

Disclosure and Barring Service (DBS) Policy

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1. INTRODUCTION

- 1.1. The aim of this policy is to set out the requirements of the East London NHS Foundation Trust (ELFT hereafter referred to as “the Trust”) on undertaking Disclosure and Barring (DBS) checks.
- 1.2. The Trust is committed to ensuring that appropriate pre and post-employment checks have been undertaken on its employees and other workers to ensure service users are protected.
- 1.3. The Trust will ensure that it adheres to the Disclosure and Barring Service Code of Practice which requires organisations to use the Disclosure information fairly and:
 - Not to discriminate against candidates on the basis of unrelated criminal offences,
 - To ensure data security
 - To comply with the recommendations for the retention of records
 - To comply with reasonable requests from the DBS to undertake assurance checks. Copies of the Code of Practice are available from the DBS website on <https://www.gov.uk/government/organisations/disclosure-and-barring-service>
- 1.4. The Guidance for Line Managers when Receiving Positive Disclosures should be read in conjunction with this policy.

2. PRINCIPLES

- 2.1. The following key principles outline the Trust’s approach to DBS Checks:
 - The Trust will ensure that disclosure information is treated fairly and without discrimination whilst ensuring a safe and robust recruitment process.
 - The Organisation is part of the DBS Update Service and encourages all successful applicants offered a position covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 with the Organisation where a DBS is applicable to register to the DBS Update Service prior to appointment with the Trust.
 - Where an employee or candidate has registered with the DBS Update Service, the check is at the required level; the Trust has been granted permission to register an interest in their DBS statement and is able to confirm a valid DBS check is in place, they will not require a new check.
 - The DBS process will form part of the pre-employment checks for all newly appointed staff when appointing staff into eligible positions.

- The Trust will assess the relevance of disclosure information to the suitability for employment of an individual.
- Compliance with equality, human rights, employment legislation, all statutory and mandatory requirements
- Compliance with the DBS Code of Practice.
- Where an employee is changing roles within the Trust due to promotion or ill health and the new role changes the level of check to a higher level, then a new DBS Check will be undertaken.
- Where a role is reviewed or changed as part of an organisational change process the requirements of the role will be formally reviewed to ensure that the level of check is appropriate and is still required.

3. SCOPE

- 3.1. The policy applies to all Trust employees and potential employees who are applying for employment with the Trust in substantive, fixed term, bank/locum posts, and secondments. It also applied to all workers such as those individuals on honorary contract, agency, and contractors and to directly employed apprentices, trainees, students. There is a separate policy/process for volunteers.
- 3.2. The purpose of this policy and associated guidance is to:
 - Set out the requirements to undertake DBS Checks
 - Prevent inappropriate and any illegal checks
 - Provide Line Managers with a framework and supplementary guidance in relation to DBS checking and the use of the information provided by the DBS
 - Ensure consistency and fair treatment
- 3.3. This policy has been written in line with the NHS Employment Check Standards for Disclosure and Barring Service checks.
- 3.4. The Medical Staffing Team has the same responsibilities outlined within this policy for medical staff as the Resourcing Team has for non-medics.

4. DUTIES AND RESPONSIBILITIES

4.1. The Chief Executive/Trust Board

- 4.1.1. The Chief Executive/ Board have responsibility to oversee this policy and ensure that appropriate processes and actions are in place to prevent illegal checks being undertaken and ensure those that are required are undertaken at the appropriate level.

4.2. **People Delivery Board/JSC**

- 4.2.1. The People Delivery Board and Joint Staff-side Committee is responsible for ensuring that this policy is effectively and appropriately implemented. They are also responsible for ensuring that the processes within the policy are monitored and non-compliance is acted upon.

4.3. **Service Directors/Service Leads**

- 4.3.1. The Service Directors/Service Leads have responsibility for ensuring appropriate action is taken by Line Managers when an employee fails to comply with their responsibilities under this Policy.

4.4. **The People & Culture Department – People Relations Team**

- 4.4.1. The People & Culture Department are responsible for providing support and guidance on the implementation of this Policy where issues or concerns are raised either during the recruitment process or during the course of an employees' employment, this includes providing advice to Line Managers when in receipt of a positive disclosure.

- 4.4.2. The People Relations Team are responsible for ensuring that DBS checks are undertaken in accordance with the requirements of this Policy, the DBS requirements, the DBS Code of Practice and NHS Employment Check Standards. They will ensure that appropriate records are kept on the ESR database and that the rolling programme of checks is maintained. Where employees are registered with the DBS Update Service the People Relations Team are responsible for obtaining the consent of the employee for the Trust to register an interest in their DBS statement, renewing these DBS checks annually via the automated checking system and for highlighting any changes in the check immediately to the appropriate Line Manager.

4.5. **The Workforce Team**

- 4.5.1. The Workforce Team are responsible for ensuring that appropriate records are kept on the ESR database and that the rolling programme of checks is maintained.

4.6. Resourcing Team

4.6.1. The Resourcing Team are responsible for ensuring that DBS checks are undertaken in accordance with the requirements of this Policy, the DBS requirements, the DBS Code of Practice and NHS Employment Check Standards. They will ensure that appropriate records are kept on the ESR database and that the rolling programme of checks is maintained. Where prospective employees are already registered with the DBS Update Service the Resourcing Team are responsible for obtaining the consent of the prospective employee for the Trust to register an interest in their DBS statement, renewing these DBS checks annually via the automated checking system and for highlighting any changes in the check immediately to the appropriate Line Manager and HR Advisor. The Resourcing Team have responsibility for ensuring any adverts confirm the requirements of this Policy to any prospective employees.

4.7. Recruiting Managers

4.7.1. The Recruiting Manager has responsibility for ensuring that they inform the Resourcing Team of the level of check required for any position being advertised or changed. Recruiting Managers must ensure they are familiar with their responsibilities under this Policy, including the requirements for DBS Checks for agency workers and contractors and when receiving a positive disclosure.

4.7.2. The Recruiting Manager should ask potential employees relevant questions about declared previous convictions at interview.

4.7.3. Where the Recruiting Manager requires a prospective employee to start work prior to the receipt of a satisfactory DBS Check they must complete and sign a Risk Assessment Form after seeking advice from the People & Culture Department.

4.8. Line Managers

4.8.1. Line Managers are responsible for ensuring that disclosed information is treated fairly and without discrimination in line with the Trust's guidance and to be aware of their employees' responsibility to disclose information under their terms and conditions of employment.

4.8.2. Line Managers are responsible for ensuring appropriate action is taken when an employee fails to comply with the Trust's renewal process or fails

to provide them with sight of their disclosure certificate when reasonably requested to do so.

4.9. Prospective Employees

4.9.1. Prospective employees that require a DBS check are contractually responsible for applying for their DBS Check at the correct level, providing consent for the Trust to register an interest in their DBS statement, and to register and maintain their registration to the DBS Update Service throughout their employment with the Trust.

4.9.2. Prospective employees have a responsibility at application stage to disclose any convictions, cautions, reprimands or warnings as set out in the DBS Disclosure Application Form. Where no evidence of a satisfactory DBS Check can be obtained and/or the prospective employee is found to have knowingly withheld information, or provided false or misleading information then the conditional offer of employment will be withdrawn.

4.10. Existing Employees

4.10.1. Existing employees who are not yet registered with the DBS Update Service are encouraged to register with the Service at the point of expiry of their five yearly DBS re-check, or if earlier, when moving to a new position within the Trust that requires a higher level of DBS check.

4.10.2. From the date of registration employees are required to maintain their registration to the DBS Update Service, renewing this on an annual basis, and for providing consent for the Trust to register an interest in their DBS Statement throughout their employment with the Trust.

4.10.3. Failure to give consent consent for the Trust to register an interest in a DBS Statement, without justifiable reason, may result in an employee being removed from their post, suspension of pay and formal action being taken under the Trust's Disciplinary Policy.

4.10.4. The Trust will continue to meet the cost of the DBS Check and annual registration with the DBS Update Service (subject to the position in relation to lapsed registrations set out below).

4.11. All Employees

4.11.1. All employees of the Trust have a responsibility to abide by this policy. If during the course of their employment they are arrested, charged, cautioned

or convicted of any criminal offence then they are contractually required to notify their Line Manager of the circumstances of the same as soon as possible, this includes notification of any pending court appearance, bind-overs, absolute and conditional discharges. Failure to do so will result in formal action being taken under the Trust's Disciplinary Policy and may result in termination of employment.

4.11.2. Failure to maintain registration, or give consent for the Trust to register an interest in a DBS Statement, without justifiable reason, or failure to produce a positive disclosure certificate when reasonably requested to do so, may result in an employee being removed from their post, suspension of pay and formal action being taken under the Trust's Disciplinary Policy.

4.12. **Trade Union Representatives**

4.12.1. Trade Union Representatives have a responsibility to provide fair and consistent advice to their members and support the implementation of this policy following agreement at JSC.

5. **DBS UPDATE SERVICE**

5.1. **Prospective Employees**

5.1.1. If a candidate is not already on the Update Service or if their current DBS on the Update Service need a different level certificate (for example, they have a standard DBS certificate and need an enhanced one), upon appointment, an electronic invite is sent to the candidate via Trac/Atlantic Data with their offer letters to complete their application within 5 working days before coming in for pre-employment checks.

5.1.2. Once a DBS application is made, the candidate is then encouraged to submit an online application to join the Update Service. The application for the Update Service must be received by the DBS within 28 days of the candidate's initial DBS application using the application form 'E' reference number generated when the DBS application is made.

5.1.3. Alternatively, if the candidate waits for receipt of their DBS certificate, they must join the Update Service within 30 calendar days of their DBS certificate issue date.

5.1.4. The link to register for the Update Service is:

<https://secure.crbonline.gov.uk/crsc/apply?execution=e1s1>

5.1.5. Registration lasts for one year, costs £13 a year, starts from the date the DBS certificate was issued and must be renewed yearly. The annual fee is payable by debit or credit card only, candidates can use someone else's card with their permission. There's no charge for volunteers.

5.1.6. Once registered, candidates and employees can use the Update Service to:

- Add or remove a certificate.
- Give employers permission to check if anything's changed on their certificate.
- See who's checked if anything's changed on their certificate.
- View their details.

5.2. Existing Employees

5.2.1. Staff can renew their subscription through the Update Service, either:

- When they first register, by choosing automatic renewal.
- Up to 30 days before their current subscription ends - but they cannot renew on the last day of their subscription.

6. PAYMENT FOR DBS CHECKS AND UPDATE SERVICE

6.1. The Trust will pay the initial DBS check (£44 for enhanced and £26 for standard) and candidates/employees are responsible for the payment of the annual update subscription of £13 which they will be able to claim this back via an expenses claim form yearly. These expenses are not taxed. The relevant instructions and forms will be provided to prospective and existing employees at the time of completing their online DBS application form.

7. LAPSED REGISTRATIONS

7.1. If an employee allows their DBS Update Service registration to lapse and wants to re-join the DBS Update Service, they will be responsible for the full cost of re-registering with the DBS Update Service and for a new DBS Check.

8. THE DISCLOSURE SERVICE

8.1. Rehabilitation of Offenders Act

8.1.1. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 enables some criminal convictions to become 'spent' or ignored after a rehabilitation period. A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction, when applying for a job. In the

NHS, there are certain circumstances/jobs under which a conviction must be declared, e.g. a nurse working on a children's ward.

8.1.2. Detailed guidance on spent and unspent criminal offences can be found within the Guidance for Line Managers when Receiving Positive Disclosures.

8.1.3. The Trust's Policy statement on the recruitment of ex-offenders can be found at Appendix 1.

8.2. Levels of checking and eligibility for check

8.2.1. The need for a check and the level of check is determined by the activities and the type of access to patients and service users the employee will have as part of their role.

8.3. Posts not exempt from the Rehabilitation of Offenders Act

8.3.1. It is illegal to carry out a DBS check on any post that is not exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, and to do so could make the Trust liable for legal action.

8.3.2. The DBS regularly monitors its registered bodies to ensure they are not carrying out ineligible checks. Persistent misuse of the criminal record checking system can lead to decisions being taken by the DBS to de-register an organisation from carrying out checks.

8.4. Posts exempt from the Rehabilitation of Offenders Act

8.4.1. Where the position is listed as exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Trust is entitled to seek information about all spent and unspent convictions that are not subject to the filtering rules and that any information disclosed will be verified by obtaining a standard or enhanced check by requesting a DBS Check. Many roles within the NHS are exempt from the Rehabilitation of Offenders Act.

8.4.2. There are currently three levels of DBS Checks available depending on the nature of the role. These are known as standard and enhanced without barred list (s) and enhanced with barred list(s).

8.5. Basic Level DBS Check

8.5.1. A basic DBS check may be requested for any position that is not eligible for a Standard or Enhanced check. It contains details of any unspent convictions or conditional cautions an applicant has.

8.6. Standard Level DBS Check

8.6.1. To be eligible for a standard level DBS Check, the post must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This check contains details of both spent (old) and unspent (current) convictions, including 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.

8.6.2. A standard check may be undertaken where the post enables the employee to have 'access to persons in receipt of services in the course of their normal duties'. 'Access to persons' does not include positions which only allow limited or incidental contact with patients or service users. I.e. where staff are required to pass through patient areas to get to their normal place of work.

8.6.3. A standard level of check does not check against either of the barred lists and should not be applied for when an employee is working in a 'regulated activity'.

8.7. Enhanced Level DBS Check

8.7.1. To be eligible for an enhanced level DBS check, the post must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) Regulations. The 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' and is included on the enhanced check certificate.

8.7.2. In a small number of cases, the enhanced level DBS Check may also include additional non-criminal record information from the local police where this is thought necessary in the interests of preventing or detecting crime.

8.7.3. An enhanced level of check does not check against either of the barred lists.

8.8. Enhanced Level DBS Check with Check of the Barred List(s)

8.8.1. To be eligible for an enhanced level DBS check with either or both of the barred lists, an employee must be expected to be working in a regulated activity with either children and/or adults. It must be specifically listed in the Police Act 1997 (Criminal Records) Regulations. Further information may be obtained from <https://www.gov.uk/government/organisations/disclosure-and-barring-service>.

8.8.2. The Trust has a legislative requirement to request barring checks to be conducted for employees working in a regulated activity under the Protection of Freedoms Act 2012 which amended the Safeguarding Vulnerable Groups Act 2006 in September 2012.

9. REGULATED ACTIVITY

9.1. A, 'regulated activity' is defined under the Safeguarding Vulnerable Groups Act (2006) as amended by the Protection of Freedoms Act (2006) as any activity involving working or volunteering with children and/or adults, which meets specific criteria. Reference should be made to Appendix 3 for further information about 'regulated activity'. Either one or both of the barred lists can be checked depending on the responsibilities of the post.

9.2. It is illegal for an employer to knowingly employ someone in a regulated activity when the employer knows that the person is barred from that regulated activity

9.3. It is also an offence for a barred person to work or seek to work in regulated activity within a sector from which they are barred. In the event a prospective employee appears on the Barred List guidance should be sought from the DBS.

9.4. Where it is indicated on a DBS application form that the prospective employee will be working or volunteering with adults or children within a regulated activity, an enhanced level disclosure will be required with reference to the appropriate barred list (s).

9.5. All staff working within a Medium Secure Unit will require an enhanced level DBS check with a check of the Adult barred list as per Standard A75 of the Best Practice Guidance Specification for Adult Medium Secure Services.

10. PROCEDURE TO BE FOLLOWED AT RECRUITMENT STAGE

10.1. All posts requiring a DBS Check will be clearly referred to in the advertisement for the post and all offers of employment will be made on condition of receipt of a satisfactory disclosure at the appropriate level for any post where one is required.

10.2. The following principles will apply:

- Only the applicant successful at interview will be required to complete the DBS application documentation
- Recruiting/line managers, the Resourcing Team and successful candidates are advised to use the interactive DBS check eligibility tool, available from the NHS Employers website, to check if an individual is eligible for a DBS check and, if so, the type of check to be undertaken (<https://www.nhsemployers.org/case-studies-and-resources/2018/08/dbs-eligibility-tool>).
- DBS applications will be completed using the on-line service wherever possible; where there are any difficulties with using the on-line service assistance will be provided by the Resourcing Team.
- Prospective employees will be advised of the level of DBS Check required and of the requirement to subscribe to the DBS Update Service throughout their employment with the Trust.
- Prospective employees will be advised that a criminal record will not automatically exclude them from being appointed.
- All applicants will be required to complete a declaration form as part of the pre-employment check process. The declaration form is mandatory within the NHS and will vary dependent upon whether the post is exempt from the Rehabilitation of Offenders Act. Declaration forms will ask prospective employees to declare criminal convictions, counter-fraud investigations, dismissal by reason of misconduct and fitness to practice proceedings.
- Full assessment of the relevance of a criminal record will be undertaken in accordance with the **Guidance For Line Managers when Receiving Positive Disclosures** to ensure a fair and consistent approach across the Trust
- Prospective applicants with positive disclosures will be required to produce their disclosure certificate to the Recruiting Manager to allow a check for authenticity and, in cases of a positive disclosure in order for a full risk assessment to be completed.
- A conditional offer cannot be confirmed until all the appropriate information has been received / considered.

11. STARTING WORK BEFORE THE RETURN OF A SATISFACTORY DISCLOSURE

11.1. A prospective employee will not be allowed to start working in a 'regulated activity' prior to a satisfactory disclosure being received. In exceptional circumstances where health safety and welfare of staff and/or patients may be affected then a risk based assessment should be made using the relevant risk assessment form and as a minimum the following must apply:

- DBS disclosure applied for.
- Individual is not working with vulnerable adults or children.
- Safeguards are put in place to manage that individual.

11.2. Where an individual is not engaged in a 'regulated activity' but has access to patients in the normal course of their duties, then a risk based assessment should be undertaken using the relevant risk assessment form and signed by an authorised person and the individual to confirm they are aware of any restrictions on their role and held on this should be held on file until the DBS Check has been provided.

12. ASSESSING THE RELEVANCE OF CRIMINAL RECORDS

12.1. The suitability for employment of an individual with a criminal record will vary, depending on the nature of the job and the details of circumstances of any conviction. 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.

12.2. The Recruiting Manager will need to make a fair, non-discriminatory assessment based on the individual's skills, experience and suitability for the post. Where the DBS Check indicates that the DBS has made a barring decision against one or both of the barred lists, it is illegal for the Trust to allow the individual to be engaged in a regulated activity from which they are barred.

12.3. Recruiting Managers should refer to the Guidance for Line Managers when Receiving Positive Disclosures in the first instance and enlist the support of the People & Culture Department prior to any final decision on whether or not to appoint, following receipt of a 'positive' disclosure certificate for an individual.

13. EXISTING EMPLOYEES CHANGING JOBS WITHIN THE SAME TRUST

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

- The employee has never had a DBS check before and is moving to a position that now requires a check (the level of check is dependent on the roles and responsibilities of the job)
- The employee has previously had a basic or standard level check and is now moving into a regulated activity, which requires them to have a higher level disclosure
- The new position requires the employee to work with a different vulnerable group and they are required to have a check against one or both barred lists
- If they have not had a DBS check within the last 5 years.
- They wish to be registered with the DBS Update Service.

13.2. If during the course of employment, an employee is arrested, charged, cautioned or convicted of any criminal offence; they have a contractual obligation to notify the circumstances of the same to their Line Manager as soon as possible, this includes any pending court appearance, bind-overs, absolute and conditional discharges. Failure to do so will result in formal action being taken under the Trust's Disciplinary Policy and may result in termination of employment. In addition the nature of the offence itself may result in disciplinary action being taken by the Trust.

14. DOCTORS ON EDUCATIONALLY APPROVED ROTATIONAL TRAINING SCHEMES

14.1. Doctors on educationally-approved rotational training schemes are considered as being in continuous employment and are therefore required to have a DBS Check every five years, as opposed to each time they rotate to a new Trust. Where the doctor will be working with children the Trust will need evidence that the DBS check was at the correct level with access to the Children's list.

14.2. Where the post involves working with adults the Trust will need evidence that the check had been made against Adult's List.

14.3. Where the doctor does not subscribe to the DBS Update Service the Trust will seek written assurances from the host/previous employer that appropriate satisfactory clearances have been obtained within the last 3 years. Where assurance cannot be obtained a new check will be required.

15. TEMPORARY WORKERS SUPPLIED BY AN AGENCY

- 15.1. Where agency workers are engaged in a role that requires them to have a valid DBS Check then evidence of this check will be required prior to their assignment commencing in the Trust. Agency workers are recommended to have a DBS Check once a year.
- 15.2. Agencies are required to complete an Agency Worker Placement Checklist confirming the DBS check undertaken prior to any agency worker commencing in their assignment.
- 15.3. The above requirement does not apply to those engaged on the Trust Bank who hold a substantive contract with the Trust however should they leave the Trust prior to them applying for a post on the Trust Bank then a new DBS check may be required.
- 15.4. For short term assignments, temporary cover should be obtained via the Trust Bank. In circumstances where the Trust Bank cannot cover the assignment, only agencies on the approved Crown Commercial Services (CCS)/NHSI Framework must be used.
- 15.5. The CCS/NHSI Framework contracts stipulate that all staff provided under the contract are subject to appropriate employment checks in accordance with NHS Employment Check Standards prior to them being supplied to the Trust. Under the framework agreement, the supplying agencies are subject to mandatory audits on both a planned and ad-hoc basis. The Trust takes assurances from the contract framework that is in place and requests copies of these audit reports on an annual basis that demonstrate that appropriate professional checks have been carried out.
- 15.6. The requesting manager and/or the Agency Booking Team will ensure the Agency Worker Placement Checklist is completed and retained for audit purposes.
- 15.7. Should an occasion occur where a temporary worker from any agency does not meet the NHS employment checks or hold the correct level DBS Check then the contract with that agency will be suspended pending an investigation and where necessary terminated.

16. STUDENTS/TRAINEES

- 16.1. DBS Checks will apply to students who, as part of their professional qualification, are required to carry out a placement. The need for a check and the level of check is determined by the activities and the type of access to patients and service users the applicant will have as part of their placement.
- 16.2. If the applicant's current Higher Educational Institution (HEI) or Educational Establishment can confirm the right level of checks has been conducted no DBS checks will be undertaken.
- 16.3. Many students will be required to move frequently to new placements during their training, so 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. The Trust should seek written assurance that the NHS Organisation, Higher Educational Institution (HEI) or Educational Establishment has carried out an appropriate check at the correct level and within the last three years. Where this cannot be obtained, and the student/trainee is not registered with the Update Service the Trust will request a new DBS check from the HEI or apply for one.
- 16.4. Where there is a delay in obtaining a disclosure and a student is not engaged in a 'regulated activity' but has access to patients in the normal course of their duties, then a risk based assessment should be undertaken providing they are fully supervised and patients are not exposed to unacceptable risks until the DBS Check has been provided.
- 16.5. More information can be found in the Honorary Contract and Placement Guidelines on the intranet.

17. VOLUNTEERS

- 17.1. Where volunteers have significant and regular contact with vulnerable people in the course of their normal duties, the Trust will undertake the same checks as they would when employing paid staff. The Trust must ensure that volunteers are fully aware of policies and procedures governing the protection of vulnerable people and what they should do and to whom they can refer if they have any concerns. There is a separate Policy relating to DBS Checks for volunteers.

18. HONORARY CONTRACTS, WORK PLACEMENTS, RESEARCHERS AND SECONDMENTS

- 18.1. The substantive employer is responsible for carrying out DBS Checks for any employee working at the Trust under an Honorary Contracts, Secondment or undertaking Research. Where an individual is not registered with the Update Service the original employer is expected to provide evidence of the DBS Check to the Trust prior to the placement commencing. The Trust is therefore responsible for maintaining DBS Checks for its substantive employees who work under honorary contracts elsewhere. The Trust will confirm the details of DBS checks held to the host organisation as part of the agreed working arrangements between our employees and other NHS Trusts.
- 18.2. If the applicant's current NHS Organisation or Educational Establishment can confirm the right level of DBS check has been conducted no further pre-employment checks will be undertaken.
- 18.3. Where a researcher is processed through the Research Passport System the HEI should undertake the necessary checks. The research passport will be accepted as written confirmation that the appropriate checks have been taken once validated. The passport is valid for a maximum of three years and should be reviewed where contact with vulnerable groups changes and a higher level required.
- 18.4. More information can be found in the Honorary Contract and Placement Guidelines on the intranet.

19. EMPLOYEES TRANSFERRED UNDER TUPE REGULATIONS (2006)

- 19.1. Where an employee is transferred into the Trust under Transfer of Undertakings (Protection of Employment) Regulations 2006 and they do not hold a valid DBS, they will require a new DBS Check and will be encouraged to join the DBS Update Service, to register with the DBS Update Service and to give consent to the Trust to register an interest in their DBS Statement. Where an employee is already registered with the DBS Update Service they will be required to give consent to the Trust to register an interest in the DBS Statement. Details of any DBS Checks will be recorded in ESR.

20. IR35 CONTRACTORS AND SELF-EMPLOYED WORKERS

- 20.1. All self-employed persons who work for the Trust and who invoice the Finance Department for payment should as a minimum be required to provide documentary evidence of their identity, right to work, DBS, qualifications/professional registration (if applicable) prior to them undertaking work at the Trust.

20.2. The Recruiting Manager/Manager contracting with the service will ensure that all contractors who will have patient contact at the Trust are subject to the appropriate DBS Check. In instances where the contractor cannot provide assurances, then the Trust will undertake its own check and recharge the contractor for the cost. The Trust reserves the right to refuse a contractor access to some sites if assurances cannot be obtained or if a positive disclosure is returned.

20.3. IR35 contractors will also be added on ESR in order to monitor compliance data.

21. STAFF RECRUITED FROM OVERSEAS

21.1. When recruiting employees or engaging students from abroad who are eligible for a DBS check:

- A certificate of good character or overseas criminal record check should be requested. For medical students the certificate of good conduct may be obtained by the HEI and confirmation of this obtained by the Trust.
- A standard or enhanced DBS check (as appropriate to the role) must be obtained as soon as is reasonably practical in order for the individual to provide the necessary documents.

21.2. All applicants applying to work in the Trust under Tier 2 route must provide a criminal record check for any country they have lived in for more than 12 months in the last 10 years.

21.3. Where a prospective employee has declared that they have been serving overseas in the military for six months or more in the past five years, they may be requested to submit an extract from their military record.

Further information can be found on the Security Industry Authority (SIA) website.

21.4. Where the position meets the criteria for a DBS check, even in the prospective employee claims they have never lived in the UK before, a DBS Check should still be obtained in addition to their overseas criminal records to verify that they have no criminal history in the UK. There is a legal requirement for staff, whether recruited from inside or outside the UK, to be checked against the Child Barred lists before they are appointed to a childcare position.

22. TRANSGENDER APPLICANTS

22.1. Transgender applicants are protected in legislation and are not obliged to include details indicating a previous gender in their application form.

22.2. They are, however, required by law to provide all name details to the DBS in their current and any previous identity. Deliberately withholding this information may be an attempt to prevent conviction information being revealed and is an offence.

22.3. DBS provide a confidential checking service for transgender applicants who do not want to reveal details of their previous identity to a potential employer by using the DBS confidential checking service at sensitive@dbsgsi.gov.uk.

23. LEGAL DUTY TO REFER TO THE DBS

23.1. The Trust has a legal responsibility to refer an employee or employees to the DBS in circumstances whereby:

- They have permanently removed an employee from a regulated activity through dismissal or permanent transfer, or where they would have removed or transferred that person from a regulated activity if they had not left, resigned, retired or been made redundant; and
- They believe the employee has been cautioned or convicted of a relevant (automatic barring) offence;
- Engaged in relevant conduct in relation to children and/or adults for example and action or inaction (neglect) that has harmed a child or adult or put them at risk of harm
- Have satisfied the Harm Test in relation to children/or adults – for example there has been no relevant conduct but a risk of harm to a child or vulnerable still exists

23.2. Further guidance on making a referral is available on the DBS website at <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>.

23.3. It is an offence not to refer someone to the DBS in the above circumstances. In the event of a prospective employee or existing employee appearing on the Barred List the Trust will be given guidance by the DBS along with the DBS check.

24. DISCLOSURE CERTIFICATES

24.1. Certificates are no longer issued to the Trust and only to the prospective employee or employee. In circumstances where a positive disclosure is issued to an employee or prospective employee they will be required to produce the original DBS disclosure certificate to the Recruiting Manager or Line Manager, whichever is appropriate, who will then follow the Guidance For Line Managers when Receiving Positive Disclosures. When the prospective employee or employee provides the Trust with sight of the disclosure certificate the Trust will record the following key details in ESR:

- The name of the individual and issue date of the certificate
- The level of the check requested, including any checks against one or both of the barred lists
- The position for which the certificate was requested
- The unique reference number of the certificate and
- Where the update service is subscribed to the individual's unique reference number

24.2. Where an employee or prospective employee fails to provide sight of the positive disclosure certificate, when reasonably requested to do so, without justifiable reason, then any offer of employment will be withdrawn or, in the case of an existing employee they may be removed from their post, pay suspended and formal action being taken under the Trust's Disciplinary Policy, which may result in termination of employment.

25. CONFIDENTIALITY AND DATA PROTECTION

25.1. The Trust will comply with the DBS Code of Practice and the Data Protection Act and Section 124 of the Police Act. The DBS code is in place to ensure that the Trust meet's their obligations when receiving the sensitive information available to them and that the information will be used fairly and that sensitive personal information, disclosed by the DBS is handled and stored appropriately and is kept for only as long as necessary.

26. PORTABILITY

26.1. Portability refers to a DBS check obtained for a position in one Organisation and later used for another position in another Organisation. A DBS check carries no period of validity, and the information provided is as known at the issue date.

26.2. **General Staff**

26.2.1. Disclosure Certificates issued for a post with another organisation are accepted by the Trust for recruitment purposes (exceptions to this are medical students, doctors in training programme, those undertaken by HEI, Research Passports) so long as it meets the following criteria:

- The DBS check is at the correct level for the new post
- The candidate produces the original certificate for verification (within 2 years of issue)
- A DBS Declaration form is completed to ensure no changes since the last check

26.3. **Medical Staff**

26.3.1. Due to the frequency of rotational short term doctor' posts within the NHS, DBS checks from other NHS Organisations are accepted, using the following criteria:

- The original DBS certificate is seen
- The DBS check level is appropriate for the new post
- The DBS check is less than 2 years old
- The candidate has been continually employed in the NHS since the DBS certificate was obtained.

26.4. For areas designated as high risk, DBS checks will only be accepted if they are less than 12 months old. High risk areas are Forensics, Coborn and Mother and Baby Units.

26.5. Portability will also be acceptable in cases whereby a prospective employee is registered with the DBS Update Service and they have given consent for the Trust to register an interest in their DBS statement.

27. TRAINING

27.1. It is recommended that managers with responsibility for recruitment and selection of employees attend the recruitment and selection training which supports managers in implementing the DBS Policy and Procedure for the Trust. It is recommended that this knowledge is updated via refresher training available to book on OLM.

28. POLICY REVIEW

28.1. This policy will be reviewed every three years or before if there are legislation or guidance changes. Where remedial action can be taken immediately, the action must be recorded appropriately.

29. FURTHER INFORMATION

- Disclosure and Barring Code of Practice
- Disclosure and Barring Service Checks Guidance Notes
- Recruitment and Selection Policy
- Honorary Contract and Placement Guidelines
- Guidance For Line Managers when Receiving Positive Disclosures
- NHS Employers Criminal Record and Barring Checks

APPENDIX 1

Policy Statement on Recruitment of Ex-Offenders

As an organisation using the DBS Disclosure services to assess applicant's suitability for positions of Trust, East London NHS Foundation Trust complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.

East London NHS Foundation Trust is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, age, physical / mental disability or offending background.

The Trust actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. The Trust selects candidates for interview based on their skills, qualifications and experience.

A Disclosure is only requested when it is felt appropriate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms, job adverts and recruitment information will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.

The Trust encourages all applicants to provide details of their criminal record at an early stage in the application process i.e. on the application form. The Trust guarantees that this information will only be seen by those who need to see it as part of the recruitment process.

The Trust ensures that all interview panels 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 this is directly relevant to the position sought could lead to withdrawal of an offer of employment or dismissal if already in post.

The Trust makes every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and makes a copy available on request.

The Trust undertakes to discuss any matters 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 Disclosure Certificate, the individual will be offered the opportunity to discuss these with an authorised individual 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 DBS 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 the Trust. This will depend on the nature of the position and the circumstances and background of the offences. A legal update came into effect on 10th March 2014 that revises the amount of time that an offence is regarded as being 'spent' for the purposes of the Rehabilitation of Offenders Act (further information on this is contained within the Guidance for Line Managers when Receiving Positive Disclosures).

When deciding whether an appointment to a post can be made 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 behavior
- 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.

APPENDIX 2

Security of the Data

The Trust treats the unauthorised access or disclosure of sensitive data as a disciplinary offence. It could also constitute a criminal offence under the GDPR, Data Protection Act and Section 124 of the Police Act.

The lead signatory, counter signatories, appointing officers and recruiting officers, as recipients of disclosure information are responsible for ensuring that it is only available to those who need to have access to it in the course of their duties.

Disclosure information should not normally be kept on personal files except in exceptional circumstances.

The Disclosure document itself is no longer sent to the requesting party but is sent directly to the applicant. The individual is required to provide an original copy of any positive disclosure to the Recruiting Manager or Line Manager in order for full assessment to be made in accordance with the Guidance for Line Managers when Receiving Positive Disclosures. The relevant details outlined below are entered on to ESR.

In circumstances where Disclosure information is requested by a third party in connection with legal proceedings e.g. in a case submitted to an Employment Tribunal, the DBS must be notified immediately and prior to the release of the information.

Retention of Records

The DBS has recommended that Trust keep a record of the following:

- The name of the individual and issue date of the certificate
- The level of the check requested, including any checks against one or both of the barred lists
- The position for which the certificate was requested
- The unique reference number of the certificate and
- Where the update service is subscribed to the individual's unique reference number

In addition, a written record should be kept of those to whom any Disclosure information has been revealed.

The Trust will ensure that completed Self Declaration Forms are kept securely with access strictly controlled and limited to persons who need to have access to this information.

APPENDIX 3

Definition of a Regulated Activity

The provision of **health care** by any **health care professional** or the provision of health care under the direction or supervision of a health care professional is a regulated activity. The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012)

Regulated activity relating to children

The new definition of 'regulated activity' relating to children comprises only:

- (i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- (ii) Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;
- (iii) Work under (i) or (ii) is regulated activity only if done regularly
- (iv) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional
- (v) Registered child-minding; and foster-carers

Regulated activity relating to Adults

The new definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. The new definition identifies the particular activities undertaken that lead to the adult being considered vulnerable at that particular time regardless of how often they are undertaken. The focus is on the activities needed by the adult, not where the activity takes place, i.e. the frequency test has been removed. An individual only needs to engage in the activities listed below once to be carrying out regulated activity relating to adults:

- Healthcare for adults provided by, or under the direction or supervision of a regulated health care professional
- Personal care for adults involving hand-on physical assistance with washing and dressing, eating, drinking and toileting
- Social work
- Assistance with an adult's cash, bills or shopping because of their age, illness or disability arranged via a third party
- Assisting in the conduct of an adult's own affairs under a formal appointment
- Conveying (transporting) adults for reasons of age, illness or disability to, from, or between places, where they receive healthcare, personal care or social work arranged via a third party