

From: Information Access <REDACTED>
Subject: CQC IAT 2223 0065
Date: 25 May 2022 at 16:50:02 BST
To: Minh Alexander <REDACTED>

Dear Dr Alexander

CQC IAT 2223 0065

I write in response to your correspondence dated 27 April 2022, in which you made a request for information.

Your email raised some questions regarding the fit and proper person regulation (FPPR) that fall outside of the scope of the Freedom of Information Act 2000 (FOIA). In the interests of clarity, I hope that it will be useful to address those points here before moving on to the FOIA response.

Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“fit and proper persons: directors”)

The provider is responsible for the appointment, management and dismissal of its directors. The FPPR imposes a duty on providers to have individuals who meet the necessary FPPR requirements in director posts.

The provider must be able to show evidence that appropriate systems and processes are in place to ensure that all new and existing directors are, and continue to be, fit and that no appointments meet any of the unfitness criteria set out in Schedule 4 to the regulations.

CQC’s role is to monitor and assess provider compliance with the FPPR Regulation which means we check that the providers we register take appropriate steps to ensure that directors of their services are of good character, have the necessary skills, and are able to perform their duties.

It is for each registered provider to determine whether each of its directors satisfies the fit and proper person tests in regulation 5. CQC assesses provider compliance with FPPR. It is not the role of CQC to assess or take action against individual directors but we are concerned to ensure that each registered provider is properly discharging its legal duties under the FPPR.

CQC are not in a position to insist on how the trust carries out their review of the fitness of an individual when an FPPR referral has been made.

We will expect the provider to assess the information of concern and establish the facts relating to it. In addition, we will expect the provider to consider whether any of the concerns fall within the categories of the Regulation.

We will consider if the provider has made reasonable enquiries and come to a reasonable conclusion. If a provider chooses to commission an independent review,

we request that the identity of the appointed reviewer should be carefully considered by the provider as we do not appoint this person. We will request to see evidence of any action the provider intends to take and the outcome in response to the findings or recommendations of a review.

In the case of the review for the FPPR referral made for University Hospitals Birmingham (UHB) we suggested to the trust that they may benefit from an external independent review. However, there is scope for the trust to do a proper review without going out to someone independent. The trust gave their reasons for carrying out the review lead by a member of UHB staff (who is a qualified and practising solicitor) supported by an independent HR lawyer. The panel accepted that their decision was reasonable.

I can confirm that CQC was not party to one set of lawyers being removed from the trust's process on the basis of that they were not sufficiently independent. The trust made the decision not to use a set of lawyers because they had previously been involved in the case.

In our letter of 29 September 2021 and as per your email of 11 March we informed you "The trust carried out a review and the information that we subsequently received from the Chair satisfied CQC that the information of concern had been looked into and that the registered provider's processes to comply with Regulation 5 are robust."

You asked if CQC reviewed any primary sources of information such as independent review reports on Dr Rosser's fitness as a trust director (as opposed to any summarised information provided by the trust Chair) and in response to your question we referred to the Berit Reglar and James Gutteridge review as the independent review. We should have stated this was an internal review with independent support. Please accept our apologies for the error in our reference.

Freedom of Information Act 2000 response

Your request was as follows:

"I would be grateful for data from CQC as follows, please treat this as an FOI request

a) Since CQC Regulation 5 Fit and Proper Persons came into force, please disclose all the CQC senior managers who have chaired CQC's FPPR panel, and the dates of their tenures

b) Please give details of independent legal advice received by the CQC since it introduced this element into its regulation of Fit and Proper Persons, and please disclose the details of any law firms supplying services in this regard

c) How many FPPR referrals has CQC received in total on NHS trust directors since Regulation 5 commenced?

c) Can the CQC tell me how many of the FPPR referrals have resulted in any CQC finding of non-compliance with Regulation 5?

If so, and if the CQC is able to easily run a report on its data, please disclose details of the number of occasions on which CQC has found non-compliance, and any summary details available on what the areas of non-compliance were found.

d) Is the CQC in a position to easily run a search on data and tell me how many FPPR review reports it has received from NHS trusts following referrals? If so, please disclose how many such reports have been received.

e) Is the CQC in a position to easily run a search on data and tell me how many of the NHS trusts' FPPR review reports that it has received have been authored by NHS trust staff or managers, either in full or in partnership with an external party? If so, please disclose how many of the FPPR review reports received from trusts were authored by external parties, and how many were authored by trust staff or managers, whether partly or fully.”

The following responses are made in accordance with the Freedom of Information Act 2000 (FOIA):

- a. Since Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 came into force, the following CQC senior managers have chaired the Fit and Proper Person Regulation (FPPR) panel:

Prof. Sir Mike Richards (Chief Inspector of Hospitals) – Dec 2014-Feb 2016

Ellen Armistead (Deputy Chief Inspector of Hospitals) – Feb 2016-June 2019

Nigel Acheson (Deputy Chief Inspector of Hospitals) – June 2019-April 2022

Rosie Benneyworth (Chief Inspector of Primary Medical Services and Integrated Care) from April 2022

- b. The lawyer who supports our FPPR panel is instructed by CQC, with consequent professional obligations, and it would be inappropriate to disclose details under FOIA that would be likely to result in them being contacted directly by third parties in this respect.

I can confirm that we do not use a law firm and that the lawyer is on a panel of counsel maintained by the Attorney General. More guidance on the Attorney General's panels is available here: <https://www.gov.uk/guidance/attorney-generals-panel-counsel-appointments-membership-lists-and-off-panel-counsel>

CQC considers the advice they have given to be exempt from disclosure under section 42 of FOIA ("legal professional privilege").

We consider that there is a high public interest in maintaining the ability for public authorities to obtain independent legal advice. We consider that this public interest outweighs the public interest in transparency to be served by disclosure.

- c. i) Since Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 came into force, a total of 147 of the referrals made to the panel have related to NHS trusts. Some trusts have been referred more than once.

In total, these included 212 referrals of NHS trust directors. In some cases, this includes more than one referral of the same person.

Of the 147 total referrals relating to NHS Trusts, 95 were considered by the panel and these related to 108 directors (including some cases where the same director was referred more than once).

There are a number of reasons why a referral may not have been considered by the panel, for example where the person referred was no longer working in a role within the scope of the regulation or the information shared was not a matter that fell within the scope of regulation 5.

- c. ii) It is for the provider to discharge its legal duties under the regulation. FPPR referrals can conclude in a number of ways. For example, an FPPR referral may end where the director resigns from their post before the process has concluded or the director is dismissed through the disciplinary process. For this reason, no FPPR referrals relating to NHS trusts have reached an outcome that the provider is non-compliant with the regulation at the conclusion of the panel process.
- d. CQC have received a total of 29 review reports. Please be aware that some FPPR cases may be concluded without the requirement for a full review or the review may have been summarised in detail in a letter from the trust.
- e. 26 of the reports were external reviews (authored by parties external to the trust). 3 of the reports were internal reviews (authored partly or fully by trust staff).

I hope that this information is helpful to you. If you are not satisfied that this response complies with your rights under FOIA you can request an internal review by writing to information.access@cqc.org.uk. The scope of any such review would be restricted to matters of FOIA compliance. If you remain unhappy following internal review you will have a right to refer the matter to the Information Commissioner's Office (ICO). You can find contact details and more information on your rights at www.ico.org.uk

Yours sincerely

Information Access Team

Care Quality Commission

For information about CQC, including contact details, information about how we use and protect personal data, and how to request information from us, go to <https://www.cqc.org.uk/contact-us>

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