

## Disclosure and Barring Service (DBS) Policy

**Formerly Criminal Records Bureau (CRB) policy**

This Policy sets out the responsibilities of the Trust and its employees to comply with concerning Disclosure Barring Service Checks to ensure the protection of vulnerable people in its care; how information revealed in this process will be handled; and position re requirement to refer people to DBS during the course of working with the Trust.

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## Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1	04 April 12	Harmonised Policy – Adopted LPT as a base
2	March 2021	Formatted
3	March 2013	Amended in relation to Protection of Freedoms Act Sept 2012 and subsequent legislative changes
4	December 2016	Rationalised to simplify policy and bring in line with UHL policy
5	April 2021	<p>Updated re changes brought in connection to filtering in November 2020. General refresh of policy. Removal of multiple complex/technical embedded documents, instead utilising online resources instead to help with decision making on e.g. level of check.</p> <p>Introduction of no need to recheck DBS's for staff moving from other NHS employers where the Trust currently employing the applicant has conducted a check during the last 3 years.</p> <p>Introduction of a section to explicitly address need to have a suitability policy as required by the DBS code of conduct based on the draft policy they have provided.</p> <p>Addition of the annual declaration.</p>
6	February 2022	<p>Addition of rechecking regime and requirement for staff to join the DBS update service.</p> <p>Simplified annual declaration.</p> <p>Establishment of requirement for bank staff to have both barring lists checked as bank work could be anywhere within the Trust.</p>

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### Equality Statement

**Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.**

## Due Regard

LPT will ensure that Due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and services are free from discrimination;
- LPT complies with current equality legislation;
- Due regard is given to equality in decision making and subsequent processes;
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 3) of this policy.

## Definitions that apply to this Policy

<b>DBS</b>	Disclosure and Barring Service (1 December 2012)
<b>Standard</b>	As defined by the Police Act and Rehabilitation of Offenders Act 1974, Standard disclosures apply to posts exempted under the Act, such as posts that involve the individual having access to patients in the course of their normal duties.
<b>Enhanced</b>	As defined by the Police Act and Rehabilitation of Offenders Act 1974, Enhanced disclosures are for posts involving greater contact with children or adults, such as jobs involving the caring for, supervising, training or being in sole charge of a person aged under 18, or a person aged 18 or over who is considered vulnerable and requires the assistance of an employee or volunteer carrying out regulated activity.
<b>Regulated Activity</b>	Roles which carry out Regulated Activity require an <i>enhanced</i> DBS check. This will include a check against the relevant Disclosure and Barring Service, Barring List (for either Adult / Children or both dependent on the role)
<b>CRB</b>	Former Criminal Records Bureau is now incorporated into the Disclosure and Barring Service (1 December 2012) (The Agency provides Disclosure and Barring Service (DBS) Criminal Records Checks which replace CRB checks from December 2012)
<b>Independent Safeguarding Authority (ISA)</b>	The regulated body that originally oversaw vetting and barring decisions – Now part of the Disclosure and Barring Service from 1 December 2012, which undertake vetting and barring decisions
<b>Vetting and Barring Scheme(VBS)</b>	A list of people that are barred from carrying out regulated activity with adults and/or children
<b>Due Regard</b>	Having <b>due regard</b> for advancing equality involves: <ul style="list-style-type: none"> <li>• Removing or minimising disadvantages suffered by people due to their protected characteristics.</li> <li>• Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.</li> <li>• Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.</li> </ul>

<b>Filtering</b>	Filtering is the term we use to describe the process that identifies which criminal records will be disclosed on a Standard or Enhanced DBS certificate (DBS check). Certain old or minor offences may not be disclosed on DBS certificates. These are known as 'protected' offences.
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## **1. Purpose of the Policy**

- 1.1 The Trust has a responsibility to comply with legislation and NHS Employment Check Standards and to help prevent unsuitable people undertaking paid or volunteer work with children or vulnerable adults. Employees who carry out work for Leicestershire Partnership NHS Trust (the Trust) whose role involves working with vulnerable people, and meets the Disclosure and Barring Service code of practice are required to undertake a Disclosure Baring Service check before commencing employment or volunteering.
- 1.2 People who are included on the Vetting and Barring lists are barred from working with vulnerable people. It is illegal to employ or allow a volunteer who is barred from working with vulnerable people to work with them. An enhanced DBS disclosure check will identify any individuals who are barred from working with vulnerable people on the lists the check covers.
- 1.3 The purpose of this Policy is to clearly define DBS procedures, providing guidance to the Trust as to when DBS information is required, how it is obtained and how it should be used and stored. The Trust will observe the DBS Code of Practice when using disclosure information, so as to ensure that information provided is used fairly and handled and stored appropriately. The Trust is also required to comply with current the NHS Employment Check Standards which include DBS checks. It is the Trust's policy to comply with its responsibilities under DBS legislation including fulfilling its obligation to refer employees, workers and job applicants to the DBS where there is a requirement to do so. This policy also fulfils the requirement of the DBS Code of Practice to have a policy relating to the suitability of employing ex-offenders, and this is included in this policy.
- 1.4 There is a legal requirement to carry out a DBS check where an employee will be carrying out regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.
- 1.5 This document details all the statutory obligations that the Trust is required to follow as well as NHS policy and practice. The justification for the document is to ensure that the Trust remains legally compliant.

## **2. Summary and Key Points**

- 2.1 This Policy sets out the responsibilities of the Trust and its employees to comply with the requirement to undertake a Disclosure Baring Service Check on commencement of any form of work with LPT in roles that require such a check to ensure the protection of vulnerable people.
- 2.2 A DBS Disclosure will reveal if the person has committed an offence that would make The Trust consider them unsuitable to do the specific job, such as convictions for theft, fraud or dishonesty. When used together, the DBS-Vetting and Barring Scheme Lists and DBS criminal records checking process will provide the Trust with a comprehensive assessment to safeguard vulnerable people.

### **3. Introduction**

- 3.1 The Trust has a responsibility to comply with legislation and NHS Employment Check Standards. It also has the legal duty to prevent individuals that have been barred from working with adults or children.
- 3.2 All staff should act in accordance to our Trust behaviours and be able to evidence adherence in situations that involve disclosure and barring. A fundamental approach to developing our behaviours is our ability to both give and receive feedback in a positive and insightful way. The feedback method is based on defining; Context, Understanding, Behaviour and Effect (CUBE).

### **4. Duties within the Organisation**

- 4.1 The Trust Board has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.
- 4.2 The Trust Policy Committee is mandated on behalf of the Trust Board to adopt policies.
- 4.3 The Workforce, Organisational Development and Wellbeing Group have responsibility for this policy.
- 4.4 The Director of Human Resources and Organisational Development is responsible for ensuring that robust processes and procedures are in place to enable the efficient and equitable application of this policy.
- 4.5 The Head of Employment Services has responsibility for ensuring that the application of this policy is monitored and audited and that reports on the application of the policy are provided regularly (at least annually) to the LPT Staff Partnership Forum (LPT SPF) and to the Trust Board.
- 4.6 Recruiting Managers and Human Resources are responsible for identifying the appropriate level of DBS Disclosure required for individual posts.
- 4.7 Managers must ensure the annual declaration of criminal offences is completed at the time of an employee's appraisal.
- 4.8 The Trust in considering DBS information is required to balance the risk between preventing unsuitable people from working in sensitive posts with the need to ensure that this does not discriminate against ex-offenders who have been rehabilitated.
- 4.9 All employees, workers and volunteers have a responsibility for complying with the policy.
- 4.10 All staff should act in accordance to our Trust behaviours and be able to evidence adherence in situations that involve disclosure and barring. A fundamental approach to developing our behaviours is our ability to both give and receive feedback in a positive and insightful way. The feedback method is based on defining; Context, Understanding, Behaviour and Effect (CUBE).

### **5. Requirements**

- 5.1 Leicestershire Partnership NHS Trust carries out work that meets the requirements to ask exempted questions under the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 Exceptions Order 1975.

5.2 This will be done through requesting DBS checks. In the process of this the Trust will:

- Establish the true identity of the applicant, through the examination of a range of documents using guidance provided by the DBS;
- Ensure the application process is accurately administered;
- Comply with the DBS's Code of Practice.
- The Trust may also utilise a third party provider to administer DBS checks to facilitate the process and where it does so will share data with this provider to facilitate the checks.

## 6. DBS Code of Practice

6.1 The Trust will comply with the DBS's Code of Practice. This can be found on <https://www.gov.uk/government/publications/dbs-code-of-practice>

## 7. Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (as amended)

7.1 The ROA 1974 applies to England, Scotland and Wales and is aimed at helping people who have been convicted of a criminal offence and who have not re-offended since.

7.2 Anyone who has been convicted of a criminal offence, and received a sentence of not more than 2.5 years in prison benefits as a result of the Act, if he or she is not convicted again during a specified period otherwise known as the 'rehabilitation period'. The length of this period depends on the sentence given for the original offence and runs from the date of the conviction. If the person does not re-offend during this rehabilitation period, they become a 'rehabilitated person' and their conviction becomes 'spent'.

7.3 Sentences can carry fixed or variable rehabilitation periods and these periods can be extended if the person offends again during the rehabilitation period. However, if the sentence is more than 2.5 years in prison, the conviction never becomes 'spent'. It is the sentence imposed by the courts that counts, even if it is a suspended sentence, not the time actually spent in prison.

7.4 Once a conviction is 'spent' the convicted person does not normally have to reveal it or admit its existence in most circumstances. **However, this is not the case for persons working with children or vulnerable adults.** These roles/jobs are, exempt from the Rehabilitation of Offenders Act.

## 8. Exemptions to the Rehabilitation of Offenders Act (ROA) 1974

8.1 Various kinds of employment, occupations and professions are exempt from the Rehabilitation of Offenders Act 1974. This means that the employment rights of an ex-offender in respect to convictions are overruled. Ex-offenders therefore have to disclose information about spent, as well as unspent convictions including any convictions, cautions, warnings, reprimands and bind-overs.

8.2 Exempted occupations fall into the following categories:

- work that brings the person into contact with vulnerable groups such as the those receiving healthcare, e.g. who are elderly, those with mental health conditions and young people under 18
- posts concerned with the administration of justice, for example, police officers, lawyers

- Professions that have legal protection, for example, nurses, doctors, dentists, chemists etc.
- Health Service appointments
- Work involving matters of national security.

- 8.3 It is illegal to carry out a DBS check, either Standard or Enhanced, on any post that is not exempt under Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (as amended), and to do so could render the Trust liable for legal action.
- 8.4 Such posts are defined as those where the individual does not have access to patients in the course of their normal duties. For example, this would include administration or management staff who work in separate building or have minimal access to patients; maintenance staff who are not required to work on ward areas; laundry staff; catering staff who do not deliver food to patients.
- 8.5 There is a minimum age limit set at 16 for a DBS check from Sept 2012. Someone who is aged under 16 will not be able to apply for a DBS check.
- 8.6 Further guidance on this can be found at:  
<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>
- 8.7 Minor offences such as traffic offences which may have a material bearing on a person's work will also be considered by the Trust where they are reported to the Trust by the police service.
- 8.8 In addition, where someone is employed to work with vulnerable groups including children and is under suspicion of an offence of violence or a sexual offence, if the Trust is notified of such an occurrence the Trust will review the appropriateness of the individual continuing in their post.
- 9. How this policy is applied relating to ex-offenders (suitability policy as required by the DBS code of conduct)**

As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), The Trust complies fully with the code of practice at <https://www.gov.uk/government/publications/dbs-code-of-practice> and undertakes to treat all applicants for positions fairly.

The Trust undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed. The Trust will only ask an individual to provide details of convictions and cautions that The Trust 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) The Trust will only ask an individual about convictions and cautions that are not protected.

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. The Trust has a written policy on the recruitment of ex-offenders, which is made available to all DBS applicants at the start of the recruitment process.

The Trust actively promotes 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.

The Trust selects all candidates for interview based on their skills, qualifications and experience.

An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the Individual being offered the position.

The Trust ensures that all those in The Trust who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences.

The Trust also ensures 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, The Trust ensures 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.

The Trust makes every subject of a criminal record check submitted to DBS aware of the existence of the code of practice <https://www.gov.uk/government/publications/dbs-code-of-practice> and makes a copy available on request.

The Trust undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

## **10. Disclosure Types**

10.1 Two types of DBS check are currently available for posts exempt under the Rehabilitation of Offenders Act 1974; Standard and Enhanced. The nature of the job role will determine the type of DBS check required.

### **10.2 Standard Disclosures:**

- 10.2.1 As defined by the Police Act and Rehabilitation of Offenders Act 1974, Standard disclosures apply to posts exempted under the Act, such as posts that involve the individual having access to patients in the course of their normal duties.
- 10.2.2 Standard disclosures list all unfiltered convictions (spent and unspent), cautions, reprimands or warnings held on the Police National Computer, and in relevant cases reveals if an individual is on any lists held by the Department of Health or the Department for Education and is unsuitable to work with vulnerable groups including children.

### 10.3 Enhanced Disclosures:

As defined by the Police Act and Rehabilitation of Offenders Act 1974, Enhanced disclosures are for posts involving greater contact with children or vulnerable adults, such as jobs involving the caring for, supervising, training or being in sole charge of a person aged under 18, or a person aged 18 or over.

### 10.4 Additional Information (Amended by Protection of Freedom Act 2012)

Under the Police Act 1997, police forces can provide certain sensitive 'additional information' about applicants only to organisations, **not** to the applicants themselves.

This is sometimes also known as 'brown envelope' material and is issued separately to an enhanced DBS check. Whilst this provision will no longer exist in the Police Act, the police may choose to use common law powers to provide information directly to employers in cases where this is necessary, for example to prevent crime or harm to others.

This information must not be shared with the applicant, but where disclosed will be information the Trust makes decisions on the suitability of an individual to work within the Trust.

### 10.5 Basic Disclosure Check

10.5.1 Where a role does not meet the criteria for an Enhanced or Standard disclosure, a basic disclosure may be considered and used.

## 11. Who is required to undertake a DBS check?

11.1 All employees, workers or volunteers within LPT that are working in roles exempt from the Rehabilitation of Offender Act 1974 **and** carry out Regulated Activity, as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended in September 2012) are required to undertake a DBS check.

11.2 The requirement for a DBS check will be assessed against the Rehabilitation of Offenders Act 1974, the Safeguarding Vulnerable Groups Act 2006 and the DBS code of practice before a request is submitted.

11.3 Roles which carry out Regulated Activity require an enhanced DBS check. This will include a check against the relevant vetting and barring lists. Please see the Home Office fact sheet below for details of which roles this covers.

In addition to this, there is also a requirement for an enhanced DBS check if the activity is carried out in a **specified place** in the following settings:

- schools (educational institutions exclusively or mainly for the provision of full-time education to under 18s, including nursery schools)
- children's centres
- pupil referral units
- childcare premises, including nurseries
- residential homes for children in care
- children's detention centres
- adult residential care homes.

11.4 In specified places, everyone who has the opportunity to have contact with children and/or vulnerable adults is regarded as carrying out regulated activity since 12 October 2009, even if they are not undertaking work of a specified nature (teaching, training, care and so on). As a result all staff who work in a specified place will be required to undertake an enhanced DBS.

## **12. When will a DBS check be carried out?**

### **12.1 Recruitment**

All new applicants for roles, Trust bank workers or volunteers to the Trust whose job roles requires them to have a DBS check undertaken will do so during the Trusts recruitment process (see Recruitment & Selection Policy).

Where an applicant can provide a previous check at the correct level and including the correct lists, where they have subscribed to the DBS update service, this service will be used to verify their criminal record and a new check will not be undertaken.

If a DBS has been carried out by an NHS organisation within the last three years, and the applicant remains employed by the NHS organisation that carried out the check and the check is at the same level and lists as required for the job with the Trust, then the Trust can accept that DBS check to satisfy the DBS requirement to start them in post, but the applicant will need to undertake a new check so as to then join the update service if they have not already joined it.

The cost involved in carrying out the initial DBS check will be charged to the successful applicant.

The applicant will then need to join the DBS update service within 30 days of their original check being carried out. LPT will reimburse the employee the cost of being in the update service, which they are then required to renew annually during their employment with LPT.

By joining the DBS update service, the employee's ESR record will then be linked to the DBS update service, and if their circumstance changes e.g. they fail to pay their annual DBS update or their DBS status changes with regards to a conviction, ESR will generate a notification to the LPT's HR team.

If the employee then requires a subsequent DBS e.g. to re-join the DBS update service, this new DBS check will be at the employee's cost.

The Trust reserves the right to request any person affected to undertake subsequent DBS checks to maintain the safety of vulnerable persons if necessary.

### **12.2 Changes of role**

A new DBS check is not always required where an existing member of staff moves jobs within the same organisation and their roles and responsibilities and level of contact with that vulnerable group has not significantly changed. The trigger for a new check is where:

- They have never had a DBS check before and are moving to a position that now requires them to have a check.

- The level of check is dependent on the roles and responsibilities of the job they have previously had a standard level check and are moving into a regulated activity, which now requires them to have a higher level disclosure under the terms of the Safeguarding Vulnerable Groups Act
- 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, i.e. the person has left the Trust for more than three months and not maintained their membership of the update service during this period.

Existing employees of the Trust are contractually obliged to disclose to the Trust any criminal conviction or caution incurred since their initial appointment. In these circumstances, employees are advised to inform their line manager initially in writing, and another DBS check may be required to assess the risk of continuing employment, and/or the matter managed through the Trusts Disciplinary Policy.

### **12.3 Existing Staff Both Substantive and Bank**

To strengthen the protection offered to its patients and service users, and to meet CQC expectations, existing staff are expected to have a DBS undertaken so that they can then join the update service.

Staff will need to join the update service within 30 days of the DBS check being undertaken.

The Trust will pay for this initial check. The employee will then need to join the update service and stay signed up to the update service throughout their employment with the Trust. The Trust will reimburse the employee for the cost of the annual update service, and the employee should claim this through the normal expense system.

If there is a need to do another DBS check due to circumstances within the employee's control, e.g. they failed to continue paying for the update service or did not join it in the 30 day stipulated time period, then this subsequent DBS will be at the employee's expense.

### **12.4 Doctors in training**

- 12.4.1 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.
- 12.4.2 For doctors who started their training programme post-October 2009, the Trust is required to seek written assurances from the host/previous employer that a check has been obtained at the correct level and against the appropriate safeguarding lists.
- 12.4.3 It is the Trust's policy that it will share DBS information with appropriate partner organisations to facilitate rotations within the NHS.
- 12.4.4 In the event of the educationally approved rotational training post being over three years in duration prior to the next rotation to LPT, or within LPT, then LPT will at the three year mark require and apply for a new DBS. The cost of this will be met by the

Doctor. In such situations and where there are no concerns regarding the individual's practice or criminal behaviour then this should not delay the next rotation from commencing, providing the original check was at the appropriate level.

- 12.4.5 LPT reserve the right to undertake a DBS check at any point during the educationally approved rotational training post should information be available that would warrant such action.

## **12.5 Health Care professionals in Training**

- 12.5.1 It is the employee's responsibility to ensure that they have a suitable DBS check in place prior to commencing the application process. All successful applicants onto education programmes where the professional regulatory bodies (e.g. NMC) have indicated that a recent, or additional, DBS is required as an entry criteria. Applicants can contact HR for advice on levels of DBS they have on record.
- 12.5.2 Where a new DBS check is required by the education provider, the employee and manager must agree in advance of accepting the place how the cost of the DBS will be paid. In this circumstance the individual can be asked to pay for this DBS as it is in addition to their existing DBS with the Trust.

## **12.6 Temporary Workers**

- 12.6.1 Agency workers, locums and other temporary workers will require a DBS check to be carried out in line with the requirements of the contract for supply of agency workers that they hold which should include carrying out rechecks in line with NHS Standards.

The supplying agency is required to give the Trust assurance that their agency worker has an appropriate DBS certificate before supplying any worker to carry out any work. If there are entries on the disclosure, the Agency must engage with the LPT DBS Panel process and receive confirmation that the worker can work for LPT before they supply them to carry out any work.

## **12.7 Student Placements**

- 12.7.1 The Trust will ensure that a satisfactory DBS check has been conducted by the host University of students or trainees that work within LPT as part of their training course. This must be verified by LPT before a placement is confirmed.

## **12.8 Trust Bank Workers**

- 12.8.1 All bank workers who fulfil the criteria for a DBS check are required in line with other employees, volunteers etc. to have a DBS check at the point they are recruited. The cost of the check will be charged to the bank worker. Bank workers are also expected to join the update service, the cost of which will be reimbursed to them through the Trust's expense system in accordance with the clauses at the start of this section.
- 12.8.2 Anyone joining the bank where an enhanced DBS is required will be checked against both adults and children's DBS lists as bank assignments could be offered anywhere within the organisation.

- 12.8.3 Substantive staff who also want to work on the bank will be checked against both adults and children's DBS lists as bank assignments could be offered anywhere within the organisation.
- 12.8.4 If someone joining the bank only wants to work with one of the groups defined by the barred lists, then if this is sufficient for any other work they are doing with the Trust then this will be accommodated. In this case their ability to work with the client group on the barred list that they did not elect for will be restricted.

## 12.9 Self Employed

A self-employed person who is eligible for a standard or enhanced DBS check can ask the organisation that wishes to contract their services, to apply for their check.

## 12.10 Staff Recruited from Abroad

A certificate of good conduct or overseas criminal record check must be requested in accordance with that country's justice system and UK requirements when recruiting from abroad. Specific guidance can be found at: <https://www.gov.uk/disclosure-barring-service-check/arranging-checks-as-an-employer>

A DBS check must also be requested for eligible posts even if the applicant claims they have never lived in the UK before as, in a small number of cases, overseas criminal records are also held on the Police National Computer (PNC). This should be requested within 2 months of the staff member's commencement date.

## 12.11 Transgender Applicants

DBS offers a confidential checking process for transgender applicants.

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. For more information about the transgender process, email [sensitive@dbs.gov.uk](mailto:sensitive@dbs.gov.uk) or see the DBS [Transgender Applications guidance](#).

The Trust policy is to work to support transgender applicants through applying this guidance.

## 12.12 Military Service Records

12.9.1 Military service records can be used instead of obtaining an overseas police check where a member of the military has served abroad.

12.9.2 A DBS check will still be undertaken in addition to reviewing this record.

## 12.13 Fit and Proper Person checks

Where an employee falls under the provisions of the "Fit and Proper Persons" stipulations, they will require a DBS check as part of the appointment process for the role that meets "Fit and Proper Persons" requirement.

The employee is then required to where possible opt into the DBS update service so that their DBS status is kept live.

If for any reason this is not possible, they will need to have a new DBS check carried out for the duration of them being in the role, with no less frequently than once every three years.

Fit and Proper Persons stipulations relate to the most senior roles in the organisation, and include The Trust Chairperson, Chief Executive and all the Executive and Non-Executive Directors.

### **13. DBS Secure storage, handling, use retention and disposal of DBS information**

#### **13.1 Storage and Access:**

Disclosure 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.

#### **13.2 Handling:**

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties.

#### **13.3 Usage:**

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

#### **13.4 Retention:**

Data regarding an applicant's DBS status will be kept in accordance with the Data Protection Act and NHS document retention guidelines.

Once a DBS has been carried out the outcome will be recorded in the applicant's electronic record. It is the Trust's policy to disclose to other NHS Trust's the outcome of DBS checks carried out on its employees to other NHS Trusts to facilitate recruitment checks within the wider NHS.

#### **13.5 Disposal:**

When disposal is required, the Trust will ensure that any Disclosure information is destroyed by secure means, i.e. by shredding or confidential destruction.

However, notwithstanding the above, we will keep a record of information which substantiates that a Disclosure was undertaken and the recruitment decision taken and basis for that.

### **14. Assessment of DBS Disclosures**

14.1 The Trust acknowledges that deciding on the relevance of convictions to specific posts needs to be done on a case by case basis taking into account a range of risk factors relevant to the specific role. In some cases the relationship between the offence and the post will be clear enough for the Trust to decide easily on the suitability of the current employee or applicant for the job. In other cases the suitability for employment of a person with a criminal record will be less clear and will vary depending on the nature of

the job and the details and circumstances of any convictions. In all situations a DBS assessment is required. The process for this is outlined in Appendix 1.

- 14.2 The applicant / employee will be required to complete a DBS Disclosure Statement in order to assist the panel to come to a decision about the risk of employing them against the protection of the vulnerable person.
- 14.3 The Trust DBS Assessment Panel which will consist of at least two senior clinical representatives and a suitable member of the Human Resources team (e.g. HR Business Partner, HR Manager) who are able to assess the offences in line with best practice and relevant legislation.
- 14.4 The Trust will operate a DBS Assessment Panel which will assess the employee /applicant's skills, experience and conviction circumstances against the risk assessment criteria for the job as outlined in Appendix 1 and in following sections.
- 14.5 In line with best practice, the Trust will consider the following points when deciding on the relevance of offences to particular posts:
- What type of work will be carried out
  - Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers or clients?
  - 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?
  - Will the nature of the job present any opportunities for the post holder to re-offend in the course of work?
  - Any legal or regulatory requirements of the role.
- 14.6 For each assessment the relevance of each offence will be considered by the Trust and/or where appropriate additional information sought from the individual, taking into account the following issues:
- the seriousness of the offence and its relevance to the safety of other employees, customers, clients or property
  - the number of offences
  - the honesty of the applicant in disclosing the information when requested;
  - the age of the applicant at the time, their circumstances at the time and now
  - the length of time since the offence occurred
  - any relevant information offered by the applicant about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties
  - whether the offence was a one-off, or part of a history of offending
  - the potential for re-offence
  - whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely
  - whether the offence has been decriminalised by Parliament
  - the country in which the offence was committed. Some activities are offences in Scotland and not in England and Wales, and vice versa
  - the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.
- 14.7 The decision will be recorded and retained on an applicant's personal file if they are to be offered a post or for a period of one year if the applicant is unsuitable for the role.

14.8 Once an assessment has been made this will be communicated to the applicant. The DBS Assessment panel's decision will be final.

14.9 It is possible that in a DBS panel, a DBS disclosure could reveal previous names and gender for transgender applicants where an offence or caution that has been recorded in that name exists in police records. In this case there is no way of avoiding the disclosure of that former identity to the employer. If this occurs panel members must deal with the transgender information in a responsible, confidential and sensitive manner.

## **15. Managing Sensitive Information**

15.1 The Trust will ensure that information regarding offences is kept confidential, so that employees and applicants feel confident that information about their convictions will not be disclosed to anyone unless there is a specific reason for doing so.

15.2 Only persons directly involved in management of the employee /recruitment and the DBS Assessment Panel members will be informed of an applicant's criminal record.

15.3 On request, an employee / successful applicant will be informed who in the organisation has been told about the conviction and the reasons for this. If the individual's line manager was not directly involved in the assessment or recruitment process, they will only be informed of the offence if it is directly connected with the job.

15.4 Offence information and any additional police information will be stored and handled in accordance with the Trust's DBS Secure Storage, Handling, Use, Retention & Disposal of Disclosure and Disclosures Information section 16.

15.5 For broader policy and procedure advice concerning personal files generally, please refer to the Trust's Information Life Management Policy including records Management Policy.

15.6 Additional information supplied by an employee or applicant will be retained on the employee personal file/ recruitment file. The individual on supply of such information signs a declaration to that effect.

15.7 In the case of an employee, should additional DBS Disclosures be required in the future the Trust, will not seek to reassess the entries already assessed, unless the nature of the new job is fundamentally different. In these cases re assessment may be appropriate.

15.8 If an applicant has failed to disclose that they have a criminal record when directly asked i.e. at interview or on application of DBS, The Trust may need to refer the information that they did not disclose to the NHS Counter Fraud department as it may be deemed that the individual is trying to gain employment using false information.

## **16. Recruitment / Employment decisions**

16.1 Recruitment decisions will be made on the basis of all information released by the Disclosure and Barring Service, including additional direct police information, and information supplied by the individual in accordance with good recruitment practice.

16.2 If the decision is made to withdraw a provisional offer of an appointment, the applicant will be informed of that decision. It may be that matters revealed in the Disclosure justify such a decision. Alternatively that information from the police in the case of Standard or Enhanced Disclosures provides evidence that in the view of the Trust, the applicant is unsuitable for the position.

16.3 If the individual is a current employee of the Trust the matter may be managed by the Disciplinary Policy. This may result in terminating the contract of employment. Other remedial action may also be required.

16.4 It is possible to offer a post conditionally subject to receiving a satisfactory DBS check however; there will be certain conditions that apply. The applicant should be in a position to state on required self-declaration that there are no DBS issues.

***If the DBS Check does not arrive by the start date, the employee will have to be deployed in other work in the department. They must not carry out any duties that are defined as regulated activity with patients until the DBS check is returned and suitable.***

If subsequently the DBS comes back with entries the applicant did not appropriately disclose in the selection process the Trust have the right to withdraw the offer.

Where contrary information is disclosed in the recruitment process this will be risk assessed through a DSB panel in line with the policy before any type of offer can be made to the candidate. The panel will liaise with the manager as appropriate to the issue and take into account all supporting information provided.

16.5 All employees are required to complete an annual declaration at their appraisal (see appendix 5) to declare any spent or unspent convictions, police cautions, final warnings or reprimands which are not protected (or filtered out) by Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order.

The employee is required to complete the declaration as part of their appraisal in advance of their meeting. If a positive declaration is made then advice can be sought from the HR Team.

If a positive DBS check is received containing information on an existing employee or the employee declares convictions during their employment/ annual declaration then the Trust's DBS assessment process outlined above will be undertaken. It may lead to the Trust's disciplinary process being implemented which could result in the termination of employment.

## **17. Duty to refer**

17.1 There are circumstances where the Trust has a legal duty to refer an individual to the DBS, including where workers have been provided by a third party staffing provider.

This duty also applies when a report has already been made to another body, such as a professional regulatory or licensing body.

A referral means sharing information about a person with the DBS. This will usually be a concern that an individual may have harmed a child or member of a vulnerable group, or put them at risk of harm.

### **When to refer**

The DBS set out two conditions which both need to be met for there to be a legal duty to refer.

## Condition 1

As an employer, you withdraw permission for a person to engage in regulated activity with children and/or vulnerable groups, or you move the person to another area of work that isn't regulated activity. This includes situations when you would have taken this action, but the person was redeployed, resigned, retired, or left. For example, a doctor resigns when an allegation of harm to a patient is first made.

Find out what constitutes regulated activity for adults and children on the Gov.uk website. You may also find our DBS eligibility tool helpful.

## Condition 2

As an employer, you believe the person has carried out one of the following:

- **An action with satisfies the harm test** in relation to children and / or vulnerable groups. A person meets the harm test if they cause harm, cause someone to be harmed, put them at risk of harm, attempt to harm or incite another to harm.
- **They have engaged in relevant conduct.** This is conduct which endangers or is likely to endanger a child or someone from a vulnerable group, may endanger if repeated again, involves sexual material relating to children (including possession), or conduct of a sexual nature.
- **They have been cautioned or convicted of a relevant offence** for example, automatic barring from working with adults or children in regulated activity, either with or without the right to make representations). Further information about automatic barring offences can be found on the DBS factsheet.

## Legal duty to refer

A person or 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. The duty still applies if an individual has resigned before a formal decision to dismiss or remove them from regulated activity has been made.

You may still choose to refer in the interests of safeguarding children or vulnerable adults where the conditions aren't fully met, for example where concerns have been shared with you, but you haven't removed an individual from regulated activity as you do not have enough evidence to dismiss them.

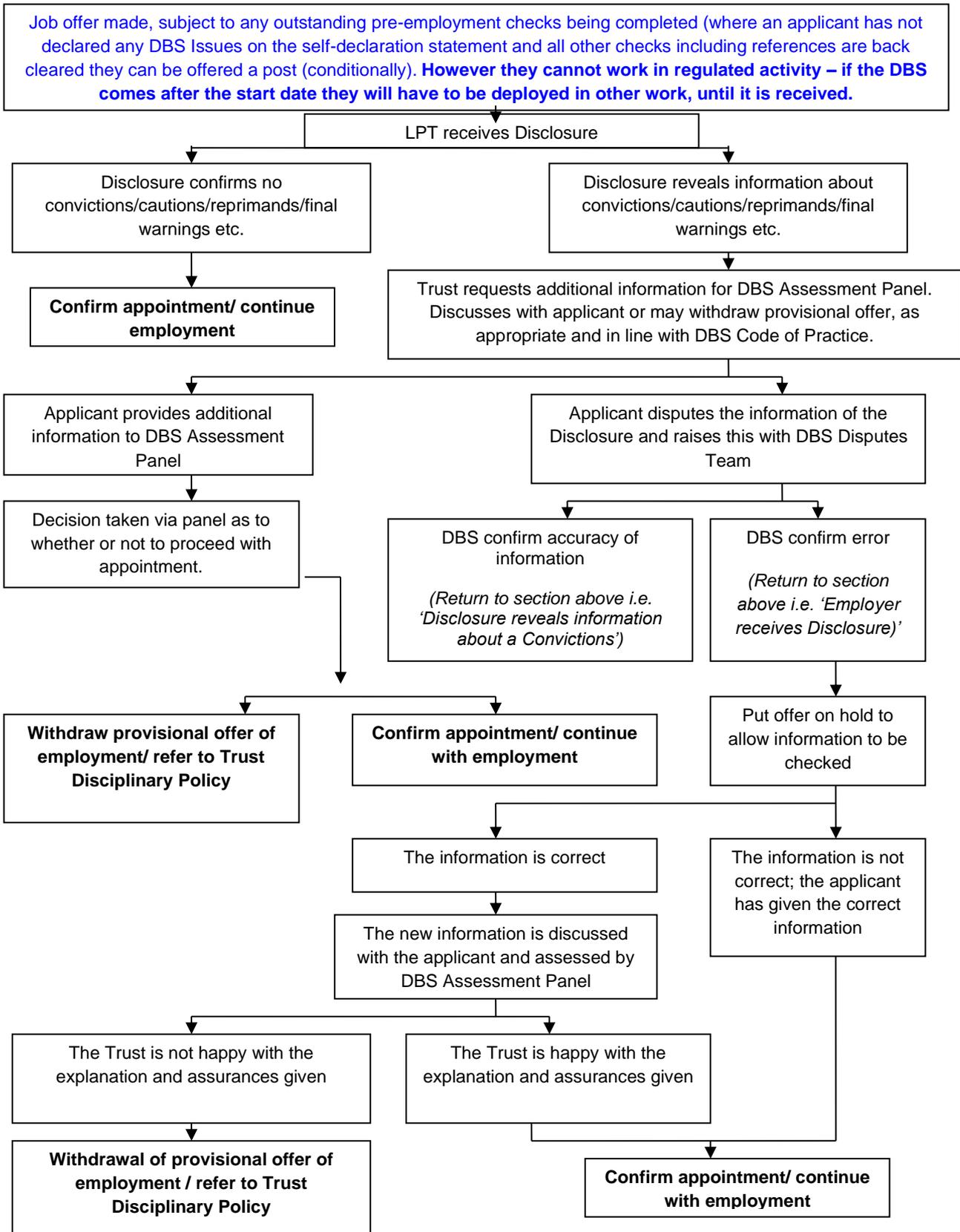
## Making a referral

Referrals can be made through an online referral form or by post. It's important to provide as much relevant information as possible, as the DBS rely on the quality of information provided when making any decisions. Ideally referrals are timely, detail the chronology of events and contain information to facilitate the DBS decision making process. Where relevant, they would include details of internal and external investigative and disciplinary processes.

Further guidance on employer duties to make referrals to the DBS, what information may be required as part of a referral, and how information is considered can be found on the DBS website.

<https://www.nhsemployers.org/your-workforce/recruit/employment-checks/criminal-record-check/an-employers-duty-to-refer-to-the-dbs>

## 18. Process for dealing with DBS Disclosures



## 19. Assessing a Post for DBS Level and factors to take into consideration

New roles will be assessed using eligibility for DBS tools built into the platform that is used to request the DBS.

Staff can also refer to the NHS Employer [online eligibility checking tool](#)

## 20. DBS Costs

For recruitment purposes, the cost of undertaking a DBS disclosure at the required level will be met by the individual. The Trust will meet the initial costs of the disclosure which will be deducted from the individuals' salary following commencement.

There are specific exemptions to this, Apprentice appointments and Mental Health Act, Hospital Managers.

Additionally individuals who are required to have a new DBS check due to management of change will have the cost for this new DBS met by the organisation.

For existing staff, see section 12 above for details of how DBS costing will work.

## 21. Training needs

There is no training requirement identified within this policy.

## 22. Monitoring Compliance and Effectiveness

This policy will be reviewed every 3 years or before if there are legislation changes.

The monitoring of this policy includes an annual audit that comprises of the following table. Where non-compliance is identified an action plan will be drawn up and monitored at the Safeguarding Committee. Where remedial action can be taken immediately, the action must be recorded appropriately.

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group
21.4.2	ESR Report		Audit	Human Resources Department
20.7.1	Overseas Medical Students Risk Assurance Pro-forma		Audit	Human Resources Department

## 23. Standards/Performance Indicators

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
Care Quality Commission Safety and Safeguarding from abuse	Service users must be protected from abuse and improper treatment.
Care Quality Commission Fit and proper persons employed	Persons employed for the purposes of carrying on a regulated activity must be of good character, Recruitment procedures must be established and operated effectively to ensure that persons employed meet the conditions of being of good character.

## 24. References and Bibliography

This policy was drafted with reference to the following:

### Home Office/Disclosure and Barring Service

<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

### DBS Code of practice

<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/dbs-checks-organisations1/code-of-practice/>

### NHS Employers

<https://www.nhsemployers.org/your-workforce/recruit/employment-checks>

### The Protection of Freedoms Act 2012

[http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpga\\_20120009\\_en.pdf](http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpga_20120009_en.pdf)

### Safeguarding Vulnerable Groups Act 2006

[http://www.legislation.gov.uk/ukpga/2006/47/pdfs/ukpga\\_20060047\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/47/pdfs/ukpga_20060047_en.pdf)

### Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

<http://www.legislation.gov.uk/uksi/1975/1023/contents/made>

### The Police Act 1997

<http://www.legislation.gov.uk/ukpga/1997/50/contents>

### Disclosure and Barring Service UHL Policy

<https://secure.library.leicestershospitals.nhs.uk/PAGL/Shared%20Documents/Disclosure%20and%20Barring%20Service%20UHL%20Policy.pdf>

### New DBS filtering rules November 2020

<https://www.nhsemployers.org/your-workforce/recruit/employment-checks/criminal-record-check/new-dbs-filtering-rules-november-2020>

## Appendix 1

### The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

<b>Shape its services around the needs and preferences of individual patients, their families and their carers</b>	<input type="checkbox"/>
<b>Respond to different needs of different sectors of the population</b>	<input type="checkbox"/>
<b>Work continuously to improve quality services and to minimise errors</b>	<b>X</b>
<b>Support and value its staff</b>	<input type="checkbox"/>
<b>Work together with others to ensure a seamless service for patients</b>	<input type="checkbox"/>
<b>Help keep people healthy and work to reduce health inequalities</b>	<input type="checkbox"/>
<b>Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance</b>	<input type="checkbox"/>

## Appendix 2

### Stakeholders and Consultation

#### Key individuals involved in developing the document

Name	Designation
Daniel Norbury	Head of Employment Services

#### Circulated to the following individuals for comment

Name
Directors / Heads of Service and Direct Reports
Operational HR Team
Equalities Team
Staffside
Strategic Workforce Committee

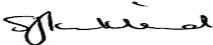
## Appendix 3

### Due Regard Screening Template

Section 1			
Date Screening commenced		March 2022	
Directorate / Service carrying out the assessment		HR Employee Services	
Name and role of person undertaking this Due Regard (Equality Analysis)		Daniel Norbury, Head of Employment Services	
Give an overview of the aims, objectives and purpose of the proposal:			
<b>AIMS:</b> This Policy sets out the responsibilities of the Trust and its employees to comply with the requirement to undertake a Criminal Records (DBS) Disclosure Check on commencement of employment/ volunteering where appropriate to ensure the protection of vulnerable people.			
<b>OBJECTIVES:</b> To effectively vet the workforce to meet safeguarding requirements.			
Section 2			
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details		
Age	n/a		
Disability	n/a		
Gender reassignment	Have an impact but a process is available with DBS to conduct DBS checks in a sensitive way for people who have received /undergoing gender re-assignment.		
Marriage & Civil Partnership	n/a		
Pregnancy & Maternity	n/a		
Race	n/a		
Religion and Belief	n/a		
Sex	n/a		
Sexual Orientation	n/a		
Other equality groups?	Offenders/ Rehabilitated offenders		
Section 3			
<b>Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please <u>tick</u> appropriate box below.</b>			
No re scale but does have a major effect on offenders/rehabilitated offenders			
High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B		Low risk: Go to Section 4.	<b>X</b>
Section 4			
<b>If this proposal is low risk please give evidence or justification for how you reached this decision:</b>			
Signed by reviewer/assessor	Daniel Norbury	Date	14 March 2022
Sign off that this proposal is low risk and does not require a full Equality Analysis			
Head of Service Signed	Kathryn Burt	Date	14 March 2022

## Appendix 4

### Data Privacy Impact Assessment Screening

<p><b>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</b></p> <p><b>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</b></p>		
<b>Name of Document:</b>	Disclosure and Barring Service (DBS) Policy	
<b>Completed by:</b>	Daniel Norbury	
<b>Job title</b>	Head of Employment Services	<b>Date</b> 14 May 2021
<b>Screening Questions</b>	<b>Yes/No</b>	<b>Explanatory Note</b>
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	No	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	No	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	No	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	Yes	<b>Withdrawal or termination of employment</b>
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	Yes	<b>Criminal records</b>
8. Will the process require you to contact individuals in ways which they may find intrusive?	Yes	<b>Personal statements to allow us to review disclosures</b>
<p><b>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via <a href="mailto:Lpt-dataprivacy@leicspart.secure.nhs.uk">Lpt-dataprivacy@leicspart.secure.nhs.uk</a> In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</b></p>		
<b>Data Privacy approval name:</b>	Sam Kirkland, Head of Data Privacy 	
<b>Date of approval</b>	17/05/2021	

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust

## Appendix 5

## Disclosure Statement

Please ensure that you complete every section of this statement. If a question is not applicable to your circumstances, please mark it N/A. If you have more than one statement to submit please complete an additional form(s).

### Personal Details

<b>Surname</b>		<b>Forename</b>						
<b>Other names</b>		<b>Date of Birth</b>	D	D	M	M	Y	Y
<b>Current Post /Post applied for</b>		<b>Place of work /applied to work</b>						

### Conviction Details

<b>Date of Conviction</b>		<b>Offence</b>	
<b>Court</b>		<b>Disposal</b>	

Type of Criminal Record (please tick)

- |                    |                          |                             |                          |
|--------------------|--------------------------|-----------------------------|--------------------------|
| Spent conviction   | <input type="checkbox"/> | Bind over order             | <input type="checkbox"/> |
| Unspent conviction | <input type="checkbox"/> | Reprimand/Warning           | <input type="checkbox"/> |
| Caution            | <input type="checkbox"/> | Other, please explain below | <input type="checkbox"/> |

1. We need additional information on the offence listed. Please provide an explanation of how the offence occurred including the circumstances surrounding the offence and include any mitigating circumstances, or explanations you wish to give.

2. Have your circumstances changed since the offence occurred? If so in what way?

3. What impact did the offence have on you as an individual and did it change your view point in any way?

4. Have you submitted an application form for any post in this Trust since the incident?	Yes / No
5. If so, did you volunteer details of your criminal record on the application form?	Yes / No
6. If not why not?(give details)	
7. If you attended for interview did you declare details of your criminal record at interview?	Yes / No
8. If not, why not? (give details)	
<p>9. Have you ever been refused employment on the basis of a CRB Disclosure? If so please complete the sections below</p> <p>Name of post declined:</p> <p>Employer:</p> <p>Date of decline:</p>	

**FOR CURRENT EMPLOYEES ONLY**

10 Start Date with Trust		
11. Were you employed by the Trust at the time of the incident?	Yes / No	
12. If yes, did you inform your manager?	Yes / No	
13. If yes, please give their name and their job title at that time	Name	Job Title
14. Please can you confirm when you told your manager?		
15. How did you inform them e.g. verbally/ letter etc.		
16. What was the response/outcome from the manager?		
17. If not, why didn't you inform your manager?		

*I understand that by giving this information it will be used by the Trust to assess my suitability to continue to work/ continue with my recruitment. The information will only be disclosed to individuals who are responsible for making the assessment decision. On completion of the assessment this statement and the assessment form will be retained on my personal file (for current/perspective employees) or for one year for applicants who are refused employment on CRB Disclosure grounds.*

Signed:

Name in capitals: \_\_\_\_\_ Date: \_\_\_\_\_



## Appendix 6

### Annual Declaration: Disclosure of Criminal Offences

This section will be integrated into the Trust's appraisal management system.

"If your role requires a DBS, do you have any criminal convictions that are not protected (i.e. eligible for filtering) under the Rehabilitation of Offenders Act 1974 (Exceptions) Order (as amended), to declare?

You do not need to declare convictions that have already been assessed through an LPT DBS panel."

Answer Options:

"nothing to declare"

"n/a role does not require a DBS"

"something to declare - please discuss this with your line manager outside of the appraisal process"