



**Fit and Proper Person Policy**

## **DOCUMENT PROFILE and CONTROL**

**Purpose of the document:** To provide assurance that the LAS will ensure that all persons appointed as directors satisfy the requirements set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

**Sponsor Department:** Corporate Governance

**Author/Reviewer:** Director of Corporate Governance/Trust Secretary

**To be reviewed by:** December 2019

**Document Status:** Final

<b>Amendment History</b>			
Date	*Version	Author/Contributor	Amendment Details
27/11/2018	1.2	Director of Corporate Governance	Amendments to failure to comply section
15/12/2016	1.1	IG Manager	Further minor amendments
01/12/2016	1.0	Head of Governance and Assurance	Document Profile and Control Update
18/11/2016	0.2	IG Manager	Document Profile and Control Update and other minor changes
14/11/2016	0.1	Sandra Adams	Formal policy to replace the current process
27/11/2018			

**\*Version Control Note:** All documents in development are indicated by minor versions i.e. 0.1; 0.2 etc. The first version of a document to be approved for release is given major version 1.0. Upon review the first version of a revised document is given the designation 1.1, the second 1.2 etc. until the revised version is approved, whereupon it becomes version 2.0. The system continues in numerical order each time a document is reviewed and approved.

<b>For Approval By:</b>	<b>Date Approved</b>	<b>Version</b>
Trust Board	27/11/2018	1.1

<b>Published on:</b>	<b>Date</b>	<b>By</b>	<b>Dept</b>
The Pulse	15/12/16	Governance Administrator	G&A
LAS Website	15/12/16	Governance Administrator	G&A
<b>Announced on:</b>	<b>Date</b>	<b>By</b>	<b>Dept</b>
The RIB	20/12/16	IG Manager	G&A

<b>Equality Analysis completed on</b>	<b>By</b>
18/11/18	Director of Corporate Governance
<b>Staffside reviewed on</b>	<b>By</b>

<b>Links to Related documents or references providing additional information</b>		
<b>Ref. No.</b>	<b>Title</b>	<b>Version</b>

Document Status: This is a controlled record as are the document(s) to which it relates. Whilst all or any part of it may be printed, the electronic version maintained in P&P-File remains the controlled master copy. Any printed copies are not controlled nor substantive.

## 1. Introduction

1.1 The Fit and Proper Person policy outlines the commitment of the London Ambulance Service NHS Trust ('the Trust') to ensuring that all persons appointed as directors satisfy the requirements set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('the Regulated Activity Regulations'). The Trust has responsibility to ensure these requirements are met and the Care Quality Commission (CQC) role is to monitor and assess how well this responsibility is discharged.

1.2 There is an expectation that senior leaders will set the tone and culture of the organisation, which leads to staff adopting a caring and compassionate attitude and adds weight to the importance of the Fit and Proper Person requirements.

## 2. Scope

2.1 The Trust confirms that the following roles fall within the scope of the relevant provisions of the Regulated Activity Regulations:

- Trust Chair
- All Non-Executive and Associate Non-Executive Directors
- Chief Executive
- Director of Finance and Performance
- Medical Director
- Chief Quality Officer
- Director of Operations
- Director of Corporate Governance/Trust Secretary
- Director of People and Culture
- Director of Strategic Communications
- Any other board member (regardless of voting rights) not listed above
- Any other person who performs the functions of, or functions equivalent or similar to, those of a director.

2.2 The individual falls under the requirements of the Regulated Activity Regulations regardless of whether they undertake the above role via a temporary, secondment or interim basis. The individual does not have to be an employee of the Trust to fall within the scope of this policy.

## 3. Objectives

3.1 Under the Requirements, the Trust must not appoint to a post under the scope of the Regulated Activity Regulations without first satisfying itself that the individual:

- Is of good character
- Has the necessary qualifications, competence, skills and experience

- Has the appropriate level of physical and mental fitness
- Has not been party to any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity
- Is not deemed unfit under the Regulated Activity Regulations' provisions
- Can provide the personal information as set out in the Regulations which must be available to be supplied to the CQC when required.

32 These requirements must be held at the point of commencing the role and on an ongoing basis.

33 The CQC's definition of 'good character' is not the objective test of having no criminal convictions but rather a judgement to be made as to whether a person's character is such that they can be relied upon to do the right thing under all circumstances. The Trust will use its discretion in reaching a decision regarding character.

34 The Trust has no discretion in relation to the requirement that the individual is not deemed unfit under the Regulated Activity Regulations and such individual is automatically prevented from holding any of the positions listed under paragraph 2 above.

35 In the event that an individual ceases to be a fit and proper person, the individual may be summarily dismissed and the Trust will notify the individual and the Trust's regulator.

36 **Appendix 1** provides information on what constitutes a fit and proper person under the Regulated Activity Regulations.

37 **Appendix 2** contains the self-declaration form which all directors and director-equivalents will be required to fill out.

## 4. Responsibilities

### 4.1 Trust Chair

- To take overall responsibility and accountability for ensuring all those required to confirm that they meet the requirements of the Regulated Activity Regulations do so at appointment and as an ongoing requirement.

### 4.2 Those within the scope of the Fit and Proper Person requirement

- To hold and maintain suitability for the role they are undertaking
- To respond to any requests of evidence of their ongoing suitability
- To disclose any issues which may call into question their suitability for the role they are undertaking.

### 4.3 Trust Secretary

- In conjunction with the Workforce and Organisational Development directorate to ensure all appointment checks (as outlined in Appendix 2) are undertaken for Directors and ensure the results are recorded and evidenced within the individual's file
- To liaise with the appointments team of NHS Improvement on appointment of the Chair and Non-Executive Directors to the Trust
- In conjunction with the Workforce and Organisational Development directorate to undertake an annual refresh of suitability (as outlined in Appendix 2) for all Directors.

#### 4.4 Procurement

- To ensure all agencies/candidate providers understand their responsibilities and comply with the requirements of this policy.
- The requirements of this policy must be communicated to any prospective agency/candidate provider prior to their engagement.

#### 4.6 Agency Providers

- To ensure the necessary checks have been outlined in this policy and make those checks available as and when required.

### 5. Compliance at the point of recruitment

5.1 The Trust has robust policies in place with regard to the appointment of directors, including:

- Confirming the status of specific qualifications as outlined within the relevant job description/person specification
- Identity checks
- Qualification and registration checks
- Right to work checks
- Disclosure and Barring Service (DBS) checks
- References (covering at least three years of employment, one of which must be from the current/most recent employer)
- Search of insolvency and bankruptcy register
- Review of full employment history seeking any explanation for gaps in employment
- Health questionnaire and occupational health clearance
- Values-based recruitment – the candidate's understanding of the Trust's and NHS values will be included as part of the interview process
- A search of the individual through internet search engines to note any relevant information in the public domain that may then be put to the candidate

- A self-declaration from the individual (Appendix 2)
- An explicit clause within the contract of employment/service level agreement to ensure the individual accepts the requirements of the Regulated Activity Regulations at the point they commence with the Trust.

52 All of the above will be recorded and held on the individual's personal file.

## **6. Assessment of continued compliance**

61 The Trust is responsible for ensuring the continued compliance of those persons to whom the Regulated Activities Regulations apply. It is intended this requirement will be fulfilled through a number of processes including:

- The completion of an annual self-declaration by all directors
- Introduction of annual checks for credit, bankruptcy and registration
- Formal appraisal processes
- Maintenance of the register of declared interests.

## **7. Failure to Comply**

71 The London Ambulance Service requires all those subject to this policy to take all practicable steps to comply with it. Compliance with this policy will be periodically monitored by Internal Audit. Any known or suspected instances of non-compliance will be reported to the Audit Committee for full investigation and appropriate disciplinary action.

72 A person's failure to provide relevant and timely information required for assessing their fitness and propriety is considered serious misconduct and will result in disciplinary action which may lead to dismissal.

<b>IMPLEMENTATION PLAN</b>				
<b>Intended Audience</b>	All directors			
<b>Dissemination</b>	Available on The Pulse and on the website under 'About Us' <a href="http://www.londonambulance.nhs.uk/about_us/how_we_are_run.aspx">http://www.londonambulance.nhs.uk/about_us/how_we_are_run.aspx</a>			
<b>Communications</b>	To be sent to all Directors; Workforce and OD; Procurement			
<b>Training</b>	N/A			
<b>Monitoring:</b>				
<b>Aspect to be monitored</b>	<b>Frequency of monitoring AND Too used I</b>	<b>Individual/ team responsible for carrying out monitoring AND Committee/ group where results are reported</b>	<b>Committee/ group responsible for monitoring outcomes/ recommendations</b>	<b>How learning will take place</b>
Employment checks Annual self-declaration Appraisal Register of Interests for Board members/ Directors	Annual self-declaration Review of declaration of interests at each Board meeting Annual update of Declared Interests	Director of Corporate Governance/Trust Secretary and Director of Workforce and OD – Workforce and OD committee and Trust Board	Trust Board	ELT and Trust Board



## Appendix 1

### FIT AND PROPER PERSON DECLARATION

1. Fitness to carry out the role of Director (or Director-equivalent post) in the London Ambulance Service NHS Trust (the Trust) is determined by the Health and Social Care Act 2008 (Regulated Activities) Regulation 2014 ('the Regulated Activities Regulations').
2. By signing the declaration in Appendix 2, a director is confirming that they do not fall within the definition of an 'unfit person' or any other criteria set out below, and that they are not aware of any pending proceedings or matters which may call such a declaration into question.
3. It is a condition of employment that those holding Director (or equivalent) posts in the Trust provide confirmation in writing on appointment and thereafter on demand, of their fitness to hold such posts.
4. The Chair and Non-Executive Directors are also required to meet the Fit and Proper Persons test for Directors.
5. The Trust shall not appoint, or permit to continue as a director, any person who is an unfit person.
6. The Trust will ensure that its contracts of employment with its Directors contain a provision permitting summary termination in the event of a Director being, or becoming, an unfit person. The Trust will enforce the provision promptly upon discovering any Director to be an unfit person.

### Regulated Activities Regulations

7. 'Regulated Activities' covers the provision of:
  - Personal care
  - Accommodation for person who require nursing or personal care
  - Accommodation for persons who require treatment for substance misuse
  - Treatment of disease, disorder or injury\*
  - Assessment or medical treatment for persons detained under the Mental Health 1983 Act
  - Surgical procedures
  - Diagnostic and screening procedures\*
  - Management of blood and blood derived products
  - Transport services, triage and medical advice provided remotely\*
  - Maternity and midwifery services
  - Termination of pregnancy services
  - Services in slimming clinics
  - Nursing care
  - Family planning services.

\*denotes the Activities the Trust is regulated to provide.

8. Regulation 5 of the Regulated Activities Regulations states that the Trust must not appoint or have in place an individual as a Director, or performing the functions of or equivalent or similar to the functions of, such a Director, if they do not satisfy all the requirements set out in paragraph 3 of that Regulation. The CQC document 'Regulations 5: Fit and Proper Persons: directors – Information

for NHS Bodies, March 2015' as amended from time to time provides further guidance on the requirement.

9. The requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are that:
- a) The individual is of good character
  - b) The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position for the work for which they are employed
  - c) The individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed
  - d) The individual has not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity; and
  - e) None of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

'Serious misconduct' includes assault, fraud and theft.

'Mismanagement' includes mismanaging funds and/or not adhering to recognised practice, guidance or processes regarding care quality.

'Privy to' means evidence that could lead the Trust to conclude that the individual was aware of some serious misconduct or mismanagement but did not take appropriate action to address it.

10. The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:
- a) The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged
  - b) The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order made to like effect in Scotland or Northern Ireland
  - c) The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (Debt relief orders) of the Insolvency Act 1986
  - d) The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
  - e) The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland
  - f) The person is prohibited from holding the relevant office or position, or in the case of an individuals for carrying on the regulated activity, by or under any enactment.
11. In assessing good character, the matters to be considered must include those listed in Part 2 of Schedule 4 to the Regulated Activities Regulations which are:
- a) Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence

- b) Whether the person has been erased, removed or struck off a register of professionals maintained by a regulator or health care or social work professionals.

### **FIT AND PROPER PERSON**

**(to be completed and returned pre-appointment in post and annually thereafter)**

1. Fitness to carry out the role of Director (or Director-equivalent post) in the London Ambulance Service NHS Trust (the Trust) is determined by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 ('the Regulated Activities Regulations').
2. This document forms part of your contract of employment and by signing the declaration below, you are confirming that you do not fall within the definition of an 'unfit person' or any other criteria set out below, and that you are not aware of any pending proceedings or matters which may call such a declaration into question.
3. It is a condition of your employment that you provide confirmation in writing, on appointment and thereafter on demand, of their fitness to hold such posts. Your post has been designated as being such a post.
4. The Chair and Non-Executive Directors are also required to meet the fit and proper persons test for Directors.
5. The Trust shall not appoint, or permit to continue as a Director, any person who is an unfit person.

### **Regulated Activities Regulations**

6. Regulation 5 of the Regulated Activities Regulations states that the Trust must not appoint or have in place an individual as a Director, or performing the functions of or equivalent or similar to the functions of, such a Director, if they do not satisfy all the requirements set out in paragraph 3 of that Regulation. The CQC document 'Regulations 5: Fit and Proper Persons: directors – Information for NHS Bodies, March 2015' as amended from time to time provides further guidance on the requirement.
7. The requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are that:
  - a) The individual is of good character
  - b) The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position for the work for which they are employed
  - c) The individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed
  - d) The individual has not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or

- not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity; and
- e) None of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

8. The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:

- a) The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged
- b) The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order made to like effect in Scotland or Northern Ireland
- c) The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (Debt relief orders) of the Insolvency Act 1986
- d) The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
- e) The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland
- f) The person is prohibited from holding the relevant office or position, or in the case of an individuals for carrying on the regulated activity, by or under any enactment.

9. In assessing good character, the matters to be considered must include those listed in Part 2 of Schedule 4 to the Regulated Activities Regulations which are:

- a) Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence
- b) Whether the person has been erased, removed or struck off a register of professionals maintained by a regulator or health care or social work professionals.

I acknowledge the extracts from the Regulated Activities Regulations above.

I confirm that I comply with the requirements as set out in Section 7 above, having regard also to matters in section 9 above.

I confirm that I do not fit within the definition of an 'unfit person' as listed in Section 8 above.

I confirm that there are no other similar grounds under which I would be ineligible to be appointed to/continue in post.

I undertake to notify the Trust immediately if I no longer satisfy the criteria to be a 'fit and proper person' or any grounds under which I would be ineligible to continue in post come to my attention.

Name:

Signed:

Position:

Date:

Pre-employment: Yes/No

Annual declaration: Yes/No

## Due Diligence

<b>Professional Registration</b>	
<b>Bankruptcy and Insolvency Registers</b>	<p>The Trust has searched the England and Wales Bankruptcy and Insolvency Register on (X Date) and can confirm that (Name) does not appear on the register.  <a href="http://www.gov.uk/search-bankruptcy-insolvency-register">www.gov.uk/search-bankruptcy-insolvency-register</a></p> <p>The Trust searched the Insolvency Service of Ireland register on (X Date) and can confirm that (Name) does not appear on the register.  <a href="http://www.isi.gov.ie/en/ISI/Pages/Registers">www.isi.gov.ie/en/ISI/Pages/Registers</a></p>
<b>Disqualified Directors Register</b>	<p>The Trust searched the disqualified directors register via the Companies House register on (X Date) and can confirm that (Name) does not appear on the register.  <a href="https://beta.companieshouse.gov.uk/">https://beta.companieshouse.gov.uk/</a></p>
<b>Internet based web search</b>	<p>The Trust conducted an internet based web search on (Name). the following search engines and websites were used:  <a href="http://www.google.com">www.google.com</a> and <a href="http://www.bing.com">www.bing.com</a></p> <p>Word searches that were used were:</p>
<b>Social Profiles</b>	<p>The following websites were used:  <a href="http://www.linkedin.com">www.linkedin.com</a>  <a href="http://www.facebook.com">www.facebook.com</a>  <a href="http://www.twitter.com">www.twitter.com</a>  (for example)</p>
<b>Proof of Identity</b>	Passport checked and verified on (Date)
<b>Referees</b>	