

## HUMAN RESOURCES POLICY

### RECRUITING EX-OFFENDERS & Disclosure and Barring Service (DBS) Procedure

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<b>Policy Validity Statement</b>
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This policy is due for review on the latest date shown above. After this date, policy and process documents may become invalid. Policy users should ensure they are consulting the currently valid version of the documentation.

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## **1. POLICY STATEMENT**

- 1.1 The CCG uses the Disclosure service provided by the Disclosure Barring Service (DBS) to assess applicants' suitability for positions of trust. The CCG complies fully with the DBS Code of Practice and undertakes to treat all applicants fairly.
- 1.2 The Organisation undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information received. Guidance on dealing with disclosures is attached at Appendix 1.
- 1.3 This policy will be made available to all applicants who are required to provide a Disclosure, at the beginning of the recruitment process.
- 1.4 The CCG will apply the NHS Criminal Records Check Standard [www.nhsemployers.org/your-workforce/recruit/employment-checks/criminal-record-check](http://www.nhsemployers.org/your-workforce/recruit/employment-checks/criminal-record-check)

## **2. PRINCIPLES**

- 2.1 The CCG actively promotes equality of opportunity for all and welcomes applications from a wide range of candidates, including those with criminal records, as we select all candidates for interview based on their skills, qualifications and experience.
- 2.2 Disclosures are only requested after a thorough risk assessment has indicated that it is proportionate and relevant to the post concerned. For those posts that require a Disclosure, all adverts, recruitment briefs and application forms will contain a statement indicating what level of Disclosure will be required in the event of an individual being offered a position.
- 2.3 The CCG will only ask for details of 'unspent' convictions as defined in the Rehabilitation of Offenders Act 1974 and will adhere to the DBS Filtering Rules:
  - warnings, reprimands and youth cautions will no longer be automatically disclosed on a DBS certificate
  - the multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed
- 2.4 The HR service has a number of representatives who are registered with the DBS as the person authorised to handle Disclosures. HR representatives have been trained to identify and assess the circumstances and relevance of offences and have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders.
- 2.5 HR representatives will advise and guide recruiting managers where a Disclosure has been made.
- 2.6 The CCG undertakes to discuss any matter revealed in a Disclosure with the person seeking employment, before withdrawing a conditional offer of employment.

- 2.7 The CCG may conduct an interview to enable an open and measured discussion to take place regarding any offences or other matters that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought, could lead to the withdrawal of an offer of employment.
- 2.8 The CCG complies fully with the DBS Code of Practice. Every person who is subject to a Disclosure will be made aware of this Code of Practice and a copy will be provided to all applicants.
- 2.9 Having a criminal record will not necessarily bar a potential employee from working with the Organisation. This will depend on the nature of the position and the circumstance and background of the offence(s).

### ***Security, Storage, Handling, Use, Retention, and Disposal of Disclosures And Disclosure Information***

- 2.10 The CCG complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information.
- 2.11 The CCG complies fully with its obligations under the Data Protection Act 2019 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information.

### ***Storage, Access & Disposal***

- 2.12 Disclosure information will be securely destroyed as soon as the relevant information listed in 2.16 has been noted.
- 2.13 No Disclosure information will be kept on personal files and where a Disclosure needs to be kept due to a dispute or because additional information has been supplied, it will be kept separately and securely in a non-portable, lockable storage unit as agreed between the CCG and NECS HR.
- 2.14 Where a Disclosure has been kept, it will be securely destroyed once the dispute is resolved or a decision made regarding employment or at the latest after 6 months of receipt.
- 2.15 Access to Disclosure information is strictly controlled and limited to those who are entitled to see it as part of their duties.
- 2.16 The CCG and NECS HR will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, for record purposes only, the organisation will keep the following information:
- The name of the subject
  - The level of Disclosure requested
  - The position for which the Disclosure was requested
  - The unique reference number of the Disclosure
  - Details of the recruitment decision taken

- The issue date of disclosure certificate
- Any checks against one or both of the barred lists
- The decision to offer / withdraw the appointment

### **Handling**

- 2.17 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.
- 2.18 The CCG/NECS HR maintains a record of all people to whom Disclosures and Disclosure information has been revealed and the CCG/NECS HR recognises that is a **criminal offence** to pass this information on to anyone who is not entitled to receive it.

### **Usage**

- 2.19 Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.
- 2.20 The CCG will comply with all recommendations from DBS on the proper use and safekeeping of disclosure information.

## **3. EQUALITY**

- 3.1 In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

## **4. Data Protection**

- 4.1 In applying this policy, the Organisation will have due regard for the Data Protection Act 2018 and the requirement to process personal data fairly and lawfully and in accordance with the data protection principles. Data Subject Rights and freedoms will be respected and measures will be in place to enable employees to exercise those rights. Appropriate technical and organisational measures will be designed and implemented to ensure an appropriate level of security is applied to the processing of personal information. Employees will have access to a Data Protection Officer for advice in relation to the processing of their personal information and data protection issues.

## **5. MONITORING & REVIEW**

- 5.1 This policy and procedure will be reviewed periodically by Human Resources in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

## **PART 2**

### **1. PROCEDURE**

#### ***This Policy should be read in conjunction with local Recruitment Procedures***

- 1.1 When recruiting for a vacancy the Recruiting Manager will need to assess the type of activities the individual in that role will be undertaking and the level of access this will allow them to have to patients. The Recruiting Manager will need to answer the questions on the Authority to Recruitment Form. If the answers to those questions result in a DBS check being necessary the Recruiting Manager needs to contact their Human Resources representative. The DBS Check Eligibility Tool ([www.nhsemployers.org/case-studies-and-resouces/2017/04/dbs-eligibility-tool](http://www.nhsemployers.org/case-studies-and-resouces/2017/04/dbs-eligibility-tool)) may also be used to assist in determining the level of check that applies to a particular position. If the answers to those questions result in a requirement for a DBS check, the Recruiting Manager needs to contact their Human Resources representative.
- 1.2 The Recruiting Manager will ensure that the advert for the vacancy includes notification that it is essential that the successful applicant obtains a satisfactory DBS check and at what level that check must be, either standard or enhanced.
- 1.3 Once a provisional offer of employment has been made the applicant will be sent a Disclosure Application Form and Guidance Booklet with the instruction that the completed form must be returned with the supporting documentation.
- 1.4 The Disclosure Application Form will be verified and countersigned by one of the Human Resources representatives who are registered with the DBS and sent for processing.
- 1.5 On receipt of the form from the DBS it will be processed by the Human Resources representative who countersigned the form.
- 1.6 The Human Resources representative will inform the Recruiting Manager if the Disclosure Application was satisfactory or if it contains any information that may affect the appointment decision taking into account the DBS filtering rules.
- 1.7 If the Disclosure Application contains information that may affect the appointment decision, the Human Resources representative will discuss this with the Recruiting Manager (in all instances), and the individual concerned, where appropriate.
- 1.8 Where the information contained on the Disclosure Application form significantly impacts on a candidate's ability to undertake the post for which they have been appointed, the offer of employment must be withdrawn.
- 1.9 If the Disclosure Application contains no information, or information that is not relevant to the post, the offer of employment can be confirmed (subject to all other pre-employment checks having been completed).
- 1.10 Any decision to withdraw an offer of employment must be reached by the agreement of the Human Resources representative and Recruiting Manager. Where both parties fail to agree the decision will be referred to the organisation's Lead Counter signatory for a final decision.

- 1.11 The decision to withdraw an offer of employment must be confirmed both verbally and in writing to the candidate concerned.
- 1.12 All completed Disclosure Applications will be recorded and retained on the Online Portal.

## Dealing With Disclosures in Recruitment & Selection

### Guidelines for Managers

The CCG uses the Disclosure Service provided by the **Disclosure Barring Service (DBS)** to assess applicants' suitability for positions of trust.

When advertising/recruiting to a vacant post you must decide whether that position requires a DBS check and if so, at what level. You can use the table outlined overleaf to assist you in making this assessment.

If you decide that a DBS check needs to be undertaken you must inform Human Resources who will ensure that the requirement for a check is made clear in the advertisement.

Departments dealing with their own recruitment will have responsibility for ensuring that the advert contains the requirement for a DBS check.

### ***Types of Check Available***

There are three levels of check available:

#### ***BASIC LEVEL***

Includes details of 'unspent' (current) convictions. This may be used for verifying information for applicants for posts that do not fall under the Rehabilitation of Offenders Act (Exceptions) Order but where the individual is being considered for a position of trust. Examples of such posts may include chief executives; finance managers where the person is in charge of public funds or internal budgets; board level directors or senior management. This level of check is permissible where justifiable, whether or not to take this checks at the discretion of the employer. Basic Level Disclosures can only currently be obtained through Disclosure Scotland. Details on how to obtain basic disclosures are available at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

#### ***STANDARD DISCLOSURE***

Includes details of both spent (old) and unspent (current) convictions, cautions, reprimands and final warnings held in England and Wales on the Police National Computer (PNC). Most of the relevant convictions in Scotland and Northern Ireland may also be included.

Employers may carry out standard level criminal record checks to assess a person's suitability for work listed in the Exceptions Order i.e. where the type of work enables the person to have '*access to persons in receipt of such services in the course of [their] normal duties*'. The term 'access' only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is no contact with patients. Please note that positions that purely involve having access to records are not covered under the terms of the Exceptions Order and therefore employers cannot obtain a standard or enhanced criminal record check for these positions. The changes to the barring arrangements on the 10 September 2012 do no effect eligibility for standard checks. However, it is strongly recommended that employers refer to the Exceptions Order to make an informed decision against positions which may be eligible for a standard level check (*paragraph 13, Part 2 of Schedule 1 of the Order specifically refers*).

## ***ENHANCED DISCLOSURE***

An enhanced check contains the same information as a standard check but also includes any non-conviction information held by local police, where they consider it to be relevant to the post. This information is referred to as 'approved information' on the enhanced check certificate.

There are two levels of enhanced check – an enhanced disclosure with barred list information (for those that fall under the new definition of regulated activity) and an enhanced disclosure without barring information (for those previously falling within regulated activity but not meeting the terms required under the new definition) – see further detail about eligibility in the sections below.

### Eligibility for enhanced with a barred list check

Individuals seeking work in a regulated activity position must be checked against the ISA's barred lists (this is known as a barred list check). This check is accessed through the process of applying for an Enhanced Disclosure. Individuals in regulated activity are eligible for an enhanced disclosure with barred list information. It will be possible to check against the children's and/or adults' barred list(s), depending on the role under consideration.

### Eligibility for enhanced without a barred list check

The number of individuals in regulated activity is being reduced by the changes to the disclosure and barring services and, as a result there will be some positions which will no longer be eligible for an enhanced disclosure with a barred list check from 10 September 2012.

Will the job holder be required to work with children? As per the access definition above.	Yes	No
Will the job holder be required to work with vulnerable adults? As per the access definition above.	Yes	No
Is the job holder required to be a member of the Legal Profession and a recognised member of the Law Society?	Yes	No
Will the job holder be based at a location where they may come in to contact with children or vulnerable adults, such as a hospital or prison? As per the access definition above.	Yes	No
Will the job holder be regularly caring for children or vulnerable adults? As per the access definition above.	Yes	No
Will the job holder be required to be a "named person" for the Authority in respect of gaming, lottery or entertainment licences?	Yes	No

### Equality Analysis Initial Assessment

<p><b>What impact will the new policy/system/process have on the following:</b></p>
<p><b>Age - Consider and detail age related evidence. This can include safeguarding, consent and welfare issues</b></p> <p>Appropriate methods of communication of the Policy have also been carefully considered to ensure they reach all ages of the workforce. Email and the internet can be accessed by all users in the workplace.</p>
<p><b>Disability - Consider and detail disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities</b></p> <p>The disability status of the workforce across the region is unknown therefore relevant tools could be made available to staff that potentially do have a disability that the organisations are unaware of. The policy should be able to be communicated in alternative methods as required for those with a disability and/or visual impairment such as braille, large font, interpreters etc.</p>
<p><b>Gender reassignment (including transgender) - Consider and detail evidence on transgender people. This can include issues such as privacy of data and harassment.</b></p> <p>The policy does not include content or vocabulary that could cause offense or discriminate against any staff members who have undergone or are undergoing gender reassignment or that identify as transgender.</p>
<p><b>Marriage and civil partnership - Consider and detail evidence on marriage and civil partnership. This can include working arrangements, part-time working, caring responsibilities.</b></p> <p>The content of this policy does not include content or vocabulary that discriminates against staff that may be married or in a civil partnership.</p>
<p><b>Pregnancy and Maternity - Consider and detail evidence on pregnancy and maternity. This can include working arrangements, part-time working, caring responsibilities.</b></p> <p>The policy does not discriminate against staff that are currently pregnant or on maternity leave and can be accessed while on maternity leave or any other leave of absence via the organisation's website.</p>
<p><b>Race - Consider and detail race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.</b></p> <p>The policy does not include vocabulary or content that discriminates against staff on the grounds of race.</p>

<p><b>Religion or belief - Religion is defined as a particular system of faith and worship but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.</b></p> <p>The policy does not discriminate against staff that hold any particular religion or belief.</p>
<p><b>Sex/Gender - Consider and detail evidence on men and women. This could include access to services and employment.</b></p> <p>The Policy does not discriminate between staff based on gender.</p>
<p><b>Sexual orientation - Consider and detail evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.</b></p> <p>The content of this policy and vocabulary used does not discriminate against staff based on their sexual orientation.</p>
<p><b>Carers - Consider and detail evidence on part-time working, shift-patterns, general caring responsibilities.</b></p> <p>The content of this policy and vocabulary used does not discriminate against staff who have carer responsibilities.</p>
<p><b>Other Identified Groups and Health Inequalities - Consider and detail evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status (migrants, asylum seekers). What is the potential impact of your work on health inequalities?</b></p> <p>Other groups have been considered however as the policy is for staff there are no additional impacts on health inequalities.</p>
<p><b>Alternative formats of this policy will be provided on receipt of individual request.</b></p>