Disclosure and Barring Policy

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## Introduction

A DBS check forms one part of our wider safeguarding processes. It helps the Integrated Care Board (ICB) determine whether a person is a suitable for a particular role by providing information about the individual’s criminal history.

This policy should be read in conjunction with the [Recruitment and Selection Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3).

## Purpose / Policy Statement

The ICB has developed this policy:

a) In line with our safeguarding principles, to help the ICB ensure that the children, young people and adults at risk who the ICB work with and for are protected and kept safe from harm by identifying individuals, through criminal records checks and/or barred list checks, who may be unsuitable to undertake ‘regulated activity’ (see Appendix B below).

b) To ensure the ICB abides by the obligations of the Disclosure and Barring Service (DBS) and the relevant laws for handling, checking and retaining criminal record disclosure information.

c) To ensure the ICB complies with the spirit and requirements of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) and that applicants are treated fairly when considering disclosed information.

## Scope

This policy and procedure applies to all candidates and all roles in the ICB that are subject to a disclosure barring check through the DBS. This includes employees, bank workers and volunteers.

DBS checks for agency workers will be carried out by the employing agency – refer to the [Temporary Staffing Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3).

Self-employed consultants/contractors (including those working as limited companies) are responsible for the payment of their own DBS check.

## Definitions

* DBS – The Disclosure and Barring Service. It replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). Responsible for criminal record disclosure checks in England and Wales.
* Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975– The Act of the UK Parliament that enables some criminal convictions to be ignored after a rehabilitation period. Its purpose is that people do not have a lifelong blot on their records because of a relatively minor offence in their past. The rehabilitation period is automatically determined by the sentence, and starts from the date of the conviction. After this period, if there has been no further conviction the conviction is "spent" and, with certain exceptions, need not be disclosed by the ex-offender in any context such as when applying for a job, obtaining insurance, or in civil proceedings.
* Regulated Activity – as currently defined by under the Protection of Freedoms Act 2012 (see Appendix B).
* Workforce Categories - The classification depends on the actual activities the individual is undertaking and whether they will fall under the definition of regulated activity in relation to adults and/or children.

## Roles and Responsibilities

### Integrated Care Board

* + 1. The ICB Board is accountable and responsible for ensuring that the ICB has effective processes for the management of Disclosure and Barring Checks in accordance with relevant legislation and best practice guidance.

### Chief Executive

* + 1. The Chief Executive is accountable for the policy and procedure being in place to ensure fair and equitable approach to Disclosure and Barring Checks for employees.

### Policy Authors

* + 1. Policy authors are responsible for ensuring that this document is updated when any changes are made to the legislation for Disclosure and Barring Checks.

### Executive Chief People Officer

* + 1. The Executive Chief People Officer oversees the implementation of this policy and is responsible for ensuring that managers take action to meet the organisation’s obligations to ensure equity and consistency.

### Line Managers

* + 1. Line Managers are responsible for ensuring that:
  + they provide accurate information about the role to the Recruitment Team in order that the post may be accurately assessed for the purpose of the DBS check.
  + staff have the required level of DBS check prior to commencement in post unless an appropriate risk assessment has been completed and authorised.
  + staff understand their responsibilities in line with this policy taking appropriate action where a disclosure is made using the relevant documentation and escalate as appropriate.
    1. Line manager will be supported by Human Resources in the following way:
  + The Recruitment Team – is responsible for the administration of the disclosure checking process and supporting managers to ensure required checks are carried out in accordance with this policy; The HR Business Partners are responsible for endeavouring to ensure compliance with legal and regulatory obligations; keeping up-to-date with any DBS policy or procedural changes updating this policy, and other associated forms or processes, accordingly and when it is necessary to make a referral to the relevant regulatory bodies.

### All Staff

* + 1. The applicant is responsible for;
  + Completing the appropriate declarations honestly and accurately as required by the ICB.
  + Completing the online application form and providing the identification required.
  + Registering for the DBS update service.
    1. Staff in regulated activity are required to register for the DBS update service and undertake yearly subscription renewal process. Staff are able to claim reimbursement for the cost.
    2. Staff are required to inform their line manager immediately if they are subject to criminal proceedings as detailed in their contract of employment. Staff should inform their line manager immediately upon being made aware by Police they are subject to an investigation to commence to ensure that appropriate support is in place to support the member of staff which may consist of risk assessment.

## The Purpose and Levels of DBS Checks

### Levels of DBS Checks

* + 1. Standard DBS Check reveals information relating to both spent and unspent convictions, cautions, reprimands and warnings that are held on the Police National Computer, which are not subject to filtering or to be eligible for a Standard Check the position must be specified in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (as amended). And requires the individual to be involved in the provision of health services and gives them access to persons in receipt of those health services.
    2. Enhanced Checks reveals the same information as Standard Checks but also checks against information held by local police forces (e.g. relevant on-going investigations). Where specified, and if the role falls within the current definition of regulated activity.
    3. To be eligible for an Enhanced Check the position must be specified in both the ROA 1974 (Exceptions) Order 1975 and in the Police Act 1997 (Criminal Records) Regulations 2013.
    4. Positions falling within the old definitions of ‘Regulated Activity’ (under the Safeguarding Vulnerable Groups Act 2006) are eligible for an Enhanced Check only.
    5. The minimum age that someone can apply for a DBS check is 16. The level of check will be determined by the nature of the role the individual will be undertaking.
    6. Enhanced Check with Children and/or Adult Barred List Check

This determines whether an individual is barred from working with vulnerable persons, including children. To be eligible for an Enhanced Check + Barred List Check the position must meet the current legal definition of ‘Regulated Activity’ (see below).

* + 1. Further written guidance on eligibility can be found on the DBS website - DBS - Eligibility Guidance. There is also an on-line tool to help determine eligibility. It is a criminal offence for The ICB to undertake a DBS check on an individual whose role does not meet the eligibility criteria.
    2. If the role is not covered by the ROA Exceptions Order but is deemed to be a position of trust then a basic check may be required. These positions are limited but may include Board and Finance roles.

### What is Regulated Activity?

* + 1. Regulated Activity includes work that involves close and unsupervised contact with vulnerable groups.
    2. There are two types of Regulated Activity; Regulated Activity with Children and Regulated Activity with Adults (see the regulated activity definitions document at Appendix B). If the nature of the work falls within either of these categories the ICB can request an Enhanced Check against the relevant workforce barred list.
    3. Regulated Activity is work a person who appears on the DBS barred list is prohibited from doing.
    4. The changes introduced in 2012 also mean that the ICB are no longer able to obtain a DBS check for anyone undertaking “controlled activity”. This category covered people who had frequent access to education, health or social services records (i.e. sensitive data). This means the ICB can no longer check people whose only eligibility would have fallen under that old category of “controlled activity”. If their role still falls within either new or old definitions of ‘regulated activity’ the ICB can request a DBS check.
    5. A person who is barred from working, or deemed unsuitable to work, with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups.
    6. An organisation that knowingly employs or engages (paid or unpaid) a barred, or unsuitable, individual to work with children or vulnerable adults will also be breaking the law.

### Classification of the Workforce

* + 1. Child and Adult Workforce

Our ability to check against the different barred lists is determined by the type of workforce that the role works within. It is therefore important that on the DBS application form that the correct workforce category is indicated as follows:

* Child Workforce - any position that involves working/ volunteering with children.
* Adult Workforce - any position that involves working/ volunteering with adults.
* Child and Adult Workforce - any position that involves working/ volunteering with children and adults.
  + 1. The classification depends on the actual activities the individual is undertaking and whether they will fall under the definition of regulated activity in relation to adults and/or children (Appendix B).

## Disclosure Process in Recruitment

### Recruitment and Selection

* + 1. At the start of the recruitment process the recruiting manager must provide information to the Recruitment Team and a decision is made on whether the role is eligible for a disclosure check.
    2. If the role is eligible for a disclosure check any offer of employment/volunteering must be made conditional on the receipt of a satisfactory disclosure check.
    3. With regards to employees, apprentices, volunteers (including student placements and interns), bank workers, casual workers and self-employed consultants (including those working as Limited Companies), it is the ICB’s responsibility to ensure that up-to-date checks are carried out as appropriate for the role.
    4. Agency staff are the responsibility of the employing agency. The line manager must ensure that the agency provides us with written confirmation that they have had the appropriate type of satisfactory DBS check within the 12 months immediately preceding the placement.
    5. For those employed by other organisations but working for or on behalf of the ICB, the ICB must ensure a DBS check has been carried out. Contact must be made with the individuals’ HR team. If they have had a check in the preceding 12 months, the certificate number should be recorded. If they have not had a check, arrangements should be made for one to take place.
    6. As the ICB does not process enough DBS checks to be a registered body in their own right, DBS checks are undertaken via a third party – currently Atlantic Data.
    7. No-one should start undertaking any regulated activity until the ICB has received the satisfactory check. Following a risk assessment and, HR advice an individual who is waiting for a check may start work with the ICB, but this must be for induction purposes only, they must not carry out regulated activities before a certificate has been received.
    8. All paperwork and information relating to the disclosure process must be handled and stored in accordance with the DBS code of practice on the secure handling, use, storage and retention of disclosure information.

### Self-Declaration

* + 1. Seeking a self-declaration is useful to ensure applicants have a greater understanding about the type of information that will be requested about them and considered as part of the recruitment process. It also gives applicants an opportunity to identify any additional information or evidence that they may wish to be considered in support of their application.
    2. For this purpose, the ICB have produced two declaration forms which outline a range of questions employers are legally entitled to ask of applicants, including information about criminal records, registration with professional bodies and fitness to practise, as may be appropriate to the role being appointed to. They also include questions about issues relating to conduct or behaviour in circumstances that may be relevant to consider in a work-related setting.
    3. The forms are periodically reviewed to ensure they remain compliant with legal requirements under the DBS regime, data protection, equality and human rights.
    4. Declaration form A should only be completed by applicants applying for positions which are exempt from the Rehabilitation of Offenders Act 1974. Exempt positions are eligible for a standard or enhanced DBS check under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or the Police Act 1997.
    5. Declaration form B should only be completed by applicants applying for NHS positions which are non-exempt from the Rehabilitation of Offenders Act 1974 and where there is discretion for an employer to require a basic disclosure in follow up to verify information.
    6. Further guidance can be sought from the HR Team where required.

## Repeat Disclosure Checks

### DBS Update Service

* + 1. The ICB requires those who are eligible for an Enhanced or Standard DBS check to register for the DBS Update Service.
    2. The Disclosure and Barring Service (DBS) Update Service allows:
  + staff to keep their DBS certificates up to date.
  + employers to check a DBS certificate for new staff.
  + employers to regularly check the employees status via the ESR interface.
    1. There are only two occasions when staff can register for the Update Service:
  + Whilst in the process of getting a standard or enhanced DBS check. The DBS must receive the application within 28 days.
  + Or, when the standard or enhanced DBS certificate is issued. The timeframe is within 30 days of the certificate being issued.
    1. Subscription for the Update Service lasts for one year. There is a choice of automatic renewal or renewal within 30 days before the current subscription ends.
    2. Staff can make payment by debit or credit card. There’s no charge for volunteers. Staff will be reimbursed for the cost of the yearly Update Service.
    3. Where someone fails to renew their subscription to the update service in time, they will be required to bear the cost of an additional DBS check for the Update Service to be reactivated. There will be no reimbursement of the DBS fee.
    4. Failure to renew the subscription for the Update Service may result in removal from the regulated activity, investigation, and disciplinary action.
    5. Further information relating to the DBS update service please refer to DBS update service guidance, this can be found on their website: <https://www.gov.uk/dbs-update-service>

### Change of Role

* + 1. In addition, a new/repeat check will be carried out on staff changing jobs or volunteers changing roles where the new role requires a disclosure check and/or involves working with a different workforce e.g. moving from a role outside Children’s Services that did not involve working with children to a new role that does will require a disclosure check.
    2. The level of information disclosed is dependent on which workforce the person is working in. It is therefore important that Managers consider whether any repeat checks are required if the client group that the service is working with changes.

### Additional DBS Checks

* + 1. The ICB will require existing staff to undertake a DBS if there is no relevant record of a DBS check being undertaken and it is required for their role.
    2. All ICB staff and volunteers who require a DBS Check may be rechecked during their employment as a result of changes in legislation, regulations or working practices.
    3. They may also be checked if their actions or activities give cause for concern, e.g. allegations of inappropriate behaviours made by a child or adult, or a colleague, parent, carer or member of the public. In such circumstances a full investigation will be carried out. If allegations are proven, further formal action may be taken under the [ICB Disciplinary Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3).

## Identity Verification

### Identity Documentation

* + 1. Obtaining a disclosure check requires applicants to provide valid, current, and original documents, to prove their identity and to verify their date of birth and address history in accordance with current DBS guidelines. They must make arrangements, to meet with their line manager or nominated individual within their team e.g. Business Manager, prior to their proposed start date so that checks can be undertaken in time to process the DBS check before the start date.

### Transgender Applicants

* + 1. DBS offers a confidential checking process for transgender applicants.
    2. This process is for transgender applicants who do not wish to reveal details of their previous identity to the person who asked them to complete an application form for a DBS check.
    3. For more information about the transgender process, email [sensitive@dbs.gov.uk](mailto:sensitive@dbs.gov.uk) or

Sensitive applications team

Customer services

PO Box 165

Liverpool

L69 3JD

* + 1. The ICB policy is to work to support transgender applicants through applying this guidance.

### Overseas applicants and UK applicants who lived abroad

* + 1. The DBS can only provide information relating to the UK. If the applicant is from overseas, or has spent time living or working abroad, The ICB will ask them to get a criminal records check, or ‘Certificate of Good Character (CGC)’, from their country of origin to supplement the DBS process.
    2. In some cases it may also be possible for the individual to request such a check through the relevant embassy. Processes for getting criminal records checks abroad vary between countries.
    3. Where it is not possible to obtain such checks, e.g. because the country in question will not co-operate, then a thorough risk assessment must be carried out by a suitably qualified member of staff. The Executive Director in discussion with HR, will then review the outcome of the risk assessment and, will take the decision on whether or not to appoint.

### Military Service Records

* + 1. If an applicant declares that they are serving in the armed forces, the ICB can ask them to present an extract from their military service record instead of obtaining an overseas police check or a DBS check. This should disclose any criminal or military offences the individual may have been charged with while serving in any country, where the offence would be considered the same in the UK.
    2. If the applicant has left the armed forces, it is important to note that any military record will only be relevant up to the point they were in service. The ICB should therefore assess whether a DBS check may still be required.
    3. The extract must be original and issued by and verified through the force they were serving with. It is important to note that some criminal offences that apply under military service law may not be regarded as such under civilian law. The ICB will therefore need to take a proportionate approach when considering any such information. For instance:
  + Convictions and cautions relating to criminal conduct while serving in the Armed Forces are recorded on the Police National Computer (PNC) and employers should consider this type of information in the same way as they would a criminal conviction or caution in a DBS check.
  + Serious convictions for disciplinary offences (non-criminal conduct) would also be recorded on the PNC. However, this is more likely to include disciplinary action for behaviours that may be a crime under military law but would not be considered so in civilian life. These offences should not be treated in quite the same way as described above but may need to be considered as part of their overall assessment of suitability.
    1. In both cases, the ICB should only consider information that would be relevant to the role they are appointing to.
    2. Information about what constitutes as a disciplinary offence under military law can be found in Schedule 1 of the Police and Criminal Evidence Act (Armed Forces) Order 1984 (Recordable Service Offences) Act 2009 which can be found on the UKSI website.

## Use of Criminal Records Information

### Presenting Certificate to Human Resources

* + 1. DBS certificates will only be sent to the applicant, even if it contains any criminal record information. Therefore, the applicant will be requested to contact their manager to bring the original certificate for checking and copying.

### No Record Convictions on DBS Certificate

* + 1. Where a disclosure indicates no criminal history, this will be recorded on ESR together with the date received and the date of the disclosure report. The recruiting Manager will be informed that the applicant/ employee has been cleared to commence in post (subject to all other pre-employment checks).

### Convictions Recorded on DBS Certificate

* + 1. If a disclosure indicates a conviction, caution or other record, the disclosure will be recorded and stored on the individual’s electronic file. The counter-signatory will make checks to ascertain whether the information reported had been declared on either the application form, at interview or on the self-declaration form.
    2. In the event that there are convictions / cautions recorded on the disclosure these should be brought to the attention of the Executive Director and discussed with HR to determine the appropriateness of proceeding.
    3. The decision rests with the ICB 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. A Risk Assessment Form is available on the intranet. [HR Forms](https://nhs.sharepoint.com/sites/99F_Connect/SitePages/HR-Forms-&-Documents.aspx)
    4. If the issues on the disclosure certificate have not been previously declared, the recruiting manager will be informed and will be required to contact and meet with the candidate to ascertain why they failed to disclose this information. If there are significant discrepancies between the information

the candidate has provided (eg on the application form or the Self Declaration) and that contained in any subsequent DBS check, it is important for the ICB to establish why this might be the case.

* + 1. Any discussion must be handled sensitively and fairly without pre-judgement. Given the complexity of the criminal justice system, it is easy for candidates to misunderstand what offences might be on a criminal record or the implications of those when applying for employment until a DBS check is conducted.
    2. If it becomes clear from the additional information provided that the candidate is unsuitable for the role being offered, then the ICB will need to withdraw of an offer of employment (in consultation with the HR Team and the Executive Director).
    3. In cases of serious misdirection, for example, if the candidate is applying for a position which involves a regulated activity from which they are barred, the ICB has a legal duty to make a referral to the DBS.

### Filtering Rules

* + 1. The DBS filtering rules were introduced on 29 May 2013 under the

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

(Amendment) (England and Wales) 2013. From this date, certain

spent or minor convictions and cautions are now protected (or filtered

out) when certain conditions are met, and they will never appear in a

DBS disclosure certificate.

* + 1. These rules were updated on 28th October 2023 as follows:
* Warnings, reprimands, youth cautions and youth conditional cautions will no longer be automatically disclosed on a DBS certificate.
* The multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed.
* Employers must be careful to ensure that they do not inadvertently ask for or, consider information which falls under the DBS filtering rules and use this to make a recruitment or employment decision.
  + 1. Further details can be found in Appendix C.

## Storage

### DBS Code of Practice

* + 1. DBS disclosure certificates contain sensitive personal data and therefore employers must comply with the Data Protection Act 2018 (as amended by the General Data Protection Regulation 2018) and the DBS code of practice. The code is designed to ensure that any criminal record information released is used fairly and is handled and stored appropriately. The ICB fully complies with the DBS Code of Practice on the secure handling, use, storage and retention of disclosure information.
    2. Any photocopied or electronically scanned copies of the disclosure certificate and self-declaration forms are stored in secure facilities with strictly controlled access. Access is limited to persons who need to use this information in the course of their normal duties.
    3. Once a decision has been made on whether to appoint or not, the disclosure certificate should be kept in line with the DBS code of practice and data protection laws. The DBS advise holding on to criminal record information for six months after the recruitment phase, to ensure resolution of any disputes or complaints.
    4. In summary the ICB will:
  + Store all disclosure information securely.
  + Only retain disclosure information, its content or any representation of the same in any format for no longer than is necessary and for a maximum of six months following the recruitment decision unless a dispute is raised or, in exceptional circumstances, where agreement is secured from the relevant national disclosure body, for example for services regulated by the CQC.
  + Ensure that no reproductions of the Disclosure or its content are made, including photocopies or scanned images, unless with the prior agreement of the relevant national disclosure body or as a result of a stipulated requirement relating to the e channel service.
  + Only share Disclosure information with relevant persons in the course of their specific duties relevant to recruitment and vetting processes.
  + Dispose of Disclosure information in a secure manner.
  + Ensure that Additional Information, including information as to its existence, is not revealed to the Disclosure applicant and is disposed of in the appropriate manner and at the appropriate time.
  + Ensure that the ICB comply with DBS guidance on the portability of disclosures and their contents.

### Information held on ESR

* + 1. Criminal record information must only be used for the specific purpose it was requested for, and with the applicant’s explicit consent. The following information should be recorded and retained on ESR:

• The issue date of the disclosure certificate.

• The level of check requested.

• The position it was requested for.

• Any checks against one or both barred lists.

• The unique reference number of the certificate.

• The decision to offer/withdraw the appointment.

* + 1. This information will be updated when either of the following occur eg information received regarding the update service, changes in the DBS due to changes in job role or when a new DBS is requested and received.

## Policy on Ex-Offenders

* + 1. The ICB will not unfairly discriminate against the subject of Disclosure Information on the basis of conviction or other details revealed. Please refer to Appendix D.

## Referrals

### DBS or Professional Body

* + 1. The Safeguarding Vulnerable Groups Act (SVGA) 2006 (amended by Protection of Freedoms Act 2012) places a duty on organisations where people are working with children or vulnerable adults to make a referral to the DBS and/or professional body in certain circumstances.
    2. This duty occurs when a person has been dismissed or removed from working with children or vulnerable adults (or would or may have been if they had not left or resigned etc.) because they have:

1. Been cautioned or convicted for a relevant offence; or

2. Engaged in relevant conduct in relation to children and/or vulnerable adults, i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm; or

3. Satisfied the Harm Test in relation to children and/or vulnerable adults, i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists

* + 1. A person/organisation that does not make a referral when the legal duty conditions are met will be committing an offence and, if convicted, may be subject to a fine of up to £5,000.
    2. Further guidance on the duties of the ICB and line managers including how to make referral, can be obtained by calling the DBS helpline on 03000 200 190.

## Monitoring Compliance

The HR Team will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Monitoring information will be published and reported as appropriate.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include, for example:

* + - training for line managers
    - A risk assessment.

## Staff Training

No essential (including mandatory) learning and development requirements have been identified for any staff groups, in order to fulfil the requirements stated within this policy.

Guidance can be sought from Human Resources team.

## Arrangements For Review

This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## Associated Policies, Guidance And Documents

#### [Associated Policies](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3)

* Recruitment and Selection Policy

## References

* Disclosure and Barring Service Code of Practice
* DBS checks: detailed guidance
* NHS Employers: NHS Employment Check Standards
* Rehabilitation of Offenders Act 1974
* Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) Order 2013
* Police Act 1997 (Criminal Records) (Amendment) Regulations 2013
* Freedom of Protections Act 2012
* Safeguarding Vulnerable Groups Act 2006 (amended by Freedom of Protections Act 2012
* Data Protection Act 2018

## Equality Impact Assessment

The EIA has identified no equality issues with this policy.

The EIA has been included as Appendix A.

## Appendix A - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy:**  Disclosure and Barring Service Policy  **Version number (if relevant):**  2.0 | **Directorate/Service**:  People Services |
| **Assessor’s Name and Job Title:**  Julia Atigla, HR Business Partner | **Date:**  16 May 2024 |

|  |
| --- |
| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff* |
| A DBS check forms one part of our wider safeguarding processes. It helps the ICB determine whether a person is a suitable for a particular role by providing information about the individual’s criminal history. |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and reports on this annually. This information helps the ICB to assess the potential impact of its policies upon staff. |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?* |
| Relevant Trade Unions have been consulted on the policy and any comments will be taken into consideration when the policy is published. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| Protected  Group | Positive  outcome | Negative  outcome | Neutral  outcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | x |  |
| Disability  (Physical and Mental/Learning) |  |  | x |  |
| Religion or belief |  |  | x |  |
| Sex (Gender) |  |  | x |  |
| Sexual  Orientation |  |  | x |  |
| Transgender / Gender Reassignment | x |  |  | Refer to section in policy. |
| Race and ethnicity |  |  | x |  |
| Pregnancy and maternity (including breastfeeding mothers) |  |  | x |  |
| Marriage or Civil Partnership |  |  | x |  |

|  |
| --- |
| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| This policy will be monitored via statistics from the recruitment process and the DBS renewal process. |

|  |
| --- |
| **REVIEW** |
| *How often will you review this policy / service?* |
| Every 2 years as a minimum and earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |

## Appendix B – Regulated Activity Definitions

**Current Definitions of Regulated Activity for England and Wales**

The Safeguarding Vulnerable Groups Act 2006 sets out the original definition of regulated activity in England and Wales, i.e. the activities and work which a person who has been barred must not do. This definition of regulated activity was scaled back by the Protection of Freedoms Act 2012. The ICB are therefore left with two different definitions in England and Wales: Old versions under the Safeguarding Vulnerable Groups Act 2006 and the current definitions as set out below under the Protection of Freedoms Act 2012.

**What this means**

Individuals undertaking the activities and work which are being carried out under the current definitions below are eligible for enhanced DBS checks and the ICB will also be able to request the appropriate barred list check (for children, adults or both depending on the workforce the person is working with).

**Regulated Activity with Children**

This should be read in conjunction with the full guidance from the Department for

Education.

Activities that place an individual in Regulated Activity with Children:

i. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;

ii. 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. ‘Regularly’ means carried out by the same person frequently (once a week or more) or on four or more days in a 30-day period (or in some cases overnight).

iii. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once.

iv. Registered childminding; and foster-carers.

Activity under (iii) and (iv) does not have a frequency restriction and is Regulated Activity even if performed only once.

Broadly speaking the new definition of Regulated Activity relating to children no longer includes certain activities done on an irregular or ad-hoc basis or some activities properly supervised by someone who themselves is in Regulated Activity.

**Regulated Activity with Adults**

This should be read in conjunction with the full guidance from the Department of Health

Activities that place an individual in Regulated Activity with Adults:

1. Healthcare: if they are a regulated health care professional or are acting under the direction or supervision of one (e.g. Doctors, nurses, physiotherapists).

2. Personal care: assistance with washing and dressing, eating, drinking and toileting or teaching someone to do one of these tasks.

3. Social work: provision by a social care worker of social work which is required in connection with any health services or social services.

4. Assistance with a person’s cash, bills or shopping because of their age, illness or disability.

5. Assistance with the conduct of an adult’s own affairs, e.g. lasting or enduring powers of attorney, or deputies appointed under the Mental Health Act.

6. Conveying adults for reasons of age, illness or disability to, from or between places where they receive healthcare, personal care or social work (excludes friends, family or taxi drivers).

Regulated Activity relating to adults identifies the activities which lead to an adult being considered vulnerable at that particular time. As such the setting of the activity and the personal characteristics of the adult are extraneous.

There is no requirement for a person to do the activities a certain number of times before they are engaging in Regulated Activity.

## Appendix C – Filtering Rules

*Source: NHS Employers – Employment Check Standards on Criminal Record Checks*

A number of changes which were introduced from 29 May 2013 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

These changes came into force following a Supreme Court judgment in 2013 that found the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to be incompatible with a person’s right to protect their private life under Article 8 of the European Convention on Human Rights.

Filtering rules were first introduced on 29 May 2013 when amendments were made to legislation that affected both what an employer can ask an individual in relation to convictions and cautions, and what is disclosed on a Standard or Enhanced DBS

certificate.

These rules were updated on 28 November 2020 following a Supreme Court judgement in 2019 that found the statutory schemes for the disclosure of criminal records were disproportionate in two respects. The first was in relation to the rule that, where a person has more than one conviction of whatever nature, all convictions must be automatically disclosed in a criminal record certificate – irrespective of the nature of the offences, their similarity, the number of occasions involved, or the intervals of time separating them. The Judges held that this rule could not be regarded as a necessary or proportionate way of disclosing criminal records indicating a tendency to offend.

Secondly, that the statutory scheme was disproportionate in the way it dealt with warnings and reprimands given to young offenders. They considered that such warnings and reprimands had a wholly instructive purpose and their use as an alternative to prosecution was designed to avoid any damaging effect on the young offender’s subsequent life. It followed that disclosure to a potential employer

would be inconsistent with that purpose.

As a result of the Supreme Court judgement, the filtering rules were updated on 28 November 2020 as follows:

* warnings, reprimands, youth cautions and youth conditional cautions will no longer be automatically disclosed on a DBS certificate
* the multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed.

**How it works**

Filtering does not mean that information will be removed from the Police National Computer (PNC) and police forces continue to retain their common law powers to include information in the disclosure certificate where they reasonably believe it to be relevant to do so in order to protect vulnerable groups.

**Under the filtering rules**

Applicants do not need to declare any cautions or convictions that are protected, irrespective as to whether they are intending to engage in regulated activity.

It is unlawful for an employer to take protected cautions and convictions into account when making a decision to employ a person or dismiss an existing employee.

**What it applies to**

For adults (persons aged 18 or over at the time of the offence). An adult conviction will be removed from a DBS check when it meets the following three conditions:

* Eleven years have elapsed since the date of the conviction.
* The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
* The conviction does not appear on the list of specified offences relevant to safeguarding.

Adult cautions will be removed after six years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the number of cautions that can be filtered.

For juveniles (persons under the age of 18 at the time of the offence). A juvenile conviction will be removed from a DBS check when it meets the following two conditions:

* The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
* The conviction does not appear on the list of specified offences relevant to safeguarding.

Youth cautions and youth conditional cautions are no longer automatically disclosed on a DBS check as a result of changes to the filtering rules in November 2020.

The DBS has provided guidance outlining the type of criminal offences which would never be filtered from a disclosure certificate.

From 28th October 2023 further legislative changes have altered the rehabilitation period of some offences, significantly reducing the time people with criminal convictions are legally required to declare. This has reduced the length of filtering rules resulting in convictions rather than being “unspent” becoming “spent” in some instances.

**What this means for employers**

Employers will need to ensure they regularly review their policies and recruitment processes to ensure they are not asking applicants for information they are not legally entitled to. This includes ensuring any information they may require as part of a request for a self-disclosure, application form, or during the interview process is in line with Ministry of Justice guidance on self-disclosure.

## Appendix D – Policy on Recruitment of Ex-Offenders

As an organisation using the Disclosure and Barring Service (DBS) checking service to assess applicants’ suitability for positions of trust, the ICB complies fully with the Code of Practice and undertakes to treat all applicants for positions fairly.

The ICB undertakes not to discriminate unfairly against any subject of a DBS check on the basis of a conviction or other information revealed.

* We are committed to the fair treatment of our staff, potential staff or users of our services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
* 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 criminal records.
* We select all candidates for interview based on their skills, qualifications and experience.
* A criminal record will not necessarily bar someone from working for the ICB.
* A DBS check and the level of the check (Enhanced with a check against the barred lists, Enhanced without a check against the barred lists, Standard or Basic) is only requested after a thorough risk assessment has indicated that one is both proportionate and if it is relevant to the position concerned.
* Where a DBS check is to form part of the recruitment process, we encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process, except for certain spent convictions and cautions which are ‘protected’, so not subject to disclosure to employers and that cannot be taken into account. Further information on the filtering of old and minor cautions and convictions is available on request.
* Our policy statement on the recruitment of ex-offenders, is made available to all DBS applicants at the outset of the recruitment process.
* We will only ask an individual to provide details of convictions and cautions that we are legally entitled to know about. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended) and where appropriate Police Act Regulations (as amended), we can only ask an individual about convictions and cautions that are not protected.
* We ensure that all those in the ICB who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. 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.
* At interview, 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 an offer of employment.
* We make every subject of a DBS check aware of the existence of the Code of

Practice and make a copy available on request.

* We undertake to discuss any matter revealed in a DBS check with the person

seeking the position before withdrawing a conditional offer of employment.

* All information received as part of this process will be treated as highly

confidential and in line with our policy regarding the security, storage and

retention of applicants and staff criminal records information, and as required by the DBS Code of Practice.

*Source: based on the sample policy recommended by the Disclosure and Barring Service.*