

DISCLOSURE AND BARRING SERVICE (DBS) CHECKS POLICY

		POLICY	
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	✓		
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Target Audience	<p>This policy applies to the appointment of all employees, paid or unpaid including volunteers, bank staff, staff on honorary contracts and others not covered by the term employees</p> <p>It also applies to external contractors working on site e.g. Medirest requiring them to have a DBS disclosure relevant to their area of work. Evidence of the check having been completed must be available for the Trust to audit at any time.</p>		
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APPENDICIES

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1.0 INTRODUCTION

Sherwood Forest Hospitals NHS Foundation Trust has a duty of care to protect the safety and wellbeing of patients. The Trust must therefore have in place measures to ensure that it does not employ anyone who might be considered unsuitable to work with or have access to vulnerable patients.

Part V of the Police Act 1997 makes criminal record checks available for positions that are identified as exempt under the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (as amended). Not all NHS staff will require a DBS check, but such checks are mandatory for all staff who have access to persons in receipt of health services in the course of their normal duties. The trigger for a check and the level of check is based on a risk assessment against the roles and duties of the position being offered and the type of contact the individual will have with vulnerable groups.

The DBS maintain the children's barred list and adults barred list; lists of individuals who have harmed or pose a risk of harm to children and/or vulnerable groups, who are prevented by law from working with children or vulnerable groups.

The checking service allows employers to access the criminal record history of people working, or seeking to work in certain positions, especially those that involve working with children or adults in specific situations.

It is important to point out that possession of a criminal conviction does not automatically make an applicant unsuitable for employment in the NHS. However, the DBS holds the power to bar people who have committed indictable offences from working or engaging in regulated activity with children and/or vulnerable adults.

This policy sets out the Trust's approach to using Disclosures & Barring Service (DBS) Checks and implications arising from their use for employees and workers. It relates to checks carried out upon recruitment and during the life time of their employment or work placement.

2.0 POLICY STATEMENT

Sherwood Forest Hospitals NHS Foundation Trust is dedicated to providing high quality, cost effective care for our patients and is therefore committed to ensuring it has robust arrangements in place to ensure that appropriate DBS Checks are made in line with legal and procedural imperatives.

It is designed to assist in ensuring that all persons working within the Trust are trustworthy and reliable and are not subject to any offences, which are a risk to service users. This policy takes account of current legislation relating to employment, rehabilitation of offenders, safeguarding children and vulnerable adults, and Department of Health guidelines.

It is a requirement under this policy for all successful applicants prior to commencing employment, to obtain a DBS check for applicable positions in accordance with appendix 3: DBS eligibility. This will also be relevant to successful applicants where internal applicants are changing roles.

Certain applicants will be required to register with the DBS update service and ensure that the annual update subscription is maintained.

No staff will commence in post until completion of the full DBS process, where applicable, except in exceptional circumstances and by agreement with the relevant Director.

A previous DBS disclosure certificate can be used to expedite a start date subject to the principles set out in this policy, however a new DBS check must have been applied for by the Trust.

In very exceptional circumstances, the Trust may make a risk-based decision to commence employment before the outcome of a DBS check is received, but this must only be where there is an urgent need to appoint because of an identified risk to patient safety or welfare, or where the individual is required to undertake induction training. In any such cases, an appropriate DBS check must have already been applied for and appropriate safeguards must be in place to manage that individual, such as restricted access to children or vulnerable adults or supervision, until the disclosure has been obtained. Approval must be sought from the relevant Director using the risk assessment form in Appendices.

Details of any convictions, cautions, reprimands or final warnings that are not “protected” as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) will be requested from all applicants on the application form.

All employees are required to report any police allegations, convictions, cautions, reprimands or warnings that occur during the course of their employment, whether at home or abroad to their line manager within 5 working days of the event, or as soon as reasonably practicable. Failure to do so will be treated as a disciplinary offence and may result in dismissal. Line Managers are responsible for discussing any reported incidents with the appropriate People Lead to identify if any action is required.

All employees are required to complete an annual declaration at the time of their appraisal (Declaration A) in regard to any information relating to unspent (current) and spent (old) criminal convictions, police cautions, final warnings or reprimands which are not protected (or filtered out) by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

This policy is designed to supplement the Trust’s Recruitment & Selection Policy.

A full equality impact assessment has been undertaken for this policy and procedure.

3.0 DEFINITIONS/ ABBREVIATIONS

Definitions of terms are provided in Appendix 2.

4.0 ROLES AND RESPONSIBILITIES

It is the responsibility of the People Directorate to ensure that the DBS checks are completed and to advise on the implications relating to them. The People Directorate will also

- Undertake the DBS application process
- Ensure any DBS information is used confidentially and sensitively

It is the responsibility of the recruiting manager for that area to ensure that the required level of DBS clearance is identified and that everyone who works for them are cleared to the required levels of DBS. They are also responsible for raising any concerns they may have to the People Directorate. .

It is the responsibility of all staff to raise any concerns they may have.

Once a post has been identified as requiring a DBS check and the appropriate level has been assessed as outlined above, the Recruitment team member will identify if the prospective employee requires a new DBS check after interview. If so, the DBS application process will be started as part of the offer in Trac.

The procedure followed must ensure confidentiality and compliance with GDPR and the Data Protection Act 2018.

5.0 APPROVAL

Approval at the Joint Staff Partnership Forum

6.0 DOCUMENT REQUIREMENTS

Electronic application process

The Recruitment Team are notified by the recruiting manager of the level of check required for the prospective employee. The Recruitment team will check the level of check identified in accordance with Appendix 3: DBS eligibility.

The Recruitment Team will raise a DBS check via Trac and the prospective employee will receive the DBS application link via email.

The candidate must complete the DBS application online and provide the required supporting ID documentation.

The Recruitment Team will check ID documentation against a list of acceptable ID requirements as listed on www.GOV.UK. Copies of the documents are retained on the electronic personal file.

The application is checked by a counter-signatory at Trac for approval and confirmation of which level of check is required – standard or enhanced – and where enhanced which list(s) to be checked.

The Recruitment Team will receive the outcome of the DBS check via Trac.

The DBS certificate will only be sent to the applicant, even if it contains any criminal record information. Therefore the applicant will be requested to contact the Recruitment Team to bring in the original certificate for checking and copying.

The applicant's permission must be obtained to copy the certificate and they will be asked to sign the copy to confirm their consent. The storage procedure will be explained to them.

A new DBS check is not always required where an existing member of staff moves roles within the Trust. If a DBS check has been made by the Trust and the level of required check for the new role and vulnerable group has not changed, then a new DBS check may not be required but will depend on the length of time since the last DBS. Anything over 5 years should be renewed.

If there is no evidence on ESR of a previous check the Trust will require a new DBS check.

Sensitive Application Route

The Disclosure and Barring Service (DBS) offers a confidential checking service for transgender applicants in accordance with the Gender Recognition Act 2004. This is known as the sensitive applications route and is available for all levels of DBS check - basic, standard and enhanced.

The sensitive applications route gives transgender applicants the choice not to have any gender or name information disclosed on their DBS certificate, that could reveal their previous gender identity.

If you are asked to complete a DBS check and have a previous identity that you do not wish to be disclosed to your employer and/or on your DBS certificate, you should call or email the dedicated sensitive applications team before submitting your application. The team is experienced in dealing with sensitive cases and will advise you of the process and what you need to do.

To contact the sensitive applications team, please telephone 0300 106 1452 or email sensitive@db.s.gov.uk. Please note, that the telephone number also has an out-of-hours answering machine where you can leave your details, and a member of the team will call you back.

Disclosure Outcome

A record of the following will be kept on ESR:

- the issue date of the DBS certificate
- the level of check requested, including any checks against one or both of the barred lists
- the unique reference number of the certificate.
- the DBS check outcome, e.g. post to be offered, offer withdrawn etc.

Positive Disclosures

The DBS certificate will reveal any convictions, cautions, reprimands or final warnings that are held on the Police National Computer, which are not subject to filtering. The DBS certificate will only provide the basic facts such as the name and date of offence(s) and, if applicable, details of any sentence(s). It will not put them into context.

Information obtained through DBS checks can help managers make an informed decision on whether or not to appoint a prospective employee. The decision rests with the Trust as to whether to employ a person whose DBS check reveals a conviction or other relevant information. The information provided should be carefully considered in the light of all the relevant circumstances and judged on a case-by-case basis.

Where a positive disclosure is noted the Trust will require the sight of the DBS certificate.

If a positive disclosure is noted via Trac the Recruitment Team will make checks to ascertain whether the issues reported had been declared on either the application form, at interview or on any self-declaration form.

If the concerns on the disclosure certificate or declaration have not been previously declared, the recruiting manager will be informed and will be required to contact the candidate to ascertain why they failed to disclose this information, as this will normally result in the offer of employment being withdrawn. The recruiting manager will discuss the candidates' explanation for failing to make the declaration with a member of the Recruitment Team.

Once the positive disclosure is seen this will be discussed with the candidate and the recruiting manager will discuss with the appropriate head of service / general manager and People Lead to come to a joint decision on the appropriateness of proceeding with the offer of employment.

Where an individual identifies on the application form any sanctions relating to fraud (cautions, convictions etc.) or any other dishonest acts as identified in the Trust's Anti-Fraud and Corruption policy, the application must be brought to the attention of the Chief Finance Officer for consideration and decision as to whether to proceed.

The procedure for dealing with positive disclosure is detailed in Appendix 4. This process applies irrespective of whether a candidate currently holds a post with the Trust.

DBS Update Service

In 2013 the DBS introduced the DBS Update Service with the key aim of improving the ease and speed with which employers can apply for criminal record checks.

Certain applicants joining Sherwood Forest Hospitals will be required to subscribe to the DBS Update Service (this is indicated on page 26 of this policy) when their new DBS certificate arrives and they must subsequently pay the annual subscription fee directly to the DBS throughout their employment however all staff who require a DBS can join the update service if they wish to do so.

If an existing employee who has not previously registered with the Update Service and change's role where it has been identified that a new DBS check is required they will be required to have a new DBS and the cost of this will be deducted from their salary.

Once an applicant is registered with the Update Service, an online check can be made by the Trust which will negate the requirement for a new check, as long as the DBS level previously carried out is of equal or higher level than the new role and the applicant can provide the Trust with the original certificate for copying.

There is no official expiry date for a criminal record check issued by the DBS, any information revealed on a DBS certificate will be accurate at the time the certificate was issued.

Any identified concerns presented through the DBS update services will be notified to the Trust Recruitment Manager who will engage with the relevant manager and take action in accordance with a positive disclosure process.

Annual Declaration

All employees are required to complete an annual declaration at the time of their appraisal in regards any information relating to unspent (current) and spent (old) criminal convictions, police cautions, final warnings or reprimands which are not protected (or filtered out) by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

The annual declaration is part of the appraisal process and therefore a requirement of any employee to complete in advance of the annual appraisal discussion.

The paperwork requires all trust employees to make an annual disclosure using the 'Model a Declaration Form'. Completed annual disclosures must be stored and retained for a minimum of 12 months.

If a positive declaration is made on a 'Model a Declaration Form' the guidance in Appendix 4 will apply. Advice and support in regards to the completion of the 'Model a Declaration Form' can be obtained from the Operational HR team.

DBS Disclosure for Doctors in Training

NHS Employers guidance sets out advice regarding the portability of checks for doctors in training. Doctors on educationally-approved rotational training will be regarded as being in continuous employment during the term of training and are therefore required to have a DBS check, as a minimum, once every three years, rather than each time they change rotation.

However, the exception to this is where a doctor is appointed to a training post falling within the scope of PoCA. This is because PoCA checks are legally required and a new check must be undertaken for each post.

The Trust reserves the right to ask for positive assurance from the Deaneries that these checks are being carried out.

The Trust seeks written assurances, prior to each rotation, from the host employer that appropriate clearances have been obtained within the last three years.

Students

NHS Employers recommends that healthcare trainees are DBS checked at the start of their training course and then again when they start working in the NHS. However, where a student is working in a post falling within the provisions of PoCA (for example midwifery students and paediatric nursing trainees) a new check will be required. The Trust reserves the right to ask for positive assurance from the schools of nursing that these checks are being carried out.

International recruitment

When recruiting from outside of the EEC, candidates may not be able to provide the required identity documentation in order to complete a DBS check. In this case, we will get the candidate to provide a current Police Check or Certificate of Good Standing from their home country as evidence of their criminal record history conduct. A risk-based decision to appoint ahead of receiving a DBS check outcome apply for the DBS check against their UK address once they have acquired the required identity documentation the use of an external agency may be considered to conduct the ID checks.

Temporary workers supplied by the Trust Bank

Temporary staff supplied via the Trust bank, are required to have DBS checks at least once a year.

The annual check requirement does not apply to individuals who are working on a Trust bank in addition to holding a substantive NHS contract.

The Trust will seek written assurances that the substantive employer has carried out appropriate checks at the correct level when they were first appointed. If, however, the individual leaves their substantive post, or where there is a break in service of three months or more prior to them applying to a Trust bank, then a new DBS check will be requested.

If the bank worker has registered with the DBS update service this will negate them requiring a new annual check.

Instead, the update service will be checked and a record of the date the check was made on ESR.

Temporary workers supplied by an agency

Temporary staff supplied by an agency, are required to have DBS checks at least once a year. The Trust obtains written assurances from the agency upon placement that an appropriate check at the correct level has been carried out within the last 12 months.

More frequent checks may be carried out where any such assurances cannot be provided, or where there is a concern about an individual's practice.

Dismissals

Where an employee is dismissed or a volunteer is removed because they have harmed a child or adult, or where the Trust would have taken such action had they not left, the Disclosure & Barring Service must be informed. The relevant Head of Service / General Manager will liaise with the relevant People Lead in making the referral.

Payment of the DBS check

All new starters to the trust who are required to undertake a DBS check will be charged for the check. The Trust will pay for the check initially and the money will then be deducted from their first month's salary.

Any new starters who join the update service will pay for this directly themselves.

Existing employees who require a new DBS check will be charged for the check, and will also need to pay to join the update service and will pay for this directly themselves.

Volunteers who require a DBS check will have the administration costs of the check paid by the trust.

The cost of DBS checks for Temporary staff supplied by an agency, including locums and staff working as part of a Trust bank, who are required to have DBS checks at least once a year, will not be paid by the Trust.

7.0 MONITORING COMPLIANCE AND EFFECTIVENESS

Minimum Requirement to be Monitored (WHAT – element of compliance or effectiveness within the document will be monitored)	Responsible Individual (WHO – is going to monitor this element)	Process for Monitoring e.g. Audit (HOW – will this element be monitored (method used))	Frequency of Monitoring (WHEN – will this element be monitored (frequency/ how often))	Responsible Individual or Committee/ Group for Review of Results (WHERE – Which individual/ committee or group will this be reported to, in what format (eg verbal, formal report etc) and by who)
A Payroll/HR Audit is undertaken by internal audit into how new employees are recruited into the organisation and would measure completeness of recruitment process including DBS checks	Internal Audit	Audit	Annual	NHS Counter Fraud Service
Recruitment process activity is measured	Recruitment Manager	Statistical Report	Monthly	Joint Staff Side Partnership
Recruitment process activity is measured against Perfect process KPIs	Recruitment Manager	Statistical Report	Bi-monthly	Joint Staff Side Partnership

8.0 TRAINING AND IMPLEMENTATION

Training will be provided to all managers and supervisors to promote awareness of the policy and procedure via the Recruitment & Selection course.

This policy and procedure will be regularly monitored and reviewed and will be assessed annually with the intention of improving its effectiveness.

To ensure that all of the minimum requirements set out in the handling of DBS checks are being met, individual cases that have been taken to a point of completion will be audited on an annual basis to assess whether they have been handled in ways that meet these minimum requirements.

9.0 IMPACT ASSESSMENTS

This document has been subject to an Equality Impact Assessment, see completed form at Appendix 6.

This document is not subject to an Environmental Impact Assessment

10.0 EVIDENCE BASE (Relevant Legislation/ National Guidance) AND RELATED SFHFT DOCUMENTS

Evidence Base:

Police Act 1997 (Enhanced Criminal Record Certificates; Protection of Vulnerable adults) Regulations 2002

Portability Framework – Criminal Records Bureau January 2007

Protection of Children Act 1999 Chapter 14

The Protection of Children Act 1999, A practical guide– Department for Education and Skills Revised September 2005

DBS Filtering Guidance, GOV.uk November 2020

Filtering of spent cautions / convictions – A detailed guide - <http://hub.unlock.org.uk>

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)

NHS Employment Check Standards (NHS Employers)

Related SFHFT Documents:

Not applicable

11.0 KEYWORDS

Definitions of terms are provided in Appendix 2.

12.0 APPENDICES

Appendix 1:

Request to start employment before DBS Check has been completed

Where a DBS check has not been received by the Trust prior to an individual commencing in post, a decision has to be made whether it is appropriate for the individual to commence employment pending receipt of a DBS check. If working in a regulated position it is strongly recommended that the new incumbent should not commence work until the DBS check has been received. If however due to clinical need this is not possible, a risk assessment must be undertaken.

Name of Individual	
Department	
Post Title	
Proposed Start Date	

Risk Assessment (to be completed by the Appointing Manager)

Has this individual worked within the NHS previously?	
Has this individual been subject to previous DBS checks?	
How often will the post holder have access to patients?	
What is the nature of the patient contact?	
Have other pre-employment checks been completed and DBS application made?	

Risk Mitigation (to be completed by the Appointing Manager)

What interventions have been put in place to mitigate the risk?	
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Authorisation

I can confirm that due to service needs I require this individual to commence ahead of the completed DBS check and understand the risks involved.

I understand that whilst the DBS check is outstanding, the above named individual should work without access to patients or where this is not possible they will be supervised.

Signed (Appointing Manager)	
Designation	
Authorised (Director)	
Designation	

To be returned to the Department of Human Resources

Appendix 2:

DBS Definitions and terms

Bind-over - A bind-over is an order about future conduct designed to reduce crime and increase public safety. The individual concerned is required to keep the peace for a fixed period of time as specified by the court.

Caution - A caution is a formal warning about future conduct given by a senior police officer, usually in a police station, after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution, generally used for juvenile or first-time offences. Basically there are two types of caution:

Simple caution - previously known as a formal caution - is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from appearing in court and to reduce the likelihood of them offending again

Conditional caution - introduced by the Criminal Justice Act 2003, differs from a simple caution in that the offender must comply with certain conditions to receive the caution and to avoid prosecution for the offence they have committed. Like simple cautions, conditional cautions aim to keep lower level offenders out of court. The conditions are usually in the form of rehabilitation or reparation where the offender is requested to repair/or make good the damage caused. The offender may be requested to pay financial compensation.

Conditional Discharge - Conditional discharge is where no further action is taken against an offender unless they commit a further offence within a given period (no more than 3 years).

Court Conviction - Arises from offences tried at Court.

Criminal Record - A record of convictions held on the Police National Computer (PNC) for individuals convicted of crimes (includes information on cautions, reprimands, final warnings and bind-overs).

Data Protection Act - The Data Protection Act 1998 regulates the use of information about an individual and requires that any person, or organisation, who is to use information about an individual, uses it in accordance with the Data Protection principles. The Act also introduces safeguards in relation to sensitive personal data which may include information on ethnic or racial origin; political opinions; religious beliefs; physical or mental health; and criminal records.

Department for Children, Schools and Families (DCSF) - Formerly known as the Department for Education and Skills (DfES). The DCSF is the government department responsible for improving the focus on all aspects of policy affecting children and young people, as part of the government's aim to deliver educational excellence.

Determination of Level of Disclosure

The recruiting manager will determine whether a DBS check is required for the post and the appropriate level upon completion of a vacancy request on Trac. The Disclosure & Barring Service Eligibility Flowchart at Appendix 3 provides a useful guide for managers.

The Disclosure and Barring Service (DBS) offers four types of criminal record check.

- **Standard DBS check** contain details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions. These are shown on a criminal records check.
- **Enhanced DBS check** contains the same details as a standard check, together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.
- **Enhanced DBS & barred list check (child)** includes information from the DBS's children's barred list and is only available for those individuals engaged in regulated activity with children and a small number of posts as listed in the Police Act regulations, for example prospective adoptive parents.
- **Enhanced DBS & barred list check (adult)** includes information from the DBS's adults barred list and is only available for those individuals engaged in regulated activity with adults and a small number of posts as listed in the Police Act regulations.

The definition of regulated activity relating to children comprises only:

- Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;
- Work under (i) or (ii) is regulated activity only if done regularly.
- Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
- Registered child minding; and foster-carers.

The definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people). A broad outline of these categories is set out below.

- Providing health care – Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for further details about what is meant by health care and health care professionals.
- Providing personal care – Anyone who provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability; prompts and then

supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their

mouth, skin, hair or nails without that prompting or supervision; or trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

- Providing social work – The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.
- Assistance with cash, bills and/or shopping – The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.
- Assistance in the conduct of a person's own affairs – Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here.
- Conveying – A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.

Disclosure - Disclosure is the term that is used to describe the service provided by the Disclosure & Barring Service (DBS) and the document issued to the applicant and Registered Body when a DBS check has been completed.

Disclosure & Barring Service (DBS) - The DBS provides access to information about criminal convictions and other police records to help employers make an informed decision when recruiting staff across England and Wales.

Disclosure Scotland - Disclosure Scotland is part of the Scottish Criminal Record Office and provides access to criminal conviction data in Scotland. They can provide a basic disclosure service to employers within England and Wales. A basic disclosure is an application for details about 'unspent' convictions only. All applications for standard and enhanced disclosures for England and Wales must still be obtained from the DBS in Liverpool.

Exceptions Order - The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 sets out those occupations and positions exempt from the provisions of the ROA. These are generally positions of trust; where there is a valid need to see a person's full criminal history in order to assess their suitability for a position. This information is intended as general guidance only. It must not be regarded as a definitive interpretation of the Act. Anyone requesting further guidance should seek legal advice.

Exempted Question - An exempted question is a valid request for a person to reveal their full criminal history (including spent convictions) and is made possible by virtue of the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974.

Filtering

Until May 2013, employers who were entitled to carry out standard or enhanced level checks had received the details of all convictions and cautions that were held on the Police National Computer (PNC). In recent years, there had been growing pressure on the Government to change the way that they disclose information to employers from the PNC. In early 2013, this culminated in a court case (known as 'T'), which found that the automatic disclosure of all convictions and cautions was disproportionate, and therefore incompatible with the right to private life under article 8 of the Human Rights Act.

The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account.

Filtering is the term used to describe the process which will identify and remove protected convictions and cautions so that they are no longer disclosed on a DBS certificate (DBS check).

Employers will no longer be able to take old and minor cautions and convictions into account when making recruitment decisions.

All cautions and convictions for specified serious violent and sexual offences, and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults, will remain subject to disclosure on a DBS check.

All convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where more than one conviction is recorded.

Final Warning

A formal verbal warning given by a police officer to a young person who admits their guilt for a first or second offence. However, unlike a reprimand, the young person is also assessed to determine the causes of their offending behaviour and a programme of activities is identified to address them.

Notification that the vacancy meets the criteria for a DBS check

Where a vacancy meets the criteria for a check, the advert will clearly state that any offer of employment will be subject to a DBS check being carried out. Prospective employees will be advised if the position being applied for is exempt from the Rehabilitation of Offenders Act 1974 and they are required to provide details of any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2020). This will be obtained by issue of Model Declaration Form A and any information given will be verified by obtaining the DBS disclosure.

A disclosure will only be applied for once a decision to offer the post has been taken and a conditional offer made.

Where the position does not meet the criteria for a DBS check, but may still be regarded as a 'position of trust', prospective employees will be required to complete a self-declaration providing information about unspent (current) convictions only as part of the application process. This will be obtained by issue of Model Declaration Form B. Consideration will also be given as to whether a Basic Disclosure should be obtained.

Failure by an employee to provide accurate and truthful information at the time of applying for the position will be considered as a disciplinary matter, which could result in dismissal or withdrawal of an offer of employment.

NHS Employers guidance confirms that there is no legal requirement to carry out retrospective (periodic) DBS checks on employees. A new DBS check would be undertaken where a concern is brought to the Trust's attention by either a member of the public, the police authorities, their line manager or where the individual themselves has alerted the Trust to an issue under 2.6 above.

The Trust reserves the right to carry out discretionary spot checks on individuals at any time.

Opportunity to disclose

Information obtained through the recruitment and selection process is designed to prevent unsuitable people from gaining access to vulnerable groups, while at the same time respecting human rights and privacy issues and complying with the requirements of the Data Protection Act. Candidates are requested to disclose any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2020).

The application form will ask candidates questions relating to any criminal convictions. This section of the application form is only accessed by the recruitment administrator and is not disclosed to the recruiting manager.

At Interview: The recruiting manager will give all candidates the opportunity to declare any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2020). Candidates will be informed that failure to disclose could result in a conditional offer being withdrawn. Candidates will also be informed that any disclosure will be held in confidence and discussed only with the HR team as appropriate. The possession of a criminal conviction does not automatically make an applicant unsuitable for employment in the NHS. A note of the discussion must be made on the relevant interview form for cross reference.

Annual self-declaration forms must be handled, stored and destroyed in the same way as DBS check information and should not be kept on file any longer than necessary.

Police National Computer (PNC) - The central police database against which all criminal record checks will be made.

Rehabilitation of Offenders Act (ROA) 1974 - The Rehabilitation of Offenders Act (ROA) 1974 enables some criminal convictions to become 'spent', or ignored, after a 'rehabilitation period' (see below).

Rehabilitation Period - A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a job or when involved in criminal or civil proceedings (*see further details under 'spent' conviction*).

Reprimand - A reprimand is given to young offenders (aged 17 and under) who have committed their first offence.

Spent conviction - The Rehabilitation of Offenders Act (ROA) 1974 sets out to make life easier for many people who have been convicted of a criminal offence and who have since lived on the right side of the law. A person convicted of all but the most serious criminal offences and who receives a sentence less than 2.5 years in prison, benefits from the Act.. This is called the rehabilitation period (*as described above*).

In general terms, the more severe a penalty is, the longer the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'. In most circumstances an employer cannot refuse to employ someone, or dismiss them, on the basis of a spent conviction. Generally, spent convictions do not have to be declared, unless the individual is applying for a position of trust. In such circumstances, an employer is entitled to ask a candidate to reveal details of all convictions, whether spent or not. This is, in part, to ensure that children and other vulnerable groups are adequately protected from those in positions of authority over them. These positions of trust, or 'excepted' professions, are set out in the Rehabilitation of Offenders Act (Exceptions) Order.

Suspended sentence - A suspended sentence is when a person sentenced to prison is not actually sent to prison - provided they keep out of trouble for the period of the suspension.

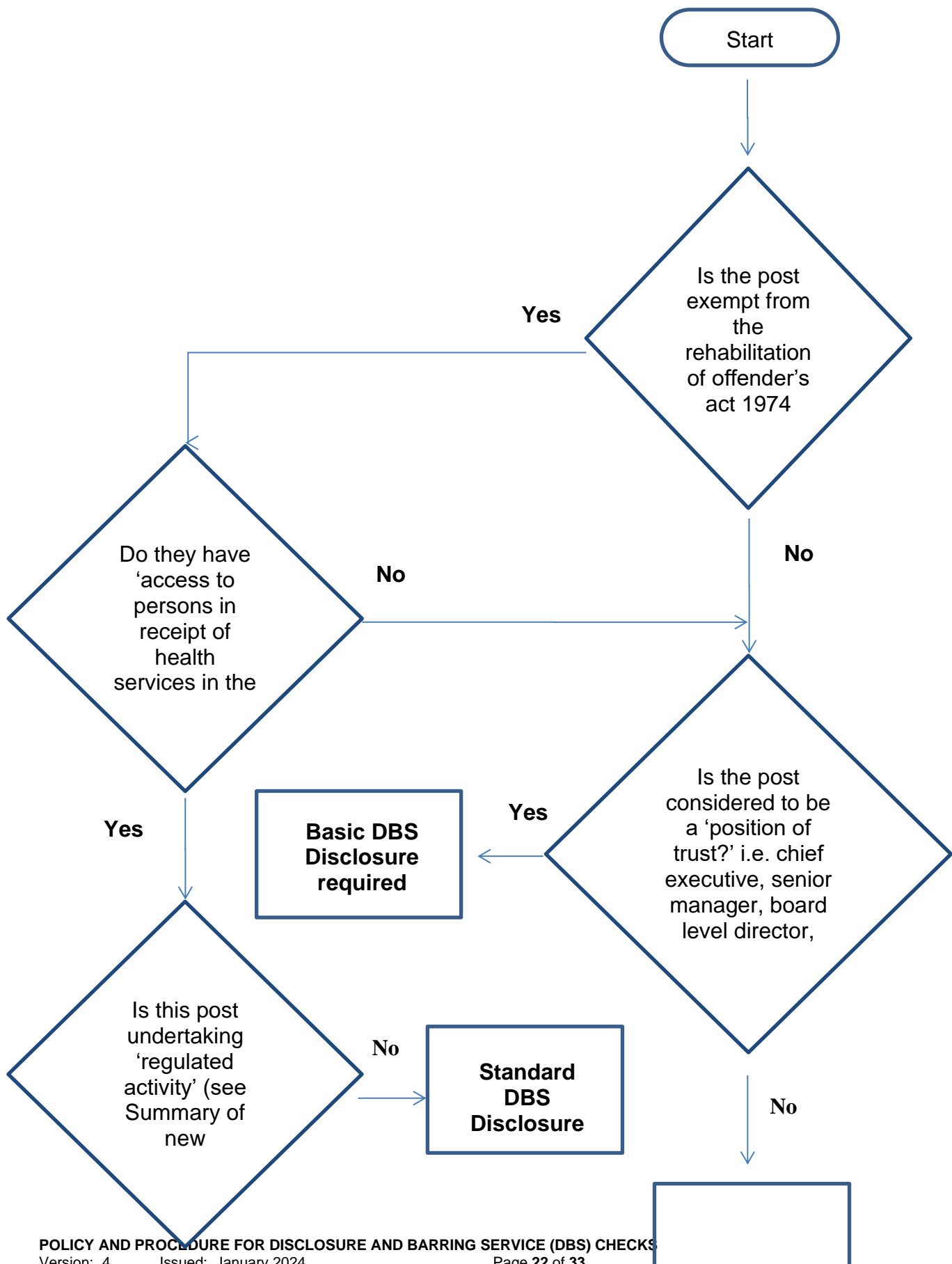
Volunteer - Volunteers should undergo the same pre-employment checks as for a paid staff. The definition of a volunteer throughout these standards refers to:

"A person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than/or in addition to close relatives".

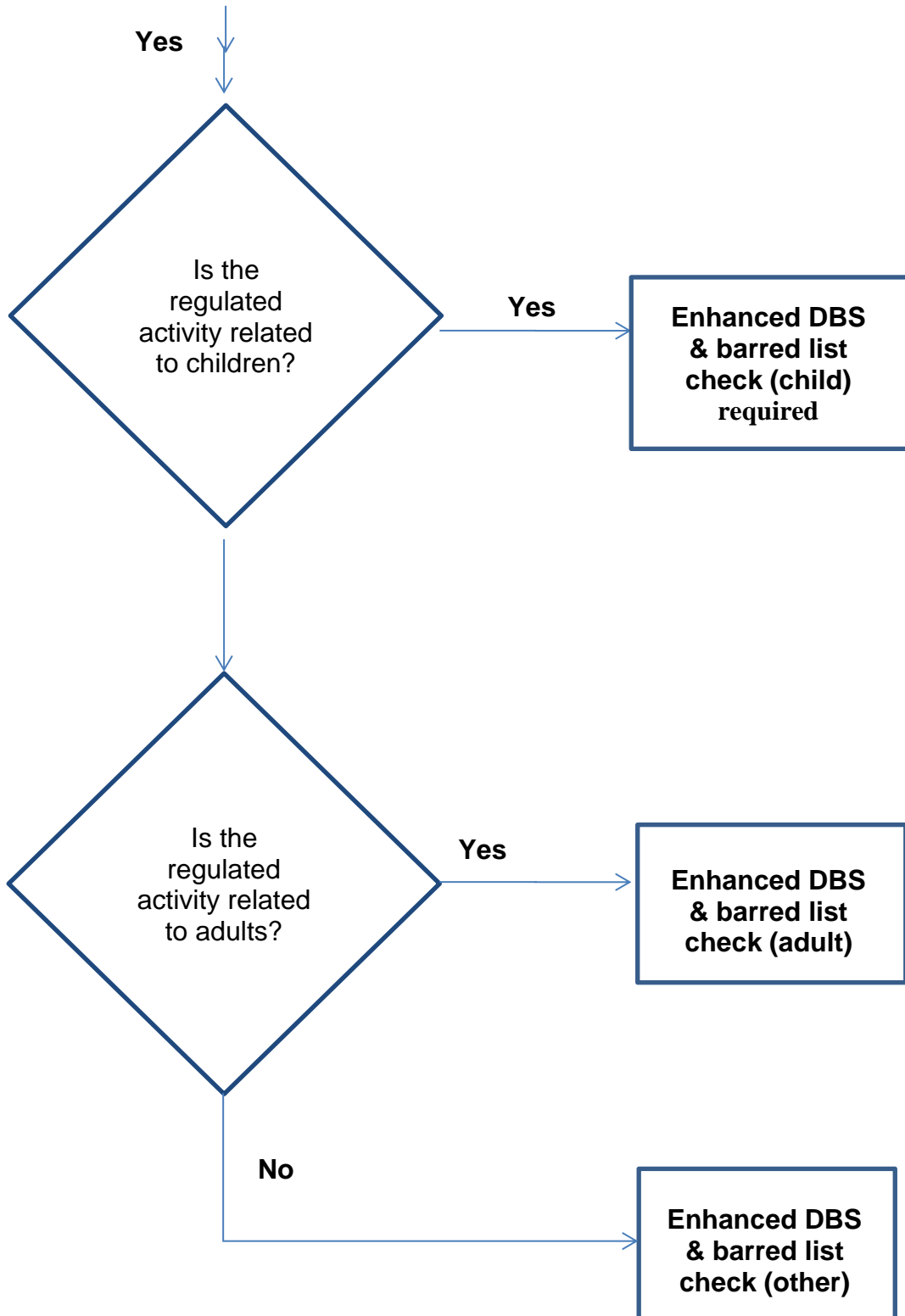
Warning - A final warning is given to young offenders (aged 17 and under) who have committed a second offence. Police will refer the young offender to a youth offending team.

Appendix 3: DBS Eligibility

Flowchart and Guidance



Not Eligible



Guidance on levels of DBS check for different roles

Standard Disclosures

The standard check is available for duties, positions and licences included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, for example, court officers, employment within a prison, and Security Industry Authority (SIA) licences.

A standard level certificate contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC) which have not been filtered in line with current legislation.

Posts fulfilling these criteria have been identified as:

- Catering Staff who deliver food to patients
- Clinical Pharmacists
- Dieticians (except Paediatric Dieticians)
- Divisional Management Teams (Divisional Manager, Director of Nursing Services, Nurse Managers)
- Housekeeping Staff who work on the Wards
- Maintenance Staff if they are required to work on the Wards
- Medical Secretaries – only if they attend Clinics with their Consultant, or their Consultant routinely manages care of children
- Operating Department Orderlies
- Pharmacology Support Staff such as Pharmacy Technicians
- Volunteers working in areas other than stated below (these disclosures are free of charge)
- Ward Receptionists

Enhanced Disclosures –

These are for posts that involve a far greater degree of contact with vulnerable groups, including children. In general this covers work that involves regularly caring for, supervising, training or being in sole charge of these groups.

This level of check involves an additional check above the Standard DBS check - a check on local police records. If local police records contain additional information that may be relevant to the post the applicant is applying for, the chief officer of police may release information for inclusion in an enhanced check.

The following enhanced checks with information from the DBS' children and adults barred list is only available for those individuals engaged in regulated activity with adults and/or children and a small number of posts as listed in the Police Act regulations.

- Enhanced check + barred list check (child)
- Enhanced check + barred list check (adult)
- Enhanced check + barred list check (child & adult)

Posts fulfilling this criteria have been identified as:

- All Doctors, Nurses and Midwives (including all Agency staff)
- Audiologists
- Chaplaincy
- Clinical Care Support Workers including HCA's, Physiotherapy, Radiology, and Occupational Therapy Assistants, etc
- Dieticians working in Paediatrics
- Little Millers Nursery staff
- Occupational Therapists
- Operating Department Practitioners
- Operating Department Assistants
- Orthotists
- Orthoptists
- Phlebotomists
- Physiotherapists
- Play Leaders
- Porters (depending on area may require an enhanced check).
- Radiographers
- Security Staff
- Unsupervised Volunteers working in Paediatrics, Obstetrics and Gynaecology, and Accident and Emergency (these disclosures are free of charge)
- All GUM staff (this staff group will be required to join the update service upon commencement at the Trust)

These lists are not meant to be exhaustive and certain exceptions can apply where a different level is required to what is specified above..

Further guidance can be found at

- <https://www.gov.uk/find-out-dbs-check>
- <https://www.nhsemployers.org/case-studies-and-resources/2018/08/dbs-eligibility-tool>

Appendix 4:

Process for dealing with positive disclosure

1. Where a positive disclosure is made the following process must be applied:

- The counter-signatory informs the recruiting manager of the positive declaration and confirms if discussions were had at interview in relation to disclosure of convictions. The interview notes are checked by the counter-signatory.
- The recruiting manager contacts the applicant by telephone to invite to a meeting to discuss the declaration. In some cases a discussion over the telephone may suffice.
- A member of the HR team can be made available to attend this meeting if the recruiting manager feels this is required.

2. The meeting with the applicant should follow the format below:

- Reassure the applicant regarding confidentiality.
- Ensure that the applicant is aware of the DBS Policy and the DBS Code of Practice and provide a copy on request.
- Seek the applicant's confirmation that the details on the certificate are accurate. Should the applicant dispute this, advise them to contact the DBS and do not proceed further with the appointment until this is resolved, unless satisfied that the details are no bar to commencement.
- Discuss the applicant's reasons for non-disclosure.
- Discuss the information on the form and circumstances surrounding it.
- Explain that you will need to contact a senior HR colleague to discuss and agree whether the application can proceed further.
- Explain that the applicant will be kept informed and notified of the outcome. This will be confirmed in writing where a negative decision is made.
- The counter-signatory will make a note on the applicant's personal file of dates of discussions and outcomes and record outcome on the DBS decisions spread-sheet.

3. In making a decision, consideration must be given to the following:

- any legal or regulatory requirements
- the nature of the offence
- its relevance to the position being applied for
- the length and type of sentence issued
- the age it was committed
- whether the applicant has a pattern of offending behaviour, for example, if there are multiple offences
- Whether the applicant's circumstances have changed since the offending behaviour. For example, where the offence was time-limited or committed as a juvenile and the individual has taken on responsibilities in life to enhance their standing in society, such as through education or voluntary work
- The circumstances surrounding the offending behaviour and the explanation offered by the individual.

4. In exceptional circumstances and following discussions with the appropriate head of service / general manager a decision may be taken to accept the candidates' explanation for failure to disclose. The applicant will be informed and a note retained on their personal file.

5. Where a decision is made to withdraw the conditional offer, this will be confirmed in writing to the applicant.

Appendix 5.

Assessment of Disclosure Information

This form **must** be completed in all cases where information about a criminal conviction, caution, reprimand, warning or bind over is shown on an individual's DBS Disclosure certificate.

Part 1 (To be completed by the appointing Manager who receives the employer copy of the Disclosure certificate)

Employee Name.....Occupation.....

Department.....Start date.....

Does the Disclosure certificate show more than one entry?	Yes/No
If an enhanced check if there anything on the top of the certificate to indicate there is further confidential information to be supplied by the Chief Police Constable?	Yes/No
Was the offence committed within the last 10 years?	Yes/No
Did the individual serve a custodial sentence for the offence(s) committed?	Yes/No
Did the offence involve violence of any kind?	Yes/No
Did the offence involve any crime of a sexual nature?	Yes/No
Is the offence of such a nature that it might question the person's suitability to working with children, young people or vulnerable adults?	Yes/No
Is the offence of such a nature that it might question the person's suitability to carry out the day to day duties of the job appointed to? (e.g. driving, access to finances etc.?)	Yes/No
Are there any doubts/concerns regarding any of the other pre-employment checks (references, identity checks, health etc.)	Yes/No
Has this applicant withheld information about their criminal conviction, caution, reprimand, warning or bind over during the selection process	Yes/No

If answers to **all** of the above questions are "No" the Appointing Manager should sign the following declaration and return to the Recruitment Team.

Managers Declaration

I have reviewed the information on the above person's disclosure and based on the questions above do not consider the offences reported to a bar to employment in this case.

Signed.....Name.....

Date.....

The employee record on ESR should be updated to reflect this decision and a memo sent to the manager as confirmation. The assessment form should be returned to the Recruitment Manager for auditing purposes.

If the above declaration cannot be made the Appointing Manager should proceed with part 2 of this assessment form on the next page.

Assessment of Disclosure Information

Part 2 (to be completed by the Manager in conjunction with People Lead for the division and Safeguarding Lead (where appropriate), if there are any “Yes” answers to the questions in part 1.

Details of the offence(s)

Factors taken into account

Decision

The Disclosure information for(name) has been reviewed by the Appointing Manager and the People Lead (include names):

A decision has been made that

(For job applicants this will be either “Disclosure deemed acceptable” or “job offer to be withdrawn”. For existing staff this may be “no further action” or “for investigation under the disciplinary policy”. Please give brief rationale as well as decision).

Signed.....Name.....

Job Title.....Date.....

Signed.....Name.....

Job Title.....Date.....

The employee record on ESR should be updated to reflect this decision and a memo sent to the Recruitment Team as confirmation. The assessment form should be returned to the Recruitment Manager for auditing purposes.

APPENDIX 6 - EQUALITY IMPACT ASSESSMENT FORM (EQIA)

Name of service/policy/procedure being reviewed: DBS Check Policy			
New or existing service/policy/procedure: Existing			
Date of Assessment: December 2023			
For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)			
Protected Characteristic	a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups' experience? For example, are there any known health inequality or access issues to consider?	b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?	c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality
The area of policy or its implementation being assessed:			
Race and Ethnicity	None		
Gender	None		
Age	None		
Religion	None		
Disability	None		
Sexuality	None		
Pregnancy and Maternity	None		
Gender Reassignment	Unconscious or conscious bias resulting in applicants not being shortlisted or appointed	<ul style="list-style-type: none"> • DBS Sensitive application route available to all candidates • Background information is confidential • Blind shortlisting process 	

	DBS process may 'out' a person causing applicant distress		
Marriage and Civil Partnership	None		
Socio-Economic Factors (i.e. living in a poorer neighbourhood / social deprivation)	The cost of the DBS check may be a barrier to employment for some people from this group		
What consultation with protected characteristic groups including patient groups have you carried out?			
None			
What data or information did you use in support of this EqIA?			
None			
As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments?			
None			
Level of impact			
<p>From the information provided above and following EQIA guidance document Guidance on how to complete an EIA (click here), please indicate the perceived level of impact:</p> <p>Low Level of Impact</p> <p>For high or medium levels of impact, please forward a copy of this form to the HR Secretaries for inclusion at the next Diversity and Inclusivity meeting.</p>			
Name of Responsible Person undertaking this assessment:			
R Ford			
Signature:			
R Ford			
Date: December 2023			

