

**TRUST-WIDE NON-CLINICAL POLICY DOCUMENT**

**POLICY AND PROCEDURE FOR  
 DISCLOSURE AND BARRING  
 SERVICE CHECKS**

<b>Policy Number:</b>	HR16
<b>Scope of this Document:</b>	All staff and unpaid honorary contract individuals who's post/remit require a DBS check
<b>Recommending Committee:</b>	HR Policy Group
<b>Approving Committee:</b>	Executive Committee
<b>Date Ratified:</b>	August 2018
<b>Next Review Date (by):</b>	February 2021
<b>Version Number:</b>	2018 – Version 2
<b>Lead Executive Director:</b>	Executive Director of Workforce
<b>Lead Author(s):</b>	Resourcing Manager

**TRUST-WIDE NON-CLINICAL POLICY DOCUMENT**

2018 – Version 2

*Striving for perfect care for the people we serve*

# TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

## POLICY AND PROCEDURE FOR DISCLOSURE AND BARRING SERVICE CHECKS

### Further information about this document:

Document name	<b>HR16 POLICY AND PROCEDURE FOR DISCLOSURE AND BARRING SERVICE CHECKS</b>
Document summary	<b>Details the approach to ensuring that appropriate Disclosure and Barring Services checks are carried out appropriately.</b>
Author(s) Contact(s) for further information about this document	<b>Resourcing Manager Telephone: 0151 472-4011 Email: <a href="mailto:Joanne.crossland@merseycare.nhs.uk">Joanne.crossland@merseycare.nhs.uk</a></b>
Published by Copies of this document are available from the Author(s) and via the trust's website	<b>Mersey Care NHS Foundation Trust V7 Kings Business Park Prescot L34 1PJ Your Space Extranet: <a href="http://nww.portal.merseycare.nhs.uk">http://nww.portal.merseycare.nhs.uk</a> Trust's Website <a href="http://www.merseycare.nhs.uk">www.merseycare.nhs.uk</a></b>
To be read in conjunction with	<b>Disciplinary Policy Recruitment and Selection Policy</b>
<b>This document can be made available in a range of alternative formats including various languages, large print and braille etc</b>	
Copyright © Mersey Care NHS Foundation Trust, 2015. All Rights Reserved	

### Version Control:

Version History:		
Version 1 – Approved and Published	Approved by HR Policy Group	July 2016
Version 2	Approved by HR Policy Group	March 2018
Version 2	Approved by Policy Group / Executive Committee	July / August 2018

**SUPPORTING STATEMENTS** – this document should be read in conjunction with the following statements:

### **SAFEGUARDING IS EVERYBODY'S BUSINESS**

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child/adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

### **EQUALITY AND HUMAN RIGHTS**

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality, **D**ignity, and **A**utonomy

## **CONTENTS**

Page

Page 3 of 25

1	Purpose and Rationale	3
2	Outcome focused aims and objectives	3
3	Scope	
4	Duties	3
	4.1 Chief Executive	3
	4.2 Executive Director of Workforce	4
	4.3 The Recruiting Manager	4
	4.4 The Resourcing Team	4
	4.5 The Employment Services Team	4
	4.5 Responsibility of Staff/Candidates	4
5	Process and Procedure	5
	5.1 Levels of DBS Disclosure	5
	5.2 Assessing the relevance of Criminal Records	9
	5.3 Update Service	11
	5.4 Fit and Proper Persons Test	11
	5.5 Supporting Procedure	12
	5.6 Duty to refer to the DBS	14
	5.7 Route 4 Fingerprint Process	15
6	Consultation	15
7	Monitoring	15
8	Supporting Documents	15

## APPENDICES

A	Policy Statement on Recruitment of Ex-Offenders	17
B	Policy statement on the secure storage, handling, use, retention & disposal of Disclosures & Disclosure Information	19
C	DBS Process - Flowchart	20
D	Who should have a Disclosure & Barring Service Check	21

## 1 PURPOSE AND RATIONALE

- 1.1 **Purpose** – The purpose of this policy is to set out and explain the Trust’s commitment to ensuring that appropriate Disclosure and Barring Service (DBS) checks are carried out and to provide Line Managers with a framework and guidance in relation to DBS checking & use of the information provided by the Disclosure and Barring Service.
- 1.2 **Rationale** – The Policy will also ensure that the Trust meets its obligations under the NHS Employment Check Standards and include those that are required by law; those determined by the Department of Health policy in relation to compliance with the Governments core

standards outlined in the Standards for Better Health; and those required for access, in the NHS Summary Care Records.

- 1.3 The Trust is registered with the Care Quality Commission (CQC) and therefore required to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009. The CQC Essentials Standards of Quality and Safety outline 16 core standards which it must meet and this includes having robust recruitment processes. The Trust must provide evidence of compliance with the check standards as part of the CQC annual regulatory framework.

## **2 OUTCOME FOCUSED AIMS AND OBJECTIVES**

- 2.1 For this policy the aims and objectives are as follows.

- 2.1.1 To promote the use of relevant DBS checks and prevent inappropriate and illegal checks
- 2.1.2 Outlines the responsibilities of managers and employees
- 2.1.3 Outlines the procedure to be followed.

## **3 SCOPE**

- 3.1 This policy applies to all staff whose post requires them to have DBS clearance, including permanent, temporary, secondments, bank/agency staff, medical staff, honorary contracts and volunteers. Executive Directors and Non Executive Directors will also be included as directed by the Fit and Proper Persons Test introduced in November 2014.

## **4 DUTIES**

### **4.1 Chief Executive Responsibilities**

- 4.1.1 The Chief Executive has delegated responsibility for ensuring compliance with “Safer Recruitment – A Guide for NHS Employers” in relation to criminal records checks.

### **4.2 The Executive Director of Workforce**

- 4.2.1 The Executive Director of Workforce has a responsibility to ensure that a robust system is in place, to record all DBS information. They will also ensure that all Directors, Managers and Human Resources and staff are fully aware of the actions contained within the “Safer Recruitment – A Guide for NHS Employers” and the Disclosure & Barring Policy and are aware of their responsibilities.

### **4.3 The Recruiting Manager**

- 4.3.1 The recruiting manager has a duty to ensure that they identify the level of DBS check required at the commencement of the recruitment process.

- 4.3.2 To ensure that no new starter who has direct patient/service user contact, who requires a DBS check, commences employment until the appropriate level of disclosure has been received and deemed satisfactory and the Update Service subscribed to;
- 4.3.3 To ensure candidates are asked questions about previous convictions, cautions warnings reprimands or bindovers at interview and confirm that no new convictions cautions warnings reprimands or bindovers have been received since submission of their application form.
- 4.3.4 To ensure appropriate decisions in relation to DBS are made in consultation with the Human Resources Business Partner/ Resourcing Manager.

#### 4.4 **Resourcing Team**

- 4.4.1 The Resourcing Team has a duty to ensure that all new recruits have the required pre-employment checks to undertake their role within the Trust.
- 4.4.3 To ensure that no unconditional offer to appoint is made until all checks have been carried out satisfactorily and for those that require an Enhanced DBS that the DBS Update Service has been subscribed to.

#### 4.5 **Employment Services Team**

- 4.5.1 The Employment Services Team has a duty to ensure that monthly reminders are sent to all employees whose DBS is due to expire or the Update Service renewal is due or has lapsed.
- 4.5.2 To check ID and process the sending and receiving of DBS applications using the eDBS system, escalating issues to the HR teams as they arise.

#### 4.6 **Responsibility of staff/candidates (including staff applying for internal posts)**

- 4.6.1 To disclose at application stage any convictions, cautions, warnings reprimands or bindovers (whether spent or unspent);
- 4.6.2 To disclose any criminal conviction, caution, warning, reprimand, or bind over that are issued to them during employment. Failure to notify Mersey Care of any convictions issued during employment will be considered as a potential disciplinary offence and will be investigated by Human Resources. The matter will also be referred to the Trust's Local Counter Fraud Specialist to establish if an offence has been committed under Section 3 of the Fraud Act 2006.
- 4.6.3 To provide satisfactory ID and complete a DBS application.
- 4.6.4 For new starters to the Trust (where an enhanced level check is required) their certificate must be registered with the DBS Update Service and failure to do so may result in withdrawal of the offer of employment.
- 4.6.5 Internal staff (where an enhanced level check is required) must register with the DBS Update Service at the time of their 3 yearly DBS check renewal, or when being recruited to a post that requires a different level of DBS check.

4.6.6 Once a new starter or internal staff member has subscribed to the Update Service, they must ensure that this is renewed on a yearly basis. Failure to keep the Certificate registered with the Update Service will require the employee to complete another DBS check and re register with the DBS Update Service, the costs of which will be met by themselves.

## 5 PROCESS / PROCEDURE

### 5.1 Levels of DBS Disclosure

#### 5.1.1 Standard DBS Checks

This level of check contains details of both (current) unspent and spent (old) convictions, cautions, reprimands and final warnings, held in England and Wales on the Police National Computer (PNC) that are not subject to the filtering rules which came into force from 29 May 2013. Most of the relevant convictions in Scotland and Northern Ireland may also be included. A list of posts deemed as requiring a Standard DBS Check is shown in Appendix D

#### 5.1.2 Enhanced DBS Checks (with checks against the barred lists)

- a) Enhanced checks contain the same information as a standard DBS check but may also include any non-conviction information held by **local police**, where they consider it to be relevant to the post. Although barred list checks are not appropriate for positions which fall outside of regulated activity, in most cases, the police will have the information which led the DBS to bar a person and so will be able to disclose it on an enhanced certificate, where this is relevant to the position being applied for.
- b) To be eligible for an enhanced level DBS check, the position must be included in both the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) Regulations 2002 as amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013. This includes work or volunteering with vulnerable groups.
- c) The Trust has a legislative requirement to request barring checks to be conducted for people in positions defined as 'regulated activity' under the Protection of Freedom's Act 2012 which amended the Safeguarding Vulnerable Groups Act 2006 on 10 September 2012.
- d) There are six categories of people who will fall within the new definition of **regulated activity** (as does anyone who provides day to day management or supervision of those people) and therefore who must be subject to an enhanced DBS and checked against the barred lists. A broad outline of these categories is set out below:
  - (i) Providing health care  
Any health care professional who provides health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional.
  - (ii) Providing personal care  
Anyone who provides 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 an adult's age, illness or disability; prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision; or trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

(iii) Providing social work

The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

(iv) Assistance with cash, bills and/or shopping

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

(v) Assistance in the conduct of a person's own affairs

Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney.

(vi) Conveying

A person who transports 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, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.

- b) Enhanced checks contain the same information as Standard checks and any locally held police force information considered relevant to the job role, by Chief Police Officer(s). Recruiting managers and those requesting Enhanced DBS with checks against the barred list need to specify which barred list is to be checked i.e. adults / children.

### 5.1.3 Enhanced DBS checks (without checks against the barred lists)

To be eligible to request an enhanced check (without barred list), the position must be included in the Exceptions Order as being exempt from the Rehabilitation of Offenders Act. In addition, the activities being carried out by the individual in that position must also be listed under **work with adults** and/or **work with children** as outlined by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013.

5.1.3.1 **Work with adults:** Individuals carrying out one or more of the following activities with **adults** in receipt of health or social care service, or a specified service will be eligible for an enhanced check without barred list information.

The activity must be carried out by the same person **regularly**.

1. Providing any form of care, supervision, treatment or therapy. Care in this context excludes the provision of 'personal care' which is a regulated activity and would therefore be eligible for an enhanced check with barred list information.
2. Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical well-being.



3. Moderating a chat room (if the individual carrying out this activity interacts with adult users and has responsibility for monitoring, removing or preventing the addition of content, or controls access to the service).
4. Face to face contact with adult residents in a care home.
5. Representing or providing advocacy on behalf of a statutory service and has contact with the adult.
6. Providing transportation wholly or mainly for adults and their carers to and from places where they will be receiving/or have received healthcare services. This excludes taxis which can be used by the general public.
7. People who have responsibility for carrying out inspection functions of a health, social care or specified service. For example, inspections carried out by the Care Quality Commission (CQC) and where any such inspection would permit the individual to have contact with adults who are in receipt of health, social care, or specified service.
8. People who are specified office holders.
9. Where staff and volunteers are working in a high secure psychiatric hospital and where the role allows the individual to have direct face to face contact with adults, for example, maintenance workers, porters and domestics.

5.1.3.2 **Work with children:** Specific **child**-related roles that are eligible for an enhanced check without barred list information are listed below. These activities must involve supervised access to children.

The activity must be carried out by the same person **regularly**.

1. Providing any form of care, supervision, treatment or therapy. Care in this context excludes the provision of 'personal care' which is a regulated activity and would therefore be eligible for an enhanced check with barred list information.
2. Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical well-being.
3. Moderating a chat room (if the individual carrying out this activity interacts with children who are users and has responsibility for monitoring, removing or preventing the addition of content, or controls access to the service).
4. Providing transportation wholly or mainly for children and their carers or guardians to and from places where they will be receiving/or have received healthcare services. This excludes taxis which can be used by the general public.

Work with **children** also includes people who have regular day to day management or supervision of individuals carrying out the activities as described above.

**Frequency of activity: Regularly** is defined as when the activity is carried out:

- Frequently, at least once a month on an ongoing basis
- Intensively, any time on more than four days in any thirty day period
- Overnight, any time between 2am and 6am which gives the opportunity for the person to have contact with the adult

***There will be posts within the Trust which will not require a DBS check, please refer to Appendix D for confirmation.***

#### 5.1.4 Spent and Unspent Convictions

5.1.4.1 Convictions are defined by the Rehabilitation of Offenders Act 1974 (ref 3) as being 'spent' after specified periods of time. Spent convictions do not need to be brought to the attention of the Trust unless the work or the post

is covered by the Rehabilitation of Offenders 1974 Exceptions Order 1975. In most circumstances, the Trust cannot refuse to employ someone, nor dismiss them, on the basis of a spent conviction.

5.1.4.2 A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed.

5.1.4.3 With effect from 29 May 2013, certain old and minor cautions and convictions as detailed below will no longer be disclosed in a criminal record certificate from this date.

5.1.4.4 The new arrangements are intended to provide individuals with the opportunity to leave behind mistakes made when they were young. Ensuring patient and public safety is paramount, therefore certain convictions and cautions will always be disclosed in a criminal record certificate (see the list of specified offences that can be found on the Disclosure and Barring Service (DBS) website at:

<https://www.gov.uk/government/publications/dbs-filtering-guidance>

5.1.4.5 The new 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:

- eleven 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: six 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:

- five and a half 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:
  - two 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.

## 5.2 Assessing the relevance of Criminal Records

5.2.1 The suitability for employment of a person with a criminal record will vary, depending on the nature of the job and the details of circumstances of any conviction. Deciding on the relevance of convictions to specific posts is not an exact science. An assessment of an individual's skills, experience and conviction circumstances should be weighed against the risk assessment criteria for the job.

To facilitate this process, an individual's criminal record should be assessed in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. We will therefore need to consider the following when deciding on the relevance of offences to particular posts:-

- Does the post involve one-to-one contact with children or other vulnerable groups such as patients/service users or visitors?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct contact with the patients/service users?
- Will the nature of the job present any opportunities for the post holder to re-offend in the place of work?

5.2.2 The answers to such questions should help to determine the relevance of convictions to specific posts. For example, paedophile, or child pornography offences would almost certainly disqualify any person required to work with children and vulnerable adults; some violent offences would be relevant to positions involving unsupervised contact with the public, service users and carers; fraud should be considered in relation to posts involving the handling of significant amounts of money.

5.2.3 In some cases, the relationship between the offence and the post will be clear enough for us to decide easily on the suitability of the individual for the job. In other cases, the decision may not be so clear-cut. For shortlisted applicants who are assessed as meeting the requirements of the person specification and who then disclose a criminal record that is not related directly to the post, the relevance of each offence should be discussed with the applicant and Resourcing Manager/HR Business Partner to ensure consistency across the Trust. It should be remembered that no two offences are exactly alike. Whilst it will not be possible to carry out a thorough risk assessment a decision tree has been developed and will be used on each individual case, the following issues are taken into account as a minimum requirement:-

- the seriousness of the offence and its relevance to the safety of other
- employees, service users/carers, clients and property;
- the length of time since the offence occurred (this may differ depending on type of offence);
- any relevant information offered by the applicant about the circumstances which led to the offence being committed, for example the influence of domestic or financial difficulties;
- whether the offence was a one-off, or part of a history of offending;
- whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely;

- the country in which the offence was committed; some activities are offences in Scotland and not considered in the same way in England and Wales, and vice versa;
- whether the offence has since been decriminalised by Parliament, for example, reclassification of illegal substances and associated offences.
- If an applicant fails to disclose information regarding a criminal conviction, caution, warning, reprimand, or bind over (regardless if they are spent or unspent) and this information comes to light this may lead to the withdrawal of the offer of employment.
- If an applicant fails to disclose information regarding a criminal conviction, caution, warning, reprimand, or bind over [regardless if they are spent or unspent] and this information subsequently comes to light the applicant is potentially guilty of committing fraud under section 3 of the Fraud Act 2006. This may lead to the withdrawal of the offer of employment and the matter being referred to the Trust's Local Counter Fraud Specialist on 0151 285 4500 for further enquires.

### 5.3 Update Service

- 5.3.1 DBS checks have been made more portable with the introduction of Update Service, is available to individuals for an annual direct debit fee of £13, it is free for volunteers. The Update Service is mandatory for new starters to those roles that require an Enhanced DBS check to be done, this allows the Trust (or any other potential employer) to go online and check whether there is any new, known criminality information on any individual who applied for their DBS certificate on or after 17 June 2014 and subscribe with the Update Service. Employees will be required to give consent for the employer to check the DBS Update Service. ESR has an interface with the DBS Update Service, this primarily allows updates to be applied within ESR, these updates will be done automatically every 60 days and triggers updates in ESR where a change is reported by the DBS Update Service.
- 5.3.2 The online check will not provide detailed information but will indicate where new information exists and therefore prompts a trigger for a new check. In this case, a new DBS application must be made and the employee will be charged the DBS fee.
- 5.3.3 Existing employees requiring a renewal DBS check (where an enhanced level of DBS is required) are required to join the DBS Update Service rather than participating in 3 yearly renewal checks. Employee's who's role requires a Standard DBS check have the option to either join and pay for the DBS Update Service or participate in 5 yearly renewals.

### 5.4 Fit and Proper Persons Test

- 5.4.1 In direct response to failing at the Winterbourne View Hospital and the Francis Inquiry into Mid Staffordshire NHS Hospital Trust Regulation 5 of *The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* (referred to as the 2014 Regulations) has been introduced. This means 'directors' should not be appointed / continue to hold office unless they meet certain criteria. One of which is "of good character". In assessing this criteria NHS providers are required to take account of Schedule 4 of the 2014 Regulations, namely:

- a) whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence.

As such, all members and associate members of the Trust Board, including non executive Directors will be subject to a DBS Check (relevant to their role) and will be required to join the DBS Update Service either on commencement with the Trust or at the time of their 3 yearly DBS renewal.

## 5.5 Supporting Procedure

### 5.5.1 Recruitment

5.5.1.1 All offers of appointment to the Trust will be subject to appropriate disclosure of criminal records where it is required for the post. The final decision in respect of the level of disclosure required will remain with the DBS Counter signatory via the Resourcing Department.

However, key principles include:-

- Only the applicant successful at interview should be required to complete the DBS application documentation;
- Applicants must be advised of the level of disclosure required and provided with a copy the DBS Update guidelines and consent form;
- Applicants must be advised that a criminal record will not automatically exclude them;
- Full assessment, of the relevance of a criminal record must be undertaken in liaison with the Human Resources Department who will keep a record of the outcomes of previous convictions to ensure a fair and consistent approach across the Trust;
- Applicants must be advised that should a conditional offer be made, it could not be confirmed (and they would not be allowed to commence employment) until the appropriate information had been received/considered & registration to the Update Service had been subscribed to.

5.5.1.2 Please see Appendix D for guidance on the level and frequency of DBS checks. All staff, irrelevant of post, working within or based within the High Secure Site will be required to have an Enhanced DBS check.

### 5.5.2 DBS Renewal Requirements

5.5.2.1 All staff who had a DBS prior to the implementation of the Update Service and are subject to a DBS check will be required to renew their DBS after the required timeframe in-line with best practice guidance issued by the DBS, Mersey Internal Audit and under safeguarding requirements.

5.5.2.2 Staff undertaking a role which requires an Enhanced DBS will be required to have a minimum of a 3 yearly check, and must sign up to the DBS Update Service at their next renewal deadline.

5.5.2.3 Staff undertaking a role which requires a Standard DBS will be required to have a minimum of a 5 yearly check.

5.5.2.4 Staff will be contacted by the Employment Services Team prior to their DBS expiry so that a new check can be undertaken, those where an enhanced check is required must join the DBS Update Service at the point their new DBS clearance is received. The Employment Services Team will update ESR so that the most recent DBS date is recorded.

5.5.2.5 Staff who fail to complete their DBS renewal within the required timescales and who have not been given authorisation from the HR team, will be subject to disciplinary investigation and potential disciplinary action being taken against them. Please refer to the Disciplinary procedure (HR01) for further information.

### 5.5.3 **Payment for DBS's**

5.5.3.1 The Trust will pay the DBS costs for new recruits joining the organisation.

5.5.3.2 The Trust will pay the DBS renewal costs for those staff who require a DBS check to undertake their role in Mersey Care.

5.5.3.3 The Trust will also pay the £13 annual fee that is required to sign up and maintain registration to the DBS Update Service (where an enhanced DBS is required) – the staff member must pay this yearly payment and reclaim this back by providing payment confirmation and submitting an online claim form via the Your HR section of the intranet.

5.5.3.4 If yearly registration is not maintained the staff member will need to undergo a new DBS check and be responsible for the payment of these DBS costs through a 3 month salary deduction.

5.5.3.5 Applicants joining the staff bank will continue to pay for their own DBS in advance of the DBS application being submitted. Registration to the DBS Update Service is mandatory for all bank new starters joining the organisation.

5.5.3.6 For further information regarding DBS and pre-employment checks please refer to the Recruitment and Selection Policy (HR22)

### 5.5.4 **Medical Staffing**

5.5.4.1 All Trust employed doctors will have a DBS check carried out on appointment and will be subject to repeat checks as described in section 5.5.2. The Single Lead for the Mersey Rotational Training Scheme will ensure that all Junior Trainee Doctors have the appropriate DBS check to undertake their placements within the Host Trusts.

### 5.5.5 **Agency workers and locums**

5.5.5.1 Agency workers will be checked at least once a year. This will be done by the Agency they are registered with. This will be monitored by the Additional Staffing Team as per the Buying Solutions Framework. Medical Locums will be DBS checked yearly by the Agency and this will be monitored by the Medical Staffing Team.

5.5.5.2 Staff registered on the Nurse or Administration and Clerical Bank, will come under the same arrangements as their colleagues in substantive posts. Staff

who have not made themselves available for shifts within a 6 month period will be advised in writing by the Additional Staffing Team that they will be removed from the bank register. Should they wish to re-join the bank register they will be subject to a new DBS check and registration to the DBS Update Service. This does not include substantive staff who also have a bank post.

### **5.5.6 Portability**

5.5.6.1 “Portability” means the re-use of a disclosure obtained for a position in one organisation and later used for another position in another organisation. Information included has no term of validity and only provides information in relation to what is known about the individual up to the point of its issue.

5.5.6.2 There is a significant risk if an organisation accepts a previously issued DBS check and the individual is not subscribed to the Update Service; as information relating to the criminal record may have changed since its issue, any information issued by the Chief of Police will have been for the original post applied for and not for the new Trust post and the information will have been revealed based on the ID of the applicant validated by another organisation.

5.5.6.3 Therefore due to the outlined risk the Trust acknowledges that copies of DBSs must not be accepted from another employer, unless the employee is signed up to the Update Service.

5.5.6.4 NB As stated above DBS clearance is not transferable between NHS employers but Trust staff who leave the Trust’s employment for a very short period of time of less than 3 months (e.g. employees who retire with a pension and then return or fixed term employees who are issued with a new contract) will not be required to undertake a new check unless they were due for a DBS check or their role has changed significantly.

## **5.6 Duty to refer to the DBS**

Under the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, the Trust has a legal duty to refer information to the Disclosure and Barring Service (DBS):

If the Trust fails to provide prescribed information without a reasonable excuse, where there is a duty to do so, it will be committing an offence with a penalty of up to £5,000. The legislation requires that a referral is made when the employee has been removed from regulated activity because of safeguarding concerns. It is for the Trust to decide whether or not it is a safeguarding issue and if it is, whether or not it is appropriate to remove that person from regulated activity. Therefore, if the Trust decides there are no safeguarding concerns and does not remove the individual from regulated activity and do not make a referral, they have not committed an offence. It is also an offence to fail to supply prescribed information without reasonable excuse to the DBS should the DBS request this information.

Further information can be provided from the HR department on this matter.

## **5.4 Route 4 Fingerprint Process**

5.4.1 If an applicant or employee is unable to provide enough ID to go through route 1 or 2 (in the case of Refugees or Asylum Seekers this must be Route 1 only) and all

avenues have been exhausted then there will be no alternative but to go through Route 4, which means that the applicant/employee must attend a police station -to have their fingerprints taken and provide three identical passport sized photographs with their name written on the back of each photograph.

5.4.2 Resourcing will arrange for the relevant forms to be sent to the applicant/employee to begin this process. The cost of this process is £40, in addition to the cost of the DBS, which is charged to the Trust as soon as the request is made and this will be passed onto the applicant/candidate. Therefore this process will only be used as a last resort and candidates/employees will be encouraged to apply for a provisional licence/passport instead, where possible.

5.4.3 If a person has the same name and date of birth as somebody else the Police may need to eliminate them. In this case the Police will request for the applicant to go contact the applicant direct to arrange for them to make a visit to the local police station to have their fingerprints taken. Due to the fact that the Police made this request the cost of £40.00 will not be charged to the individual or the Trust and the request will be made direct to the applicant/employee. The DBS will only issue the certificate once this process has been completed”



## 6 CONSULTATION

6.1 The policy has been developed by HR Policy Group, which consists of representatives from:

1. Recognised Trade Union Organisations
2. Senior managers
3. HR Staff

## 7 MONITORING

System for the Monitoring of Compliance	
Monitoring of compliance with this policy will be undertaken by:	Executive Director of Workforce
The results of monitoring will be reported to:	Safeguarding Strategy Group – annually
Compliance with this policy will be monitored through:	Reporting the number of DBS checks that are completed annually.  ESR reporting system in place to ensure three yearly checks are undertaken as required.

## 6 SUPPORTING DOCUMENTS

### 6.1 List of Supporting Documents

Doc ID	Name	Purpose
	Recruitment and Selection Policy and Procedure	for reference during recruitment process

**POLICY STATEMENT ON RECRUITMENT OF EX-OFFENDERS**

As an organisation using the Disclosure and Barring Service (DBS) Disclosure services to assess applicants suitability for positions of trust, Mersey Care NHS Foundation Trust complies fully with the DBS Code of Practice.

The Trust undertakes to treat all applicants fairly and not to discriminate unfairly against any candidates who have convictions declared on their disclosure.

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 candidates for interview based on their ability to meet the person specification.

DBS checks are only requested once it has been ascertained as a requirement for the post. For those positions where a DBS check is required, all application forms, job adverts and recruitment information will contain a statement confirming the need for these checks.

We encourage all applicants to provide details of their criminal record at an early stage in the application process i.e. on the application form. We guarantee that this information is only seen by those who need to see it as part of the recruitment process.

We ensure that all interview panels for posts within Mersey Care NHS Foundation Trust will include at least one person who has been trained in Recruitment & Selection, including guidance in the relevant legislation relating to the employment of ex-offenders e.g. Rehabilitation of Offenders Act 1974.

At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment or dismissal if already in post.

We make every candidate who is subject to a DBS check aware of the existence of the DBS Code of Practice and make a copy available on request.

We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

If there are any discrepancies between the information disclosed by an individual and the information contained in the DBS Disclosure Certificate, the individual will be offered the opportunity to discuss these with a HR Representative and the manager before a final decision is made about their suitability for employment.

All reasonable attempts will be made to resolve any discrepancies. However, if it is not possible to do so, the Trust will reserve the right to withdraw the offer of employment. Individuals will be advised to use the Disclosure and Barring Service Disputes Procedure if they believe the information contained within the Disclosure Certificate to be incorrect.

Having a criminal record will not necessarily bar people from working with us. This will depend on the nature of the position and the circumstances and background of the offences. When deciding whether an appointment to a post can be made an individuals previous convictions will be considered, taking into account the following information:

- Whether the offence(s) or matter revealed are relevant to the post in question;
- The seriousness of the offence(s) or other matters revealed;

- The length of time since the offence(s) or other matters occurred;
- Whether the applicant has a pattern of offending behaviour;
- The circumstances surrounding the commitment of the offence(s)

If a candidate fails to disclose a criminal record after subsequently being employed, they may be dismissed on grounds of failure to declare information/fraud as this constitutes an act of gross misconduct.

Any suspicion of fraud, bribery and/or corruption should be reported to the Trust's Local Counter Fraud Specialist on 0151 285 4500 or alternatively reported using the confidential NHS Counter Fraud Services Fraud and Corruption Reporting Line 0800 028 40 60 [Freephone Monday–Friday 8am-6pm or via the online reporting form [www.reportnhsfraud.nhs.uk](http://www.reportnhsfraud.nhs.uk)

Information provided via any of these reporting lines will be treated in the strictest confidence, and can be provided completely anonymously.

## Appendix B

### **Policy statement on the secure storage, handling, use, retention & disposal of Disclosures & Disclosure Information**

#### ***General principles***

As an organisation using the Disclosure and Barring Service (DBS) Disclosure service to help assess the suitability of applicants for positions of trust, Mersey Care NHS Foundation Trust complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use,

storage, retention and disposal of Disclosure information. This policy describes these matters, and is available on request.

### Handling

In accordance with Section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.

### Usage

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

### Retention

Once all satisfactory pre-employment checks have been completed the following details will be recorded on ESR

- Date of issue of Disclosure
- Name of individual
- Type of disclosure
- Position for which requested
- Reference number
- Permission given for the Update Service

If convictions are detailed on the Disclosure Certificate, the Resourcing Team will keep a copy electronically, to allow for the consideration and resolution of any disputes or complaints. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

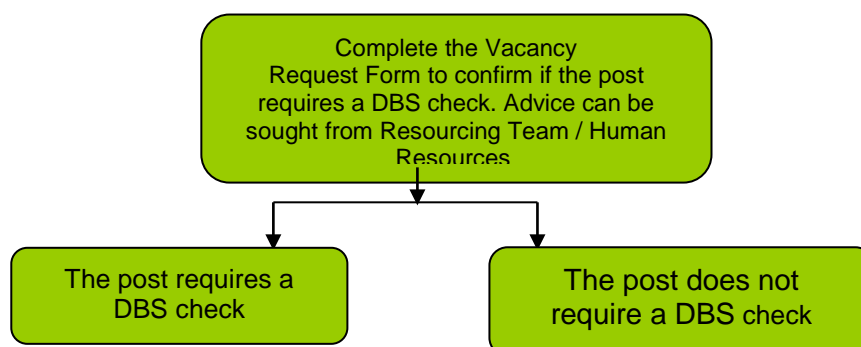
### Disposal

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately and suitably destroyed by secure means. We will not keep any photocopy or other image of the contents of a Disclosure. However, notwithstanding the above, we may keep a record of the date of receipt of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

## Appendix C

### DBS Process

The following flowchart (Figure 3) has been designed in order to illustrate the process to follow when undertaking DBS checks for new staff joining the Trust through recruitment.



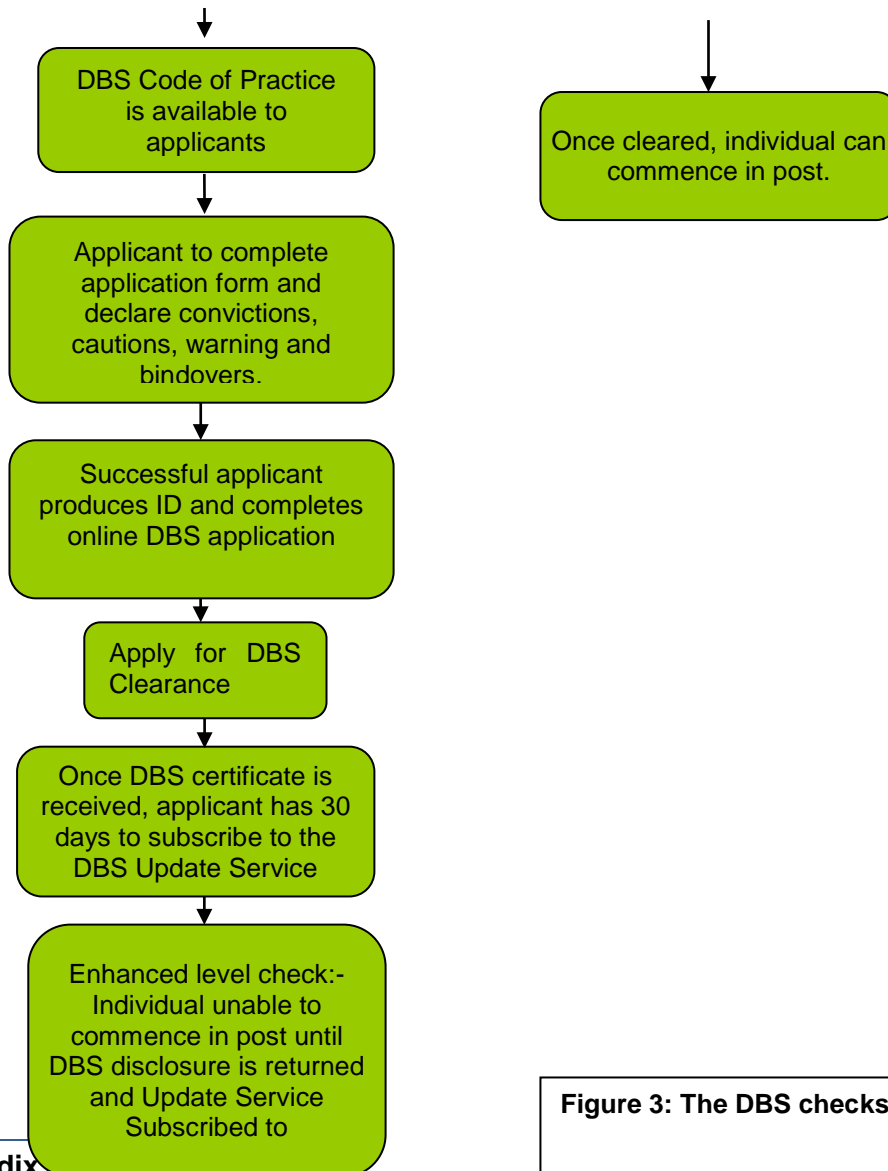


Figure 3: The DBS checks process

Appendix

Who should have a Disclosure & Barring Service Check?

Not all positions in the NHS are eligible for a DBS check. Employers must ensure that they are legally entitled to seek information about an individual's criminal history before requiring workers and volunteers to have a DBS check.

The trigger for a DBS check and the level of check required is determined by the type of activities the individual in that role will be undertaking and the level of access this will allow them to have with patients.

Positions which only allow limited or incidental contact with patients (e.g. where there is no more opportunity for contact with patients than that of a visitor to the hospital site, or where staff are required to pass through patient areas to get to their normal place of work does not meet the requirements for a DBS check to be carried out.

Mersey Care NHS Foundation Trust in line with the directive from the Clinical Security Practice Forum requires all staff that draw **High Secure Service** keys regardless of the role they undertake to have an Enhanced Level DBS Check.

Apprentice roles – any apprentice role will be subject to the same level of DBS required for that of the similar role within the Trust.

### Administrative Services

There is no legislation that allows people to have a DBS check just because they have access to patient notes or because they are in a position of trust, such as finance or medical records staff, regardless of whether or not they handle cash or sensitive information. A specific exemption is required.

The nature of administrative roles means that it would be highly unusual for them to be involved in a regulated activity and in the majority of cases most would not qualify for a Standard check as they are not going to be working in patient areas as part of their job.

Role	Level of Check	Frequency of Check
Ward Clerks Receptionist Other admin staff (with direct patient/service user contact)	Standard DBS	On appointment and 5 yearly renewal
Receptionist Other admin staff eg. Corporate Services staff or staff not based on wards (without direct patient/service user contact)	No DBS	N/A
Qualified Accountant	Standard DBS	On appointment and 5 yearly renewal
PALS Officer	Enhanced with barred list	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.

### Support / Estates Services

The check requirements for Support / Estates Services are very similar to Administrative Services staff, other than the following special cases:

Role	Level of Check	Frequency of Check
Estates and facilities staff with direct patient/service user contact <ul style="list-style-type: none"> <li>Facilities Management Assistant</li> </ul>	Standard DBS	On appointment and 5 yearly renewal
Drivers who transport patient/service users	Enhanced DBS	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Security Staff	Standard DBS	On appointment and 5 yearly renewal
Estates and facilities staff without direct patient/service user contact	No DBS	N/A

### Senior Managers / Directors

DBS checks can be carried out on managers with day to day responsibility for managing staff that carry out Regulated Activities as part of their job. No other powers exist to carry out checks just because a person is in a senior managerial position.

Role	Level of Check	Frequency of Check
Service Manager with direct patient/service user contact or managing someone undertaking a regulated activity	Enhanced with barred list check	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Service Manager without direct patient/service user contact	No DBS	N/A
Clinical Director	Enhanced with barred list check	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Non Executive Director	Standard	Prior to appointment and in accordance with the Fit and Proper Persons Test
Trust Board Members	Enhanced DBS	Prior to appointment and in accordance with the Fit and Proper Persons Test

### Health Care Professionals

Health care professionals' undertaking Regulated Activity are eligible for an Enhanced DBS check with a check of the relevant Barred List(s).

Health care professionals' not carrying out Regulated Activities, and who do not have contact with patients in the role they are undertaking, are unlikely to be eligible for a DBS check, unless they are directly managing staff who are carrying out Regulated Activities as this management activity is itself a Regulated Activity and they would need an Enhanced Check with the appropriate barred lists.

To carry out a barred list check ***the applicant must be involved in undertaking Regulated Activities for that group*** (adults or children).

If a ward or area is predominately for adults, but staff will also be expected to undertake Regulated Activities for people under the age of 18, they will need both adult and children's barred list checks. This might apply for example on adult wards where patients aged 16 and 17 are admitted.

For areas that would only treat adults or children you can only justify having the appropriate list check, not both.

Mersey Care services known to require both adult and child barred lists:–

- Criminal Justice Liaison Team
- AED Teams
- Early Intervention Team
- Talk Liverpool
- Sefton Community Services Teams eg. District Nursing

Role	Level of Check	Frequency of Check
Qualified clinical staff	Enhanced with barred list	On appointment and 3 yearly

undertaking regulated activity: <ul style="list-style-type: none"> <li>Registered nurses</li> <li>Social Workers</li> <li>Psychologists</li> <li>Occupational Therapist</li> <li>Physiotherapy</li> <li>Podiatrist</li> <li>Dietician</li> <li>Speech &amp; Language Therapist</li> </ul>	check	renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Unqualified clinical staff undertaking regulated activity <ul style="list-style-type: none"> <li>Health Care Assistant</li> <li>Support Worker</li> <li>Nursing Assistant</li> <li>Psychology Assistant</li> <li>Technical Instructors</li> </ul>	Enhanced with barred list check	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Chaplains	Enhanced check only (not barred list as this is no longer classed as a regulated activity)	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Medical staff <ul style="list-style-type: none"> <li>Consultants</li> <li>Associate Specialists</li> <li>Staff Grades</li> <li>Locums</li> </ul>	Enhanced with barred list check	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Junior Doctors on Rotational Training Scheme	Enhanced with barred list check	Managed by Lead Employer
Ward Based Pharmacist	Enhanced with barred list check	On appointment and 3 yearly renewal. Mandatory requirement to maintain registration to the DBS Update Service.
Pharmacy staff with patient/service user contact	Standard DBS	On appointment and 5 yearly renewal
Pharmacy staff without patient/service user contact	No DBS	N/A

## Volunteers

DBS checks on volunteers should be at the level appropriate to the activities they are being recruited to undertake.

To qualify for a free-of-charge criminal record check, the applicant must not benefit directly from the position the DBS application is being submitted for. The *applicant must not*:

- benefit directly from the position for which the DBS application is being submitted
- receive any payment (except for travel and other approved out-of-pocket expenses)
- be on a work placement
- be on a course that requires them to do this job role
- be in a trainee position that will lead to a full time role/qualification



### **Honorary Contracts/Students**

DBS checks for honorary contract and student placements should be at the level appropriate to the placement they will undertake. For students attached to a University the DBS from the education establishment can be accepted if this is at the correct level for the role that they will be undertaking.

This list is not exhaustive and is provided as a guide. When in doubt managers should view the job description and person specifications for a post in order to make a final decision on the suitability and level of a check along with advice from Human Resources.