

Disclosure and Barring Service (DBS) POLICY

Version:	4
Ratified by:	Senior Managers Operational Group
Date ratified:	August 2015
Title of originator/author:	HR Business Partner
Title of responsible committee/group:	Regulation Governance Group
Date issued:	August 2015
Review date:	July 2018 Extended to January 2019
Relevant Staff Group/s:	All staff

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DOCUMENT CONTROL

Reference	Version	Status	Author
GP/Sept12/CRBP	4	Final	Recruitment Lead
Amendments	<ol style="list-style-type: none"> 1) Changing 'Criminal Records Bureau' to Disclosure and Barring Service and 'CRB' to DBS' 2) Amend the Lead Countersignatory to the Deputy Director of Workforce 3) Changed the enhanced levels of disclosure from two to three (see section 6.1) 4) Include the update to regulated activity with children, that it should be an 'Activity of a Specified Nature' (see section 7.25) 5) Change the level of check Porters should have to Enhanced as they convey patients (part of the Adults regulated activity – see section 9.2) 6) Include in the information about overseas checks must be carried out if applicants have lived overseas for six months 'in the last 5 years' in line with NHS Employers Guidance. 7) include information about the DBS Update Service (see section 11) 8) include information about the legal duty to refer to DBS (see section 12) 9) Update the Model Declaration Form as part of the Appendix 		
Document objectives: Outline the Trust's position and process to be followed regarding DBS checks			
Intended recipients: All staff			
Committee/Group Consulted: Executive Team, Joint Policy Review Group, Regulation Governance Group			
Monitoring arrangements and indicators: HR Team; Workforce Governance Group			
Training/resource implications: in line with section 12 of this document.			
Approving body and date	Executive Management Team	Date: August 2015	
Formal Impact Assessment	Impact Part 1	Date: July 2015	
Clinical Audit Standards	NO	Date: N/A	
Ratification Body and date	Senior Managers Operational Group	Date: August 2015 SMT August 2018	
Date of issue	August 2015		
Review date	July 2018 Extended to January 2019		
Contact for review	Director of HR and Workforce Development		
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1. INTRODUCTION

- 1.1 This policy sets out the main principles that the Trust operates in relation to recruitment and continued employment in relation to Criminal Records.
- 1.2 This policy complies with legislation and with the standards provided by NHS Employers and by the Care Quality Commission.
- 1.3 The Disclosure and Barring Service (DBS) is an executive agency of the Home Office set-up to help organisations make safer recruitment decisions. The service enables organisations in the public, private and voluntary sectors to make safer recruitment decisions by identifying candidates who may be unsuitable for certain work, especially that involving children or vulnerable adults.
- 1.4 The DBS was established under part five of the Police Act 1997 and was launched in March 2002.
- 1.5 The Independent Safeguarding Authority (ISA) is an independent non-departmental public body established under Section 1 of the Safeguarding Vulnerable Groups Act (2006) by the Home Office to provide new safeguarding arrangements for children and vulnerable adults.
- 1.6 The ISA has four main duties:
1. To maintain a list of individuals who are barred from engaging in *regulated activity* with children.
 2. To maintain a list of individuals who are barred from engaging in *regulated activity* with vulnerable adults.
 3. To reach decisions about whether an individual should be included in one or both barred lists.
 4. To reach decisions as to whether to remove a person from a barred list.
- 1.7 The Safeguarding Vulnerable Groups Act (2006) was created in response to recommendations made in the Bichard Inquiry, arising from the Soham murders in 2002. The inquiry questioned the way employers recruit people to work with vulnerable groups and particularly the way background checks are carried out. Recommendation 19 highlighted the need for a single agency to vet all individuals who want to work with vulnerable groups and to bar unsuitable people from doing so. The Act laid the foundation for the Vetting and Barring Scheme (VBS) and sets out the activities and work that are 'regulated activities'. These are the activities that a person who has been barred must not do.
- 1.8 In June 2010, the Government announced that the planned implementation of the VBS was to be halted because of concerns about the proportionality and bureaucracy of the scheme. A thorough review was undertaken with a view to scaling back the VBS scheme and the criminal records regime to common sense levels.

- 1.9 On 1 May 2012, the Protection of Freedoms Bill, which amends the Safeguarding Vulnerable Groups Act received Royal Assent and became an Act of Parliament, scaling back the VBS and the criminal records regime.
- 1.10 The Protection of Freedoms Act 2012 responded to recommendations made in Sunita Mason's review of the criminal records regime and the Government's review of the VBS. Recommendation 6 of Sunita's phase 2 review highlighted the need for a single agency to provide combined barring and criminal records services. From December 2012, the CRB and ISA merged to create the Disclosure and Barring Service (DBS). This new organisation provides a joined up service to combine the criminal records and barring functions.
- 1.11 Somerset Partnership NHS Foundation Trust applies for DBS checks through an online umbrella body called UCheck. . The Trust only requests disclosures where it is both proportionate and relevant to the position concerned.
- 1.12 This policy is based on the DBS Code of Practice, which requires organisations to use the disclosure information fairly, not to discriminate against candidates on the basis of unrelated criminal offences, to ensure data security, to comply with the recommendations for the retention of records and to comply with reasonable requests from the Disclosure and Barring Service to undertake assurance checks. Copies of the Code of Practice are available from Trust Human Resources Department or DBS website. The Policy Statement for the Recruitment of Ex-Offenders can be found in Appendix A and Safe Storage and Handling of DBS Checks is included as Appendix B.

2. PURPOSE & SCOPE

- 2.1 This policy applies to all candidates who have been offered a post subject to pre-employment checks, existing employees, doctors in training, students, trainees, external agency staff, workers/contractors and those entering the Trust on a voluntary basis.
- 2.2 All NHS organisations are required to undertake pre-appointment checks for all new employees (as described within the Recruitment and Selection Policy). The Disclosure and Barring Service represents a part of these pre-employment checks.
- 2.3 In order to ensure the safety of children and vulnerable adults, the Trust are required to check with the Disclosure and Barring Service whether staff or volunteers recruited to work within these areas have any criminal record.
- 2.4 This policy identifies which posts should be subject to a Disclosure and Barring Service check and at what level.
- 2.5 This policy promotes the use of relevant Disclosure and Barring Service requests and prevents inappropriate and illegal checks.
- 2.6 This policy will ensure consistent and fair treatment for all Trust employees, candidates and volunteers.

3. DUTIES AND RESPONSIBILITIES

3.1 The Trust Board has a responsibility to ensure that safe employment practices exist to protect patients and staff which are achieved through a robust recruitment and selection process, thus meeting its legal obligations. The Trust is obliged to ensure a position recruited to is regarded as eligible for a standard or enhanced DBS disclosure under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and the Police Act 1997 (Criminal Record) Regulations 2002 (as amended).

3.2 The **Director of HR and Workforce Development**, with delegated authority, is the Executive Lead with devolved responsibility for this policy and will provide quarterly reports to the Workforce Governance Group.

3.3 A senior representative from the HR Directorate is the **Lead Countersignatory** and is responsible for:

- Overseeing the introduction, operation and monitoring of the policy
- Ensuring the provision of briefings on the policy, guidance and support for managers on the operation of the policy

3.4 The **Human Resources team** is responsible for:

- Providing fair and consistent advice to Trust managers
- Recording of outcomes relating to previous convictions declared
- Sending DBS Applications to be processed
- Assisting managers in dealing with non-disclosure of criminal convictions
- Ensuring that all job adverts include a reference to DBS Disclosure checks, if required for the post
- Ensuring all DBS Disclosures are kept centrally and securely and destroyed in line with DBS guidance
- Ensuring the completion of a Declaration form for all new appointments
- Ensuring the provision of accurate and regular statistical information as requested
- Having a legal duty to refer to DBS

3.5 **Recruiting Managers** are responsible for:

- Ensuring that candidates are not unfairly discriminated against during the recruitment and selection process on the basis of criminal convictions held
- Ensuring that confidentiality is maintained regarding any convictions disclosed by candidates at any stage of the recruitment process.
- Ensuring that risk is assessed at the point of interview if a conviction is declared and taking a reasonable and pragmatic approach. Completing the relevant risk assessment paperwork and seeking advice from the Safeguarding Team if appropriate

3.6 **All employees and candidates** are responsible for:

- Disclosing at the application stage any convictions, cautions or bindovers they may have
- Disclosing any convictions, cautions or bindovers issued to them during their Trust employment
- Attend meetings to discuss non-disclosure of criminal convictions when requested to do so

3.7 The **Workforce Governance Group** will be responsible for monitoring the quarterly reports identifying the status of pre-employment checks and recruitment statistics over the previous quarter.

3.8 The **Regulation Governance Group** is responsible for approving any changes to this document.

3.9 The **Human Resources Business Partner** is the author of this policy and will ensure that this policy is reviewed at least every three years or sooner if national and local changes are required.

4. **EXPLANATIONS OF TERMS USED**

4.1 The following definitions apply in this policy:

Lead Countersignatory – A senior employee registered with and approved by the Disclosure and Barring Service as being suitable to authorise the appointment of counter-signatories and who is the named contact for the Disclosure and Barring Service with responsibility for ensuring compliance with the DBS Code of Practice.

Countersignatory – An employee registered with and approved by the Disclosure and Barring Service as being suitable to request Disclosure and Barring Service Disclosures.

Disclosure Certificate – A certificate that provides criminal record information, depending upon the type of disclosure requested.

Child – Is normally defined as someone under the age of 18.

Vulnerable Adult – A person aged 18 or over who is or may be unable to protect themselves from harm or exploitation.

Employee/staff – Defined as people who have a contract of employment with the Trust which may give them direct access to children or vulnerable adults

Candidate – An individual applying for a post with the Trust

Volunteer - A volunteer is someone who gives a commitment of time and energy for the benefit of the community, which is undertaken freely without financial gain.

Others – Staff not in the employment of the Trust e.g. Agency, Contractors, Locums. Where a DBS check is appropriate, this must be undertaken by their employer or Agency, and evidence provided in writing to the Trust.

5. PRINCIPLES

- 5.1 The Trust is committed to encouraging best practice in recruitment to ensure that appropriate use is made of the information provided by the Disclosure and Barring Service.
- 5.2 The Trust recognises that the Disclosure service is not a substitute for existing pre-employment checks including the taking up of references and making enquiries into a candidate's previous employment history. Disclosures will be used to complement existing recruitment practice and processed only after a conditional offer of employment is made.
- 5.3 The Trust recognises the need to have a policy and procedure in relation to Disclosure and Barring Service checks to provide a fair and consistent approach in recruitment and whilst employed in accordance with Care Quality Commission requirements and the NHS Employment Check Standards.
- 5.4 The Trust will not automatically exclude an individual on the basis of a criminal record without due consideration. The Trust believes that those with a criminal record should be treated fairly and given every opportunity to establish their suitability for Trust posts.
- 5.5 Because of the sensitivity and personal nature of Disclosure information, the Trust undertakes to handle and store information securely and to keep it only for as long as necessary. This will be a maximum of six months.
- 5.6 The Trust will indicate on its recruitment information the posts which will require a Disclosure in the event of a successful application.
- 5.7 The Trust will co-operate with audit and assurance checks carried out by the Disclosure and Barring Service and will implement its recommendations

6. LEVELS OF DISCLOSURE

- 6.1 The DBS service currently offers three levels of checking, Standard Disclosures, Enhanced Disclosures and Enhanced with Barred List checks. In addition, Disclosure Scotland offers a fourth level of check, Basic Disclosure.
- 6.2 **Standard Disclosures** contain details of both spent (old) and unspent (current) convictions, including cautions, reprimands and final warnings held in England and Wales on the Police National Computer (PNC). Most of the relevant convictions in Scotland and Northern Ireland may also be included.
- 6.3 From 12 October 2009, this level of check can no longer be used to obtain any information held on the ISA's barred lists for working with children and/or vulnerable adults. Where the duties of the position meets the criteria for regulated activity (see definitions below), employers must apply for an enhanced DBS check and request clearances against the relevant barred lists.
- 6.4 An **Enhanced Disclosure** is the highest level of Disclosure and contains the same information as a standard check but also includes any non-conviction information held by local police, where they consider it to be relevant to the

post. This information is referred to as 'approved information' on the enhanced check certificate.

- 6.5 An **Enhanced Disclosure with Barred List Checks** will check whether someone is included in the 2 DBS 'barred lists' (previously ISA barred lists) of individuals who are unsuitable working with children or adults.
- 6.6 In a small number of cases, the enhanced DBS check may also include additional non-criminal record information from the local police where this is thought necessary in the interests of preventing or detecting crime.
- 6.7 A **Basic disclosure** is the lowest level of disclosure and only contains details of 'unspent' (current) convictions. Basic Disclosures are administered by Disclosure Scotland.

7 DEFINITIONS

7.1 From 10 September 2012 the definitions of regulated activity relating to children and adults were amended to reduce the number of individuals falling within the definitions. In addition, the category of activities known as "controlled activity" was abolished. Only individuals falling within the new definitions of regulated activity are subject to the ISA's barring regime.

7.2 Regulated activity

7.2.1 The new definition of regulated activity relating to adults and children in the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, can be summarised as follows:

Adults

7.2.2 Any activity involving working or volunteering with **adults** that is of a **specific nature**. An adult refers to any individual who is aged 18 years or over.

7.2.3 There are six categories within the new definition of regulated activity, these are:

- (i) 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.

- (ii) 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.

Personal care, excludes any physical assistance provided to an adult in the relation to the care of their hair.

(iii) Providing social work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing ongoing support to clients.

(iv) 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.

(v) 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.

(vi) Conveying

Drivers and their assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving: health care, personal care or social care, for the purpose of enabling them to receive these services, as outlined above.

- 7.2.4 There is no requirement for a person working or volunteering with adults to do the activities outlined above a certain number of times within a certain period before they are regarded as engaging in regulated activity.

Children

- 7.2.5 An activity involving working or volunteering with **children** that is of a **specified nature (updated June 2013)**:

(i) Activity of a Specified Nature

Teaching, training, instruction, care for or supervision of children (except if the person undertaking the activities is under regular supervision) if carried out by the same person frequently or overnight

- Advice or guidance (except legal advice) provided wholly or mainly for children which relates to their physical, emotional or educational well-being if carried out by the same person frequently or overnight

(ii) Activity within specified establishment

- Any activity that is for or on behalf of the establishment with the opportunity for contact with children if carried out frequently :
- Excepted is work by volunteers under regular supervision or occasional or temporary contract work that is not an activity of a specified nature listed above.
- Specified establishments are schools, pupil referral units, academies, nursery schools, Further Education (FE) establishments mostly for children, institutions for the detention of children, children's homes, children's centres (in England), children's hospitals (in Northern Ireland) and childcare premises including nurseries.

(iii) Healthcare of a child (any frequency)

Healthcare provided to a child by a health care professional or by a person acting under the direction or supervision of a healthcare professional.

- A health care professional who is a person regulated by a professional healthcare regulator (i.e. a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002).
- Health care includes: all forms of health care provided for children and includes physical, mental and palliative health care; diagnostic tests and investigative procedures and procedures similar to surgical or medical care, but not provided in connection with a medical condition.

(iv) Personal Care of a child (any frequency)

- Physical help with eating or drinking for reasons of illness or disability.
- Physical help with toileting (including menstruation), washing, bathing or dressing for reasons of age, illness or disability.
- Prompting together with supervision when a child is otherwise unable to decide for themselves in relation to any of the above personal care activities.
- Training or advice given to a child in relation to any of the above personal care activities.

(v) Moderating an online forum for children

Moderating a public electronic interactive communication service likely to be used wholly or mainly by children and carried out by the same person frequently . Except activity by a person who does not have access to the content of the matter or with users of the service.

(vi) Driving a vehicle used for conveying children

Driving a vehicle being used only for conveying children and their carers or supervisors under a contract or similar arrangement when carried out by the same person frequently .

- (vii) Early years or later years childminding (any frequency)

Early or later years childminding where there is a requirement to register or for voluntary registration under the Childcare Act 2006 and where the activity takes place on domestic premises for reward.

- (viii) Fostering a child (any frequency)

- (ix) Day to day management of regulated activity (any frequency)

Day to day management on a regular basis of a person who is providing a regulated activity in relation to children. This includes the supervisor of a person who would be in regulated activity if not under regular supervision.

- 7.2.6 Individuals who will be working in Regulated Activity as defined above will be eligible for an enhanced DBS check with barred list check.

8 RECRUITMENT OF EX-OFFENDERS

- 8.1 The Rehabilitation of Offenders Act 1974 provides for anyone who has been convicted of a criminal offence and has been sentenced to less than two and a half years in prison, to be regarded as rehabilitated after a specified period of time with no further convictions. After this period of rehabilitation, the conviction is considered as “spent”. In normal circumstances, once a conviction is spent, the convicted person does not have to reveal this to future employer when applying for a job. However, in order to protect the vulnerable, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 exempts some professions within the health and care sectors from this approach.

- 8.2 Where posts have been identified as exempt under the Exceptions order, employers are entitled to know about all previous convictions regardless as to whether they are considered “spent” or “unspent”.

- 8.3 By law, employers cannot request a standard or enhanced disclosure on any position that is not identified as exempt from the Act. For all other positions, employers may only request details of any unspent (current) convictions. This is known as a basic disclosure.

9. POSTS SUBJECT TO DBS CHECKS

- 9.1 Following a conditional offer of employment, the Human Resources Department will ensure that a candidate’s completed Disclosure and Barring Service application is sent to the DBS or Disclosure Scotland (as appropriate) for processing.
- 9.2 The level of Disclosure requested will be dependent on the post applied for. New employees to the Trust in one of the following categories or existing employees moving into one of these categories for the first time will be checked at the disclosure level stated in Appendix E.

9.3 Applicants who have lived Overseas

9.3.1 The Disclosure and Barring Service does not generally have access to overseas criminal records. Therefore, in addition to requesting an appropriate Disclosure certificate, the Trust will also request that any applicant who has lived outside the UK for more than six months in the last 5 years also supplies an overseas police check from the relevant country.

9.4 **Declaration Forms**

9.4.1 All candidates are sent either Model Declaration form A or B (dependent on the post they are applying for). At interview, candidates will present their completed Declaration form to the Chair of the panel and he/she should ensure that they follow the declaration protocol provided in their interview panel pack.

9.4.2 If cautions, investigations, convictions or any other information is disclosed on the form, the Chair should ensure that open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal cautions, convictions or investigations on the job application form, declaration form or at interview could lead to the withdrawal of an offer of employment, dismissal from employment with the Trust and to referral to the **NHS Counter Fraud Service**. Model Declaration form A (to be used for posts exempt from the Rehabilitation of Offenders Act 1974) is provided as Appendix C.

9.4.3 If a candidate declares a caution, conviction or investigation at interview, the Chair should ensure that a risk assessment is completed based on the information supplied. The Risk Assessment Checklist is included as Appendix D. The Human Resources department will be able to provide further help and support in such cases.

9.5 **Commencement of employment**

9.5.1 Employment may commence prior to receipt of the Disclosure and Barring Service check, providing a DATIX Local Risk form (accessible on the Trust Intranet) is completed and that the Recruiting Manager takes responsibility for ensuring that the individual works under full supervision (please note that this is not appropriate for posts involving working with children). (see Trust's Recruitment and Selection Policy for more information about completing a DATIX risk assessment).

10. **EXISTING TRUST STAFF**

10.1 A new DBS check is not always required where an existing member of staff moves to a new post within the Trust and their role, responsibilities and level of contact with that vulnerable group has not significantly changed. However, existing staff will be asked to undertake a new check in the following circumstances:

- their DBS Disclosure is over three years old
- they have never had a DBS check before and are moving to a position that now requires them to have a check

- they have previously had a standard level check and are moving into regulated activity, which now requires them to have a higher level disclosure under the terms of the Safeguarding Vulnerable Groups Act 2006
- the new position requires them to work with a different vulnerable group and they are required to have a check against one or both barred list(s)
- there has been a break of service for more than three months between leaving the old position and taking up the new position
- there is a concern about that individual's suitability for the post

10.2 Trust employees also have a responsibility to inform their manager should they receive a conviction, caution, reprimand or warning during their employment with the Trust. Failure to disclose a conviction, caution, reprimand or warning may result in disciplinary action.

11. DBS UPDATE SERVICE

11.1 For an annual fee, applicants can have their DBS certificate kept up to date and take it with them from role to role, within the same workforce, where the same type and level of check is required.

11.2 The Recruitment Team will request the individual's original DBS certificate and have permission to request a status check. The HR Assistant will go to www.gov.uk/dbs-update-service and enter information from the certificate. The result will be returned instantly. The individual will be able to see who has carried out a status check and when this occurred.

One of the following results will be returned:

- the DBS certificate did not reveal any information and remains current as no further information has been identified since its issue
- this DBS certificate remains current as no further information has been identified since its issue
- this DBS certificate is no longer current. Please apply for a new DBS check to get the most up-to-date information
- the details entered do not match those held on our system. Please check and try again.

12. LEGAL DUTY TO REFER TO THE DBS

12.1 Who has the power to refer?

- Local Authorities - as defined in section 1 of the Local Authorities (Goods and Services) Act 1970 (c.39)
- Keepers of Registers – registered bodies such as the Nursing and Midwifery Council
- Supervisory Authorities – for example the Care Quality Commission or Ofsted

12.2 When must you refer?

When **two** main conditions have been met:

- ONE: Withdraw permission to engage in regulated activity when someone is dismissed, redeployed, retired/made redundant or resigned
- TWO: When the referring party thinks that the person has either:
 - Engaged in relevant conduct or
 - Satisfied the harm test or
 - Received a caution for, or been convicted of a relevant offence.

For most cases, the DBS only has the power to bar a person who **is, has been** or **might in the future** engage in regulated activity.

13. DISCLOSURE AND BARRING SERVICE CHECKS – OTHERS

13.1 Doctors in Training

13.1.1 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.

13.1.2 Where the individual has previously had a check against the PoCA List (or Children's List, if they started their training programme post-October 2009) then there is no legal requirement for the employing organisation to undertake a further check until that three year period elapses.

13.1.3 Doctors appointed to training programmes before 12 October 2009, who hold a valid enhanced DBS check (within the last three years), will not normally be required to have a fresh check against the Vulnerable Adults List until that three-year period elapses. For doctors who started their training programme post-October, the Trust must seek written assurances from the host/previous employer that a check has been obtained against the Vulnerable Adults List.

13.1.4 In all cases, the Trust will seek written assurances from the host/previous employer that appropriate clearances have been obtained within the last three years.

13.1.5 Where assurances cannot be obtained, or the new post changes the level of check required under the terms of the Safeguarding Vulnerable Groups Act 2006, or where there is a specific concern about the individual's practice the Trust may undertake a new check.

13.2 Assigned Staff and Dual Contracts

13.2.1 Any assigned staff or those who have dual contracts must be checked by each employer unless they only carry out restricted work for one employer in which case it is that employer's responsibility. Line managers should identify such staff and ensure the check is made through the Trust HR Department.

13.2.2 All Somerset County Council employees working in partnership with the Trust must be checked by their employer in accordance with their policy and protocols.

13.3 External Agency Workers

- 13.3.1 Temporary staff supplied by an agency, including locums are required to have DBS checks at least once a year. The Trust must obtain written assurances from the agency that an appropriate check at the correct level has been carried out within the last 12 months. Managers should refer to the Bank, Agency and Locum Policy. More frequent checks should be carried out by employers where any such assurances cannot be provided, or where there is a concern about an individual's practice.
- 13.3.2 The annual check requirement does not apply to individuals who are registered with NHS Professionals, 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 NHS Professionals, then a new DBS check will be requested.
- 13.3.3 Line managers should satisfy themselves with the documentary evidence provided. HR advice may be sought if necessary.

13.4 Clinical Placements

- 13.4.1 Students/trainees should have a DBS check at the start of their training course, rather than each time they move to a new placement.
- 13.4.2 Written confirmation must be recorded of a satisfactory check having been undertaken by the Higher Education Institute.
- 13.4.3 In this instance, the student may not commence the placement until a satisfactory check has been confirmed/obtained.
- 13.4.4 All written confirmation of Disclosure and Barring Service checks must be original copies, on headed paper, and must include the full name, date of birth and address of the applicant together with the date of the satisfactory check. Photocopies, email or faxed copies are not acceptable.

13.5 Private contracts/works and maintenance staff

- 13.5.1 If it is necessary for other categories of staff to be deployed for any length of time in areas where there is direct access to children/vulnerable adults, a Disclosure and Barring Service check must be carried out on those individuals.
- 13.5.2 If the report indicates that a particular person is not suitable for those duties, the manager and/or contractor should be told that the individual cannot undertake the work and should be assigned to other areas. The manager responsible for the area for which the work is to be undertaken should be advised accordingly.

14. TRAINING REQUIREMENTS

- 14.1 The Trust will work towards all staff being appropriately trained in line with the organisation's Staff Mandatory Training Matrix (training needs analysis). All training documents referred to in this policy are accessible to staff within the Learning and Development Section of the Trust Intranet.

15. EQUALITY IMPACT ASSESSMENT

All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. In addition, the Trust has identified Learning Disabilities as an additional tenth protected characteristic. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Equality and Diversity Lead who will then actively respond to the enquiry.

16. MONITORING COMPLIANCE AND EFFECTIVENESS

Monitoring arrangements for compliance and effectiveness

- 16.1 Overall monitoring will be by the Workforce Governance Group.
- 16.2 Human Resources are responsible for ensuring that a satisfactory Disclosure and Barring Service check is requested where appropriate. The line manager is responsible also for ensuring that a satisfactory Disclosure is received before they allow a member of staff to start work or for putting in place full supervision arrangements including a recorded risk assessment (not appropriate for posts working with children).
- 16.3 A senior representative from the HR Directorate will provide quarterly reports to the Workforce Governance Group identifying the status of pre-employment checks and recruitment statistics over the previous quarter. Where any deficiencies are identified, this will be recorded in the minutes and form part of the meeting action plan, monitored at each subsequent meeting and assurance will be provided to the Regulation Governance Group. The Workforce Governance Group report quarterly to the Regulation Governance Group using the Governance Group reporting template.

The Director of HR and Workforce Development will highlight any agreed system or practice changes to the HR Team who will be responsible for ensuring improvements are implemented.

17. COUNTER FRAUD

- 17.1 The Trust is committed to the NHS Protect Counter Fraud Strategy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

18. RELEVANT CARE QUALITY COMMISSION (CQC) REGISTRATION STANDARDS

- 18.1 Under the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3)**, the fundamental standards which inform this procedural document, are set out in the following regulations:

Regulation 13:	Safeguarding service users from abuse and improper treatment
Regulation 17:	Good governance
Regulation 18:	Staffing
Regulation 19:	Fit and proper persons employed

Regulation 20: Duty of candour
Regulation 20A: Requirement as to display of performance assessments.

18.2 Under the **CQC (Registration) Regulations 2009 (Part 4)** the requirements which inform this procedural document are set out in the following regulations:

Regulation 18: Notification of other incidents

18.3 Detailed guidance on meeting the requirements can be found at <http://www.cqc.org.uk/sites/default/files/20150311%20Guidance%20for%20providers%20on%20meeting%20the%20regulations%20FINAL%20FOR%20PUBLISHING.pdf>

Relevant National Requirements

Disclosure and Barring Service Policy and Procedures: The Trust has a Disclosure and Barring Service policy and is compliant with Disclosure and Barring Service Code of Practice.

Safeguarding Vulnerable Groups Act 2006

NHS Employment Check Standards

Police Act 1997

Protection of Freedoms Act 2012

The Rehabilitation of Offenders Act 1974

NHSLA Risk Management Standards 2012-2013 for NHS Trusts providing Acute, Community, or Mental Health and Learning Disability Services and Non-NHS Providers of NHS Care

19. REFERENCES, ACKNOWLEDGEMENTS AND ASSOCIATED DOCUMENTS

19.1 References

NHS Employment Check Standard – DBS

Disclosure and Barring Service (DBS) checks for providers registered under the Health and Social Care Act 2008

19.2 Cross reference to other procedural documents

Bank, Agency and Locum Policy

Counter Fraud Policy

Development & Management of Procedural Documents

Disciplinary Policy

Professional Codes of Conduct

Recruitment and Selection Policy and Procedure

Risk Management Policy and Procedure

Safeguarding Children

Safeguarding Vulnerable Adults at Risk Policy

Untoward Event Reporting Policy and procedure

All current policies and procedures are accessible in the policy section of the public website (on the home page, click on 'Policies and Procedures'). Trust Guidance is accessible to staff on the Trust Intranet.

20. APPENDICES

20.1 For the avoidance of any doubt the appendices in this policy are to constitute part of the body of this policy and shall be treated as such.

Appendix A	Policy Statement on the recruitment of Ex-Offenders
Appendix B	Safe Storage and Handling of Disclosure and Barring Service Checks
Appendix C	Model Declaration Form A
Appendix D	Risk Assessment Checklist
Appendix E	List of Roles and Relevant Disclosure

SOMERSET PARTNERSHIP NHS FOUNDATION TRUST

POLICY STATEMENT ON THE RECRUITMENT OF EX-OFFENDERS

Background

All individuals or organisations using the Disclosure and Barring Service (DBS) Disclosure service to help assess the suitability of applicants for positions of trust and who are recipients of Disclosure information, must comply fully with the DBS Code of Practice.

Policy Statement

As an organisation using the Disclosure and Barring Service (DBS) to assess applicant's suitability for positions of trust, the Trust complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It is a requirement of the DBS Code of Practice that all Registered Bodies must treat Disclosure applicants who have a criminal record fairly and not discriminate because of a conviction or other information revealed.

The Trust is committed to the fair treatment of its staff, potential staff or users of its services, irrespective of any protected characteristics under the Equality Act 2010 (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage or civil partnership, pregnancy and maternity). This policy will be made available to all disclosure applicants at the outset of the recruitment process.

We actively promote equality of opportunity for all with the right mix of talent, skills, and potential and welcome applications from a wide range of candidates including those with a criminal record. We select all candidates for interview based on their skills, qualifications and experience.

Having a criminal record will not necessarily bar anyone from working for us. This will depend upon the nature of the position and the circumstances and background of the offences.

A Disclosure is only requested after a thorough assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, application forms, job adverts and/or recruitment briefs will contain a statement that a disclosure will be requested in the event of an individual being offered the position.

All applicants are required to declare if they have a criminal record in their Declaration form and when asked at interview. We guarantee that this information is only seen by those who need it as part of the recruitment process. Unless the nature of the position allows the Trust to ask questions about an applicant's entire criminal record we only ask about unspent convictions as defined in the Rehabilitation of Offenders Act 1974.

At Interview, and/or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of the offer of employment or subsequent dismissal.

We ensure that all those in the Trust who are involved in the identification and assessment of the relevance and circumstances of have been suitably trained. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders e.g. The Rehabilitation of Offenders Act 1974.

We make every subject of a DBS disclosure aware of the existence of the DBS Code of Practice and make a copy available on request.

The Trust's Human Resources Department undertakes to discuss any matter revealed in the disclosure with the person seeking the appointment before withdrawing a conditional offer of employment.

SOMERSET PARTNERSHIP NHS FOUNDATION TRUST

SAFE STORAGE AND HANDLING OF DISCLOSURE AND BARRING SERVICE CHECKS

Somerset Partnership NHS Foundation Trust complies fully with the DBS Code of Practice regarding the correct handling, use, storage and retention and disposal of Certificates and Certificate information. The Trust also complies fully with its obligations under the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage and retention and disposal of Certificate information and has adapted this Appendix to the Trust DBS policy as a statement of our practice.

Storage and access

Certificate information should be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

Secure Handling

In accordance with section 124 of the Police Act 1997, Certificate information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those whom Certificates or Certificate information has been revealed and it is a criminal offence to pass this information to anyone who is not entitled to receive it.

Usage

Certificate information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

Retention

Once a recruitment (or other relevant) decision has been made, we do not keep Certificate information for any longer than is necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Certificate information for longer than six months, we will consult the DBS about this and will give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

Disposal

Once the retention period has elapsed, the Trust will ensure that any Certificate information is destroyed by secure means i.e. shredding through authorised Trust mechanisms. Whilst awaiting destruction, Certificate information will not be held in unsecure receptacle e.g. (waste sacks). Photocopies or other images of the Certificates will not be held by the Trust. The Trust will need to keep a record of the date of issue of

a Certificate, the name of the subject, the type of Certificate received, the position for which the Certificate was requested, the unique reference number of the Certificates and the details of any recruitment decision taken. This record will ensure compliance with the NHS pre-employment checks DBS guidance and NHSLA standards.

Disclosure and Barring Service Confirmation

A paper copy indicating a member of staff has been checked, the outcome and date may be placed on the individual's personal file. No reference to any conviction details may be recorded as part of this process.

MODEL DECLARATION (FORM A)

EMPLOYER NOTES

This model declaration form is for use **only** in connection with positions that **are exempt** from the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975* [the Exceptions Order] and where a standard or enhanced disclosure may be sought under the provisions of the *Police Act 1997* through the Disclosure and Barring Service (DBS) [referred to as a DBS check].

Use of this model declaration form is mandatory for all NHS employers where the position being appointed to meets the criteria for a DBS check and should be seen as complementing existing good recruitment practice. It **must not** be used to ask questions against positions that are non exempt from the Exceptions Order.

Employers will find it useful to be aware of the following Statutory Instruments which came into force on 29 May 2013:

- *Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013* which amends the definition of 'relevant matters' in the Police Act 1997, being the information which should be disclosed in an standard or enhanced check.
- *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013* which made amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to provide that certain spent convictions and cautions will become 'protected' when specific conditions are met and therefore are not subject to disclosure through a DBS check. Employers must take care not to ask questions which could potentially lead to an applicant disclosing protected convictions or cautions and cannot take any such information into account as part of the recruitment process.

Guidance and criteria on the filtering of these cautions and convictions can be found on the Disclosure and Barring Service website at: www.gov.uk/disclosure-and-barring-service.

A request for a self-declaration is not a substitute for the full range of pre-appointment checks that are required by law or that are available to employers. It should therefore be remembered that appointing persons on the basis of information that applicants have themselves provided can never be risk free.

It is also essential that employers provide applicants with separate information [referred to within this model declaration form as 'Guidance Notes for Applicants'] that clearly stipulates local recruitment procedures in relation to: why checks are required, the level of check being obtained, the type of information that may be disclosed, who information will be shared with, how this will be recorded and handled, and how long it is likely to take to process information, to ensure that applicants are fully aware of, and understand what is being requested and why. They should also be advised of where they can seek independent advice, should they have any concerns, or who to contact within the organisation if they have any questions about completing this form.

Employers must comply with guidelines issued by NHS Employers *NHS Employment Check Standards: Criminal record and barring checks* (July 2013) which is available at: www.nhsemployers.org/RecruitmentAndRetention/EmploymentCheckStandards/

APPLICANT NOTES

IN CONFIDENCE

The position you have applied for has been identified as being an 'eligible position' under the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975* [the Exceptions Order] and, in certain circumstances, the *Police Act 1997*. As such, it meets the eligibility criteria for a standard or an enhanced disclosure to be requested through the Disclosure and Barring Service (DBS).

Both standard and enhanced DBS disclosure certificates contain information about any convictions, cautions (including reprimands and final warnings) which are not 'protected' as defined by the *Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975 (as amended)* - see highlighted note in the section below. Enhanced disclosures may also include other relevant police information where this is deemed relevant to the position you are applying for.

Please be aware that the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 (S.I. 2013/1198)* made amendment to the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975* to provide that certain spent convictions and cautions will become protected when specific conditions are met. Protected convictions and cautions will not be disclosed in a DBS check, and employers cannot ask for information about protected convictions or cautions, or take these into account when considering you for appointment.

Before you complete this form please read guidance and criteria for the filtering of these convictions and cautions which can be found on the Disclosure and Barring Service website at: www.gov.uk/government/disclosure-and-barring-service

Before you can be considered for appointment with Somerset Partnership NHS Foundation Trust we need to be satisfied about your character and suitability.

Where the position has, in addition, been identified as a regulated activity under the *Safeguarding Vulnerable Groups Act (2006) (as amended by the Protection of Freedoms Act 2012)* an enhanced DBS disclosure will include information which is held on the Children's and/or Adults barred list(s), as applicable to the position.

Somerset Partnership NHS Foundation Trust aims to promote equality of opportunity and is committed to treating all applicants for positions fairly and on merit regardless of ethnicity, disability, age, gender or gender re-assignment, religion or belief, sexual orientation, pregnancy or maternity, marriage or civil partnership. We undertake not to discriminate unfairly against applicants on the basis of criminal conviction or other such information declared.

Prior to making a final decision concerning your application, we shall discuss with you any information declared by you that we believe may have a bearing on your suitability for the position. If we do not raise this information with you, this is because we do not believe that it should be taken into account. In that event you still remain free, should you wish, to discuss the matter with the recruiting manager. As part of assessing your application, we will only take into

account criminal records and other information declared which is relevant to the position being applied for.

The information that you provide in this declaration form will be processed in accordance with the *Data Protection Act 1998*. It will be used for the purpose of determining your application for this position. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud.

Please ensure that you read the ‘Guidance Notes for Applicants’ that accompanied your application form carefully before completing this declaration form. They provide you with further and more detailed information about how your application will be processed, the persons to whom it will be disclosed and the checks that will be done to verify the information provided.

Please answer all of the following questions in this form. If you answer ‘yes’ to any of the questions, please provide full details in the space indicated. Please also use the space below to provide any other information that may have a bearing on your suitability for the position for which you are applying. You may continue on a separate sheet if necessary, and you may attach supplementary comments should you wish to do so.

Answering ‘yes’ to any of the questions below will not necessarily bar you from an appointment within the NHS. This will depend on the relevance of the information you provide in respect of the nature of the position for which you are applying and the particular circumstances.

1. Are you currently bound over, or do you have any convictions or cautions (including warnings and reprimands) which are not deemed 'protected' under the amendment to the Exceptions Order 1975*, issued by a Court or Court-Martial in the United Kingdom or in any other country?

NO

YES

If **YES**, please include details of the order binding you over and/or the nature of the offence, the penalty, sentence or order of the Court, and the date and place of the Court hearing.

***Please note that you do not need to tell us about convictions, cautions, warnings or reprimands which are deemed 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 - see applicant notes above.**

You also are not required to tell us about parking offences.

2. Have you been charged with any offence in the United Kingdom or in any other country that has not yet been disposed of?

NO

YES

If **YES**, please include details of the nature of the offence with which you are charged, date on which you were charged, and details of any on-going proceedings by a prosecuting body.

You are reminded that, if you are appointed, you have a continued responsibility to inform us immediately where you are charged with any new offence, criminal conviction or fitness to practise proceedings in the United Kingdom or in any other country that might arise in the future.

You do not need to tell us if you are charged with a parking offence.

3. Are you aware of any current investigation being undertaken by the NHS Counter Fraud and Security Management Services (NHS CFSMS) following allegations made against you?

NO

YES

If **YES**, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by NHS Counter Fraud and Security Management Services (NHS CFSMS).

4. Have you been investigated by the Police, NHS CFSMS or any other Investigatory Body resulting in a current or past conviction or dismissal from your employment or volunteering position?

NO

YES

If **YES**, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by the Investigatory Body.

Investigatory bodies include: Local Authorities, Customs and Excise, Immigration, Passport Agency, Inland Revenue, Department of Trade and Industry, Department of Work and Pensions, Security Agencies, Financial Service Authority. This list is not exhaustive and you must declare any investigation conducted by an Investigatory Body.

5. Have you ever been dismissed by reason of misconduct from any employment, volunteering, office or other position previously held by you?

NO

YES

If **YES**, please include details of the employment, office or position held, the date that you were dismissed and the nature of allegations of misconduct made against you.

6. Have you ever been disqualified from the practise of a profession, or required to practise subject to specified limitations following fitness to practise proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?

- NO
YES

If **YES**, please include details of the nature of the disqualification, limitation or restriction, the date, and the name and address of the licensing or regulatory body concerned.

7. Are you currently or have you ever been the subject of any investigation or fitness to practise proceedings by any licensing or regulatory body in the United Kingdom or in any other country?

- NO
YES

If **YES**, please include details of the reason given for the investigation and/or proceedings undertaken, the date, details of any limitation or restriction to which you are currently subject, and the name and address of the licensing or regulatory body concerned.

8. Are you subject to any other prohibition, limitation, or restriction that means we are unable to consider you for the position for which you are applying?

- NO
YES

If **YES**, please include details.

9. Are there any other matters that may be relevant to the position being applied for which might cause your reliability or suitability for employment to be called into question?

- NO
YES

If **YES**, please include details.

Please note that you are not required to disclose a protected conviction or caution as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2013 or any circumstances ancillary to that protected conviction or caution - as outlined within the applicant notes above.

If you have answered 'yes' to any of the questions above, please use the space on the next page to provide details.

If you have answered 'yes' to any of the questions above, please use this space to provide details. Please **indicate clearly the number(s) of the question** that you are answering. You may continue on a separate sheet if necessary and may attach supplementary comments should you wish to do so.



DECLARATION

IMPORTANT

The *Data Protection Act 1998* requires us to advise you that we will be processing your personal data. Processing includes: holding, obtaining, recording, using, sharing and deleting information. The *Data Protection Act 1998* defines 'sensitive personal data' as racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health, sexual life, criminal offences, criminal convictions, criminal proceedings, disposal or sentence.

Where you are applying for a position which involves regulated activity, this will also include any barring decisions made by the Disclosure and Barring Service (DBS) against the Children's or Adults barred lists under the terms of the *Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedom's Act 2012)*.

The information that you provide in this declaration form will be processed in accordance with the *Data Protection Act 1998*. It will be used for the purpose of determining your application for this position. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud.

Once a decision has been made concerning your appointment, Somerset Partnership NHS Foundation Trust will not retain this declaration form any longer than necessary [see further details in '*Guidance Notes for Applicants*' which was provided with your application form. This declaration will be kept securely and in confidence. Access to this information will be restricted to designated persons within the organisation who are authorised to view it as a necessary part of their work.

In signing the declaration on this form, you are explicitly consenting for the data you provide to be processed in the manner described above.

I have read the '*Guidance Notes for Applicants*' that accompanied my application form, and I consent to the information provided in this declaration form being used by Somerset Partnership NHS Foundation Trust for the purpose of assessing my application, and for enquiries in relation to the prevention and detection of fraud.

I confirm that the information that I have provided in this declaration form is correct and complete. I understand and accept that if I knowingly withhold information, or provide false or misleading information, this may result in my application being rejected, or if I am appointed, in my dismissal, and I may be liable to prosecution.

Please sign and date this form.

SIGNATURE.....

NAME (in block capitals)

DATE.....

Please complete and bring this Model Declaration Form to your interview.

.....

.....

If you wish to withdraw your consent at any time after completing this declaration form or you have any enquiries relating to information required in this form, please contact Jo Corlett on 01278 432148.

All enquiries will be treated in strict confidence.



APPENDIX D

RISK ASSESSMENT CHECKLIST DISCLOSURE UNDER THE POLICE ACT 1997 (DBS)

CANDIDATE NAME:

DATE OF INTERVIEW:

POST APPLIED FOR:

This risk assessment should be carried out in conjunction with the Job Description.

GENERALLY	LEVEL OF RISK					JUSTIFICATION FOR LEVEL OF RISK GIVEN
	low		high			
	1	2	3	4	5	
The following areas should be considered when an applicant who has a criminal conviction is being interviewed for a post:						
The seriousness of the offence and its relevance to the safety of patients, other employees and property.						
Will the nature of the job present any opportunities for the post holder to re-offend in the place of work?						
The length of time since the offence occurred.						
Any relevant information offered about the circumstances which led to the offence being committed, for example the influence of domestic or financial difficulties and whether they have changed.						
Whether the offence was a one off, or part of a history of offending.						
Does the post involve one to one contact with children or vulnerable groups?						
What level of supervision will the post holder receive?						
Does the post involve any direct responsibility for finance or items of value?						
Does the post involve direct contact with the public?						

The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.						
Does the level of risk make this candidate unsuitable for the post? YES / NO						
Signatures of Panel (insert names) 1. 2. 3.						

Enhanced Disclosure with a barred list check

- nursing staff
- dental nurses
- doctors
- dentists
- health care assistants/support workers
- allied health professionals and assistants
- counsellors
- phlebotomists
- psychologists
- health visitors
- assessment workers
- volunteers undertaking regulated activity
- porters

Enhanced Disclosure (no barred list check)

- chaplains

Standard Disclosure:

- catering support workers/service assistants (with patient contact)
- assistant housekeepers
- housekeepers
- volunteers based in patient areas but who do not undertake regulated activity

Basic Disclosure:

- all administration/reception posts based in patient areas (that do not carry out regulated or controlled activity) or those who have access to patient information
- staff in the human resources department
- staff in the payroll department
- staff in the finance department
- catering support workers (with no patient contact)
- chief executive
- senior managers/heads of service
- board appointments
- volunteers with no patient contact but with access to patient information

No Disclosure:

- other administrative posts based away from patient areas and with no patient contact or no access to patient information
- volunteers based away from patient areas and with no patient contact or no access to patient information