

Disclosure & Barring Service Policy and Protocols

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Disclosure & Barring Service Policy and Protocols Version Control Sheet

Version	Section	Amendments	Author	Date
1		Archived	April 2007	Sheila Manning, HR Manager
2	Front of Policy	Inserted template, version control sheet and Policy Statement in line with Policy on Policies 2008.	November 2008	Pam Leverton/Sheila Manning
	Whole Document	Revised in accordance with DBS guidance and requirements		
2.1	Whole Document	Policy extended to 31 March 2011 to enable anticipated legislation changes to be incorporated	19 November 2010	Sheila Manning
2.2	Whole Document	Policy re-aligned following the implementation of Transforming Community Services (TCS) agenda and new legal entity.	15 March 2011	Rachael Ellis-Ingamells
2.3	Whole Document	Policy reviewed by Employment Policy Group – review date extended as no changes identified	4 August 2011	Rachael Ellis-Ingamells
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3.1	Whole Document	Added in responsibilities regarding DBS 3 year checks and removed reference to frequency of regulated activities.	25 October 2012	Lyndsey Clapham
3.2	Whole Document	Made amendments as CRB changed to become DBS with effect from 1 December 2012	December 2012	Lyndsey Clapham
3.3	Whole Document	Remove ref to umbrella body 3 year checks and amend Pre DBS form	September 2013	Julie Bembridge
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4.1	Whole Document	Minor amendment - Added information of the DBS Update Service and checking applicants who have lived overseas and removed comment regarding 3 yearly checks	August 2016	Kate Hopkins
5	Whole Document	HR updated to Workforce. Model Declaration Form A removed and reference to NHS employers advised	July 2017	Sophie Coutts

6	Whole Document	To ensure that this document is still compliant with the DBS Code of Practice and NHS Employers Pre Employment Check Standards	June 2019	Tracey Langley
7	Whole Document	Policy review	July 2021	Vicky Cobb

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Policy Statement

Background	This policy has been developed from the Disclosure & Barring Service Code of Practice and the NHS Employment Checks Standards to ensure this organisation is fully compliant with the standards, to reduce the risk of harm or damage to patients.
Statement	DBS checks are to be instigated by the Human Resources team when recruiting staff whose work requires them to have contact with patients, or who require a DBS disclosure for another type of work, i.e. working with children's records. This includes permanent staff, staff on fixed term contracts, temporary staff, bank staff supplied by an agency and ongoing highly mobile staff supplied by an agency and staff in ongoing NHS employment. Any agency used must comply with this standard.
Responsibilities	<p>The Human Resources team has responsibility for managing the DBS application process and treating disclosures according to DBS regulations. The Human Resources team will also ensure further checks are carried out as appropriate.</p> <p>Managers are to notify Human Resources if they are informed of a staff conviction to ensure impact of conviction on current role is assessed and action taken as appropriate.</p> <p>Staff members and candidates are to complete DBS application form when requested. They should also notify their manager if they receive a conviction whilst in our employment.</p>
Training	As part of the Recruitment and Selection Training.
Dissemination	Through the Trust website.
Resource implication	None.
Equality Statement	This policy aims to meet the requirements of the Equality Act 2010 and ensure that no employee received less favorable treatment on the grounds a protective characteristic, social status or trade union membership.

1. Introduction

- 1.1. LCHS is committed to providing professional, fair and safe employment practices and uses the Disclosure and Barring Service (DBS) to assist the Trust in making informed decisions when recruiting into positions of trust.
- 1.2. DBS checks are instigated by the Human Resources team when recruiting staff whose work requires them to have regulated activity with vulnerable children and/or adults. This includes all staff regardless of their contract status. Any staff supplied by an agency, who require a criminal record check for their role, will have a DBS check carried out by a framework agency. The agency will be required to confirm that a suitable DBS disclosure has been received at the correct level.
- 1.3. If evidence submitted is deemed to be inaccurate and/or fraudulent, and is submitted with an intention to misrepresent the truth, then the matter will be reported to the Trust's nominated Local Counter Fraud Specialist (LCFS) who will investigate this in line with the Trust's Countering Fraud, Bribery and Corruption Policy and Response Plan which could result in criminal prosecution. Suspicions of fraud, bribery or corruption can also be reported by calling the confidential NHS Fraud and Corruption Reporting Line on 0800 028 40 60 or online at <https://reportfraud.cfa.nhs.uk>.
- 1.4. This Trust will not unfairly discriminate against the subject of the disclosure information on the basis of a conviction or other details revealed. A criminal record will not necessarily be a bar to obtaining the position applied for.
- 1.5. Any matters revealed in the disclosure will be discussed with the person before making any decision as to whether the employment offer is withdrawn.
- 1.6. **Human Resources Responsibilities**
- 1.7. Human Resources will ensure that self-disclosures are completed as part of the pre-employment checking process and the information shared confirmed with the application form declarations and information received on a Disclosure Certificate. Self-disclosures will be completed on NHS Employers Model Declaration forms A and B:
 - Model Declaration Form A will be used for the purpose of obtaining information on positions which are exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. This will include information about spent and unspent convictions and cautions (including reprimands and final warnings).
 - Model Declaration Form B will be used for the purpose of obtaining information on positions which are non-exempt and will only include information on current unspent convictions and cautions (including reprimands and final warnings) only.
 - Model Declaration Form A and B are located on the NHS employers website and will be updated from the website as changes occur.
- 1.8. As part of the recruitment process, the Human Resources team will ensure that, where appropriate, applicants/new employees will be provided with access to submit an e-DBS application.

2. **Manager's Responsibilities**

- 2.1. When recruiting a new member of staff the recruiting manager must ensure that they specify whether a DBS check is required and at what level on the Vacancy Authorisation stage on TRAC. Definitions of regulated activity and support with DBS levels can be found on the TRAC system under User Guides – Recruitment Workflow – Authorisation – Creating a vacancy request – DBS Checks and levels or by following this link: [User guide - Trac: User guide](#).

Only in exceptional circumstances should a new employee commence work before satisfactory clearance from the DBS is received and this must be supported by the completion of a Risk Assessment form. Managers must ensure that employees forward a copy of the disclosure to Human Resources within 3 working days after receipt of the clearance form. DBS monitoring will take place by the Human Resources team.

- 2.2. If a manager becomes aware that a member of staff has been prosecuted for an offence they are responsible for notifying a member of the Human Resources team.

3. **Applicant's Responsibilities**

- 3.1 Applicants must complete required self-disclosures (Model A declaration forms) and DBS applications honestly and fully.
- 3.2 Applicants will be required to pay for the cost of their DBS disclosure application via deductions from salary over a period up to 6 months.

4. **Current Employee's Responsibilities**

- 4.1. When notified of the requirement to carry out a DBS check, employees are responsible for ensuring that they complete an application form in a timely manner. Failure to complete a DBS application form within 1 month of the existing DBS expiry date may result in the staff member being removed from duty and formal action being taken against them.
- 4.2. The Trust retains the right to request that a further disclosure is sought at any time regardless of the length of time elapsed since the last check.
- 4.3. If during employment with the Trust a member of staff is under investigation or convicted of a criminal offence they must inform their line manager immediately. Failure to do this may result in formal action being taken against them which could lead to dismissal.
- 4.4. For existing staff a new DBS disclosure will be needed in the following circumstances:
- Never had a DBS check before and now moving to a position which requires one.
 - Previously only had a standard DBS check and are now changing to a role that requires an enhanced check.
 - The new role requires them to work with a different vulnerable group which they do not have a check against (all enhanced DBS application forms are now completed to cover the individual for both vulnerable adults and children due to the flexibility required when employees may be redeployed between services).
 - There has been a break in continuous service of more than three months.

5. Managing Conviction Information

- 5.1. When assessing applicants who declare convictions, cautions etc, this does not automatically bar a person from gaining employment. However, someone who is “barred” must not engage in regulated activity as this is a criminal offence.
- 5.2. A Disclosure certificate will reveal if the individual has a criminal record, however, this will only provide the basic facts such as the name and date of the offence, and where applicable, the sentence. Under the DBS Code of Practice, the employee should be offered the opportunity to give further information regarding the conviction in order to put this into context for the Trust to consider and make a decision. Refusal to provide further information, whilst within the rights of the individual, will lead to the Trust making a decision as to whether to withdraw the offer of employment without further context for the disclosure.
- 5.3. For each Disclosure received with a criminal record, a decision will be made as to whether or not the Disclosure information is acceptable to the Trust and to the final recruitment decision. This may involve seeking specialist advice from Safeguarding team, Human Resources team or others as appropriate. A decision making process will consider the following:
 - The type and nature of the offence
 - When the offence took place/how long ago
 - The age of the candidate when the offence was committed
 - If there is a pattern to offending behaviour
 - The context of the circumstances at the time of the offence
 - The circumstances of the individual at the time of the offence
 - The relevance of the post they have applied for
 - The level of supervision the individual will have
 - The level of risk the individual poses to patients

Managers are responsible for completing a risk assessment and risk assessment forms are available from Human Resources.

6. Handling and Retention of Disclosure Information

- 6.1. In accordance with Section 123 and 124 of the Police Act 1997, the Trust shall:
 - Securely store the relevant information from the Disclosure on to the computer system.
 - Have a written security policy to cover the correct handling and safekeeping of disclosure information.
 - Not copy or keep the DBS disclosure via any other image.
 - Not make a false statement for the purposes of obtaining or enabling another person to obtain a certificate.
 - Co-operate fully with any requests by DBS to undertake checks as to the proper use and safekeeping of disclosure information and report any suspected malpractice in relation to the code of practice.
- 6.2. The Trust will not employ anyone who appears on any of the lists held by the Department of Children, Schools and Families or the Department of Health, showing that the individual is barred from working with children and/or vulnerable adults.

- 6.3. The Rehabilitation of Offenders Act 1974 provides for anyone who has been convicted of a criminal offence, and has been sentenced to less than two and a half years in prison, to be regarded as rehabilitated after a specified period of time with no further convictions. After this period of rehabilitation the conviction is considered as 'spent'. In normal circumstances, once a conviction is spent, the convicted person does not have to reveal this to a future employer when applying for a job. However, in order to protect the vulnerable, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 exempts some professions within the health and care sectors from this approach. Where posts have been identified as exempt under the Exceptions order, employers are entitled to know about all previous convictions regardless as to whether they are considered 'spent' or 'unspent'.
- 6.4. Since November 2020, the filtering rules for Standard and Enhanced DBS checks changed. The DBS will no longer disclose youth reprimands, youth warnings or youth cautions. The DBS service will also no longer automatically disclose all convictions where an individual has more than one conviction - instead, each individual conviction will be assessed against the appropriate rules.

7. Levels of Disclosure and Eligibility

7.1. Standard Disclosure

- 7.1.1 The Trust is entitled to request a standard DBS disclosure for employees whose posts are listed in the Exceptions Order to the Rehabilitation of Offenders Act. For the current list see www.gov.uk.
- 7.1.2 Standard DBS disclosures reveal if an individual has a criminal record and will include details of convictions, cautions, reprimands and final warnings. It will show dates and the name of the offence. Standard Level DBS check will be applicable to positions listed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) order 2013, for example, any work which is concerned with the provision of health services and which enables the post holder to have access to persons in receipt of such services in the course of their normal duties, financial services positions, employment regarding counter fraud, investigation and security management of the NHS.
- 7.1.3 For the purposes of Standard Level DBS check, "access" only relates to positions where individuals have direct physical contact with patients as part of their day to day activities. It does not include positions where there is no contact with patients or those who have access to medical records.

7.2. Enhanced Disclosure

- 7.2.1 Enhanced DBS disclosures are required where the employee will be undertaking 'regulated activity', or working in a specified establishment. Regulated activity covers any work of a specified nature, whether it is paid or unpaid.
- 7.2.2 Enhanced disclosures would be appropriate for roles such as Doctors, Nurses, Dentists, Physiotherapists and other clinical staff. Porters with patient contact would also require an enhanced DBS disclosure.
- 7.2.3 Enhanced disclosures contain the same information as on a standard disclosure. In addition to this an enhanced disclosure will also show if the individual has been barred from working with children and/or vulnerable adults.

8. Portability

- 8.1. DBS offer an Update Service where applicants can subscribe to an annual fee within 30 days of receiving a new certificate making the data portable. The applicant can take this with them from role to role. This enables the Trust to check the up to date status of a certificate. An applicant will bring a current certificate with them to the appointment with Human Resources where a representative will access the online DBS status checker. The results and the information that they contain are logged on to the computer system. It is not appropriate to accept a DBS disclosure completed for another organisation.

9. Students/Trainees

- 9.1. DBS checks may apply to students. The following points apply.

- DBS disclosures may be requested by Higher Educational Institutions (HEIs) as part of their admissions procedure for healthcare students where a training placement has been arranged.
- The level of disclosure (standard or enhanced) should be agreed with the organisation. As students will normally be supervised – in most cases a standard disclosure will be all that is required. In the case of a placement which also involves ‘regularly caring for, training, supervising or being in the sole charge of children or vulnerable adults in the course of their normal duties’ (Police Act) an enhanced disclosure will be required. The organisation will advise if any post meets this criteria.
- Many students and trainees move frequently to new placements during their training and it is recommended that they have a DBS check at the start of their training course rather than each time they move to a new placement. If a satisfactory check has been carried out by the university, there is no legal requirement for this to be repeated by the organisation when the student/trainee takes up their placement. A new DBS check is required when they first start working in the NHS.
- Where there is a delay in processing a disclosure, students can start their placement if they are supervised and patients are not being exposed to unacceptable risks. The exception to this is where contact with children or vulnerable adults is involved in the role.

10. Volunteers

- 10.1. Not all volunteers will need a DBS check but where they have significant and regular contact with vulnerable people in the course of their normal duties, employers should undertake the same criminal record checks as they would when employing paid staff. The Trust will ensure that volunteers are fully aware of organisational policies and procedures governing the protection of vulnerable people.
- 10.2. The DBS will issue a disclosure free of charge for volunteers if the applicant satisfies the following criteria:

A volunteer is “a person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing

something which aims to benefit someone (individuals or groups) other than/or in addition to close relatives”. The DBS Update subscription is free to volunteers.

11. GPs and Dentists

- 11.1. GPs and General Practice Staff - All GPs applying to join a medical performers list under the Performers List Regulations have to provide an enhanced disclosure certificate as part of their application. General Practices have a responsibility to check an applicant for any position that qualifies for a DBS check within their practice.

12. Researcher’s Passport

- 12.1. Lincolnshire NHS has signed up to the Researcher’s Passport, which is a document designed to avoid duplication of HR processes for researchers undertaking research within NHS organisations.
- 12.2. This means that a DBS check will be undertaken at the start of the Research Passport process and then the need for a re-check will be flagged up by the research department and the individual will be contacted as appropriate.

13. Staff Recruited from Overseas

- 13.1. The Trust will also carry out DBS checks when recruiting staff from abroad. Currently, the DBS can only access criminal records held on the Police National Computer (PNC) in England, Wales and Scotland (there is also some conviction data held on the PNC from Northern Ireland). Where the position meets the criteria for a disclosure – even if the applicant claims they have never lived in the UK before – a DBS disclosure should still be obtained in addition to the individual’s overseas criminal records.
- 13.2. Where an applicant has previously lived overseas for more than six consecutive months in the preceding five years the Human Resources team will contact the appropriate embassy to ascertain if the individual has a record which shows any criminal offences sometimes referred to as a “certificate of good conduct” or “certificate of clearance”.
- 13.3. If the applicant has declared they have seen serving overseas with HM Armed Forces within the preceding five year period, the Trust will ask for an extract of their military service record instead of an overseas police check.
- 13.4. For overseas criminal record information the website www.fco.gov.uk should be used which can be accessed via www.businesslink.gov.uk. This website lists the different websites of all embassies and High Commissions where information for applying should be found.

14. Further Checks and Reporting

- 14.1. Anyone who has had a DBS disclosure will on occasions be required to have their DBS check repeated. ESR will be updated to reflect the current status.
- 14.2. In the event that an employee does not renew their DBS disclosure when requested, the Human Resources team will inform the appropriate Director. The Human Resources Business Partner will liaise with the employee and manager of the service to advise on appropriate action to be taken whilst evidence of a new clearance is gained.

14.3. In certain cases, such as those working regularly with children, it will be necessary to request they do not work unsupervised until clearance is obtained.

15. **What is the Code of Practice?**

The code of practice relates to all Registered Bodies with the Disclosure and Barring Service (DBS) under section 120 of the Police Act 1997 (Registered Bodies) and recipients of Update Service information under section 116A of the Police Act 1997.

The code of practice does not apply to third parties. The DBS will seek to ensure compliance with the Code through the full range of assurance management processes.

All applicants going through a DBS check should be given a copy of the Code of Practice and provided with a copy on request.

What happens if the Code is breached?

Failure to comply with the Conditions of Registration can result in suspension or cancellation of registration. This follows a set legislative process with clear timescales.

Failure to comply with the requirements set out in the GDPR Guidelines for Data Storage also result in enforcement action from the Information Commissioner's Office.

Equality and Health Inequality Impact Assessment Tool

This tool has been developed by the Equality, Diversity and Inclusion Leads for use in the NHS Provider organisations in Lincolnshire. The tool is designed to ensure due regard is demonstrated to the Equality Act 2010, the Public Sector Equality Duty and potential health inequalities are also identified and addressed (as outlined in the Health and Social Care Act). Please complete all sections below. Instructions are in *italics*. Email for all correspondence: email to lhnt.edifirst@nhs.net

A. Service or Workforce Activity Details	
1. Description of activity	<i>Policy review</i>
2. Type of change	Adjust existing
3. Form completed by	<i>Vicky Cobb – Assistant HR Advisor</i>
4. Date decision discussed & agreed	<i>06/09/21</i>
5. Who is this likely to affect?	Service users X Staff X Wider Community X If you have ticked one or more of the above, please detail in section B1, in what manner you believe they will be affected.
B. Equality Impact Assessment	
<p>Complete the following to show equality impact assessment considerations of the decision making to ensure equity of access and to eliminate harm or discrimination for any of the protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Further, please consider other population groups which are at risk of health inequality and can include, but not be limited to, people who are; living in poverty / deprivation, geographically isolated (e.g. rural), carers, armed forces, migrants, homeless, asylum seekers/refugees, surviving abuse, in stigmatised occupations (e.g. sex workers), use substances etc.</p> <p>Please ensure you consider the connections (intersectionality) between the protected characteristics and population groups at risk of health inequality (e.g. it is recognised that older men from a BAME background, with one or more comorbidities and living in deprivation are more at risk of a poorer outcome if they contract CV-19).</p>	
1. How does this activity / decision impact on protected or vulnerable groups? (e. g. their ability to access services / employment and understand any changes?) Please ensure you capture expected positive and negative impacts.	Consideration has been taken into account for protection of service users and patients. It is important for everyone to follow this policy guidance to ensure protection and safety of all staff, service users and the wider community.
2. What data has been/ do you need to consider as part of this assessment? What is this showing/ telling you?	N/A
C. Risks and Mitigations	
1. What actions can be taken to reduce / mitigate any negative impacts? (If none, please state.)	Following DBS guidance in all situations when recruiting both internally and externally.
2. What data / information do you have to monitor the impact of the decision?	Use of risk assessments and collation of DBS checks performed by the Human Resources Team

D. Decision/Accountable Persons	
1. Endorsement to proceed?	N/A
2. Any further actions required?	N/A
3. Name & job title accountable decision makers	N/A
4. Date of decision	
5. Date for review	<i>Please note: the equality impact assessment is a 'live' document and must be reviewed regularly / when any significant change occurs.</i>

Purpose of the Equality and Health Inequality Assessment tool

- The NHS in Lincolnshire has a legal duties under the Equality Act 2010, Public Sector Equality Duty 2011 and the Health and Social Care Act 2012 to demonstrate due regard in all decision making, for example, when making changes to services or workforce practices, to ensure access to services and workforce opportunities are equitable and to avoid harm and eliminate discrimination for each of the protected characteristics and other groups at risk of inequality.
- Within the guidance toolkit there are also some examples of decisions this tool has been used on in other organisations and the impacts they have identified.

Checklist

- Is the purpose of the policy change/decision clearly set out?
- Have those affected by the policy/decision been involved?
- Have potential positive and negative impacts been identified?
- Are there plans to alleviate any negative impact?
- Are there plans to monitor the actual impact of the proposal?