

# **CRIMINAL RECORD CHECKS**

## **POLICY AND PROCEDURE**

**June 2017**

## **POLICY STATEMENT**

The purpose of this policy is to provide procedural guidance and direction for the administration of Criminal Records Checks.

- The Disabilities Trust is committed to the safeguarding of those accessing our services and has a statutory duty of care towards vulnerable groups.
- The Disabilities Trust uses the Disclosure and Barring Service (DBS) and Disclosure Scotland Service which includes the protection of Vulnerable Groups (PVG) scheme, to help assess the suitability of applicants for job roles in the organisation.
- The Disclosure and Barring Service (DBS) has been established under the Protection of Freedoms Act 2012 and merges functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

## **SCOPE**

This policy applies to all services located in England, Wales and Scotland.

This policy also applies to:

- All Disabilities Trust staff and workers/suppliers of services including registered, unregistered, , bank, temporary, locum staff, and self-employed contractors
- All students, volunteers and those on secondments or other flexible working arrangements.

This document outlines the Disabilities Trust policy on the use of criminal record checks and recruitment of staff or volunteers with criminal convictions or those who are barred from working with vulnerable groups. This policy applies to all staff and will be made available to applicants at the outset of the recruitment process where a DBS request for disclosure of their criminal record will be required as part of the application process.

The Trust is committed to the fair treatment of its staff, potential staff or users of its services, regardless of any protected characteristics. The Trust actively promotes equality of opportunity for all with the right mix of talent, skills and potential and will not discriminate against any subject of a criminal records check on the basis of convictions or other information revealed.

This policy is for guidance only and may be amended from time to time

All employees have a duty to follow any code of conduct and/or any rules contained; non-compliance with this policy is likely to result in disciplinary action being taken in accordance with this Disciplinary policy and procedure.

## **PRINCIPLES**

The following key principles outline the Trust's approach to DBS / Disclosure Scotland Checks:

- The Trust will ensure that disclosure information is treated fairly and without discrimination whilst ensuring a safe and robust recruitment process.

- The Trust will not accept a DBS Check undertaken through any other organisation unless this is via the DBS Update Service.
- Where the 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 / Disclosure Scotland 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.
- Where an employee is changing roles within the Trust, and requires the same level of DBS check, their existing check will transfer to their new role.
- Where an employee is changing roles within the Trust, 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.

## PROCEDURE

### **Rehabilitation of Offenders Act**

Guidance on the rehabilitation of offenders can be found within the Recruitment of Ex-Offenders Policy & Procedure which is available on the Hub. The Trust also has a Recruitment of Ex-Offenders Statement which is also available on the Hub.

### **Code of Practice**

The Trust agrees to comply with the DBS / Disclosure Scotland Code of Practice regarding the correct handling, use, storage, retention and disposal of certificates and certificate information. More information can be found on the DBS pages of the government website. The Trust also complies fully with its obligations under the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information and has a written policy statement on these matters, which is available to those who wish to see it on the Trust's website and/or on request.

### **Disclosure and Barring Service and Disclosure Scotland**

The Disclosure and Barring Service (DBS) and Disclosure Scotland are services that make decisions on who should be barred from working with vulnerable groups. They maintain constantly updated lists (one for those individuals barred from working with children and one for those barred from working with adults). Individuals are prohibited from undertaking 'regulated activity' if barred by the DBS or Disclosure Scotland. For employees in Scotland there may also be a requirement for you to successfully register with the Scottish Social Care Council (SCCC).

### **Regulated Activity**

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. Either one or both of the barred lists can be checked depending on the responsibilities of the post.

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, a disclosure will be required with reference to the appropriate barred list (s).

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. 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.

### **Types of Criminal record checks available**

There are different levels of criminal record check. Each level results in the issue of a different kind of disclosure and these are detailed in Appendix 1. A list of roles within the Trust and guidance on their associated criminal record check level is also included at Appendix 2.

### **DBS Filtering**

Filtering is the term used by DBS to describe the process which will identify and remove convictions and cautions which should no longer be disclosed on a DBS certificate.

The Trust will only request individuals to disclose details of convictions and cautions which fall under the positions listed in the Rehabilitation of Offenders Act 1975 (Exceptions order 1975). Applicants are legally entitled to withhold details of any convictions which would now be filtered and it is the responsibility of the applicant to check these details.

### **DBS Certificates**

A certificate is processed by the DBS / Disclosure Scotland on receipt of the application form and is the document which contains the information held by the police and government departments regarding an individual's criminal history.

Disclosure Scotland will issue both the applicant and the Trust a copy of the disclosure certificate. However the DBS only now issue certificates to the prospective employee or employee. The Trust requires all applicants to present their original DBS certificates before employment can be confirmed. Upon presentation of the certificate the manager should complete the criminal record check confirmation form

Where an employee or prospective employee fails to provide sight of the positive disclosure certificate without justifiable reason, when reasonably requested to do so, then any offer of employment will be withdrawn. 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.

### **Portable DBS certificates**

Portability refers to the re-use of a criminal record check, obtained for a position in one organisation and later used for another position in another organisation. Disclosure Certificates issued for a post with another organisation are not accepted by the Trust for recruitment purposes. Portability will only be acceptable in cases where 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.

### **Costs**

Currently the costs incurred by obtaining a criminal record check are paid directly by the Trust. In certain circumstances it may be necessary for these costs to be passed on to an individual, for example, where there are acts of deliberate un-cooperation which lead to additional costs in respect of obtaining these checks.

### **Procedure to be followed at Recruitment Stage**

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.

The following principles will apply:

- 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 and will ask prospective employees to declare criminal convictions (only information which has not been filtered should be declared).
- Prospective employees will be advised of the level of DBS Check required and of the requirement to renew their check throughout their employment with the Trust.
- Those applicants called for interview who have declared relevant criminal history (including cautions, warnings, bind-overs, reprimands and convictions), will be asked about this during the interview process.
- Only the applicant successful at interview will be required to complete the DBS application documentation.
- DBS applications will be completed using the on-line service.
- PVG checks (Disclosure Scotland) will be completed on an application form available from the relevant service and countersigned by a registered countersignature in the HR Department.
- Full assessment of the relevance of a criminal record will be undertaken when receiving positive disclosures to ensure a fair and consistent approach across the Trust
- Applicants will be required to produce their disclosure certificate to the recruiting manager to allow a check for authenticity and assist with recruitment decisions

### **Registered Body**

The Trust utilises a 3<sup>rd</sup> party for online processing of criminal record checks via Disclosure Services who are a registered body and act as the Trust's counter signatory.

For Disclosure Scotland PVG checks the applicant will be required to complete an application form which will be signed by a registered Trust counter signatory.

As a Registered Body, the Trust is entitled to ask exempted questions under the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 Exceptions Order 1975 which covers the UK, Scotland and Wales.

### **The Registered Body's role is to:**

- Check and validate the information provided by the applicant on the DBS application form
- Establish the true identity of the applicant, through the examination of a range of documents using guidance provided by the DBS
- Ensure the application form is fully completed and the information it contains is accurate
- Countersign applications to confirm that the organisation has an entitlement to access criminal record information comply with the Code of Practice

### **Online Criminal Record Application (Excludes Scotland)**

When a job offer is made (if appropriate) the recruiting manager will send the preferred candidates relevant details to enable them to apply for a criminal record check.

The individual will complete the relevant sections of the online application form providing personal details, address history and identification information. The individual will complete the declaration to confirm whether he/she has any convictions, cautions, reprimands or final warnings which would not be filtered in line with the current guidance. The completed application will then be sent to the recruiting manager for further verification.

Original identity documents should then be presented by the individual then checked and verified by the service/department. The service/department should then complete the disclosure application. Disclosure Services will act as a counter-signatory and forward the application to DBS for processing.

### **Identity Documentation & Verification**

The identity documentation the individual is required to present in order to complete a criminal records check is determined by the DBS/Disclosure Scotland. Relevant lists detailing the documentation which can be presented and the age of these documents are available on the Hub.

As the Registered Body, the Trust is obliged to:

- Check and validate the information provided by the applicant on the application form/continuation sheet;
- Establish the true identity of the applicant, through the examination of a range of documents as set out in the guidance;
- Ensure the applicant provides details of all names by which they have been known and all addresses where they have lived in the last 5 years; and
- Ensure the application form is fully completed and the information it contains is accurate.

Any documentation presented must be valid, current and original. Please note documents which are photocopies will not be accepted unless checked against the original documents to ascertain that the photocopy is a true copy.

### **Starting work before the return of a satisfactory disclosure**

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 the disclosure has taken more than four weeks or requirement to commence the new starter earlier is critical to service delivery, the Trust has a Criminal Record Check Risk Assessment which can be completed to determine the level of risk of employing an individual prior to receiving the criminal record check. The requirements of the risk assessment will remain in place until such time as the criminal record check is issued and presented at the Service/Department.

All outcomes of the risk assessment must be documented and held on the individual's personnel file or in secure storage facility. Please note, the CQC will require access to this information (as required) to evidence that a robust process has been undertaken.

## **Decision Making Tool – Assessing the Relevance of Criminal Records**

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 using the Decision Making Tool (DMT) 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. The DMT is available on the Hub.

The DMT consists of three parts (A, B, C). Each part will be used at different stages of the process when a criminal history is declared or is detailed on the disclosure received. Dependent on what the individual has stated about his/her criminal record will determine the parts of the DMT to complete and should streamline the work needed by the manager to justify the decision then taken regarding employment/continued employment.

DMT Part A - will be completed if the individual indicates on their application form that they have a conviction/warning or reprimand. The recruiting manager will need to discuss the content with the individual.

DMT Part B will be completed when the disclosure has been returned and criminal history is detailed. The recruiting manager will invite the candidate in to discuss what's on the disclosure and what was discussed in Part A (if previously declared).

DMT Part C will only be used if the information contained on the disclosure is of a more serious nature or the questions on it need to be applied in order to reach a decision in the earlier stages.

The DMT must be completed by management and also be authorised by the relevant Divisional Manager/Director prior to any recruitment or disciplinary decision being made. Dependent on the criminal charges received, the employee may face disciplinary action (including dismissal) in accordance with the Trust's Disciplinary Policy and Procedure. A bank worker may be removed from the Trust's Bank Worker Register and any services undertaken by a volunteer/contractor withdrawn. Each situation will be considered on an individual basis and relevant facts established to determine the course of action required.

### **Existing Employee Renewals / Changing Jobs**

Criminal record checks do not carry a pre-determined period of validity because a conviction or other matter could be recorded against the subject of the record check at any time after it is issued. The Trust will apply for a new disclosure when a staff member has been in post for 3 years. Please note this timeframe will also be used to update individual's identity cards where such a card is deemed necessary for their job role.

Failure to complete a record check renewal when requested to do so will be deemed a breach of this policy and for employees a breach of contract. As such this may result in disciplinary action being taken which in relevant circumstances may lead to dismissal. A bank worker may in the same circumstances be removed from the Trust's Bank Worker Register and for volunteers/contractors, their services withdrawn.

In circumstances where a staff member transfers to another role within the Trust, a criminal record risk assessment will be undertaken regarding the nature of the role and any previous level of DBS check obtained. If a different level of check is required for the new role then this will need to be obtained.

## **Criminal Record or Investigation whilst working for The Disabilities Trust**

All employees/ bank workers/contractors/students and volunteers are obliged to inform the Trust should he/she be placed under investigation or acquire a criminal caution, warning, reprimand, bind-over or conviction whilst working for the Trust. Failure to do so may impact on his/her continued employment/work with the Trust or other organisations you are employed by or provide a service to. Having a criminal record will not necessarily bar a person from working with the Trust. This will depend on the nature of the position and the circumstances and background of the offences.

### **Volunteers**

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 employing volunteers.

### **Students/Work experience/ Placements**

Criminal record checks will be obtained for students who, as part of their professional qualification, are required to carry out a placement where they will undertake work that falls within the Exceptions Order, and/or regulated activity definition. Students who are on work experience/placement **observing** in regulated activity with appropriate supervision and safeguarding risk assessment will not require a criminal record check. The Protection of Freedoms Act 2012 states employers must not apply for a criminal record check for an individual under the age of 16.

### **Agency Workers**

Where agency workers are engaged in a role that requires them to have a valid Criminal Records Check then evidence of this check will be required prior to their assignment commencing in the Trust. It is the responsibility of the Manager to obtain confirmation that the appropriate level of criminal record check has been conducted by the agency and is up to date. The confirmation should be in place before the agency worker starts undertaking regulated activity.

### **Overseas Applicants**

When recruiting applicants from abroad, or who have spent 3 months or more in a foreign country within the last 5 years, a certificate of good character or overseas criminal record check should be requested. Information should be translated into English by a recognised translation service and original documents should be presented for inspection. The responsibility and cost of obtaining such checks will sit with the applicant. The Trust will reimburse the cost of the check after 12 months service providing the staff member can provide original receipts. It will be the employee's responsibility to reclaim this expense.

Where the position meets the criteria for a DBS check, even if the prospective employee claims they have never lived in the UK before, the Trust will consider carefully whether to also request a criminal records check in respect of the individual. Dependant on the job role, the Trust will be obliged to check the relevant barred lists. 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.

### **Staff Taking Extended Leave Abroad**

When considering an application from an existing staff member for extended leave to visit a foreign country, managers should ensure they are aware that they will need to obtain an overseas check should they be away in excess of 3 months.

### **Re-engagement of Former Employees**

All former employees of the Trust seeking re-engagement to a post where it is a requirement to undertake 'regulated activity' will be subject to a new criminal records check if they do not return within 4 weeks. This check must be completed before they recommence working for the Trust.

### **TUPE Transfers**

Where individuals undertaking a 'regulated activity' are transferred into the Trust under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), and they continue in the role they were previously employed, the Trust will carry out DBS checks. Such checks will be undertaken within 4 weeks of the date of transfer.

### **Transgender Applicants**

If applicants do not wish to reveal details of their previous identity due to reassignment of gender, the DBS provides a confidential checking process for transgender applicants. Further information or guidance can be obtained from the DBS Sensitive Applications Team.

### **Disputes**

The Disclosure and Barring Services' protocol looks into concerns/complaints raised by the individual and/or counter signatory (on behalf of the individual) within 3 months of the issue of the criminal record check.

If an applicant or employee wishes to appeal against a barring decision they should be advised to contact the HR Department personally, and guidance will be provided.

### **Legal Duty to Refer to the DBS**

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

Decisions regarding referrals should be made in conjunction with your HR and QA Representative. It is the responsibility of the Disciplinary Chair to ensure that the referral and all relevant documentation is submitted to the relevant external body once the formal process has been concluded.

### **MONITORING, AUDIT & REVIEW**

This policy remains under the control of the Director of Governance and Quality and resides within the Disabilities Trust's SharePoint (The Hub).

The SharePoint system (The Hub) maintains the document control database for tracking and monitoring The Disabilities Trust-wide controlled documents.

## **EQUALITY IMPACT ASSESSMENT STATEMENT**

As part of its development, this policy and its impact on equality have been reviewed in line with the Trust's Equality and Diversity Policy. The purpose of the assessment is to minimise and if possible remove any disproportionate impact on service users and people employed by The Disabilities Trust on the grounds of any protected characteristic.

## **ASSOCIATED POLICIES & PROCEDURES**

Other Policies and Procedures to be operated in succession with

- Recruitment of Ex-Offenders Policy & Procedure
- Recruitment of Ex-Offenders Statement
- Recruitment & Selection

## **SUPPORTING DOCUMENTS & TEMPLATES**

Supporting documentation and appropriate templates including are available to accompany this policy and procedure and can be located on The Hub.

## **POLICY REVIEW**

Date: **June 2017**

Review Date: **August 2018**

Signed and approved by: \_\_\_\_\_  
**Naomi Carey, Director of HR**



## Appendix 1 – Levels of Criminal Record Check

Level	Issued to	Shows	Suitability
Basic Disclosure <sup>1</sup>	The Individual	Details of convictions at national level that are unspent under Rehabilitation of Offenders Act 1974	All prospective employees could be asked to obtain one
Standard Disclosure	The Individual <sup>2</sup>	Details of spent and unspent convictions, reprimands, cautions and final warnings <sup>3</sup>	For positions that are exempt from the provisions of the Rehabilitation of Offenders Act 1974
Enhanced Disclosure	The Individual <sup>2</sup>	In addition to the standard disclosure material, a check of local police records	For positions that are exempt from the provisions of the Rehabilitation of Offenders Act 1974 and that are listed in the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233)
Enhanced Disclosure with barred check	The Individual <sup>2</sup>	In addition to the standard disclosure material, a check of local police records, and information about whether or not the individual is on either of the barred lists held by the Disclosure and Barring service	Primarily for positions that involve working with children or vulnerable adults in a regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006

<sup>1</sup> Only currently available through Disclosure Scotland.

<sup>2</sup> A registered employer will be able to apply for a copy of the certificate only in prescribed circumstances, but can ask the individual for his or her permission to see the certificate and carry out a status check.

<sup>3</sup> From 29 May 2013, information is filtered in accordance with the Police Act 1997 and will not appear on the disclosure.

Job Role	Registered as an Independent Hospital	Registered as a Care home setting	Registered as a special school which caters for children and young people, aged 5-19, who have a range of autistic spectrum conditions/Asperger syndrome
Maintenance Person / Gardener who doesn't drive	Standard or Basic	Enhanced without barred list	Enhanced with barred list
Maintenance Person / Gardener who drives	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list
Housekeeper	Standard	Enhanced without barred list	Enhanced with barred list
Chef / Kitchen Assistant	Standard	Enhanced without barred list	Enhanced with barred list
Administration <b>In a Service</b> (including finance related, Governance) <b>Role meeting Regulated Activity</b>	Standard	Enhanced with barred list	Enhanced with barred list
<b>In a Role NOT meeting Regulated Activity</b>	Basic	Enhanced without barred list	
Administration (including finance related) <b>Role meeting Regulated Activity</b>	Standard	Enhanced with barred list	Enhanced with barred list
<b>In a Role NOT meeting Regulated Activity</b>	Basic	Enhanced without barred list	
Health and Safety Advisors	Standard	Enhanced without barred list	Enhanced with barred list
Quality Assurance Advisors (deal with Service Users matter/care)	Standard	Enhanced without barred list	Enhanced with barred list
Health & Fitness Coach	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list
Clinical roles	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list
Teaching roles	Enhanced without barred list	Enhanced without barred list (for Adult) Enhanced with barred list (for Children)	Enhanced with barred list
Management roles - in a Service	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list
Operational Director roles	Enhanced without barred list	Enhanced without barred list	Enhanced without barred list
Trustee's	Enhanced without barred list	Enhanced without barred list	Enhanced without barred list
Vocational & Recreational Activity Assistant / Coordinator	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list
Social Worker / Link Worker	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list
Rehabilitation / Support Worker	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list
Nurses	Enhanced with barred list	Enhanced with barred list	Enhanced with barred list

**Assumptions:** The roles detailed above have been assessed for the level of criminal record, and as appropriate, DBS Barred list check, on the basis that the Independent Hospital is for Adults and Children and the Care Home is for Adults and/or Children.

**Head office roles:** HR Advisors, Administration, Directors, - all Basic checks, assuming the staff are not working in any of the settings detailed above.  
Foundation Associates (does not include link workers) – all standard checks as going into prison settings