

CQC Consultation – ‘Our next phase of regulation’

Changes to the Fit and Proper Persons Requirement

The CQC Consultation proposes wide-ranging reforms: some of which impact on all regulated services, alongside specific proposals on the regulatory approach for primary medical services and adult social care.

This bulletin addresses:

Part 3 of the Consultation - ‘**Fit and Proper Persons Requirement**’

Impacts on: **all providers of health and adult social care**

Key points:

An important area of the CQC’s proposals in their phase 2 consultation is that of the Fit and Proper Persons Requirement (FPPR). The FPPR as it currently stands applies to directors as well as non-executive and interim directors of an organisation – those who are part of the ‘controlling mind’ of the business and who are strategic decision-makers. Under the new proposals, this will not change.

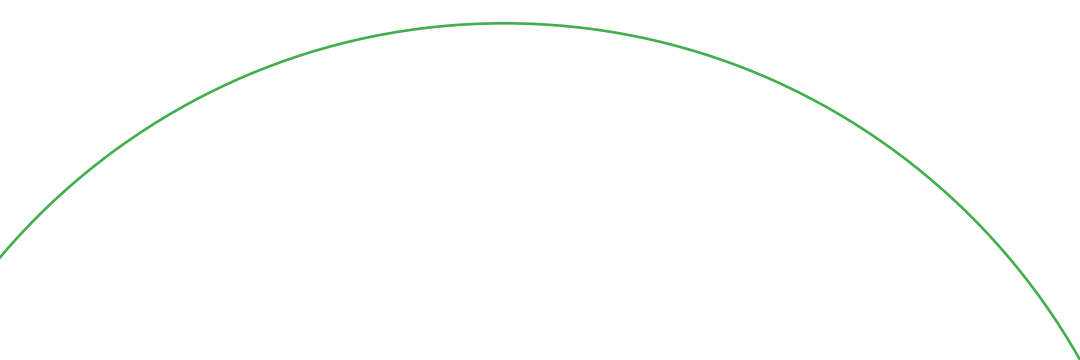
There are proposals, however, to change some of the key details around how the FPPR works. For example, currently when the CQC receives information from a member of the public or health and social care staff about concerns over the fitness of a director, the CQC asks the provider to respond only if CQC, having carried out an initial screening review, believes that information of concern. In future, however, the CQC is proposing to ask the provider to assess all the information that it receives. This will increase transparency for the provider – it will be given the full picture of all the information received – but will also increase the amount of resource, time and cost it must devote to the enquiry because there will be more information to assess and respond to.

The CQC will ask the person providing the information for their consent to pass all of it to the provider, and will seek to protect their anonymity if necessary. In exceptional cases, the CQC says it may need to progress without this consent if it is concerned about the potential risk to people using services.

The CQC is also proposing a wider definition of what it considers to be ‘misconduct’ and ‘mismanagement’ on the part of directors (including, for example, failure to learn from incidents, the suppression of report findings which compromise the organisation, and victimisation of staff raising legitimate concerns), as well as guidance as to when this should be considered sufficiently ‘serious’ to warrant removal from post. It can be seen that this is all part of the agenda of increasing accountability.

Some of these proposed changes of definition – to ‘mismanagement’ in particular – could have the effect of lowering the threshold, in practical terms, at which individuals are deemed not to have acted in a fit and proper manner. They could expose a greater number of individual directors to the risk of findings of unfitness.

Clearly, FPPR is set to be an area of increased focus for the CQC. Providers need to ensure that they understand what is being proposed and how it could affect individual directors in their organisation.



Current Position

- FPPR applies to executive and non-executive directors, permanent, interim and associate positions – those who are part of the ‘controlling mind’ of the organisation
- CQC asks a provider to assess only information received that the CQC believes is ‘of concern’
- FPPR assessment involves judging whether an individual has been guilty of ‘serious misconduct’ or ‘serious mismanagement’

Consultation Proposals

- Applicability is unchanged
- CQC will pass all information received to the provider, who will need to assess all of it
- Clarified definitions of what constitutes ‘serious’ misconduct or mismanagement. The definition of mismanagement in particular could lower the threshold for FPPR failings

Points for providers to consider

- Will we need to increase the resources that we have available to respond to FPPR enquiries, given more information will need to be assessed?
- Do we need to communicate and discuss the implications of the proposals with our directors individually before we respond?
- Do we believe that the new definitions of serious misconduct and mismanagement are fair and reasonable?
- Do we welcome greater transparency over the information received in a complaint, at the expense of greater accountability and lower thresholds of ‘culpability’?

There is a lot of detail in the Consultation and not a lot of time to respond – the consultation closes on 8 August 2017. It is important that providers study the proposals closely and make sure their voice is heard on what is being proposed. Bevan Brittan is hosting a consultation event with CQC on 26 July 2017 (in London) – [click here](#) to register for the event; the event will have a particular focus on the adult social care sector, but all providers are welcome to attend.

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