

3. Thinking back to the last director you recruited, what steps did you take to ensure that the director was suitable for the job? (please tick all that apply)

   Assessed past employment and other relevant history ☐

Held interviews ☐

Sought references from past employers or other relevant individuals ☐

Carried out further pre-employment vetting (e.g. CRB checks) ☐

Bankruptcy checks ☐

Was already familiar with the director ☐

Other (please give details) ☐

4. Approximately how much time was required to carry out each of these steps? Please also give details of any additional costs (e.g. agency fees) you incurred.

5. Do you think that other organisations similar to yours carry out similar style checks?

   Yes ☐ No ☐

   If no, please detail how you believe other organisations differ.

6. Do you think you will need to make any changes to your recruitment process to comply with the proposed fit and proper person's test for directors?

   Yes ☐ No ☐

If yes, please give details, including any estimates of the additional costs that this might require and time taken.

7. How often do you assess the performance of your directors?

Annual performance assessment process ☐
Assessment only carried out when concerns are raised ☐
Continuous informal monitoring throughout the year but no formal process ☐
Do not currently assess the performance of directors ☐
Other (please give details) ☐

8. Approximately how much time is required to carry out an assessment? Please also give details of any additional costs (e.g. agency fees) you incurred in carrying out the assessment.

9. Do you think you will need to make any changes to your performance appraisal process to comply with the proposed fit and proper persons test for directors?

Yes ☐ No ☐

If yes, please give details, including any estimates of the additional costs that this might require

10. Do you think the impact assessment on the fit and proper person's requirement accurately highlights the nature and the size of the costs and benefits of the proposal?

Yes ☐ No ☐

Please provide more details

11. Are there any additional costs or benefits of the proposal that you do not feel are sufficiently addressed in the accompanying Impact Assessment?

Yes ☐ No ☐

Please provide more details

12. Do you agree that the identified benefits of improved accountability and patient safety are expected to outweigh the costs, due to the potentially significant impact that poor leadership can have on the quality of care of an organisation?

Yes ☐ No ☐

Please provide more details