

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST****DISCLOSURE AND BARRING SERVICES CHECK (DBS) AND THE  
RECRUITMENT OF EX-OFFENDERS ADDITIONAL PROCEDURAL GUIDE****INTRODUCTION**

- This guide provides additional guidance on the DBS procedure and ensures that ex-offenders are not discriminated against.
- The Trust complies with the DBS Code of Practice, a copy of which is made available to job applicants should they request it.
- DBS checks will not replace other pre-employment checks but work in conjunction with where it is deemed necessary.
- The Trust will not seek to offer or engage anyone in either paid or unpaid work in a regulated activity without undertaking the appropriate DBS check
- Types of check - DBS checking service can ask successful job applicants to apply for one of the following types of check depending on the job role:
  - Standard check - details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions. Where the type of work enables the person to have 'access to persons in receipt of such services in the course of [their] normal duties'.
  - Enhanced check - 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 with a barred list check: Child barred list information 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: paediatrician, Child Psychologist, Staff Nurse.
  - Adult barred list 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. For example: Radiologist, Doctor, Surgeon and Community Nurse.
  - Child and adult barred list is only available for those individuals engaged in regulated activity with both vulnerable groups including children and a small number of posts as listed in the Police Act regulations

- Adult first - an individual can be checked against the DBS adult barred list while waiting for the full criminal record check to be completed
- DBS information will only be viewed by Organisation workers with the authority to receive it in the course of their duties. This includes recruiting managers and members of the HR Department who are required to provide support in the recruiting process.
- All decisions regarding DBS checks are to be documented in order to provide an audit of good practice and to ensure that the Organisation's Equal Opportunities Policy is being followed.
- All criminal record information will be dealt with as strictly confidential. Breaches of confidentiality will be dealt with through the Organisation's Conduct and Capability Policy.
- The trust may ask the candidates permission to view the original DBS certificate.
- The Trust can contact the DBS for a copy of the applicant's DBS original Certificate if all of the following conditions apply:
  - The individual is subscribed to the Update Service
  - The employer has carried out a Status Check which revealed a change to the DBS Certificate and as a result the individual applied for a new DBS check
  - The DBS issued the new DBS Certificate to the applicant more than 28 days ago
  - The applicant has not shown the employer their new DBS Certificate.

<b>REGULATED ACTIVITY</b>
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- The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012). No distinction is made between paid and voluntary work.
- *Regulated activity relating to children* - The definition of regulated activity relating to children comprises as follows:
  - 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;
- *Regulated activity relating to adults* - The regulated activity relating to adults is as follows:
  - An adult is a person aged 18 years or over
  - A person whose role includes the day to day management or supervision of any person, who is engaging in regulated activity, is also in regulated activity.
  - There are 6 categories within the definition of regulated activity for adults;
    1. Providing Healthcare
    2. Providing Personal Care
    3. Providing Social Work
    4. Assistance with General Household Matters
    5. Conveying
    6. Assistance in the conduct of a person's own affairs
  - 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.
- Regulated Activity and its Guiding Principles should be adhered to, when managers make any decisions related to an employee's DBS
- All employees DBS information will be recorded within ESR.

## OVERSEAS APPLICATIONS

- Currently, the DBS is unable to access criminal records held overseas. However, in a small number of cases, overseas criminal records are also held on Police National Computer (PNC) and these would be revealed as part of a criminal record check. Where the position meets the criteria for a criminal records check, even if the applicant claims they have never lived in the UK before, a check should still be obtained in addition to the individual's overseas criminal records.
- In line with the Disclosure and Barring Checks, NHS Employment Check Standard it is recommended that a certificate of good conduct or overseas criminal record check is gained. These must be in accordance with the relevant country's justice system and UK requirements.
- Where it is not possible to carry out any criminal record checks e.g. asylum seekers or refugees, a recruitment decision will be based on all available information. The HR department will provide support to the manager in obtaining and assessing information.

## RECRUITMENT PROCESS

- A DBS check will be applied for if the job role meets the definition of 'regulated activity'. Regulated Activity is where a post has contact with vulnerable adults and / or children, as follows:
  - A standard check will contain 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.
  - A standard DBS check will be made to assess a candidate's suitability for work listed within the Exceptions Order i.e. where the type of work enables the person to have "access to persons in receipt of such services in the course of normal duties". The term "access" only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is no contact with patients.
  - The Trust can no longer carry out DBS check's on people who just have access to sensitive records, such as Electronic Staff Records (ESR). However if someone has access to sensitive records and is based in a regulated location, they may need a DBS check.
  - Self-Disclosure is deemed justifiable in terms of the position being offered, it is the Trusts responsibility to request that applicants complete a self-declaration form. To obtain self-disclosures EPUT must use the following forms:

- **Model Declaration form A:** for the purpose of obtaining information on positions which are exempt under the Act about spent and unspent convictions and cautions, including reprimands and final warnings
  - **Model Declaration form B:** for the purpose of obtaining information on positions which are non-exempt and where employers can ask for current unspent convictions and cautions (including reprimands and final warnings) only
- Where a post is assessed as requiring a DBS disclosure, this will be made clear to all potential candidates. An explanatory statement will be placed, where relevant, in:
    - The job advertisement
    - The Application Form
    - Terms and Conditions attached to each position advertised.
  - The Information for Applicants sheet will contain the organisations statement on the use of DBS information, a statement on the organisation’s willingness to consider ex-offenders and provide awareness of the DBS Code of Practice.
  - Only candidates who are made a conditional offer will be subject to a DBS check.
  - Information on any criminal records will be requested from all candidates on their application Form and Model Declaration form.
  - Where issues relating to a criminal record are highlighted at any stage of the recruitment process, the appointing manager may be required to meet with the individual. The purpose of the meeting is for the manager to undertake a risk assessment to ensure that the offence(s) will not lead to an unacceptable risk to any staff/patients and carers. HR advice should be sought before any meeting is arranged.
  - If an applicant fails to reveal information that is directly relevant to the position sought prior to a DBS check any offer of employment from the Organisation may be withdrawn. This will be at the discretion of the appointing manager.
  - All conditional offer documentation will include:
  - That employment with the Organisation is also subject to the receipt of a satisfactory DBS check
  - An electronic invite for the candidate to complete their application within 5 working days. It is the candidate’s responsibility to complete the application via E-DBS, using the online guidance for support. Failure to complete an on-line application will lead to the post being withdrawn. The Organisation is part of the DBS Update Service and requires all successful applicants offered a position with the Organisation where a DBS is applicable to register to the

DBS Update Service prior to appointment with the Trust. Failure to register will result in offers being withdrawn.

- On appointment, applicants are responsible for the payment of their initial DBS check. The Organisation will pay the fee and then deduct the amount from their initial salary. The first annual update subscription will be subtracted from the initial DBS cost as agreed with the applicant. In exceptional circumstances the individual can repay the fee up to a maximum period of 3 months. (free for volunteers).
- The deduction from the employees pay will be set up by Human Resources once a start date has been identified.
- Candidates should be given the opportunity to discuss any new information provided by the DBS either with a member of the Human Resources team or the appointing Manager.
- Once all pre-employment checks have been deemed satisfactory, by the appointing manager, an unconditional offer letter will be sent to the successful candidate.
- If a candidate disputes disclosure information it may not be possible to keep open the offer of employment while DBS carry out re-checks. This will be the decision of the appointing manager.
- Feedback about their criminal convictions, upon request from a candidate, can be provided by the Human Resources Department.

#### **COMMENCING WORK WITHOUT CURRENT DBS CHECK**

- There are circumstances where there can be no flexibility in the DBS procedures. This particularly applies to jobs covered by the Protection of Freedoms Act 2012.
- Only in exceptional circumstances are candidates able to commence work prior to a DBS clearance being received. If this is to be the case the manager of the Service will need to accept full responsibility and confirm by email that the worker will not be working unsupervised until the DBS check is received. Alternatively a waiver can be signed to ensure full supervision will be adhered. This can be found on the Trust's Intranet.

#### **HANDLING OF DBS INFORMATION**

- DBS information will be handled, used, retained and disposed of in accordance with the DBS Code of Practice 2012.
- In accordance with section 124 of the Police Act 1997 only authorised members the HR Department will be permitted to receive information in the course of their duties

- A record will be maintained by the Organisation in the HR Directorate of all those to whom disclosures or disclosure information has been revealed. The Organisation recognises the seriousness of the implications of information being passed to anyone not entitled to receive it and will take the appropriate disciplinary action.
- Disclosure information should only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.
- Once a recruitment decision has been made information will not be retained for longer than six months. This is to allow for consideration and resolution of any disputes or complaints.
- Throughout this extended time, normal conditions regarding safe storage and restricted access will prevail to comply with audit controls and the DBS Code of Practice 2012.
- Once the retention period has lapsed, the DBS document will be destroyed. All information will be destroyed by secure means. An electronic record is to be retained showing; the date of issue, the subjects name, type of disclosure, post, unique reference number and the decision made on the information.
- All reasonable steps will be taken to ensure that other organisations, on behalf of which Disclosure information is obtained, comply fully with the DBS Code of Practice 2012.

## **SUITABILITY OF EMPLOYMENT**

- The original certificate does not have to be seen by a member of the HR or recruitment team if the online status check is clear of any criminal offence.
- If a candidate's DBS check has highlighted a criminal offence, then the original document must be verified by an authorised member of the HR or Recruitment Department who will have been trained.
- If a disclosure clearance is received into the Recruitment Team that includes convictions a member of the team will contact the appointing manager to discuss the information received.
- The application form and model declaration form that the candidate completed will be assessed to see if the conviction(s) were disclosed. The candidate may be required to attend a meeting with the appointing manager to discuss and complete the risk assessment form, which can be obtained from HR.
- The appointing manager can discuss this with a member of the HR team for advice and support in relation to the findings from the meeting and the discussions and evidence provided and relay the decision that was taken for authorisation to proceed.

- The following are taken into account when assessing whether the offer of employment should proceed which is in line with The Rehabilitation of Offenders Act 1974:
  - The seriousness of the offence and its relevance to the position
  - Whether the conviction makes it illegal to employ the applicant in that job
  - The length of time since the offence took place and the age of the applicant at the time
  - Any relevant information offered by the applicant relating to mitigating circumstances e.g. domestic or financial difficulties and the circumstances surrounding the offence
  - Whether the offence is a 'one-off' or part of a history of offending
  - Whether the candidate's circumstances have materially changed
  - The country in which the offence took place. It should be noted that some activities are offences in Scotland but not in England or Wales
  - The level and closeness of supervision that might be needed early on in the employment
  - The extent to which procedures, such as audits or the involvement of others in the work process, would be a form of indirect supervision
  - Whether any training or briefing would be useful to enable the supervisor to manage the post-holder in the work context
  - What precautions there are or could be put in place
- Once the meeting has taken place the candidate will be informed of the decision in writing. If the decision is taken that the offer of employment is to continue the recruitment process will continue. A copy of the form will be retained on the individual's personal file.
- If the decision is taken that the offer of employment is to be withdrawn the candidate will be notified of this in writing and this will be updated on the electronic spreadsheet for future reference once the disposal period has passed in relation to the certificate.

## DBS RENEWALS

- The Trust does not conduct DBS renewals on an automatic basis within the organisation. The HR team will however continue to conduct a collection of checks 3 yearly from employees/workers picked at random from a selection of services within the organisation.
- All relevant staff within the organisation are re-checked if they are moving to a new job role within the Trust if their current DBS is more than 3 years old.
- All staff are notified that it is a contractual requirement and all contracts state that they are required to *'inform the line manager of any circumstances or convictions, subsequent to employment in post, which may affect employment with the Trust'*. This is an on-going requirement throughout employment.
- As part of the declaration process a model declaration form and also the application form asks for any convictions to be declared by the applicant/member of staff.
- Any disclosures that are received with adverse information which was not previously declared and discussed will be passed to an HR Advisor if necessary the member of staff will be investigated in line with the Trusts Disciplinary (Conduct) Policy and Procedure. The employee has the right to be supported by an accredited Trade Union Representative or work colleague
- Should an employee refuse to complete a D.B.S update service check they will be subject to disciplinary proceedings in line with the Organisation Disciplinary (Conduct) Policy and Procedure.

## GROUND FOR DISMISSAL

- Once employed, if the employees role requires a DBS check the employee is responsible for disclosing any convictions or cautions received whilst in our employment to the line manager or HR department as and when they happen.
- Being convicted of a criminal offence will not necessarily result in dismissal although withholding or failing to disclose a criminal conviction, caution, reprimand or being 'bound over' will lead to a disciplinary investigation that could result in dismissal. Any decision to terminate employment will be made following the Disciplinary (Conduct) policy and procedure.
- The Trust is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.

## REFERRALS

- Referrals must be made to the DBS by the Trust when a person is believed to have caused harm or poses a future risk of harm to vulnerable groups, including children in relation to safeguarding issues.
- Managers have a legal duty to refer and must seek direction from HR.
- Prior to any referral being made HR must be informed and agreed in line with Trust policy.

SAMPLE ONLY