

Response issued under the Freedom of Information Act 2000

Our Reference: CQC IAT 2021 0844

Date of Response: 19 March 2021

Information Requested:

“Please can you disclose:

1/ Any CQC guidance to CQC inspection teams on how to inspect whether provider organisations are compliant with CQC Regulation 5 Fit and Proper Persons?

If the guidance is already published, please direct me to where it is published.

In particular, does CQC define what specific checks its inspectors should take when inspecting provider compliance with CQC Regulation 5 Fit and Proper Persons?

2/ Does CQC hold central data on how well CQC inspectors check provider compliance with CQC Regulation 5 Fit and Proper Persons? If information is held centrally, please advise what categories of information are held.

3/ Has CQC audited/ reviewed how thoroughly CQC inspectors check providers’ compliance with CQC Regulation 5 Fit and Proper Persons?

If audits/ reviews have been conducted, please shared the findings of any such audits and reviews, and any follow up action taken by CQC.

4/ Does CQC explicitly require its inspectors to check provider directors’ qualifications?

5/ Does CQC require its inspectors to check a minimum proportion of provider directors’ personnel files when inspecting compliance with CQC Regulation 5 Fit and Proper Persons? If there is a minimum percentage of checked files required by CQC, please advise what this threshold comprises.

6/ Does CQC require its inspectors to assess provider compliance with CQC Regulation 5 Fit and Proper Persons in ALL inspections?”

The Information Access team has now coordinated a response to your request.

CQC has considered your request in accordance with the Freedom of Information Act 2000 (FOIA).

Our first obligation under the legislation is to confirm whether we do or do not hold the requested information.

In accordance with section 1(1) of FOIA we are able to confirm that CQC **does** hold recorded information in relation to this matter.

“1/ Any CQC guidance to CQC inspection teams on how to inspect whether provider organisations are compliant with CQC Regulation 5 Fit and Proper Persons?”

If the guidance is already published, please direct me to where it is published.

In particular, does CQC define what specific checks its inspectors should take when inspecting provider compliance with CQC Regulation 5 Fit and Proper Persons?”

Please refer to the below information on actions we take in respect of assessing the compliance with Regulation 5 Fit and proper persons.

During an inspection

If a CQC inspector has concerns during an inspection of an adult social care, primary medical, dental care or independent healthcare service, they will need to establish if the concerns relate to a director (individual or collective) and their role in the quality and safety of care. The inspector should assess the concerns and whether they have an impact on the quality and safety of care at the location they are inspecting.

CQC will handle the information in line with our safeguarding or whistleblowing protocols, where relevant. The information received will not form part of the inspection feedback process.

For NHS bodies, as part of the inspection process we will assess and report whether the trust has robust and thorough processes in place for the recruitment, management, discipline and dismissal of its directors.

The assessment will be made as part of the well-led key question at the trust level ([KLOE W1: Is there the leadership capacity and capability to deliver high-quality, sustainable care?](#) with the related prompt W1.1: Do leaders have the skills,

knowledge, experience and integrity that they need – both when they are appointed and on an ongoing basis?).

Inspection teams should confirm whether the provider has undertaken appropriate appointments of its board directors and has satisfied itself that at appointment, and subsequently, all directors are deemed to be of good character and are not unfit.

This may involve checking:

- personnel files of recently appointed directors (including internal appointments of existing staff)
- information or records about appraisal rates for executive and non-executive directors
- that the provider is aware of the various guidelines on recruiting executives and that they have implemented procedures in line with this best practice.

In addition, inspectors may also check personnel files of existing directors.

Inspectors may also speak to:

- Relevant people who undertake checks and monitor the completeness of personnel files (for example human resources)
- Directors who have recently been appointed or who have recently updated documents relating to FPPR

Below is an extract from [published guidance on CQC for Adult Social Care](#) services

Fit and proper person requirements: adult social care services

Categories:

- Organisations we regulate

The intention of the fit and proper persons regulation (FPPR) is make sure that people who have director-level responsibility for the quality and safety of care, treatment and support are fit and proper to carry out their role.

It does not apply to providers that are individuals or partnerships.

Providers are responsible for the appointment, management and dismissal of their directors and board members (or their equivalents). They must carry out appropriate checks to make sure directors are suitable for their role. Our role is to make sure providers have a proper process in place to make robust assessments to satisfy the FPPR.

FPPR information of concern

CQC may intervene where there is evidence that proper processes have not been followed, or are not in place for FPPR. While we do not investigate individual directors, we will pass on all information of concern that we receive about the fitness of a director to the relevant provider.

We notify providers of all concerns relating to their directors and ask them to assess all of the information received. This is done with the consent of the third-party referrer, whose anonymity is protected wherever possible. There may be occasions when we are concerned about the potential risk to people using services, so we will need to progress without consent. The director to whom the case refers will also be informed, but their consent will not be sought.

Providers must detail the steps they have taken to assure the fitness of the director and provide us with a full response.

Action we may take

We will carefully review and consider all information. Where we find that a provider's processes are not robust, or an unreasonable decision has been made, we will either:

- contact the provider for further discussion
- schedule a focused inspection

take regulatory action in line with our enforcement policy and decision tree if a clear breach of regulation is identified.

We have published guidance on our website, which you can access below:

www.cqc.org.uk/sites/default/files/20180119_FPPR_guidance.pdf

with further guidance available here:

www.cqc.org.uk/guidance-providers/nhs-trusts/guidance-providers

We also attach the internal guidance document *Fit and proper person test*. It is important to note that Inspection teams are not expected to use all the tools at each inspection.

“2/ Does CQC hold central data on how well CQC inspectors check provider compliance with CQC Regulation 5 Fit and Proper Persons? If information is held centrally, please advise what categories of information are held.”

No central data is held on how well CQC inspectors check provider compliance with CQC Regulation 5 Fit and Proper Persons.

“3/ Has CQC audited/ reviewed how thoroughly CQC inspectors check providers’ compliance with CQC Regulation 5 Fit and Proper Persons?”

If audits/ reviews have been conducted, please shared the findings of any such audits and reviews, and any follow up action taken by CQC.”

In 2016 a sample of 18 records were reviewed across all three inspection directorates. The purpose of the sampling was to review how well the Fit and Proper Person Requirement at director level is reported, and the information acted upon.

Follow up action included

- [2017 Consultation](#) included proposed changes relating to FPPR, including guidance on interpreting what is meant by ‘serious mismanagement’ and ‘serious misconduct’, following expert advice from counsel
- Revised CQC inspector and provider guidance
- Process maps and standard operating procedure developed
- Updated inspector training on how to apply the principles and follow the processes of FPPR following the changes to internal process.

We also attach the summary of the Quality Sampling Report for full details of our findings and recommendations.

“4/ Does CQC explicitly require its inspectors to check provider directors’ qualifications?”

Most of this information is covered by our response to Point 1 of your request.

Additionally, the assessment for NHS Trusts will be made as part of the well-led key question at the trust level. CQC’s [How we Monitor, Inspect and Regulate NHS Trusts](#) guidance states:

Our assessment of trust-wide leadership, governance, management and culture will be the starting point for the trust-level rating for well-led. We also consider improvements and changes since the last inspection. A small team of inspectors and specialist advisors with appropriate experience will look at a range of evidence applicable at the overall trust board level. This includes interviews with board members and senior staff, focus groups, analysis of data, strategic and trust-level policy documents, and information from external partners. The scope and depth of our assessment of the well-led question varies for each provider. Our approach depends on factors such as the size of the trust, the findings of previous inspections, and information gathered from the provider, external partners and other sources on performance and risks in the trust across our five key questions.

“5/ Does CQC require its inspectors to check a minimum proportion of provider directors’ personnel files when inspecting compliance with CQC Regulation 5 Fit and Proper Persons? If there is a minimum percentage of checked files required by CQC, please advise what this threshold comprises.”

Please see our response to Points 1 and 4 of your request.

“6/ Does CQC require its inspectors to assess provider compliance with CQC Regulation 5 Fit and Proper Persons in ALL inspections?”

Regulation 5 applies to all registered providers, but not if they are an individual or a partnership (other than limited liability partnerships). Individuals and partnerships are governed by the existing Regulation 4. For example, adult social care providers run as small enterprises by individuals who are not limited companies, or GP practices run by traditional GP partnerships will not be covered by FPPR.

Please also see response to question 1 (‘during an inspection’ extract) and 4 (extract from provider guidance on NHS Trust well-led assessment approach).

There are also different types of inspection – some do not look at all five key questions – these vary between sectors. See ‘what we will inspect’ or ‘types of inspection’ sections in guidance linked below.

NHS Trust, Adult Social Care and Independent Healthcare guidance linked below, but CQC’s <https://www.cqc.org.uk/guidance-providers/nhs-trusts/guidance-providers> pages also contain documents for other sectors and subsectors.

CQC’s [How we Monitor, Inspect and Regulate NHS Trusts](#) guidance sets out different types of inspection for NHS Trusts.

CQC’s [How we monitor, inspect and regulate adult social care services](#) provider guidance details the different types of inspection in adult social care.

CQC’s [How we monitor, inspect and regulate independent healthcare services](#) provider guidance details the different types of inspection in independent health

Please note that as a result of the pandemic we suspended our routine programme of inspection (as set out in above guidance), and have not returned to our fixed timetable or frequency rules on inspecting, as set out in the linked guidance. We are drawing from our existing methodologies and adapting to the environment we are in. (see CQC [news item](#))

Where we do carry out on-site inspections, our action is targeted and driven by the information we hold on a service, focusing on areas where we can’t collect

information in other ways, or on services where we need to visit more, for example in secure settings

Advice and assistance

Under section 16 of the Freedom of Information Act 2000 (and in accordance with the section 45 code of practice) we have a duty to provide you with reasonable advice and assistance.

If you need any independent advice about individual's rights under information legislation you can contact the Information Commissioner's Office (ICO).

The ICO is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The contact details for the ICO are detailed below.

There is useful information on the ICO website explaining the rights of individuals:

www.ico.org.uk/your-data-matters

CQC Complaints and Internal Review procedure

If you are not satisfied with our handling of your request, then you may request an internal review.

Please clearly indicate that you wish for a review to be conducted and state the reason(s) for requesting the review.

Please note that it is usual practice to accept a request for an internal review within 40 working days from the date of this response. The [FOIA code of practice](#) advises that public authorities are not obliged to accept internal reviews after this date.

Please be aware that the review process will focus upon our handling of your request and whether CQC have complied with the requirements of the Freedom of Information Act 2000. The internal review process should not be used to raise concerns about the provision of care or the internal processes of other CQC functions.

If you are unhappy with other aspects of the CQC's actions, or of the actions of registered providers, please see our website for information on how to raise a concern or complaint:

www.cqc.org.uk/contact-us

To request a review please contact:

Information Access
Care Quality Commission
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

E-mail: information.access@cqc.org.uk

Further rights of appeal exist to the Information Commissioner's Office under section 50 of the Freedom of Information Act 2000 once the internal appeals process has been exhausted.

The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone: 0303 123 1113

Website: www.ico.org.uk