

CRIMINAL BACKGROUND AND BARRING CHECKS POLICY

Document Reference	H10.CRB.V3.2
Document Status	Final
Target Audience	All staff, volunteers, agency workers, honorary placements, private contractors and their staff, work placements, research staff, cadets/students and individuals identified from time to time as meeting the criteria to which this policy refers.
Date Ratified	9 July 2015
Ratified By	Policy Committee
Release Date	13 July 2015
Review Date	July 2018
Sponsor	Kath Griffin, Director of Human Resources

Version Control

Version	Date of amendments	Author	Update comments
1.0	October 2006	Jan Armstrong Deputy Director of Human Resources	
2.3	February 2012	Vicky Bowmaker Human Resources Administration Manager	
3.0	December 2014	Vicky Bowmaker Employee Services Manager	
3.1	January 2015	Vicky Bowmaker Employee Services Manager	
3.2	July 2015	Vicky Bowmaker Employee Services Manager	Updated to reflect comments from Policy Committee

**CITY HOSPITALS SUNDERLAND NHS FOUNDATION TRUST
DOCUMENT APPROVAL PRO FORMA**

Policy Title: Criminal Background and Barring Checks Policy			
Policy Number: H10.CRB.V3.2			
Name of Author: Vicky Bowmaker, Employee Services Manager			
Name of Sponsor: Kath Griffin, Director of Human Resources			
New Policy:		No	
Reviewed Without Amendments:		No	
Type of Policy:	Risk Management Operational policy Operational guidelines Mental Health Act Human Resources X Control of infection Drugs policy Other		
Equality Impact Assessment: If this policy has a potential discriminatory impact please record below the person who has informed and involved the sponsor: Name: Title: Date: NB: It is the sponsor's responsibility to submit the policy through the CHS approval route.			
Checklist for the review and approval of the policy			
	Is the policy compliant with:	Yes/No	Comments
	Corporate style	Yes	
	Format including duties,	Yes	
	Content; intended outcomes clearly described	Yes	
	Evidence base; key references included and cited in full	Yes	

	Associated documentation recorded	Yes	
	Review/consultation process: List of groups/committees included with the policy	Yes	
	Appropriate stakeholders consulted	Yes	
	Approval: Staff side committee (if appropriate)		
	Dissemination & implementation: appropriately described	Yes	
	Training: requirements included (where appropriate)	Yes	
	Document control: table updated appropriately	Yes	
	Monitoring compliance/ effectiveness: adequate description and appropriate monitoring	Yes	
	Review date: identified and acceptable	Yes	
	Page numbers: correct with index	Yes	
	Intranet to be updated: Record the date and person responsible		Andrea Hetherington 13 07 15
	Individual approval; Policy author	Date	Sign
	Director of Corporate Affairs: update version control and approval of the process	Date	Sign
	Policy archived		13 07 15

Committee Approval

Committee which forms the approval process: Policy Committee

Date of approval: 9 July 2015

Signature of Chair of Committee, including approval: Mike Davison, Non-Executive Director

CONTENTS

Section	Page
1. Introduction	5
2. Purpose and Scope	5
3. Duties	6 – 8
4. Definitions	8 – 9
5. Criminal Background Checks and Convictions	10 - 22
6. Monitoring Compliance/Effectiveness Of The Policy	22
7. Dissemination, Implementation and Training	23
8. Consultation, Review and Approval/Ratification	23
9. References	23
10. Associated Policies	23

Appendix

1. Policy Statement on the Recruitment of Ex-Offenders	24
3. Criminal Background and Barring Checks Policy - Easy Read Guide	25

1 INTRODUCTION

It is the policy of City Hospitals Sunderland NHS Foundation Trust (CHS) to adopt recruitment practices that will protect children and safeguard the welfare of vulnerable adults, whilst making every effort to prevent unfair discrimination against those with criminal records in accordance with the Rehabilitation of Offenders Act 1974.

2 PURPOSE AND SCOPE

This policy applies to all new staff to the Trust, volunteers, agency workers, honorary placements, private contractors and their staff, work placements, research staff, cadets, students, current employees who are, or move to a post, which gives them access to children or vulnerable adults and those individuals as identified from time to time as meeting the criteria to which this policy refers.

This document outlines the criminal background checks that the Trust must carry out for the appointment and ongoing employment of all eligible individuals. It makes reference to the new requirements under the Safeguarding Vulnerable Groups Act (2006) for checking staff against the barred lists, which replaced all pre-existing lists (PoCA, PoVA, List 99 and disqualification orders) from 12 October 2009.

Mandatory checks will include all medical, nursing and other staff with direct patient contact, as well as staff whose work provides access to patients in the course of their normal duties, such as cleaners and maintenance staff.

This Policy is intended to ensure, as far as is reasonably practicable, fair and consistent use of Disclosure information in relation to ex-offenders in accordance with the Rehabilitation of Offenders Act 1974.

Criminal background checks are undertaken for the Trust by the Disclosure and Barring Service (DBS) previously known as Criminal Records Bureau (CRB), which searches information held on the Police National Computer (PNC), barred lists and the records held by the Department for Education and Skills (DFES) to help the Trust assess the suitability of candidates.

The Trust will make recruitment and employment decisions in relation to those with criminal convictions, taking account of all relevant information available at the time. A criminal conviction will not automatically debar a person from employment with the Trust. Only successful candidates will be subject to a DBS check. The weight given to the conviction will depend on the nature of the offence, the age at which it was committed and its relevance to the duties of the post.

In addition, to ensure appropriate management of risks to patients, the Trust will conduct employment checks on eligible employees at pre-determined intervals and to meet statutory and best practice needs as employees transfer posts within the Trust.

3 **DUTIES**

3.1 Board of Directors

The Board of Directors is responsible for monitoring and approving a framework to support a robust DBS process, which is compliant with all relevant legislation, guidelines and NHS employment check standards.

3.2 Chief Executive

The Chief Executive has ultimate responsibility for ensuring that a robust DBS process is in place that is compliant with all relevant legislation, guidelines and NHS employment check standards.

3.3 Director of Human Resources

The Director of Human Resources is the nominated Director lead for the management of this policy and is directly responsible to the Chief Executive for facilitating the implementation of this policy following consultation with the staff side representatives.

The Director of Human Resources will also act as Lead Signatory. The Lead Signatory is the sole authority to act on behalf of the DBS and has overall accountability of the process.

The Director of Human Resources will ensure that:

- The policy is adhered to at all times.
- Applications are made in line with the DBS Code of Practice.
- Robust records are maintained with regard to all DBS checks undertaken in line with the Section 124 of the Police Act 1997, NHS Employment Check Standards and Data Protection guidelines.
- The HR Department monitors and updates DBS information in the Employee Staff Record (ESR) system
- A risk assessment based DBS matrix of all jobs and their level of disclosure is maintained in line with DBS guidance.
- All positive DBS disclosures are investigated and referred to the Director of Human Resources.
- Any concerns about the application and/or breach of this policy are brought to the attention of the Director of Human Resources

3.4 Employee Services Staff

Employee Services staff are part of the HR Department. They have been DBS checked to the level of Enhanced Disclosure. Employee Services staff have access to candidates' and current employees' sensitive personal information and it is their responsibility to ensure its security. Employee Services staff processing DBS applications have responsibility for operating within the DBS Code of Practice.

These staff are responsible for:

- Ensuring that requests are appropriate and apply to positions, which allow substantial access to children and vulnerable adults.
- Ensuring requests are made at the correct stage of the appointment process.

- Ensure applications are accurately completed in a timely manner and submitted in accordance with the DBS code of practice.
- Ensuring the information is only released to those authorised to receive it.
- Ensuring records are kept securely and destroyed after use.

3.5 Recruiting/Line Managers

It is the responsibility of the recruiting/line managers to ensure that:

- Risk assessments are carried out on all job roles (paid and unpaid) within their area to assess the level of DBS disclosure required using the DBS eligibility criteria.
- For recruitment purposes, the Request to Recruit form clearly states whether or not a DBS disclosure is required for the post and if so, at what level and that DBS disclosure is referred to within the advert and job description.
- They support the retrospective DBS checking process as required.
- They bring to the attention of the Director of Human Resources an employee's criminal conviction, cautions, warnings, binding or supervision orders, which occurs during their period of employment with the Trust.

3.6 Work Experience and Apprenticeships Manager

It is the responsibility of the Work Experience and Apprenticeships Manager to ensure that people offered work experience placements or apprenticeships with the Trust has an appropriate DBS check following a thorough risk assessment of the area and nature of the role prior to commencement of duties.

3.7 Volunteer Co-ordinator

It is the responsibility of the Volunteer Co-ordinator to ensure that prospective volunteers have an appropriate DBS check following a thorough risk assessment of their volunteer duties.

3.8 Employees

It is the responsibility of employees to:

- Ensure they provide information in an open and honest way, making any declaration as appropriate, during the course of their employment.
- Participate in any retrospective DBS checking process as required.
- Inform the Director of Human Resources of any criminal convictions, cautions, warnings, binding or supervision orders, which occur during their period of employment with the Trust. Failure to do so will be considered as a disciplinary matter, which could result in disciplinary action up to and including dismissal.

3.9 Job Applicants

It is the responsibility of job applicants to ensure they provide information in an open and honest way, making any self declaration using the required declaration form as appropriate, during the recruitment process. Failure to do so will be considered as a disciplinary matter, which could result in the withdrawal of an offer of employment.

3.10 Other Workers (Not Employed by the Trust)

It is the responsibility of other workers (not employed by the Trust) to:

- Ensure they provide information in an open and honest way, making any declaration using the required declaration form as appropriate, during any DBS administration process or when tendering for service.
- Inform the Director of Human Resources of any criminal convictions, cautions, warnings, binding or supervision orders, which occur during their period of placement with the Trust.
- Failure to do so could result in the placement being withdrawn.

4 DEFINITIONS

4.1 Disclosure and Barring Service (DBS)

The DBS was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). The DBS provides access to information across England and Wales about criminal convictions and other police records to help employers make an informed decision when recruiting staff. The information provided by the DBS is known as a 'disclosure'.

4.2 Independent Safeguarding Authority (ISA)

Now part of the Disclosure and Barring Service, and part of the Government's Vetting and Barring Scheme (VBS) to help prevent unsuitable people from working with children and vulnerable adults.

4.3 Barred Lists

The Safeguarding Vulnerable Groups Act 2006 contained the legislation to create two new Barred Lists (replacing all pre-existing lists – PoCA, PoVA, List 99 and disqualification orders). These are:

- a list of people barred from working with children (replacing List 99, the PoCA list and disqualification orders); and
- A list of people barred from working with vulnerable adults (replacing the PoVA list).

These lists are separate but aligned. They allow ISA to keep a record of:

- individuals who will not be permitted to work in regulated activity with children and/or vulnerable adults; and
- Individuals who can only work with children and/or vulnerable adults in controlled activities with safeguards.

Certain extremely serious offences result in automatic barring.

4.4 Vulnerable Adult

The Disclosure and Barring Service class an adult (a person aged 18 or over) as vulnerable when they are receiving one of the following services:

- Health care;
- Relevant personal care;
- Social care work;
- Assistance in relation to general household matters by reason of age, illness or disability;
- Relevant assistance in the conduct of their own affairs; or
- Conveying (due to age, illness or disability in prescribed circumstances).

4.5 Regulated Activity (relating to children)

The term 'regulated activity' relating to children is defined in law and describes an activity, which involves working with children, whether this is in a paid or unpaid capacity. In general terms, regulated activity relating to children comprises:

- Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice / guidance on well-being, or drive a vehicle only for children.
- Relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional.
- Registered childminding and foster-carers.
- Moderating online forums or chat rooms provided mainly for children where the person has access to the content and contact with users of the service.

4.6 Regulated Activity (relating to vulnerable adults)

- Providing health care to an adult or providing health care under the direction or supervision of a health care professional.
- Providing personal care, such as physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability
- Training, instructing or offering advice/guidance related to eating/drinking, going to the toilet, washing/bathing, dressing, oral/skin/hair or nail care to adults who need it because of their age, illness or disability.
- Providing social work (the provision by a social care worker of social work).
- Assistance with cash, bills and/or shopping.
- Assistance in the conduct of a person's own affairs.
- Conveying an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, , personal, or social care; or between places where they have received or will be receiving health, personal or social care. This does not include family, friends or taxi drivers.

4.7 Police National Computer (PNC)

The PNC holds details of people, vehicles, crimes and property that can be electronically accessed by the police and other criminal justice agencies. It is a national information system maintained and delivered by the National Policing Improvement Agency.

4.8 The Safeguarding Vulnerable Groups Act 2006

The Act was passed as a result of the Richard Inquiry arising from the Soham murders in 2002. The Act was created in response to recommendation 19 of the Inquiry Report and the ISA was set up to fulfill this role across England, Wales and Northern Ireland.

4.9 Recruitment Authorisation Form (RAF)

The RAF consists of the relevant forms and supporting documents that must be completed as the first step of the recruitment process. Where there is a

need to carry out a DBS check, this will be added to recruitment information by Employee Services using the DBS jobs matrix.

4.10 Electronic Staff Record (ESR)

The national NHS integrated workforce and learning management system which is used across all 586 NHS organisations in England and Wales

4.11 NHS Employment Check Standards

These standards, set by NHS Employers, outline the legal/mandatory requirements for employment checks in the NHS.

4.12 Job Description

The job description provides a description of the overall job purpose along with a list of the general tasks, or functions, and responsibilities of a position.

5. CRIMINAL BACKGROUND CHECKS AND CONVICTIONS

5.1 The information provided by the DBS is known as a 'disclosure'. The DBS provides three levels of disclosure:-

1. 'Standard';
2. 'Enhanced';
3. 'Enhanced with Barring Checks.'

Information obtained through disclosures helps the Trust to make informed recruitment decisions on whether or not to appoint a prospective employee. The decision as to whether or not to appoint a person whose DBS disclosure certificate reveals a conviction or other information rests with the Trust. A person's criminal background will be carefully considered in the light of all the relevant circumstances and decisions reached on a case-by-case basis.

Possession of a criminal conviction will not automatically make an applicant unsuitable to work at/for the Trust. However, the Independent Safeguarding Authority holds the power to bar people who have committed serious offences from working or engaging in regulated activity with children and/or vulnerable adults.

The DBS now incorporates the Independent Safeguarding Authority (ISA) which provides safeguarding arrangements for children and vulnerable adults. The ISA has three main statutory duties.

- To maintain the two lists of individuals who are barred from working with children and/or vulnerable adults (replacing all pre-existing lists – PoCA, PoVA, List 99 and disqualification orders).
- To make discretionary decisions on who should be placed on the children's and/or the vulnerable adults' list(s) prior to an individual's employment or where referred to the ISA.
- To reach decisions as to whether or not to remove an individual from the barred lists following review.

The minimum age at which someone can be asked to apply for a DBS check is 16 years old.

5.2 Criminal Background Checks

Part V of the Police Act 1997 makes criminal background checks available for positions that are identified as exempt under the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (as amended). Not all staff/workers will require a DBS check, but such checks are mandatory for all staff who work with/have contact with children and/or vulnerable adults.

A risk assessment will be undertaken to assess the roles and duties individuals are expected to fulfil and checks will be carried out through the DBS.

5.3 The Safeguarding Vulnerable Groups Act (2006)

The Safeguarding Vulnerable Groups Act (2006) was created in response to recommendations made in the Bichard Inquiry, which questioned the way employers recruit people to work with vulnerable groups, and particularly the way background checks are carried out. Recommendation 19 of the inquiry highlighted the need for a single agency to vet all individuals who want to work, or volunteer to work, with children or vulnerable adults and to bar unsuitable people from doing so. The Act laid the foundation for the Vetting and Barring Scheme (VBS) which came into force on 12 October 2009.

The new scheme provides a more comprehensive and consistent measure of protection for vulnerable groups across a wide range of settings and applies to England, Wales and Northern Ireland. A separate, but aligned, scheme covers Scotland. Information is shared across these borders and barring is recognised in any part of the UK.

5.4 Rehabilitation of Offenders Act (1974)

The Rehabilitation of Offenders Act provides for anyone who has been convicted of a criminal offence, and has been sentenced to less than two-and-a-half years in prison, to be regarded as rehabilitated after a specified period of time where no further convictions have been committed. A rehabilitation period may vary from 6 months to 10 years from the date of conviction. During this period the conviction is regarded as 'unspent' (current) and an individual is required to disclose this information to any prospective employer, or their current employer if the offence takes place during their term of employment.

Once this period of rehabilitation has passed, the conviction is regarded as 'spent' (old). In normal circumstances the convicted person does not have to reveal any 'spent' convictions to a prospective employer when applying for a job. However, to protect the vulnerable, some professions within the health and social care sector are exempt from this approach by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. In the case of such excepted professions, employers are entitled to know about all previous criminal record information whether spent or unspent (including reprimands, cautions, final warnings) and to take this information into account when assessing an individual's suitability for the post.

5.4.1 Spent Convictions

If a conviction is 'spent' (old), the person does not have to reveal its existence in most circumstances. There are however, some exceptions relating to employment and the Trust is therefore legally entitled to request DBS disclosures due to its caring responsibility to children and vulnerable adults. Applicants for posts in the Trust must declare details of **all** convictions, cautions and warnings on the declaration form (**appendix 1**) and for certain posts will be required to complete a standard or enhanced DBS disclosure, depending on their position with the Trust.

Failure to reveal information that is directly relevant to the job role could lead to withdrawal of an offer of employment and/or disciplinary action up to and including dismissal. However having a criminal record will not necessarily prevent an individual from becoming an employee of the Trust; this will depend on the nature of the position, professional suitability and the circumstances, nature and background of the offences.

5.5 Levels and Eligibility of Disclosures

There are three levels of Disclosure: Standard, Enhanced (excluding the barred list check) and Enhanced (including the barred list check for roles that carry out regulated activity).

5.5.1 Standard Check

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

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

5.5.2 Enhanced Check

The enhanced check is available for specific duties, positions and licenses included in both the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) regulations, for example, regularly caring for, training, supervising or being solely in charge of children, specified activities with adults in receipt of health care or social care services and applicants for gaming and lottery licenses.

An enhanced level certificate contains the same PNC information as the standard level certificate but also includes a check of information held locally by police forces.

5.5.3 Enhanced with Barring Checks

The enhanced check with barring checks is only available for those individuals who are carrying out regulated activity and a small number of positions listed in Police Act 1997 (Criminal Records) regulations, for example, prospective adoptive parents and taxi and Private Hire Vehicle (PHV) licences.

An enhanced level certificate with barring checks contains the same PNC information and check of information held locally by police forces as an enhanced level check but in addition will check against the children's and/or adult's barred lists.

If the application includes a request to check the barred list(s) the DBS has a statutory duty to consider any information that suggests the applicant may pose a risk of harm. The DBS will write to the applicant if they are affected.

5.6 **Filtering of Information Included within a Disclosure Certificate**

Since 29 May 2013, certain old and minor cautions/convictions are no longer disclosed in a criminal record certificate. This filtering of information is intended to provide individuals with the opportunity to 'leave behind' mistakes made when they were young. Ensuring patient and public safety is paramount however. Therefore certain convictions and cautions will always be disclosed in a criminal record certificate. A list of such offences can be found on the DBS website at: www.gov.uk/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check

The filtering system introduces a strict set of rules that must be satisfied before any decision is made as to whether information should not be disclosed in a criminal record certificate. In relation to *convictions* committed by an adult, information will not be disclosed where all four conditions outlined below are met:

- 11 years have elapsed since the date of the conviction;
- it is not listed as one of the specified offences which must always be disclosed;
- it did not result in a custodial sentence, and;
- The individual does not have more than one conviction.

Cautions issued to an adult will not be disclosed where:

- 6 years have elapsed since the date of that caution being issued, and;
- Where the caution does not appear on the specified list of offences.

In relation to *convictions* committed by individuals under the age of 18, information will not be disclosed where:

- 5½ years have elapsed since the date of the conviction;
- it is not one of the specified offences which must always be disclosed;
- it did not result in a custodial sentence, and;
- The individual does not have more than one conviction.

Where the *caution* was issued to an individual under the age of 18, information will not be disclosed where:

- 2 years have elapsed since the date of issue, and;
- the caution does not appear on the list of specified offences

Police forces will continue to use their common law powers to share information which they reasonably believe to be relevant and which, in their opinion, should be disclosed within the criminal record certificate.

5.7 Applicant Only DBS Certificate

The DBS issues disclosure certificates only to applicants, which means the Trust does not receive a copy of the disclosure certificate at the same time that the applicant receives theirs. To satisfy the NHS Employment Check Standards, individuals are required to produce the original certificate to the Human Resources Department.

5.8 Use of DBS Disclosures

Disclosures are an important tool in ensuring safer recruitment practices and patient safety. Although a criminal conviction does not automatically prevent anyone from working in the Trust, some types of offences, for example involving violence, assault, intimidation, sexual misconduct/abuse, serious criminal activity, corruption or an offence deemed inappropriate by the Trust, may indicate that an applicant is unsuitable to have access to patients and vulnerable adults and should not be employed.

The Disclosure is just one element in the pre and post employment checks required by the Trust in line with the NHS Employment Checks Standard. It will be considered in the light of all relevant circumstances, including but not limited to:

- the nature of the offence;
- the age at which it was committed;
- its relevance to the position being applied for;
- whether or not the applicant has a pattern of offending behaviour;
- whether or not the applicant's circumstances have changed since the offending behaviour;
- The circumstances surrounding the offending behaviour and the explanation offered by the individual.

5.9 Recruitment

Individuals applying for/or transferring posts within the Trust will be checked/rechecked at either standard or enhanced level appropriate to the job role to which they are being appointed, to ensure that best practice guidance provided by DBS is adhered to take a robust risk management approach towards patient safety and financial risk.

- All recruitment advertising will indicate whether a post will be the subject of a DBS Disclosure at the level appropriate to the job role. Human Resources will process all job applications in accordance with the existing Recruitment Policy and where applicable request a DBS disclosure for those successful applicants who meet the eligibility criteria.
- All recruiting Managers must have successfully completed the Institute of Leadership and Management's NVQ Level 3 course, and ensure they adhere to the statutory obligations placed on the Trust for the protection of children and vulnerable adults.

- All offers of employment will be made subject to a satisfactory DBS Disclosure where applicable at the appropriate level. A start date will not be agreed until such time as all necessary pre-employment checks including DBS disclosures, where applicable, are satisfactorily completed.
- All vacancies notified to NHS jobs (www.jobs.nhs.uk) will be accompanied by a policy statement on the recruitment of Ex Offenders.
- The requirement for a DBS disclosure will be notified to all applicants on offers of appointment.
- All posts within the Trust will be risk assessed in relation to the level of disclosure required.

5.10 Existing staff changing jobs within the Trust

A new DBS check is not 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 does not change. The criteria for determining whether a new check is required, is where:

- The person has never had a DBS check before and is moving into a post that requires a DBS check at standard, enhanced or enhanced with barred list check.
- The person has previously only had a standard level disclosure and is moving into a post that requires them to have an enhanced or enhanced with barring list level disclosure.
- There has been a break of service of more than three months between leaving the old post and taking up the new one
- There is a concern about that individual's suitability for the post.

In addition, eligible staff opting to take an Employment Break of more than 12 months will be re-checked before returning to work at CHS.

5.11 Students

DBS checks apply to all students who as part of their qualification undertake a regulated activity placement.

DBS Disclosures may be requested by Higher Educational Institutions (HEI's) as part of their admissions procedure for healthcare students where a training placement has been arranged. A Disclosure should only be requested for applicants who have been provisionally accepted onto a course.

Where a DBS check has been carried out by the HEI, the Trust will request the DBS details in advance of the Student's placement. The request will ask for written assurance that the HEI has carried out an appropriate check at the correct level – including their unique DBS reference number and confirmation of whether or not the check has resulted in a positive Disclosure. Where the Trust is notified of a positive Disclosure, it will undertake a second check and assess the suitability of the Student in accordance with Section 5.19 of this policy.

Where this assurance cannot be provided a new DBS check will be required to be carried out by the HEI.

5.12 Secondees

Where employees apply to be seconded from their existing post to undertake professional training (e.g. Healthcare Assistants applying to be seconded to undertake nurse training), the relevant HEI organisation may request a DBS disclosure as part of the admission/application procedure. An assessment will then be undertaken by the Trust and the HEI as to whether or not the candidate can proceed with the secondment.

5.13 Work Experience and Apprenticeships

The Work Experience and Apprenticeships Manager will ensure that people offered work experience or apprenticeships within the Trust have an appropriate DBS check following a thorough risk assessment of the area and nature of the role prior to commencement of duties.

DBS checks resulting in positive disclosures will be notified to the Director of Human Resources and a decision taken on the suitability of the individual to be placed at CHS will be made in accordance with Section 5.19 of this policy.

The minimum age limit for criminal backgrounds checks has been set in the Protection of Freedoms Act 2012. This means the Trust cannot apply for a criminal background check for individuals under the age of 16.

Students who are on work experience and are engaging in an activity with vulnerable groups will also not be required to have a DBS check on the basis that the roles they are undertaking will involve them observing or carrying out minor duties under the full supervision of someone who is in regulated activity.

5.14 Volunteers

The Volunteer Co-ordinator will ensure that prospective volunteers have an appropriate DBS check following a thorough risk assessment of their volunteer duties.

DBS checks resulting in a positive disclosure will be notified to the Director of Human Resources and a decision taken on the suitability of the individual to volunteer at CHS, in accordance with Section 5.19 of this policy.

5.15 Other Workers (Not Employed by the Trust)

Other workers should be checked at least once a year. The agency/organisation supplying the worker must furnish the Trust with the unique DBS reference number and confirmation of whether a check has resulted in a positive disclosure before an individual will be allowed to take up their duties. In the event that such information is not available, a new check will be required at the agency/other organisation's expense before the individual(s) will be allowed to start work.

All new and existing service contracts will be reviewed to ensure there is an obligation on the provider to ensure satisfactory DBS checks are undertaken on eligible 'workers' before they start work with, on behalf of, or for the Trust.

DBS information for researchers will be sought in line with the NHS Research Passport Scheme.

The Trust retains the right to bar any individual or provider where there are reasonable grounds to believe that DBS checks have not been carried out on eligible 'workers'.

Where the DBS check has been undertaken by the third party, the Trust will require the DBS details in advance of the 'worker' being placed. This will include the name, unique DBS reference number, level of check undertaken and confirmation of the status of the check i.e. trace/no trace.

DBS checks resulting in a positive disclosure will be notified to the Director of Human Resources, who will decide whether or not the individual can be placed within the Trust in accordance with Section 5.19 of this policy.

5.16 Doctors in Training

Doctors on educationally-approved rotational training will be regarded as being in continuous employment during the term of training and are therefore required to have a DBS check, as a minimum, once every three years, rather than each time they change rotation.

The Lead Employer Trust (LET) will deal with all pre-employment checks for doctors in training not directly employed by the Trust. Information regarding pre-employment checks, including confirmation of DBS checks, will be forwarded to the Human Resources Department prior to the doctor rotating into the Trust.

Under normal circumstances a doctor in training will not be allowed to undertake their duties unless satisfactory DBS clearance has been confirmed by the LET. Exceptions to this may be approved by the relevant Divisional HR Manager, Deputy Director of HR

DBS checks resulting in a positive disclosure will be notified to the Director of Human Resources who will decide on the suitability of the individual to be placed with the Trust in accordance with Section 5.19 of this policy.

5.17 Highly Mobile Staff

Staff who are highly mobile, such as clinical staff who hold a substantive post with one Trust but who are required to work across a number of NHS organisations or to provide emergency cover in another NHS organisation, do not necessarily need a fresh DBS check each time they move.

The employing organisation must seek written assurances from the individual's host/substantive employer that appropriate checks have been carried out at the correct level. Where such assurances cannot be obtained, the employing organisation may request a fresh check. Any additional checks should be proportionate to risk.

5.18 Staff Recruited from Overseas

The Human Resources Department will request a certificate of good conduct or overseas criminal background check for all applicants who live overseas,

or have disclosed that they have spent a continuous period of 6 months or more outside of the UK in the last 5 years prior to their application for the position being offered.

Currently, the DBS cannot access criminal records held overseas. However, in a small number of cases, overseas criminal records are also held on the Police National Computer (PNC) and these would be revealed as part of a DBS check. Therefore, where the position met the criteria for a disclosure, even if the applicant claims they have never lived in the UK before, a DBS disclosure will still be obtained in addition to the individual's overseas criminal records.

All overseas police checks must be in accordance with that country's justice system and UK requirements.

The DBS website will be consulted to access up to date information/guidance on how to access information from a list of countries.

If the country is not listed, the Human Resources Department will contact the country's representative in the United Kingdom. Contact details for those countries that have a representative in the United Kingdom can be found on the Foreign and Commonwealth website.

DBS checks resulting in a positive disclosure will be notified to the Director of Human Resources, who will decide on the suitability of the individual to be placed in accordance with Section 5.19 of this policy.

5.19 Portability

The DBS define 'portability' as meaning the re-use of a disclosure obtained for a position in one organisation and later used for another position in another organisation.

The Trust may, in exceptional circumstances, make a risk based decision to appoint applicants while they are waiting for the outcomes of a DBS check for the purpose of undertaking induction, training or to undertake other duties which would not include them engaging in any form of regulated activity. In any such case, the Human Resources Department will ensure:

- An appropriate DBS check as been applied for; and
- Safeguards are in place to manage that individual i.e. full supervision where given access to patients and restricted duties, until the outcome of the DBS check has been received.

5.20 Positive Disclosures

5.20.1 Prospective Employees, Unpaid & Work Experience Placements, Volunteers and Other Workers (Not Employed by the Trust)

A positive disclosure will not automatically debar a prospective employee/worker from working in the Trust. The Director of Human Resources will make a decision based on all the relevant information including:

- the nature of the offence
- the age at which it was committed
- its relevance to the post in question
- whether the applicant has a pattern of offending behavior
- whether the applicant's circumstances have changed since the offending behavior
- The circumstances surrounding the offence and the explanation(s) offered by the convicted person.

All Positive Disclosures returned to the Trust will be fully investigated by the HR Department whilst ensuring confidentiality is maintained.

Following the investigation, which will include a meeting with the individual concerned, a report will be issued to the Director of Human Resources who will consider the content and make a decision as to whether the application should continue taking account the Trust's statutory obligations.

Where a prospective employee/worker fails to declare a previous conviction on their application form, the self declaration form or the information is significantly different to the Disclosure, a specific and detailed explanation will be requested from the individual at the meeting and will be included in the report to the Director of Human Resources.

Under no circumstances will the appointing panel be made aware of the Positive Disclosure during any stage of the recruitment process.

In the event that the Disclosure is not considered to be a bar from employment the recruitment process will continue in accordance with the Trust Recruitment Policy.

Should the Disclosure conflict with the Trust's statutory obligation to protect children and vulnerable adults, the prospective employee/worker and the appointing panel will be advised by the HR Department that the individual has not meet the Trust's recruitment standards.

Where there is a disclosure under Section 4 of the Criminal Justice and Court Services Act, the individual is banned from working or seeking to work with young people under the age of 18. In this case the Trust has a legal obligation to inform the Police.

Documentation referring to the investigation of prospective employees whose recruitment is not progressed, will be held by the HR Department securely for a period of 6 months in the event of a query and then destroyed in accordance with the Trust Retention of Non Healthcare Records Policy

Applicants may dispute the information on a Disclosure, which they deem to be incorrect by contacting the DBS. If an error has been made a new disclosure will be issued to the individual.

5.20.1 Existing Employees, Unpaid & Work Experience Placements, Volunteers and Other Workers (Not Employed by the Trust)

Existing employees/workers are required to inform the Director of Human Resources of any of the following during the course of their employment/placement, whether they have occurred in the UK or any other country:

- A criminal conviction – a record of convictions is held on the Police National Computer for individuals convicted of crimes
- A police caution – this is a formal warning about future conduct given by a Senior Police Officer, usually in a police station, after a person has committed an offence. It is used as an alternative to a charge and possible prosecution.
- A Reprimand – this has replaced the caution for young people aged under 18.
- A Warning – a young person aged under 18 who is given a second formal warning about future conduct is given a final warning.
- An order binding them over
- A supervision order
- When they are/have been subject to any police investigation(s), which might lead to a conviction.

This is not an exhaustive list.

Where staff are unsure about disclosing a matter they think may fall within the terms of this policy, they should contact the Director of Human Resources personally, to discuss this in more detail.

All declarations made to the Director of Human Resources will be fully investigated by the HR Department whilst ensuring confidentiality is maintained.

Following the investigation, which will include a meeting with the individual concerned, a full report will be issued to the Director of Human Resources who will consider the content and make a decision with regard to employment taking account of the Trust's statutory obligations.

Failure to follow this policy will be regarded as a serious breach of contract and potentially as Gross Misconduct under the Trust Disciplinary Procedure. In the event that a Positive Disclosure is received for an existing employee/worker, this will be investigated in accordance with the Trust Disciplinary Procedure.

In cases of dismissal/gross misconduct the Trust reserves the right to report any failures to comply with professional codes of conduct/practice to the relevant professional body e.g. GMC/NMC. Any report will be made by the relevant professional lead person e.g. Executive Director of Nursing, Medical Director.

Positive Disclosures for all employees/students/placements/external bodies/volunteers/agency staff/private contractors and their staff/work placements/research staff/cadets/students and those individuals as identified from time to time as meeting the criteria to which this policy applies, will be shared with the Director of Human Resources who will be the final arbiter in reaching a decision on their potential employment/placement within the Trust. There will be no right of appeal except where existing staff are dealt with in accordance with the Trust Disciplinary Procedure, which allows for a right of appeal.

5.21 Legal Duty to Refer to DBS

Under the Safeguarding Vulnerable Groups Act, the Trust has a legal duty to refer information to the Disclosure and Barring Service if an employee or volunteer/worker has harmed, or poses a risk of harm to vulnerable groups and where they have dismissed them, or removed them from working in a regulated activity with children or adults. This duty equally applies where an individual has resigned before a formal decision to dismiss or remove them from regulated activity has been made.

5.22 Retrospective and Periodic Checks

There is no legal requirement to carry out retrospective or periodic DBS checks on staff or volunteers who are already in the workforce and are not changing positions.

5.23 Disclosure & Barring Scheme (DBS) Update Service

The DBS Update Service offers a level of portability of criminal record information which means that people will be able to change roles and employers more quickly without the constant need for a new DBS check. This is regardless as to whether the individual is moving within the NHS or to a different sector, as long as the new position does not change the type of vulnerable group they are working with and the activities they are undertaking do not require them to have a different level of check.

A new check will always be required if the individual is working or volunteering:

- with a different type of vulnerable group (e.g. is currently working with in a regulated activity with adults but is moving to a new regulated position working with children, and therefore will need clearances against the Children's barred list)
- Is moving to a position which requires a different level of check (e.g. moving from a non-regulated activity into a regulated activity).

Subscription to the service is voluntary and employees/potential employees will be provided with information regarding the Update Service from the HR Department when they receive information regarding their conditional employment/voluntary position with the Trust.

- Employees/potential employees can subscribe to this service for an annual subscription fee.
- Volunteers will be able to subscribe to the service for free however, if they move into paid employment they will need to pay the fee for their annual subscription the next time it is due for renewal

The Trust does not need to subscribe to the Update Service but must have the individual's permission to undertake an online status check on them. This permission will be taken by the HR department during employment (pre or post) checks. This permission will also allow the Trust to undertake routine checks on the status of the individual's DBS check using the ESR/DBS interface.

5.24 Handling and Retention of Criminal Background Checks

In line with the Code of Practice for Registered Persons and Other Recipients of Disclosure Information (April 2009), the Trust will:

- Treat all applicants fairly and without discrimination
- Ensure all applicants for eligible positions are notified in advance that criminal background information will be obtained
- Have a written policy on the recruitment of ex-offenders that is available to all applicants
- Ensure that criminal background information is only supplied for the purpose of a recruitment (or other relevant) decision
- Discuss the content of the criminal record certificate with the applicant before withdrawing any offer of employment/placement
- Ensure compliance with the DBS guidelines on the portability of criminal record checks and their contents

6 MONITORING COMPLIANCE/EFFECTIVENESS OF THE POLICY

Requirement	Frequency	Person Responsible	Reporting To	Action Plan By	Monitored By
Checking of employment checks	Annually	Internal Audit	Director of Human Resources	Allocated within Annual Report	Audit Committee

7. DISSEMINATION, IMPLEMENTATION AND TRAINING

- Dissemination to Managers via email;
- Through Senior Manager Forum briefings;
- Team Brief;
- Intranet;
- Recruitment and Selection Training.

8. CONSULTATION, REVIEW AND APPROVAL/RATIFICATION

8.1 Consultation

- Human Resources Strategy Group
- Joint Consultative Group
- Executive Committee

8.2 Ratification

- Policy Committee

8.3 Review

- 3-yearly

9. REFERENCES

- NHS Employers Employment Check Standards 2013
- Disclosure and Barring Service Code of Practice
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975
- The Safeguarding Vulnerable Groups Act (2006)
- The Independent Safeguarding Authority
- The Police Act 1997
- The Equality Act 2010
- The Data Protection Act 1998
- The Freedom of Information Act 2000
- Freedoms Act 2012

10. ASSOCIATED TRUST POLICIES/DOCUMENTS

- Recruitment & Selection Policy
- Employment Checks Policy
- Disciplinary Procedure
- Grievance Policy and Procedure
- Equality and Diversity Strategy
- Secondary Employment Policy
- Locum Doctor and Agency Worker Policy

POLICY STATEMENT ON THE RECRUITMENT OF EX-OFFENDERS

This page outlines the Trust's policy on the recruitment of ex-offenders. It should be read in conjunction with this policy and Frequently Asked Questions.

1. As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, City Hospitals Sunderland NHS Foundation Trust ("the Trust") complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes **not to discriminate unfairly against any subject of a disclosure on the basis of conviction or any other information revealed.**
2. 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 dependents, age, physical/ mental disability or offending background.
3. We have a written policy statement on the recruitment of ex-offenders, which is available to all Disclosure applicants at the outset of the recruitment process.
4. 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.
5. All application packs adverts will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
6. Where a Disclosure 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. We guarantee that this information is only seen by those who need to see it as part of the recruitment process.
7. Unless the nature of the position allows the Trust to ask questions about your criminal record we only ask about "unspent" convictions as defined in the Rehabilitation of Offenders Act 1974.
8. We ensure 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. 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.
9. 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 or this may result in disciplinary action and possible dismissal from the Trust once in employment.
10. We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.
11. **Having a criminal record will not necessarily bar you from working with us. This will depend on the nature of the position and the circumstances and background of your offences.**

CRIMINAL BACKGROUND AND BARRING CHECKS POLICY
EASY READ SUMMARY

WHAT IS THE POLICY FOR?

The Policy tells you why you may need a criminal background / barring check before you can start work with the Trust and why these checks are carried out. If you do not follow the Policy you could be disciplined or sacked.

WHAT DOES IT SAY?

What is a criminal background check?

Criminal background checks are carried out for the Trust by the Disclosure and Barring Service. Your details are checked against criminal records and other sources, including those held on the Police National Computer. The check can reveal convictions, cautions, reprimands and warnings. You and the Trust will see the results of your search.

Why criminal background checks are needed

If you apply for a job that will involve direct care of and/or access to patients, the Trust is required to carry out a criminal background check. This DBS check will be at Standard, Enhanced or Enhanced with Barring List level depending on the type of job that you have applied for. If you do need a criminal background check, we will let you know and tell you what to do next

What information does a criminal background check contain?

The DBS check will either confirm that you don't have a criminal record, or it will list any relevant convictions, cautions, reprimands, warnings and, if applicable, whether you have been barred from working with vulnerable groups. The police can also include non-conviction information, for example, fixed penalties, that may be relevant.

What if I have a criminal record and am applying for a job?

Having a criminal record will not automatically stop you from working at the hospital. If you are applying for a job at the hospital you must tell us about any criminal record you have, when you completed your application form. If you are offered a job, you will be invited to an interview to discuss your record and a report will be given to the Director of Human Resources, who will decide if you can work at the hospital.

What is a spent conviction?

A spent conviction is an old conviction. If you have an old conviction you must declare this when you completed your application form.

What if I work at the hospital and get into trouble with the police?

You must tell the Director of Human Resources as soon as possible. If you don't do this you could be disciplined and could be sacked.

Will I ever need to have another criminal background check?

The Trust might need to complete another check if you apply for a job that involves direct patient care or access to patients.