

Meg Hillier MP
Chair of the Public Accounts Committee
By email: pubaccomm@parliament.uk

12 May 2021

Dear Ms Hillier

Thank you for your invitation to appear at the Public Accounts Committee on 19 April to discuss Adult Social Care Markets. During the session I promised to write to you about the “fit and proper person” test for GPs and the NHS, and whether there have ever been any times when we have raised that as a concern in primary care provision.

There are a number of different regulatory routes for holding providers to account on this issue.

Fit and Proper Persons Requirement (Regulation 5)

At the point of registration, and throughout the time a provider is registered with us, providers must meet the Fit and Proper Persons Requirement (FPPR) and take proper steps to ensure that their directors, or equivalent, are ‘fit and proper’ for the role.

The terms ‘fit’ and ‘proper’ are set out in [Regulation 5 \(Fit and Proper persons\)](#) of the Health and Social Care Act 2008 (the ‘Act’). The Regulation is intended 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.

It applies to a provider’s board directors, board members and equivalents, who are responsible and accountable for delivering care, including associate directors and any other individuals who are members of the board, irrespective of their voting rights.

We do not undertake the fit and proper person tests of directors or equivalent. The responsibility for making the assessment of Fit and proper rest with the provider. Our role is only to scrutinise the administration of the FPPR by the provider and to assess whether they are properly discharging their duties under the FPPR. We will not register a service that does

not meet the requirements of regulation 5. We expect the provider to take all reasonable steps to maintain compliance with regulation 5.

When we receive information of concern about FPPR during an inspection, we will share all the data received with the provider. This will be done, where possible, with the consent of the person making the referral. If, following investigation, there are concerns under regulation 5 we would expect the provider to take appropriate steps. The role of reaching a decision about the truth or relevance of any information that is relevant to the FPPR lies with the provider, and not with us. As outlined above, our role is to scrutinise the trust's FPPR decision-making.

We look at whether the decision taken by the provider is within the range of decisions that a reasonable decision-maker would make.

Application of Fit and Proper persons in General Practice

GP practices run by *traditional* GP partnerships are not covered by FPPR legislation. Individuals and Partnerships are instead governed by the existing [Regulation 4, not Regulation 5](#). The intention of this regulation is to ensure that people who use services have their needs met because the service is provided by an appropriate person. GP providers must have a registered manager as a condition of their registration. Appointed managers must also apply and satisfy us about their fitness and meet with the other requirements of the relevant regulations and enactments.

Under Regulation 4 there is an expectation that registered providers, or their partners are:

- of good character,
- able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are:
 - where the provider or partner is an individual, intrinsic to the carrying on of the regulated activity, or
 - where the provider or partner is a partnership, intrinsic to their role in the carrying on of the regulated activity, and
- able to supply to the Commission, or arrange for the availability of, information relating to themselves specified in [Schedule three](#).

General Practices also have a general obligation to ensure that they only employ individuals who are 'fit' for their role using [Schedule three](#) of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Action taken on Regulation 4 and Regulation 5 in NHS and primary care services

Since 2017, we have served the 'fit and proper person' test (regulation 5) within NHS organisations on 37 occasions. This includes Requirement notices on 35 occasions and Warning notices on 2 occasions. These services include NHS acute hospitals; community health (both NHS and Independent); and NHS mental health services (community and residential). (*regulation 5 data prior to 1 April 2017 are not held centrally for NHS Hospital organisations and are excluded from this data*).

For GP services since 2015, Regulation 4 actions have been served three times on traditional GP practices and Regulation 5 actions have been served on one occasion on a director of a primary medical service.

Further action against Regulations 4, 6 and 7

In addition to the cases above a small the number of registration applications submitted by GP surgeries were refused on the basis of Regulations 4, 6 and 7 in the last five years.

Three applications were refused at the point of registration under Regulation 4 requirements (where the service provider is an individual or partnership). One registration has been refused under [Regulation 6](#) requirements where the service provider is a body other than a partnership, and six refused under [Regulation 7](#) requirements relating to registered managers. Both Regulation 6 and 7 also seek to ensure the individual is of good character; is able to properly perform tasks that are intrinsic to their role; has the necessary qualifications, competence, skills and experience to supervise the management of the regulated activity; and has supplied them with documents that confirm their suitability.

You also asked about organisations and companies with headquarters overseas, and if the regulations would be applicable in those circumstances. Currently overseas companies fall outside of our regulatory powers and we cannot register companies from overseas.

I hope this response is helpful. If the Committee has any further questions please don't hesitate to contact me via our Parliamentary and Stakeholder Engagement team: Matthew.hughes@cqc.org.uk.

Yours sincerely



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Care Quality Commission

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