

**Quality Sampling Report**  
**Fit and Proper Persons Requirement**  
**November 2016**

**Background**

The purpose of the Quality and Risk Teams quality sampling programme is to contribute and support practice improvement by identifying areas of good practice to share, the key gaps in the implementation of current processes and areas of improvement required.

**Introduction**

The Fit and Proper Person Requirement (FPPR) was introduced in the hospitals directorate on November 27 2014 and to adult social care and primary medical and dental services on 1 April 2015. The intention of this regulation is to ensure that people who have director level responsibility for the quality and safety of care, and for meeting the fundamental standards are fit and proper to carry out this important role.

The regulation seeks to achieve this without needing an individual barring scheme that would be costly to operate. This regulation applies to all providers that are not individuals or partnerships (other than limited liability partnerships) that carry on a regulated activity. The regulation holds providers to account without regulating individuals or creating a barring scheme.

It is not the responsibility of CQC to ensure fitness although we can take action against the provider if we believe an unfit person to be in a directorship position. However, previous reviews and current incidents indicate that expectations of key stakeholders vary, including going beyond the scope of the current regulations. There is therefore still confusion regarding CQCs role in FPPR including a misunderstanding of the role of CQC in enforcing the regulation and an apparent overstatement of our regulatory powers.

Following the introduction of FPPR, progress has been made in embedding this requirement with guidance and training put in place for inspectors and other CQC staff. The original policy intention was to ensure that unfit directors could not move with ease between organisations.

At present there is no register of FPPR cases brought to the attention of CQC. It is possible to gather information on the number of Management Review Record (MRR) cases where a FPPR case is reviewed, however this is dependent on information added to CRM by inspectors. Since March 2016 there have been 38 MRR records

where the fit and proper person regulation 5 has been flagged as having been considered at MRR . This data was used to obtain a sample for this review.

18 MRR 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.

## Summary of Findings

- There are two internal guidance documents for staff titled *Regulation 5: Fit and proper persons: directors*, dated March 2015. One guidance document applied to the NHS and one for all other providers. Both documents lack clarity and include out of date information and contacts. Whilst the NHS guidance details how FPPR is to be reviewed on inspection, the adult social care, primary medical and dental care, and independent healthcare guidance clearly states that we will not be in a position to inspect proactively on the 1 April 2015 and that arrangements would be put in place later in the year to allow proactive inspection of FPPR requirements. These arrangements are not yet in place.
- The current guidance does not provide enough detail for the inspector to follow regarding which regulation applies to which type of provider, and what types of evidence would constitute a breach. There is also a lack of clarity about what is considered to be serious mismanagement, what to do if a breach of regulation 5 is determined and how the information and any proposed action should be escalated.
- Our current management information on FPPR cases and records of action taken in relation to FPPR is not complete or correct. There are a lack of processes to follow when FPPR information is received by CQC The way we record and manage information relating to FPPR is inconsistent and as a result we are unable to track referrals or provide an audit trail of decision making and action taken. The only source of data at the present time is from the Management Review Record (MRR) where FPPR has specifically been selected for discussion and the box ticked. It is unclear whether FPPR has been discussed outside of MRR processes or at other MRR as part of wider discussions. In light of the nature of the regulation and it's links to wider governance issues within an organisation, it seems probable that staff may often consider FPPR as part of a wider governance failing under regulation 17 and therefore it may not be clearly recorded on CRM (see later findings regarding regulation 17). We also found five cases where the FPPR box had been ticked in error.

- The hospitals directorate hold monthly panel meetings to consider FPPR director level concerns. Information relating to individual issues are recorded on a spreadsheet which is updated and held in a restricted folder in the Y drive. This information is not transferred into CRM unless there is a breach to regulation 5 and enforcement action is taken. Therefore this information is not captured as part of data collection.
- Inspectors are unsure when FPPR is applicable to some corporate providers and how this is addressed when inspecting at location level. There is a lack of clarity on how we will gain assurance of FPPR from some organisations. This results in inconsistency in report writing where FPPR issues are sometimes reported against and at other times not.
- The sample included an independent health care provider where there was evidence the local inspection activity, which indicated corporate FPPR issues, was escalated nationally and action was taken at provider level. There was clear evidence of how the regulation had been considered within the MRR and the rationale for the final decision to include the FPPR breach within regulation 17 for systemic governance failings.
- In NHS inspections FPPR is proactively inspected, with specific prompts to guide staff as to the information that should be reviewed to determine if the provider is meeting the standard. Comprehensive NHS inspection reports include specific sections in the provider report relating to FPPR which inspectors complete during the report writing phase and which are reviewed by NQAG during report sign off. Across all other providers FPPR is only addressed reactively when specific issues arise.
- From the sample reviewed the majority of FPPR issues were raised at inspection, however there were a small number received from safeguarding, whistleblowing and at registration. Where the issue related to FPPR the MRR meeting discussed the issues and followed the decision tree to determine the necessary next steps.
- Where a MRR was conducted to discuss FPPR issues overall this was well documented across all the inspection directorates, clearly setting out the background, issues of concern, potential breaches, options available for action, why different options were discounted and the final course of action decided upon. In one case in adult social care, discussion relating to FPPR issues at MRR and conversation of the outcome with the provider brought about improvement without enforcement action being taken.

- However there was poor recording in the MRR of any further follow up, updates to the action and recording of the final outcome. When a MRR took place, with the exception of PMS, in the majority of cases this was not linked to any regulatory processes or enquiries relevant to the issue. There was no clear audit trail following the initial decision making process.
- Although staff have received some training in FPPR there remains a lack of confidence and awareness about regulation 5, what type of evidence indicates a potential breach and what to do if a breach is found. There is also confusion over what type of provider FPPR regulation 5 applies to. Of the 18 cases reviewed in the sample five had raised issues in relation to FPPR at MRR which were incorrect. Two related to breaches to regulation 4, two were not issues relating to FPPR and one the FPPR box had been ticked in error.

There have been five breaches to regulation 5 Fit and Proper persons for active services since 1 April 2016, three in Independent Mental Health and two in Adult Social Care. There have been no breaches in Acute Hospitals or primary medical services. All breaches resulted in a requirement notice to the provider.

- In three of the sample, where there was wider systemic governance issues identified during the inspection, FPPR was included in the requirements set out under breaches to regulation 17.
- There is some degree of confusion amongst staff as to the escalation route for potential regulation 5 breaches. Historically there had been a national panel which considered FPPR concerns across all directorates; this is still active within the hospitals directorate. Staff are unclear whether or not FPPR issues are now addressed following the usual process of a MRR. The guidance document includes an email contact (FPPR@cqc.org.uk) which is active but is used infrequently by staff.

## **Recommendations**

- The FPPR guidance, which should include real examples, should be reviewed and updated across all the inspection directorates so that staff are clear on how to identify and act upon concerns relating to FPPR. Guidance for 'other' providers (i.e. Non NHS) should be prioritised.
- The guidance should clarify what is meant in the regulation by the term serious mismanagement to enable staff to confidently consider any potential breaches to the regulation.

- Clear processes should be implemented to enable staff to record and manage information relating to FPPR in a consistent way and enable CQC to have accurate management information and assurance on action taken in relation to FPPR.
- Staff should be provided with opportunities to attend updated training in FPPR to increase their understanding of the regulation, guidance and process.
- Staff should be able to take issues to forums where expert advice is available to increase their understanding.
- Improve inspector awareness of the importance of maintaining a robust audit trail within the MRR of any action and follow up which takes place following the initial MRR meeting.
- The introduction of forums where FPPR considerations and outcomes can be shared across and within directorates would promote a shared understanding and consistent approach to the management of FPPR and breaches to regulation
- These recommendations should be referred to the ongoing work stream which is considering FPPR