

Review of FPPR: Outline terms of reference (draft)

In a statement to the House on 8 February Steve Barclay, Minister of State for Health at the Department of Health and Social Care, was clear that the review should consider:

“...[the] operation and purpose of the fit and proper test, including but not limited to: where an individual moves to the NHS in another part of the United Kingdom; where they leave but subsequently provide healthcare services to the NHS from another healthcare role, such as with a charity or a healthcare company; where differing levels of professional regulation apply, such as a chief executive who is a clinician compared to one who is a non-clinician; where there is a failure to co-operate with a review of this nature and what the consequences of that should be; and reviewing the effectiveness of such investigations themselves when they are conducted.”

The review will:

- Consider the scope, operation and purpose of the fit and proper person test as a means of specifically preventing the re-deployment or re-employment of senior NHS managers where their conduct has fallen short of the values of the NHS, as well as relevant managers in the independent healthcare and adult social care sectors.
- Report with recommendations to the Department of Health and Social Care by autumn 2018.
- Consider amendments to secondary legislation as a means of improving the operation and purpose of the test, including its applicability to specific kinds of misconduct, consistent with maintaining a learning culture.
- Consider whether and how to extend operation of the test to a full range of NHS bodies, above and beyond ‘providers’ as currently constituted, and a range of roles where appropriate.
- Consider when in relation to an individual’s employment an employer should apply the eligibility criteria - for example, prior to the employment starting and/or during the course of the employment, including if new evidence becomes available. Consider what forms of evidence may be taken into account by employers in applying the eligibility criteria.
- Consider the specification of a failure to cooperate with a properly constituted review or investigation as ‘misconduct’ within the test.
- Consider the specification of a loss or falsification of records as ‘misconduct’ within the test.
- Consider the specification of bullying and harassment as ‘misconduct’ within the test.
- Consider the specification of any conduct which might inhibit or discourage appropriate whistleblowing as ‘misconduct’ within the test.
- Consider the specification of a failure to secure relevant approvals for, or notify relevant bodies of, any “settlement agreements” and associated payments as ‘misconduct’ within the test.
- Review the application of the test compared with models of professional regulation in other areas of employment, for example those applying to clinicians.
- Consider what information and guidance should be made available to bodies subject to the requirement to enable them to meet it effectively.
- Engage and discuss these issues with a range of interested parties, including, but not limited to, the Care Quality Commission, NHS Improvement, NHS England, relevant Parliamentarians, and patients and relatives.