



# Fit and Proper Persons Policy

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<b>Equality Analysis</b>	July 2020
<b>Linked procedural documents</b>	Annual Leave Policy Flexible Working Arrangements Policy Special Leave Policy Adoption Leave and Pay Policy Employment Break Policy
<b>Dissemination requirements</b>	All staff via intranet
<b>Part of Trust's publication scheme</b>	Yes

The East of England Ambulance Service NHS Trust has made every effort to ensure this policy does not have the effect of unlawful discrimination on the grounds of the protected characteristics of: age, disability, gender reassignment, race, religion/belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity. The Trust will not tolerate unlawful discrimination on the basis of, spent criminal convictions, Trade Union membership or non-membership. In addition, the Trust will have due regard to advancing equality of opportunity for and fostering good relations between; people from different groups and people with protected characteristics.

This policy applies to all employees (whether permanent, fixed term or temporary) working at all levels and grades for the Trust, including senior managers, directors, non-executive directors, and on secondment, honorary contracts and volunteers. All Trust policies can be provided in alternative formats if required.

East of England Ambulance Service Trust recognises its obligation of supporting the requirements of the Modern Slavery Act 2015 and any future legislations. A prime objective of the Trust is to eradicate modern slavery and human trafficking and recognises the significant part it must play in both combatting it and supporting

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victims. The Trust is also committed to ensuring that its supply chains and business activities are free from any ethical and labour standards abuse.

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## 1. Introduction

This policy outlines the Trust's commitment to ensuring that all persons appointed as directors satisfy the requirements (set out in the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the Regulated Activity Regulations"). The Trust has a responsibility to ensure these requirements are met and the Care Quality Commission's role is to monitor and assess how well this responsibility is discharged.

There is an expectation on senior leaders to 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 objectives of the Fit and Proper Person's Regime (FPPR).

## 2. Purpose

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 Care Quality Commission ("CQC") when required.

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

No individual that is eligible for Fit and Proper Persons Test will commence in the post without all completed checks

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

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’s and the Trust’s regulator.

Further information in relation to what constitutes a fit and proper person under the Regulated Activity Regulations can be found in Appendix A.

The self-declaration form which all directors and director-equivalents will be required to fill out is at Appendix B.

### **3. Duties**

#### **3.1 Trust Chair**

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

#### **3.2 Those within the scope of FPPR**

- 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

### 3.3 HR Services

- To undertake all recruitment checks (as outlined in Appendix B) for employees and ensure the results are recorded and evidenced within an individual's file.
- To undertake the routine re-assessment under the DBS process for both Executive and Non-Executive Directors, in line with Trust policy

### 3.4 Head of Governance

- To undertake all appointment checks (as outlined in Appendix B) for Non-Executive Directors and ensure the results are recorded and evidenced within an individual's file.
- To undertake an annual refresh of suitability (as outlined in Appendix B) for all NonExecutive Directors and Executive Directors

### 3.5 Procurement

- To ensure all agencies/candidate providers understand their responsibilities and comply with the requirements of this policy. This should be evidenced through suitable contract documentation to ensure the position is clear

### 3.6 Agency Providers

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

### 3.7 Roles within Scope

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
- Deputy Chief Executive
- Director of Finance
- Director of Workforce
- Medical Director



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- Chief Operating Officer
- Any other board member (regardless of voting rights) not listed above
- Deputy Clinical Directors
- All Band 9 Staff
- Any other person who performs the functions of, or functions equivalent or similar to, those of a Director.

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.

### 4. Compliance at the Point of Recruitment

The Trust has in place robust processes with regard to the appointment of directors, these processes include the following:

- Confirming the status of specific qualifications as outlined within the relevant job descriptions / person specifications
- 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 explanation of any gaps in employment
- Health questionnaire and Occupational Health clearance
- Values based recruitment – values tested through interview process
- A search of the individual through internet search engines to note any information in the public domain which the Trust should be made aware of
- A self-declaration from the individual (see Appendix B)

- An explicit clause within the contract of employment/Service Level Agreement to ensure the individuals accepts the requirements of the Regulated Activity Regulations at the point they commence with the Trust

All of the above will be recorded and held on the individuals personal file

## 5. Assessment of Continued Compliance

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
- Requirement for regular health checks, including mental health (where these are deemed to be appropriate)
- Formal appraisal processes.
- Maintenance of the register of declared interests

## 6. Policy Review

This policy will be reviewed on a three yearly basis or more frequently if changes are made to the Fit and Proper person requirements.

## APPENDIX A

### FIT AND PROPER PERSON

1. Fitness to carry out the role of Director (or Director-equivalent post) in the East of England 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. By signing the declaration in Appendix B, 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 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. Your post has been designated as being such a post.
4. Chairs 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 that provision promptly upon discovering any Director to be an unfit person.

#### **Regulated Activities Regulations**

7. “Regulated activities” covers the provision of:
  - a. Personal Care
  - b. Accommodation for persons who require nursing or personal care

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- c. Accommodation for persons who require treatment for substance misuse
  - d. Treatment of disease, disorder or injury
  - e. Assessment or medical treatment for persons detained under the Mental Health 1983 Act
  - f. Surgical procedures
  - g. Diagnostic and screening procedures
  - h. Management of supply of blood and blood derived products etc
  - i. Transport services, triage and medical advice provided remotely
  - j. Maternity and midwifery services
  - k. Termination of pregnancies
  - l. Services in slimming clinics
  - m. Nursing care
  - n. Family planning services
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 'Regulation 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 or 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

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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 to like effect made 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 individual 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 of health care or social work professionals.

## APPENDIX B

### PRE-EMPLOYMENT & ANNUAL DECLARATION - FIT AND PROPER PERSON

1. Fitness to carry out the role of Director (or Director-equivalent post) in the East of England 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. 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 employment that those holding Director posts in the Trust 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. Chairs 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 that provision promptly upon discovering any Director to be an unfit person.

#### **Regulated Activities Regulations**

7. 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 to be a fit person and that they must not meet any of the ‘unfit’ criteria. The CQC document ‘Regulation 5: Fit and Proper Persons: directors – Information for NHS Bodies, March

2015' as amended from time to time provides further guidance on the requirement.

8. The definitions of being fit under 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 or 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.
  
9. 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 to like effect made 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;



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- 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 individual for carrying on the regulated activity, by or under any enactment.
10. In assessing good character, the matters to be considered must include those listed in Part 2 of Schedule 4 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 of 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 8 (above), having regard also to matters in section 10 (above) relating to character.

I confirm that I do not fit within the definition of an “unfit person” as listed in Section 9 (above).

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

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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:

## APPENDIX C

## Due Diligence

<b>Professional Registration</b>	
<b>Bankruptcy and Insolvency Registers</b>	The Trust have searched the England and Wales <a href="https://www.gov.uk/search-bankruptcy-insolvency-register">https://www.gov.uk/search-bankruptcy-insolvency-register</a>
	Bankruptcy and Insolvency register on [date] and can confirm that [name] does not appear on the register.
	The Trust searched the Insolvency Service of Ireland <a href="https://www.isi.gov.ie/en/ISI/Pages/Registers">https://www.isi.gov.ie/en/ISI/Pages/Registers</a> registers on [date] and can confirm that [name] does not appear on them.
<b>Disqualified Directors Register</b>	The Trust searched the disqualified directors register via Companies House <a href="http://wck2.companieshouse.gov.uk/dirsec">http://wck2.companieshouse.gov.uk/dirsec</a> on [date] and can confirm that [name] does not appear on the register.
<b>Internet based web-search</b>	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> , <a href="http://www.bing.com">www.bing.com</a>

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	Word searches that were used were:
<b>Social Profiles</b>	The following websites were used:
	For example- www.linkedin.com, www.facebook.com, www.twitter.com
<b>Proof of Identity</b>	Passport checked and verified on the [date]
<b>Referees</b>	

## Appendix D

## Monitoring Table

What	Who	How	Frequency	Evidence	Reporting arrangements	Acting on recommendations	Change in practice and lessons to be shared
<p>Policy to be monitored against</p> <p>NHSI FPP Legislation and CQC requirements</p>	Head of Governance/ HR	<p><b>The HoG is responsible for undertaking FPP assessments at Director and NED level. HR are Responsible for All other staff. This will be monitored Via audit</b></p>	Upon appointment and yearly for each employee	Completed paperwork, DBS references, checks of required registers	Report annually to Remcom	Head of Governance	Required changes to Practice will be identified and actioned within a specific time frame. A lead member of the team will be identified to take each change forward where appropriate. Lessons will be shared with all the relevant stakeholders.

**APPENDIX E****Equality Impact Assessment**

<b>EIA Cover Sheet</b>		
Name of process/policy	Fit and Proper Person Policy	
Is the process new or existing? If existing, state policy reference number	Existing	
Person responsible for process/policy	Head of Governance	
Directorate and department/section	Governance	
Name of assessment lead or EIA assessment team members	Deputy Head of Corporate Governance	
Has consultation taken place? Was consultation internal or external? (please state below):	No – minor policy refresh/ title update	
The assessment is being made on:	Guidelines	
	Written policy involving staff and patients	X
	Strategy	
	Changes in practice .	
	Department changes	
	Project plan	
	Action plan	

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	Other (please state) Training programme	
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<b>EQUALITY ANALYSIS</b>					
What is the aim of the policy/procedure/practice/event? This policy outlines the Trust’s commitment to ensuring that all persons appointed as directors satisfy the requirements (set out in the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the Regulated Activity Regulations”).					
Who does the policy/procedure/practice/event impact on?					
<b>Race</b>		<b>Religion/belief</b>		<b>Marriage/Civil Partnership</b>	
<b>Gender</b>		<b>Disability</b>		<b>Sexual orientation</b>	
<b>Age</b>		<b>Gender re-assignment</b>		<b>Pregnancy/maternity</b>	
Who is responsible for monitoring the policy/procedure/practice/event? Head of Governance					
What information is currently available on the impact of this policy/procedure/practice/event? This policy does not adversely impact any of the protected characteristic. The application of the policy is uniform across all directors					
Do you need more guidance before you can make an assessment about this policy/procedure/ practice/event? No					
Do you have any examples that show that this policy/procedure/practice/event is having a positive impact on any of the following protected characteristics? No, If yes please provide evidence/examples:					

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<b>Race</b>		<b>Religion/belief</b>		<b>Marriage/Civil Partnership</b>	
<b>Gender</b>		<b>Disability</b>		<b>Sexual orientation</b>	
<b>Age</b>		<b>Gender re-assignment</b>		<b>Pregnancy/maternity</b>	

Please provide evidence:

Are there any concerns that this policy/procedure/practice/event could have a negative impact on any of the following characteristics? No, if so please provide evidence/examples:

<b>Race</b>		<b>Religion/belief</b>		<b>Marriage/Civil Partnership</b>	
<b>Gender</b>		<b>Disability</b>		<b>Sexual orientation</b>	
<b>Age</b>		<b>Gender re-assignment</b>		<b>Pregnancy/maternity</b>	

Please provide evidence:



**Action Plan/Plans - SMART**

Specific

Measurable

Achievable

Relevant

Time Limited

**Evaluation Monitoring Plan/how will this be monitored?**

Who

How

By

Reported to