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NHS South East London Integrated Care Board

Fit and Proper Persons Test Policy (CG17)

Approved by	SEL ICB Executive Committee
Date approved	22 January 2025
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Target audience	All Board members of NHS South East London ICB and executive directors/ non-executive members.

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Contents

SECTION 1: BACKGROUND AND CONTEXT	4
1. Introduction.....	4
2. Requirements of the Fit and Proper Person Regulations (FPPR)	5
3. Application.....	5
4. Roles and responsibilities.....	6
SECTION 2: THE FPPT FRAMEWORK AND PRACTICAL ADMINISTRATION.....	9
5. FPPT Framework	9
6. FPPT Assessment and Director Appointments	9
7. NHS Leadership Competency Framework	11
8. The FPPT assessment process in detail	12
9. Breaches, investigations and dispute resolution.....	18
10. Personal Data.....	19
11. Quality assurance and governance	21
SECTION 3: GENERAL POLICY MATTERS.....	23
12. Equality and diversity statement.....	23
13 Links to other Policies/Documents and Guidance	23
14 Specialist review.....	23
Appendix 1: Self-attestation form	24
Appendix 2: Annual assessment form	26
Appendix 3: Board member reference (template)	30
Appendix 4 – processes for Board Member references	39
Appendix 5 - Equality & Equity Impact Assessment	40

SECTION 1: BACKGROUND AND CONTEXT

1. Introduction

Background

- 1.1. The Fit and Proper Persons Regulations (FPPR) were introduced in response to concerns raised following investigations into Mid Staffordshire NHS Foundation Trust and Winterbourne View Hospital.
- 1.2. The Regulations stipulate that NHS organisations must not appoint or have in place directors unless they meet the FPPR standards. To assess individuals, the Fit and Proper Person Test (FPPT) was introduced in 2014 via Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 1.3. In 2019, Tom Kark KC made recommendations to revise the existing FPPT assessment process in his review into its scope, operation and purpose. The aim of strengthening the FPPT is to prioritise safety and good leadership in NHS organisations. In response to these recommendations, NHS England (NHSE) published a Fit and Proper Person Test Framework in August 2023 to support NHS organisations' compliance with the regulations and ensure directors satisfy the regulatory requirements. The Framework also takes into account the requirements of the Care Quality Commission (CQC) in relation to directors being fit and proper for their roles.
- 1.4. By way of a formal assessment, Integrated Care Boards are required to demonstrate compliance with the FPPR to NHS England on an annual basis.

Purpose, Aims and objectives of the policy

- 1.5 The purpose of this policy is to outline the processes that will be followed by NHS South East London ICB to ensure its compliance with FPPR requirements.
- 1.6 Application of this policy and the NHSE Framework will help board members to build a portfolio to support and provide assurance they are "fit and proper", enabling the ICB to ensure its directors can demonstrate high standards of leadership which translates into greater staff wellbeing and - critically – delivery of better clinical care. Ensuring that board members are demonstrating the right behaviours will help the NHS drive its cultural initiatives: namely, to foster a culture of compassion, respect and inclusion, and a feeling of belonging; as well as setting the tone at the top to encourage a listening and speaking up culture.

Scope of the policy

- 1.7 The Fit and Proper Persons Test (and therefore the scope of this policy) applies to all directors and those performing the functions of, or functions equivalent or to the functions of, a director in all NHS organisations registered with the CQC. ICBs and NHSE are within the scope of the Framework.
- 1.8 Further definition of the roles considered to fall under this description for the purposes of NHS South East London ICB are detailed in section 3 of this policy.

2. Requirements of the Fit and Proper Person Regulations (FPPR)

2.1 The FPPR requires that those individuals fulfilling a role deemed to be that of a director or equivalent, meet the following criteria:

- a) The individual is of good character
- b) The individual has the necessary qualifications, competence, skills and experience
- c) The individual is capable by reason of their health, after reasonable adjustments are made, of properly performing tasks that are intrinsic to the office or position for which they are appointed or to the work for which they are employed
- d) The individual has not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) while carrying out a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity
- e) None of the grounds of unfitness specified in part 1 of Schedule 4 apply to the individual.

2.2 The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:

- a) The person has been declared bankrupt and still has outstanding debts to pay or a person whose estate has an outstanding sequestration order awarded in respect of it, meaning their assets have been put into the control of a trustee to be used to pay off their debts and this process is still ongoing.
- b) 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.
- c) The person is a person to whom a temporary prohibition (moratorium) period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986, meaning they do not have to pay their debts during that period.
- d) The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
- e) 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.
- f) The person is 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.

The good character requirements referred to above in Regulation 5 are specified in Part 2 of Schedule 4 to the Regulated Activities Regulations, and relate to:

- a) Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence.
- b) Whether the person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

3. Application

3.1 The Framework applies to the Board members of NHS organisations.

3.2 NHS England's definition of "board members" is:

- both executive directors and non-executive members (NEMs), irrespective of voting rights.
- interim (all contractual forms) as well as permanent appointments.
- those individuals who are called 'directors' within Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- those individuals who by virtue of their profession are members of other professional registers, such as the General Medical Council (GMC) or Nursing and Midwifery Council (NMC), should still be assessed against this Framework if they are a board member at an NHS organisation.

3.3 The Framework is designed to assess the appropriateness of an individual to effectively discharge their duties in the capacity of a board member. However, the framework does allow organisations to extend FPPT assessments to other key roles for example – those who may regularly attend board meetings or otherwise have significant influence on board decisions.

3.4 The FPPT requirement applies on an individual basis, rather than in relation to the board as a whole. Individuals fall under the requirements of the Regulated Activity Regulations regardless of whether they undertake the above role via a temporary, secondment or interim basis. The individual does not have to be an employee of the ICB to fall within the scope of this policy.

3.5 For the purposes of NHS South East London ICB, all Board members, as specified by the ICBs Constitution, will be required to meet the FPPT requirements, including executive directors, non-executive members and partner members. In addition, all executive attendees will be included in the scope of this policy. For partner members who have an NHS organisation as their principal employer, the ICB will place reliance on the FPPT checks carried out by that organisation.

4. Roles and responsibilities

4.1 Chair

The Chair is ultimately responsible for ensuring the ICB meets its obligations in relation to the Fit and Proper Persons test and that members of the Board have been subject to an appropriate appraisal process, which includes a development discussion and agreement of objectives.

The Chair will specifically ensure that:

- An appropriate programme is in place to identify and monitor the development of board members.
- Ensure any new members to the Board are competent and hold the skills and knowledge for the role and have completed an FPPT assessment in advance of the commencement of their role.
- They have completed their own annual self-attestation and adhere to the requirements of FPPR.
- They are assured that all board members have completed their own annual self-attestation return.
- They have completed an appraisal with each of the ICBs non-executive members, and the ICB Chief Executive.
- Sign off the annual assurance return for NHS England.

4.2 Chief Executive

The Chief Executive is responsible for ensuring that:

- They have completed an appraisal with each of the ICBs executive directors, and confirmed this has been completed to the Chair.
- Ensure any new executive directors are competent and hold the skills and knowledge for the role and have completed an FPPT assessment in advance of the commencement of their role.
- They have completed their own annual self-attestation and adhere to the requirements of FPPR.
- They are assured that all executive directors have completed their own annual self-attestation return.

4.3 Board members

Board members (i.e. those who are falling within the scope of MCR) must:

- Ensure they have completed an annual self-attestation and adhere to the requirements of FPPR.
- Respond promptly to any request for information or evidence required to support the completion of the FPPT assessment.
- Disclose any issues which may call into question their suitability for the role they are undertaking.

4.4 ICB Recruitment team

The ICB recruitment team will lead on the completion of the FPPT process at the point where a new member of the Board is appointed. This will include:

- Initial collation of declarations of interest.
- Arrange for DBS and social media checks to be completed as required.
- Ensure results of the FPPT are recorded in ESR.
- Highlight any concerns or issues arising from the FPPT checks to the ICB HR and ICB company secretary.
- Provide FPPT information as required to support completion of the Chairs annual assurance submission to NHS England and any audits.

4.5 ICB Company Secretary

The Company Secretary will:

- Co-ordinate the completion of annual self-attestation forms by all board members.
- Complete a draft of the annual assurance return for NHSE to be signed by the Chair.
- Work with the recruitment team to ensure a full FPPT assessment is completed for board members before they are appointed. and support the annual assessment process.
- Support the Chair in discharging their duties in relation to the FPPR.
- Prepare reports for presentation to the Board as required.

- Support CQC inspections, NHSE requests for information and internal audits as required.
- Maintain the FPPT policy.

SECTION 2: THE FPPT FRAMEWORK AND PRACTICAL ADMINISTRATION

5. FPPT Framework

5.1 The Framework sets out:

- When the full FPPT assessment is needed, which includes self-attestations.
- New appointment considerations.
- Additional considerations in specific situations such as joint appointments, shared roles and temporary absences.
- The role of the chair in overseeing the FPPT.
- The FPPT core elements to be considered in evaluating board members.
- The circumstances in which there will be breaches to the core elements of the FPPT.
- The requirements of a board member reference check.
- The requirements of accurately maintaining FPPT information on each board member in ESR.
- The record retention requirements.
- Dispute resolution.
- Quality assurance over the Framework.

The duty to take account of fit and proper person requirements is continuous and ongoing, however for the purposes of the Framework, NHS England considers it appropriate for NHS organisations to be able to consistently demonstrate on an annual basis that a formal assessment of each Board member is undertaken.

6. FPPT Assessment and Director Appointments

6.1 Full FPPT assessment

6.1.1 A documented, full FPPT assessment by the ICB is required in the following circumstances:

1. New appointments in board member roles, whether permanent or temporary, where greater than six weeks, including:
 - a. new appointments that have been promoted within an NHS organisation
 - b. temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis
 - c. existing board members at one NHS organisation who move to another NHS organisation in the role of a board member
 - d. individuals who join an NHS organisation in the role of board member for the first time from an organisation that is outside the NHS.
2. When an individual changes role within their current NHS organisation (for instance, if an existing board member moves into a new board role that requires a different skillset, e.g. Director of Finance).
3. Annually from the date of the previous FPPT to review for any changes in the previous 12 months.

Notes:

- *for points 1a – 1c above (new appointments) the full FPPT will also include a board member reference check.*
- *for points 2 and 3 above, the board member reference check will not be needed.*

6.1.2 The FPPR does not apply to a person who has left the board or ICB, or once a board is dissolved. If the individual applies for a new job with a new employer, it is the new employer's responsibility to assure itself that the candidate is fit and proper.

6.2 Annual assessment

6.2.1 The ICB will conduct an annual assessment of the FPPT information it has on file and ensure it still accurately reflects the status of its board and directors. Individuals will be asked to complete a self-attestation form to validate that no changes should be logged against their record in ESR. The information to be covered in the assessment is detailed in the table in section 8.2.2.

This process will involve the following steps:

1. Circulation of self-attestation forms (Appendix 1) to directors for completion – ICB Company Secretary
2. Update to ESR records from information provided – HR
3. Consolidation of outcomes on FPPT dashboard – HR
4. Completion of annual assessment form (see Appendix 2) for signing by Chair – ICB Company Secretary
5. Review and sign off of dashboard and annual assessment form – ICB Chair
6. Submission of completed form to NHS England – ICB Company Secretary

6.3 Joint appointments

6.3.1 Where a joint appointment is made across different NHS organisations, the designated host/ employing organisation is responsible for completion of the full FPPT process. The findings will then be shared with the Chair of the other contracting organisation for input to agree the board member is fit and proper to perform the role.

6.3.2 Where two individuals fulfil a board role as a job share, both individuals should be assessed independently against the FPPT requirements.

6.4 Partner member arrangements

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6.4.1 Where partner members are appointed to the Board from other NHS organisations, the ICB will place reliance on any FPPT assessment completed on that individual by their employing NHS organisation.

In the event that an individual has been appointed as a partner member but they are not of sufficient seniority within their employing NHS organisation that a FPPT assessment has been completed, then the ICB should undertake an FPPT assessment.

6.4.2 Where partner members are appointed who are not employed by an NHS organisation – such as the GP and Local Authority partner members – then the ICB will complete a full FPPT assessment.

6.5 Outcomes

6.5.1 No appointments to the Board should be confirmed until the full FPPT assessment has been completed and any issues resolved and documents.

6.5.2 For appointment to the role of Chair, approval is also required from the NHS England Appointments Team before commencement in role.

6.5.3 Where an individual does not meet the requirements of the FPPT, the following options are available:

- For the role of **Chair**, escalation should be made to the NHS England Appointments team
- For other (non-NHS England) appointed roles, the issue will be highlighted to the Chair and Chief Executive for a decision on next steps.

7. NHS Leadership Competency Framework

The NHS Leadership Competency Framework (LCF) was formally published on 28 February 2024, and has been designed to provide a consistent competency and skills benchmark against which board members are assessed.

The LCP is based on assessment of competencies within six domains, as detailed below, aimed at supporting ongoing development. NHSE are planning that this be followed by the launch of a specific Board Member Appraisal Framework in autumn 2024, which when published will be the standard to be used to complete future appraisals.

In addition, a Framework has been published for the conducting of annual appraisals of NHS Chairs, which is based on the competencies outlined in the LCF.

Copies of these documents can be obtained from the ICB Company Secretary if required.

The six LCF domains are:

1	Setting strategy and delivering long term transformation
2	Leading for equality
3	Driving high quality, sustainable outcomes

4	Providing robust governance and assurance
5	Creating a compassionate and inclusive culture
6	Building trusted relationships with partners and communities

The NHS leadership Competency Framework for board members (publication reference B04096_i) produced by NHS England includes a table in Appendix 2 which provides an optional scoring guide that could be adopted to enable individuals to self-assess against the competencies.

8. The FPPT assessment process in detail

8.1 Review of evidence

- 8.1.1 The Chair is ultimately responsible for ensuring the ICB can evidence that appropriate systems and processes are in place to ensure that all new and existing board members are, and continue to be, fit and proper. In addition to the FPPT assessment itself, consideration should be given to recruitment processes, induction, board training and development, and appraisal processes for both executive directors and non-executive members (including the Chair themselves).
- 8.1.2 For the Chair themselves, the senior independent director will review the evidence for the Chair and make a conclusion on their ability to meet the requirements of the FPPT.

8.2 Steps in the assessment process

- 8.2.1 NHS organisations are required to assess their directors against the following three core elements when considering whether they are a fit and proper person:
- Good character
 - Possessing the qualifications, competence, skills required and experience.
 - Financial soundness.
- 8.2.2 The assessment will comprise consideration of the following aspects shown within the table below:

	Initial recruitment	Annual check
First name	✓	n/a
Second name/ surname	✓	n/a
Organisation	✓	n/a
Staff group	✓	n/a
Job title	✓	n/a
Occupation code	✓	n/a
Position title	✓	n/a
Employment history	✓	n/a
Training and development	✓	✓
References	✓	n/a
Last appraisal and date	✓	✓

Details of any disciplinarys	✓	✓
Details of any grievances upheld against the individual	✓	✓
Whistleblowing	✓	✓
Behaviour where there are actions or investigations relevant to FPPT	✓	✓
Type of DBS disclosed	✓	✓ (3 yearly)
Date DBS received	✓	✓ (3 yearly)
Date of medical clearance	✓	n/a (unless it has changed)
Date of professional register check	✓	✓
Insolvency check	✓	✓
Disqualified directors register check	✓	✓
Disqualification from being a charity trustee check	✓	✓
Employment tribunal judgment check	✓	✓
County Court judgements check	✓	✓
Social media checks	✓	✓
Signed self-attestation form	✓	✓
Board member reference	✓	n/a
Letter of appointment (for joint appointments)	✓	n/a
Settlement agreement	✓	n/a
NINO	✓	n/a
Sign off by Chair/ CEO	✓	✓

8.2.3 Responsibilities for stages in the assessment process are shown in the table below:

1a.

Stage	Activity	Responsibility of:
1. New joiners	Collate evidence and obtain completed self-attestation form	Recruitment
2. Annual completion of self-attestation forms by Directors	Disseminate forms and collate responses	Company Secretary
	Resolution of any changes highlighted which may affect FPPT assessment	Company Secretary and Recruitment jointly
3. Maintenance of FPPT dashboard	Dashboard updated as appropriate	Company Secretary and Recruitment jointly
4. Review of results of self-attestation returns	For the ICB Chair	SID
	For other directors	ICB Chair
5. FPPT annual return	Completion of annual return	Company Secretary
	Sign off	ICB Chair
	Submission	Company Secretary

8.3 Employment History

This will be obtained through the usual recruitment processes.

8.4 Training and Development

Professional qualifications which are pertinent to the role will be validated by receipt of a copy of the relevant certification from the individual being assessed.

In order to support Board members to maintain competency, the ICB will expect all Board members to complete the mandatory staff training that is available for all staff via Workforce. Completion of mandatory requirements can be evidenced through Workforce and will be considered as part of the annual appraisal.

A directory of board level learning and development opportunities is available on the NHS England website on the following link <https://www.england.nhs.uk/long-read/directory-of-board-level-learning-and-development-opportunities/> and can be accessed by all Board members.

As part of the appraisal discussions, areas of development will be identified and requirements directed to the Associate Director for Corporate Operations to work with the ICB organisational development team to identify training opportunities for individuals and general development opportunities for the Board.

8.5 References

- 8.5.1 A standardised Board Member Reference (BMR) has been introduced by NHS England to ensure greater transparency, robustness and consistency in the process of appointing board members within the NHS. When writing a board member reference, the six competency domains in the Leadership Competency Framework should be taken into account, evidencing broad competence across all domains.

The BMR process for new appointments and leavers is set out in Appendix 4 and further information on references is set out in section 3.0 of the Framework.

- 8.5.2 **For new appointments**, Board member references will be requested in writing before appointment, as part of the FPPT assessment. This applies whether permanent or temporary appointments greater than six weeks are made, specifically:
- New appointments that have been promoted within an NHS organisation.
 - Existing board members at one NHS organisation who move to another NHS organisation in the role of a board member.
 - Individuals who join an NHS organisation in the role of board member for the first time from an organisation that is outside of the NHS.
 - Individuals who have been a board member in an NHS organisation and join another NHS organisation not in the role of board member, that is, they take a non-board level role.
- 8.5.3 In terms of obtaining references, the following approach should be taken:

- a. Where the individual is from outside the NHS or from within the NHS but moving into a Board role for the first time:
 - Obtain a minimum of two board member references (using the BMR template)
 - references to come from different employers, where possible.
- b. For an individual who moves from one NHS board role to another NHS board role, across NHS organisations:
 - Obtain one reference from a separate organisation in addition to the board member reference for the current board role will suffice.
- c. For a person joining from another NHS organisation:
 - The new employing/appointing NHS organisation should take reasonable steps to obtain the appropriate references from the person's current employer as well as previous employer(s) within the past six years.
 - These references should establish the primary facts as per the board member reference template.

8.5.4 Where a settlement agreement applies, references will not ask for specific information on settlement agreements or non-disclosure agreements but will request any further information and concerns about an applicant's fitness and propriety, relevant to the FPPT to fulfil the role as a executive director or non-executive member. If there is a historical settlement agreement/non-disclosure agreement already in place which includes a confidentiality clause, the ICB will seek permission from all parties prior to including any such information in a board member reference. The existence of a settlement agreement does not, in and of itself determine that a person is not fit or proper to be a board member.

8.5.5 Investigations (irrespective of reason for discontinuance) will be limited to those which are applicable and relevant to the FPPT for example:

- Relating to serious misconduct, behaviour and not being of good character.
- Reckless mismanagement which endangers patients.
- Deliberate or reckless behaviour
- Dishonesty.
- Suppression of the ability of people to speak up about serious issues in the NHS, e.g. allowing bullying or victimisation of those who speak up or blow the whistle, or any harassment of individuals.
- Any behaviour contrary to the professional Duty of Candour which applies to health and care professionals, e.g. falsification of records or relevant information.

Discontinued investigations are included in the reference request to identify issues around serious misconduct and mismanagement and to deliberately separate them from issues around qualifications, competence, skills, and experience and health, unless such competence and/or health issues could potentially lead to an individual not meeting the requirements of the FPPT.

8.5.6 Where the ICB is asked to provide a reference, the HR team will aim to provide a reference to another NHS organisation within 14 days of the date that the request is received. The standard Board Member Reference template will be used.

Where a current board member moves between different NHS organisations, a board member reference form following a standard format will be completed by the employer and signed off by the Chair of that NHS organisation.

A Board Member Reference must be completed for all leavers whether or not a reference has been requested. This should be retained on the personnel file and forwarded to another organisation as requested.

8.5.7 If an NHS organisation has provided a reference to another NHS organisation about an employee or former employee, and has subsequently:

- become aware of matters or circumstances that would require them to draft the reference differently.
- determined that there are matters arising relating to serious misconduct or mismanagement.
- determined that there are matters arising which would require them to take disciplinary action.
- concluded there are matters arising that would deem the person not to be 'fit or proper' for the purposes of Regulation 5 of the Regulations,

the NHS organisation that provided the reference should make reasonable attempts to identify if the person's current employer is an NHS organisation and, if so, provide an updated reference/additional detail within a reasonable timeframe. Revised references between NHS organisations should cover a six-year period from the date the initial board member reference was provided, or the date the person ceased employment with the NHS organisation, whichever is later.

8.5.8 For leavers, a reference will be completed irrespective of whether a reference has been requested by a future employer and including in the circumstances of retirement. This can be completed as part of the exit interview and the individual has the right to have sight of any reference that has been written for them. The competency domains in the LCF should be taken into account when the board member reference is written.

8.6 Appraisals

8.6.1 Annual appraisals will be completed by:

- NHSE or the ICB Senior Independent Director for the Chair.
- The Chair for non-executive members.
- The Chief Executive for executive directors.

The outcome of the FPPT assessments for board members will be provided by the HR and ICB Company Secretary to the Chair and Chief Executive to form part of the evidence considered within the appraisal meetings.

8.6.2 Evidence of the appraisals will be recorded on Workforce for the executive directors and via a paper-based method for non-executive members, with records retained in ESR by the HR team.

8.6.3 When setting objectives, equality, diversity and inclusion objectives are important and should always be considered by all involved in the process.

8.7 Disciplinaries and grievances

8.7.1 The ICB Company Secretary will request information from HR in relation to Disciplinaries, Grievances and Whistleblowing claims relating to/ made non-executby current board members.

8.7.2 Where a disciplinary or grievance finding is disclosed to the recruitment team as part of a reference or other communication from a previous employer, the circumstances will be discussed with the Chair for a decision to be made on a case-by-case basis concerning any actions to be taken.

8.8 DBS checks

8.8.1 The ICBs Safer Recruitment Policy (QN03) details the standard process the ICB recruitment team will follow in respect of DBS checks.

8.8.2 There are three types of DBS Checks:

- **Basic Check** – positions eligible for a standard level DBS certificate must be included in the Rehabilitation Offenders Act 1975 (Exceptions) Order 1975.
- **Enhanced Disclosure** – in addition to the above, the post would be included in the Police Act 1997 (Criminal Records) regulations.
- **Enhanced checks with childrens and/or adults barred list checks** – position that require an enhanced disclosure and under regulated activities that are covered by the barred list, as defined in the Protection of Freedoms Act 2012.

8.8.3 In respect Board members, all board members will have basic checks completed, with the exception of the Medical Director, Deputy Medical Directors, Chief Nurse, Deputy Chief Nurse, Chief Finance Officer, and Deputy Chief Finance Officer, who will be eligible for enhanced checks.

8.8.4 DBS checks will be arranged and paid for by the ICB as part of its due diligence in meeting the FPPT requirements.

8.8.5 In the event of an unsatisfactory DBS outcome, the process detailed in section 10 of the Safer Recruitment Policy will be enacted.

8.9 Annual checks to be undertaken by Recruitment Team.

8.9.1 The annual checks are in line with 8.2.2 and are as follows:

- Professional Register Check - The recruitment team will request evidence of continuing professional qualification and check against the appropriate professional register eg GMC, NMC, Accountancy, Human Resources.
- Insolvency check which can be found on the following link –[Search the bankruptcy and insolvency register - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/organisations/crystal-clear/insolvency-check)
- Disqualified directors register check which can be found on the following link: [Search for disqualified company directors - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/organisations/crystal-clear/disqualified-directors)

- Disqualification from being a charity trustee which can be found on the following link: [Search the Register of Removed Trustees \(charitycommission.gov.uk\)](https://www.charitycommission.gov.uk)
- Employment tribunal judgment check – information can be found on the following link: [Employment tribunal decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- County Court judgements check which can be found on the following link: [TrustOnline Search](https://www.trustonline.co.uk)
- Social media checks – conducted through Social Media check.com

8.9.2 Copies of outcomes of checks will be kept on the individual's personal file and the dates of the checks recorded on ESR FPPT screen.

8.10 Self-attestation

Each board member will be asked to complete a self-attestation form as part of the recruitment process and then annually. At the recruitment stage, this will form part of the standard recruitment process completed by the HR team. Co-ordination of the annual self-attestation process will be led by the Associate Director for Corporate Operations.

The Self-attestation form included in Appendix 1 should be completed in both scenarios.

9. Breaches, investigations and dispute resolution

9.1 Breaches

The Regulation will be breached if a board member or executive director:

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

- On receipt of information about a board member's fitness, a decision is reached on the board member that is not in the range of decisions a reasonable person would be expected to reach.

Exceptions

- If a board member or executive director is deemed competent but does not hold the relevant qualifications should be a documented explanation, approved by the Chair, as to why the individual in question is deemed fit to be appointed, or fit to continue in role if they are an existing board member or executive director. This should be recorded in the annual return to the NHS England regional director.
- Where an individual is deemed unfit (that is, they failed the FPPT) for a particular reason (other than qualifications) but the ICB appoints them or allows them to continue their current employment there should be a documented explanation as to why the individual is unfit and the mitigations taken, which is approved by the Chair. This should be submitted to the relevant NHS England regional director for review, either as part of the annual FPPT submission for the NHS organisation, or on an ad hoc basis as a case arises. In the event of a breach, the following process will be followed:

9.2 Investigations

Investigations will be undertaken in line with the ICB's Disciplinary Policy.

9.3 Dispute resolution

Where a board member or executive director identifies an issue with data held about them in relation to the FPPT, they should email the Associate Director of Corporate Operations, who is acting as Company Secretary for this purpose, to request a review.

Where this does not lead to a satisfactory resolution, the following options are available:

- For Chairs – the matter should be escalated to the NHS England Appointments Team.
- For all other board members and executive directors (including NHS England appointed board members where the above processes have not led to a satisfactory conclusion), the options could include:
 - referring the matter to the ICO
 - (for executive director roles only*) taking the matter to an employment tribunal.
 - instigating civil proceedings.

10. Personal Data

- 10.1 Personal data relating to the FPPT assessment will be retained in local record systems and specific data fields in the NHS Electronic Staff Record (ESR).

The information contained in these records will not routinely be accessible beyond an individual's own organisation.

Personal data is exempt from the Freedom of Information Act (FOIA).

10.2 **General Data Protection Regulation**

NHS England has established that the most relevant lawful basis for processing the FPPT data contained in ESR is set out in Article 6(1)(e) UK GDPR. This is on the basis that the processing of personal data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

As special category data would be processed as part of the maintenance of the ESR FPPT data fields, controllers will also rely on one of the lawful bases for processing set out in Article 9 UK GDPR: Articles 9(2)(b) – employment; 9(2)(g) – statutory/public functions; and 9(2)(h) (read with Schedule 1, paragraph 2 of the Data Protection Act 2018). This covers processing that is ‘necessary for the management of the health service.’

10.3 **Electronic Staff Record (ESR)**

ESR will be used by the ICB to record that FPPR tests have been undertaken and to produce reports to support audit trails of completed testing, sign off and annual assessment.

Information held in ESR will only be accessible by a limited number of senior individuals within the ICB.

ESR will be updated:

- For all new and existing board members/executive directors.
- Whenever there has been a change to relevant FPPT information held on ESR.
- For annual completion of the full FPPT.
- For annual completion of FPPT confirmed by Chairs.

As a minimum the ICB will conduct an annual review to verify that ESR is appropriately maintained.

Personal information recorded held on ESR includes details of the following:

- First name / surname
- National insurance number
- Organisation (current employer)
- Staff group
- Job title (current job description)
- Occupation code
- Position title
- Employment history
- Training and development
- References
- Last appraisal and date
- Disciplinary findings
- Date and type of DBS disclosed
- Date self-attestation form signed
- Social media checks
- Disqualified directors register check

- County Court Judgement check
- Date of medical clearance
- Date of professional register check
- Any ongoing and discontinued investigations relating to Disciplinary / Grievance / whistleblowing / Employee behaviour
- Insolvency check
- Employment tribunal judgement check
- Disqualification from being a charity trustee check
- Board member reference
- Sign-off by Chair/CEO.

The ICB's Privacy Notice provides further information on how the ICB processes personal information.

Personal data of the applicant is exempt from the FOIA.

On appointment, the ICB Company Secretary will write to new board members explaining what information is collected, how it will be stored and who will have access to it. By doing this, individuals will be afforded the opportunity to raise any concerns/objections regarding the proposed use of their data so that a review can be arranged.

Further information on data recorded on ESR can be found in section 3.10 of the Framework and in the FPPT for Board members: Guidance on electronic staff record. Some ESR data will be used by the ICB for mandatory and statutory equalities reporting.

11. Quality assurance and governance

11.1 To ensure the ICB's compliance with the FPPR, a number of assurance check points will be in place.

11.1.1 CQC checks – whilst it is the ICB's duty to ensure that they have fit and proper persons in post, the CQC has the power to take regulatory action against the ICB if it considers that it has not complied with the requirements of the FPPR. This may come about if concerns are raised to the CQC about an individual or during the annual review.

During its inspections, the CQC will consider the following:

- quality of processes and controls supporting the FPPT
- quality of individual FPPT assessments
- Board member references, both in relation to the new employing NHS organisation but also in relation to the NHS organisation which wrote the reference.
- collation and quality of data within the database and local FPPT records.

This may involve checking:

- personnel files of recently appointed directors (including internal appointments of existing staff)
- information or records about appraisal rates for executive directors and non-executive members

- that the ICB is aware of the various guidelines on recruiting executives and that they have implemented procedures in line with this best practice.

11.1.2 NHS England will quality assure the ICB through receipt and review of the annual submission to the regional director.

11.1.3 Internal Audit - The ICB's FPPT assessment process will be considered by the Audit Committee for assurance. Every 3 years, the ICB is required to undertake an internal audit to assess its FPPT processes, controls and compliance, in line with NHSE guidance.

11.1.4 Board - A paper will be presented to the board in public at least annually.

11.2 This policy will be reviewed every two years or earlier if changes are made to the FPPR or FPPT framework, or other associated ICB policies.

SECTION 3: GENERAL POLICY MATTERS

12. Equality and diversity statement

- 12.1 NHS SEL ICB is committed to equality of opportunity for its employees and members and does not unlawfully discriminate on the basis of their “protected characteristics” as defined in the Equality Act 2010 - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. An Equality Impact Assessment has been completed for this policy.
- 12.2 If members or employees have any concerns or issues with the contents of this policy or have difficulty understanding how this policy relates their role, they are advised to contact the Chief of Staff.

13 Links to other Policies/Documents and Guidance

The following documents should be read in conjunction with this policy:

SEL ICB Disciplinary policy
SEL ICB Freedom to Speak Up and Whistleblowing Policy
SEL ICB Standards of Business Conduct Policy
SEL ICB Anti-Fraud and Bribery Policy
SEL ICB Training and Development Policy
SEL ICB Confidentiality Policy
SEL ICB Information Governance Policy and Information Governance Framework
SEL ICB Safer Recruitment (DBS) policy
SEL ICB Constitution
The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
NHS England Fit and Proper Person Test Framework for board members
NHS Leadership Competency Framework for board members
Framework for conducting annual appraisals of NHS Chairs

14 Specialist review

The following subject matter experts have reviewed and provided input to the contents of this policy prior to its presentation to the ICBs Policy Review Group for recommendation:

- Tosca Fairchild, Chief of Staff
- Michael Boyce, Director of Corporate Operations and Deputy Chief of Staff
- Angela Paradise, Director of HR
- Sue Holford, Head of Recruitment

Appendix 1: Self-attestation form

Fit and Proper Person Test annual/new starter* self-attestation NHS South East London ICB

I declare that I am a fit and proper person to carry out my role. I:

- am of good character
- have the qualifications, competence, skills and experience which are necessary for me to carry out my duties
- where applicable, have not been erased, removed or struck-off a register of professionals maintained by a regulator of healthcare or social work professionals
- am capable by reason of health of properly performing tasks which are intrinsic to the position
- am not prohibited from holding office (eg directors disqualification order)
- within the last five years:
 - I have not been convicted of a criminal offence and sentenced to imprisonment of three months or more
 - been un-discharged bankrupt nor have been subject to bankruptcy restrictions, or have made arrangement/compositions with creditors and has not discharged
 - nor is on any 'barred' list.
- have not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.

The legislation states: if you are required to hold a registration with a relevant professional body to carry out your role, you must hold such registration and must have the entitlement to use any professional titles associated with this registration. Where you no longer meet the requirement to hold the registration, any if you are a healthcare professional, social worker or other professional registered with a healthcare or social care regulator, you must inform the regulator in question.

Should my circumstances change, and I can no longer comply with the Fit and Proper Person Test (as described above), I acknowledge that it is my duty to inform the chair.

Name and job title/role:	
Professional registrations held (ref no):	
Date of DBS check/re-check (ref no):	
Signature:	
Date of last appraisal, by whom:	
Signature of board member:	

Date of signature of board member:	
For chair to complete	
Signature of chair to confirm receipt:	
Date of signature of chair:	

*Delete as appropriate

Appendix 2: Annual assessment form

As per Appendix 5 of the NHS England Fit and Proper Person Test Framework for Board Members

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Part 1: FPPT outcome for board members including starters and leavers in period

Role	Number Count	Confirmed as fit and proper?			Leavers only	
		Yes	No	How many Board Members in the 'Yes' column have mitigations in place relating to identified breaches? *	Number of leavers	Number of Board Member References completed and retained
Chair/NED board members						
Executive board members						

Partner members (ICBs)						
Total						

*** See 3.8 'Breaches to core elements of the FPPT (Regulation 5)' in the Framework.**

Part 2: FPPT reviews / inspections

Use this section to record any reviews or inspections of the FPPT process, including CQC, internal audit, board effectiveness reviews, etc.

Reviewer / inspector	Date	Outcome	Outline of key actions required	Date actions completed
CQC				
Other, e.g., internal audit, review board, etc.				

Add additional lines as needed

Part 3: Declarations

DECLARATION FOR NHS SOUTH EAST LONDON ICB [year]

For the SID/deputy chair to complete:

FPPT for the chair (as board member)	Completed by (role)	Name	Date	Fit and proper? Yes/No

For the chair to complete:

Have all board members been tested and concluded as being fit and proper?	Yes/No	If 'no', provide detail:
Are any issues arising from the FPPT being managed for any board member who is considered fit and proper?	Yes/No	If 'yes', provide detail:

As Chair of NHS South East London ICB, I declare that the FPPT submission is complete, and the conclusion drawn is based on testing as detailed in the FPPT framework.

Chair signature:

Date signed:

For the regional director to complete:

Name:

Signature:

Date:

Appendix 3: Board member reference (template)

As per Appendix 2 of the NHS England Fit and Proper Person Test Framework for Board Members

STANDARD REQUEST: To be used only AFTER a conditional offer of appointment has been made.

[Date]

Human resources officer/name of referee

Recruitment officer

External/NHS organisation receiving request

HR department initiating request

Dear [HR officer's/referee's name]

Re: [applicant's name] - [ref. number] – [Board Member position]

The above-named person has been offered the board member position of [post title] at the [name of the NHS organisation initiating request]. This is a high-profile and public facing role which carries a high level of responsibility. The purpose of NHS boards is to govern effectively, and in so doing build patient, staff, public and stakeholder confidence that the public's health and the provision of healthcare are in safe hands.

Taking this into account, I would be grateful if you could complete the attached confirmation of employment request as comprehensively as possible and return it to me as soon as practically possible to ensure timely recruitment.

Please note that under data protection laws and other access regimes, applicants may be entitled to information that is held on them.

Thank you in advance for your assistance in this matter.

Yours sincerely

[Recruitment officer's name]

Board Member Reference request for NHS Applicants:

To be used only AFTER a conditional offer of appointment has been made.

Information provided in this reference reflects the most up to date information available at the time the request was fulfilled.

1. Name of the applicant (1)

2. National Insurance number or date of birth

3. Please confirm employment start and termination dates in each previous role

A:(if you are completing this reference for pre-employment request for someone currently employed outside the NHS, you may not have this information, please state if this is the case and provide relevant dates of all roles within your organisation)

B: (As part of exit reference and all relevant information held in ESR under Employment History to be entered)

Job Title:

From:

To:

Job Title

From:

To:

Job Title:

From:

To:

Job Title:

From:

To:

Job Title:

From:

To:

4. Please confirm the applicant's current/most recent job title and essential job functions (if possible, please attach the Job Description or Person Specification as Appendix A):

(This is for Executive Director board positions only, for a Non-Executive Member, please just confirm current job title)

<p>5. Please confirm Applicant remuneration in current role (this question only applies to Executive Director board positions applied for)</p>	<p><u>Starting:</u></p>	<p><u>Current:</u></p>
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6. Please confirm all Learning and Development undertaken during employment:

(this question only applies to Executive Director board positions applied for)

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7. How many days absence (other than annual leave) has the applicant had over the last two years of their employment, and in how many episodes? (only applicable if being requested after a conditional offer of employment)

Days
Absent:

Absence
Episodes:

8. Confirmation of reason for leaving:

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9. Please provide details of when you last completed a check with the Disclosure and Barring Service (DBS)

(This question is for Executive Director appointments and non-Executive Member appointments where they are already a current member of an NHS Board)

Please provide a summary of the outcome and actions to be undertaken for the last 3 appraisals:

12. Is there any relevant information regarding any outstanding, upheld or discontinued complaint(s) or other matters tantamount to gross misconduct or serious misconduct or mismanagement including grievances or complaint(s) under any of the Trust's policies and procedures (for example under the Trust's Equal Opportunities Policy)?

(For applicants from outside the NHS please complete as far as possible considering the arrangements and policy within the applicant's current organisation and position)

Yes

No

If yes, please provide a summary of the position and **(where relevant)** any findings and any remedial actions and resolution of those actions:

14. Please provide any further information and concerns about the applicant's fitness and propriety, not previously covered, relevant to the Fit and Proper Person Test to fulfil the role as a executive director or non-executive member. Alternatively state Not Applicable. (Please visit links below for the CQC definition of good characteristics as a reference point) (7)(12)

Regulation 5: Fit and proper persons: directors - Care Quality Commission (cqc.org.uk)

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (legislation.gov.uk)

15. The facts and dates referred to in the answers above have been provided in good faith and are correct and true to the best of our knowledge and belief.

Referee name (please print): Signature:

Referee Position Held:

Email address:

Telephone number:

Date:

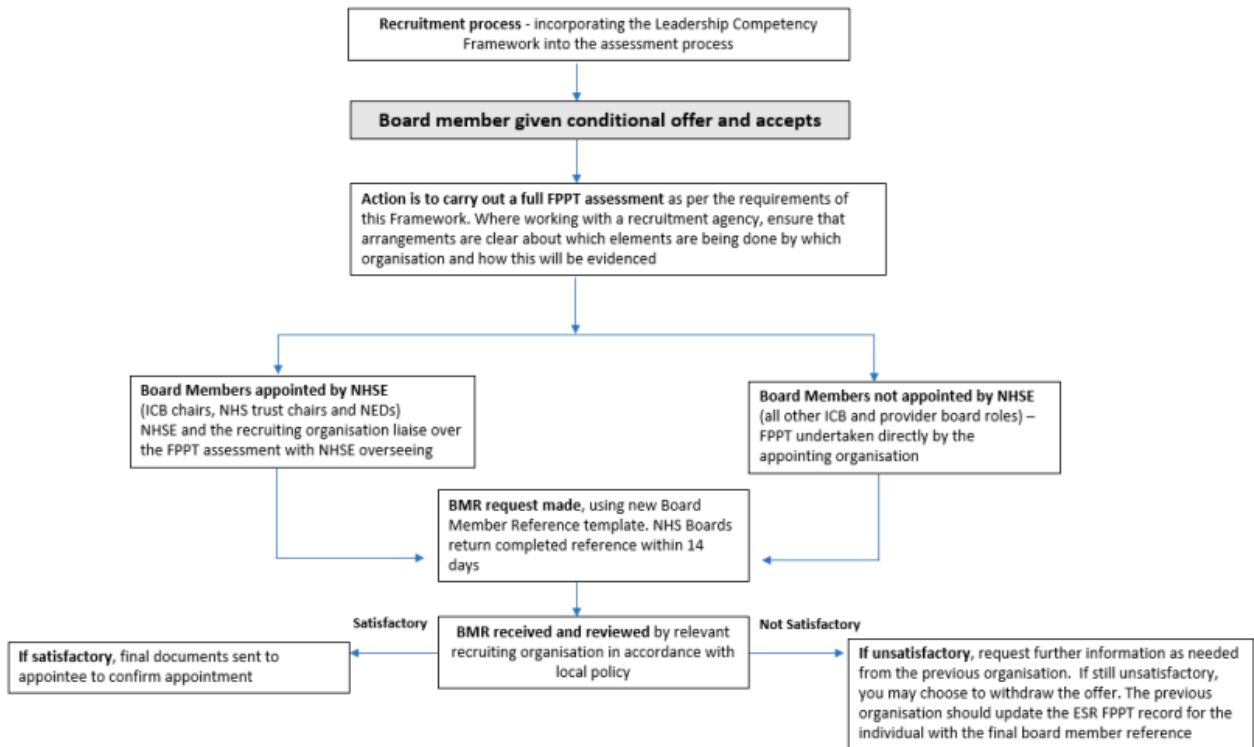
Data Protection:

This form contains personal data as defined by the Data Protection Act 2018 and UK implementation of the General Data Protection Regulation). This data has been requested by the Human Resources/ Workforce Department for the purpose of recruitment and compliance with the Fit and Proper Person requirements applicable to healthcare bodies. It must not be used for any incompatible purposes. The Human Resources/Workforce Department must protect any information disclosed within this form and ensure that it is not passed to anyone who is not authorised to have this information.

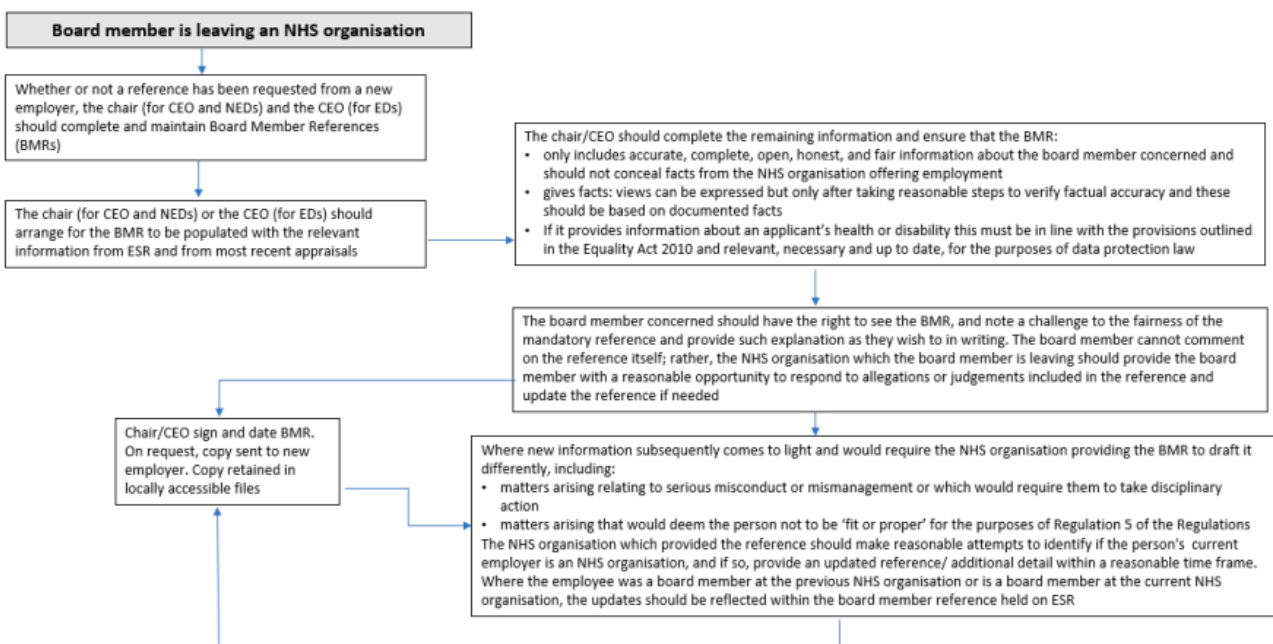
Appendix 4 – processes for Board Member references

As per the NHS England Fit and Proper Person Test Framework for board members

Board Member Reference (BMR) – for appointments



Board Member Reference (BMR) – for leavers



NB: a larger standalone diagram of this process can be provided on request by email to selgovernance@selondon.ics.uk.

Equality Analysis Screening Tool

Date of Assessment	2 July 2024
Assessor Name(s) & Job Title(s)	Simon Beard, Associate Director of Corporate Operations
Organisation	NHS South East London ICB
Name of the project/decision	SEL ICB Fit and Proper Persons Test Policy
Aim/Purpose of the project/decision	To detail the processes to be followed within the ICB to meet the requirements of the Fit and Proper Persons Test in alignment with the NHS England Fit and Proper Person Test Framework for board members.

1. Do you consider the project/decision to have an *adverse workforce equality impact and/or health inequality impact* on any of the protected groups as defined by the Equality Act 2010? Write either 'yes' or 'no' next to the appropriate group(s).

Protected group	Yes/No	Protected group	Yes/No	Protected group	Yes/No
Age	No	Pregnancy/Maternity	No	Marriage/Civil Partnership (employment only)	No
Disability	No	Race	No	Socio-economic / Deprivation	No
Gender	No	Religion/Belief	No	Carers	No
Gender reassignment	No	Sexual orientation	No	Digital Exclusion	No

2. If you answered 'yes' to any of the above give your reasons why

N/A

3. If you answered 'no' to any of the above give your reasons why

This policy applies equally to all individuals who meet the criteria for eligibility to complete the Fit and Proper Persons Test defined by the ICB – being they are members (voting or otherwise) of the ICB Board.

This policy will be applied consistently across all Board members.

4. Please indicate if a Full Equality Analysis is recommended:		NO	YES
Signature of Project Lead: Simon Beard	Date completed 2/7/24	No	
Signature of reviewing member of Equality Team: <i>Louis French</i>	Date reviewed: 25/10/24	IF YES, BEGIN TO GATHER DATA FOR COMPLETION OF A FULL EQUALITY ANALYSIS	