



**DISCLOSURE AND BARRING SERVICE CHECK
POLICY
(Previously Criminal Records Bureau)
(H14)**

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| 3 | | November 2014 | Updated eligibility for checks and filtering of criminal record information in line with new legislation | |
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1 POLICY STATEMENT

The aim of this policy is to set out the requirements of South Devon Healthcare NHS Foundation Trust and Torbay and Southern Devon Care Trust (hereafter referred to as “the Trust”) on checks of criminal records obtained through the Disclosure and Barring Service (DBS).

The Trusts is committed to ensuring that appropriate pre and post employment checks have been undertaken on its employees, and other workers, to ensure patients are protected.

The Trusts will ensure that it adheres to the DBS Code of Practice, which requires organisations to use the disclosure information fairly, 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 and to comply with reasonable requests from the DBS to undertake assurance checks. Copies of the Code of Practice are available from the DBS website.

This policy has been written in line with the NHS Employers Check Standards for Criminal Records Checks.

2 PURPOSE

The purpose of this policy is to:

- Identify which posts are subject to a DBS check
- To promote the use of relevant DBS checks and prevent inappropriate and illegal checks
- Provide line managers with a framework and guidance in relation to DBS checking and the use of the information provided by the DBS
- Ensure consistency and fair treatment for all.

3 SCOPE

The DBS Policy applies to the recruitment and selection of all prospective employees and will incorporate good practice guidelines. Those included in the policy are:

- Substantive employees
- Temporary / Fixed term
- Secondments
- Bank / Agency workers
- Clinical placements / attachments
- Honorary appointments
- Volunteers

4 EQUALITY AND DIVERSITY STATEMENT

- 4.1 The Trusts are committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.
- 4.2 The Trusts are committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality Analysis Procedure (SDHCT only).

5 ROLES AND RESPONSIBILITIES

- 5.1 The Trusts Board has a responsibility to ensure that safe employment practices exist to protect patients and staff which are achieved through a robust recruitment and selection process, thus meeting its legal obligations as well as strategic NHS obligations.
- 5.2 As Lead Counter Signatory for the Trust, the Human Resources Manager (Recruitment & Temporary Staffing Lead) is responsible for:
- Acting as the principle contact for the DBS
 - Ensuring that the Trust's practices and counter-signatories comply with requirements and guidance in line with the DBS Code of Practice.
- 5.3 Counter signatory is responsible for:
- Ensuring that the correct level of Disclosure is requested
 - Counter-signing DBS disclosure applications
 - Receiving disclosure certificates
 - Controlling the use, access and security of disclosure certificates
 - Providing advice and guidance to managers in the implementation of the Policy
 - Monitoring the implementation of the policy
 - Assisting managers in dealing with non-disclosure of criminal convictions
 - Ensuring that appropriate checks have been carried out for periods of non-UK residence
- 5.4 Recruitment Department will ensure:
- All job adverts include a reference to DBS checks if required for the post
 - Information is available on the DBS process, the secure handling and storage of DBS Disclosure information, DBS Recruitment of Ex-offenders Policy Statement and DBS Code of Practice
 - DBS Disclosures indicating a conviction are brought to the attention of an appropriate member of Recruitment and the relevant appointing Manager
 - DBS checks are recorded on the Electronic Staff Record System (ESR).
- 5.5 Interview panels should:

- Ensure that candidates are not unfairly discriminated against and the recruitment and selection process is fair and unbiased.
- Ensure that confidentiality is maintained regarding any convictions disclosed by candidates at any stage of the recruitment process

5.6 Appointing officer is responsible for:

- Satisfying themselves of the identity of the person applying for a disclosure
- Satisfying themselves that the evidence presented is genuine and in line with DBS requirements

5.7 Disclosure applicants are responsible for:

- Providing the necessary evidence of identity checks
- Disclosing all necessary information to enable a DBS disclosure application to be made
- Disclosing all information that could be relevant to the DBS throughout the duration of their work for the Trust

5.8 **Definitions**

Lead Counter signatory – A senior figure within the Trust's employment who has overall responsibility for the use of DBS checks at the Trusts and is able to authorise the appointment of counter-signatories.

Counter signatory – A person within the Trust who is registered with the DBS to countersign applications and receive the Disclosure Certificate.

ID Checker – A person within the Trust who verifies identification documents face to face with candidates.

Disclosure Certificate – A certificate that proves criminal record information depending upon the type of disclosure requested.

6 DISCLOSURE AND BARRING SERVICE

On 1st December 2012 the Criminal Records Bureau (CRB) merged with the Independent Safeguarding Authority (ISA) to become the Disclosure and Barring Service. The services and processes remain the same.

7 LEVEL OF CHECKING AND ELIGIBILITY

Where a position is eligible for a check the Trust must make it clear to the applicant that any offer of employment will be subject to a satisfactory DBS check. The DBS check must only be carried out once a conditional offer of employment has been made.

The applicant must also be informed that any offer of employment may be withdrawn if they knowingly withhold information, or provide false or misleading information. Existing staff may be subject to disciplinary action and possible dismissal if they knowingly fail to disclose relevant information in relation to their DBS check or barred list status.

However a possession of a criminal conviction does not automatically make an applicant unsuitable for employment in the Trust.

Standard Level Check

Standard checks contain 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 that are not subject to the filtering rules which came into force from 29th May 2013. Most of the relevant convictions in Scotland and Northern Ireland may also be included.

Eligibility for Standard Checks

A standard level DBS check is to be carried out on candidates whose work is listed in the Exceptions Order i.e. a specific profession or where the type of work enables the person to have '***access to persons in receipt of such services in the course of their normal duties***'. 'Access' only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is limited or incidental contact with patients, i.e. 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.

Positions that purely involve having access to patient records or data are not covered under the terms of the Exceptions Order and therefore are not eligible for a DBS check.

The Trusts are able to request standard DBS checks for some professions within the health and social care sectors not considered as Regulated Activity. Examples of these are:

- Chartered accountant / certified accountant
- Legal executive
- Financial services positions which have to be registered with the Financial Services Authority
- Directors and managers which have final authority to issue payments

A full comprehensive Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 List can be found on the direct.gov website.

Enhanced Level Check

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

Eligibility for Enhanced Checks

There are two levels of enhanced check;

Enhanced DBS with a barred list check

Individuals seeing work in a **Regulated Activity** (see definition below) must also be checked against the Children's and/or Adults Barred lists. Only with an Enhanced DBS can a check be made against the children's and/or adults' barred list, depending on the role under consideration.

Enhanced DBS check only

The number of individuals in regulated activity has been reduced, some posts which no longer fall into the regulated activity may still be eligible for an enhanced check. However it is not envisaged that a large number of positions will fall into this category, the majority of positions within the NHS which were previously considered as regulated activity will continue to do so under the new definition.

REGULATED ACTIVITY

There are six categories with the new definition of regulated activity, these include where the individual will be providing any one of these activities as part of their role:

- **Healthcare**
Any health care professional providing health care to an adult/child, or anyone who provides health care to an adult/child under the direction or supervision of a health care professional.
- **Personal Care**
Anyone who provides physical assistance; prompts and supervises; and/or trains, instructs or offers advice to adults/children because of their age, illness or disability relating to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails. (This excludes any physical assistance for hair care).
- **Social Work**
Activities include assessing or reviewing the need for health or social care services, and providing ongoing support to clients.
- **Assistance with cash, bills or shopping**
For an adult because of their age, illness or disability
- **Assistance with the conduct of their own affairs**
e.g. power of attorney
- **Conveying services**
Drivers who transport an adult because of their age, illness or disability to or from places where they are able to receive health care, personal care or social care. E.g. patient transport service driver, ambulance technicians, hospital porters for patients

Children's Additional Regulated Activity

In addition to the above, regulated activity also includes where an individual is providing 'unsupervised' teaching, training, instruction, caring for or supervision of children where these activities are undertaken 'frequently'.

Frequently is determined as once a month or more / three or more days in any 30 day period or overnight between the hours of 2am and 6am.

Note - children's hospitals are no longer listed as a 'specified place' and therefore to be eligible for a check individuals will have to provide regulated activity. Where an individual is not providing regulated activity they may still be considered for eligibility to obtain a standard DBS check

Examples of posts not considered eligible for DBS checks:

- Positions that purely involve having access to records / data are NOT covered under the Exceptions Order and therefore are not eligible for a standard or enhanced DBS check.
- Staff in GP surgeries who do not provide healthcare (e.g. receptionists / cleaners) will not be in regulated activity.
- A hairdresser or beauty therapist based on a hospital site to cut patients hair or provides manicures for anyone who would *like* one would NOT be engaging in regulated activity
- The legal limit for DBS check is 16 therefore DBS checks must not be requested for individuals aged under 16, no matter if they are engaged in regulated activity
- Students aged 16-18 who are on work experience placements engaging in an activity with vulnerable groups will not be required to have a DBS check on the basis that the roles they are undertaking will involve them observing or carrying out minor duties under full supervision.

It is illegal to carry out a DBS check on any post that is not eligible for a check and to do so could make the Trust liable for legal action.

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

8 PROCEDURE**8.1 Recruitment**

All offers of employment will be made on condition of receipt of a satisfactory disclosure at the appropriate level for the post. The decision in respect of the eligibility and level of disclosure will be the responsibility of the Recruiting Manager, with the guidance of Recruitment Manager, and will be subject to the following principles:

- Only the applicant successful at interview will be required to complete the DBS application documentation.
- Applicants will be advised of the level of disclosure required and will have access to a copy of the guidelines.
- All applicants will complete a self declaration form as part of the pre-employment check process.
- Full assessment of the relevance of a criminal record will be undertaken in accordance with the Positive Disclosure Guidance to ensure a fair and consistent approach across the Trust.
- Applicants must be advised that, when a conditional offer is made, the offer cannot be confirmed until the appropriate information has been received / considered.

Atlantic Data - Online DBS Services

The Trusts carry out the DBS checks through a Department of Health approved provider. The Recruitment Department requests the level of check and verifies the individuals ID paperwork. The individual is then able to complete the check online. Atlantic Data will alert the Recruitment Department when the check is complete and if it is clear. Should a disclosure be made this is not accessible through Atlantic Data, the individual has to produce the DBS certificate to the Recruitment Department for verification. The disclosure certificate is only issued to the applicant.

8.2 Self Declaration Forms

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 ask candidates to declare information regarding:

- Criminal convictions (spent or unspent dependant on the post)
- Counter-fraud investigations
- Dismissal by reason of misconduct
- Fitness to practice proceedings

Self declaration information must be handled, stored and destroyed in the same way as DBS check information and should be destroyed in line with the DBS. Once a decision has been made to appoint or not, it should be kept for no longer than 6 months from appointment or 6 months from when the applicant has been unsuccessful. Self declaration forms are held with the Recruitment Department

8.3 Starting work before the return of a disclosure

It is strongly recommended that the individual is not permitted to start work in any form of 'regulated activity' until the outcome of the DBS check is known. In exceptional circumstances, where the 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:

- Trust DBS disclosure is being processed
- Clear self declaration form has been submitted

- Satisfactory references have been received, at least one of these must be the most recent employer
- A copy of the individual's latest DBS is submitted and should be clear of any convictions
- Individual is not working with children
- Safeguards are put in place until the DBS has been received

The risk assessment form must be completed by the Hiring Manager and a member of the Recruitment Department and authorised by the appropriate Director (or nominated Deputy). See Appendix 4.

8.4 Assessing the relevance of criminal records

The suitability for employment of a person with a criminal record will vary depending on the nature of the job and the details and circumstances of the 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 weighted against the risk assessment for the job. To facilitate this process, an individual's criminal record should be assessed in relation to the tasks they will be required to perform and the circumstances in which the work is to be carried out.

The individual will be given the opportunity to discuss the information with the Recruitment Manager and/or Hiring Manager and the following will need to be considered when deciding on the relevance of offences to particular posts:

- The seriousness of the offence and its relevance to the safety of groups such as patients, service users and visitors
- Whether the post involves any direct responsibility for finance or items of value
- Whether the post involves direct contact with the public / patients / service users
- The length of time since the offence
- Whether the offence was isolated or part of a history of offending
- Any relevant information offered by the applicant regarding the circumstances which led to the offence being committed e.g. influence of domestic or financial difficulties
- Whether the offence involved a child and/or vulnerable adult
- Whether the applicant's circumstances have changed since the offence was committed making reoffending less likely
- Whether the behaviour could pose a risk to patients / service users
- Does the post involve one-to-one contact with children and/or vulnerable adults
- What level of supervision does the post holder receive
- Has the applicant fully disclosed the offence on the self-declaration documentation and shown any degree of remorse, or otherwise, and demonstrated their motivation to change
- Has the offence come to light retrospectively
- Establish whether any regulatory body (NMC / HPC / GMC etc) took any action following the conviction

The answers to such questions should help determine the relevance of convictions to specific posts. For example, child pornography offences would almost certainly disqualify a person required to work with children and/or vulnerable adults; some violent offences would be relevant to positions involving unsupervised contact with the public

and patients; fraud should be considered in relation to posts involving the handling of money.

Where the ISA has made a barring decision against one or both of the barred lists, it will be illegal for an employer to allow them to engage in regulated activity with the vulnerable group.

Where a Disclosure reveals the existence of a criminal record, the Recruitment Department will check to ensure that this information has been declared by the applicant prior to appointment on their application form, at interview and on their Self Declaration Form. Should a criminal record not be declared this will be discussed at the review panel meeting.

The circumstances for the criminal record and the reason for non-declaration by the applicant will be investigated. The investigation may lead to disciplinary action under the Trusts Disciplinary procedure or withdrawal of an employment offer, if it is considered that the applicant deliberately withheld information about their criminal record.

8.5 Portability of DBS checks

Portability refers to the re-use of a DBS check (disclosure), obtained for a position in one organisation and later used for another position in another organisation.

On 17 June 2013 the DBS introduced a new "update service" which makes checks portable. Individuals register with the service and the Trusts can check the status of the DBS through an online DBS check. If an individual has subscribed to the Update Service, and the DBS remains current and unchanged, there is no need to request a new DBS. The Trusts will not accept any other types of DBS checks from other organisations, with the exception of Doctors in Training. (see section 9.2)

8.6 Existing employees / changing jobs within the same organisation

A new DBS check is not always required where an existing member of staff moves jobs within the same organisation 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 are moving to a position that now requires them to have a check (the level of check is dependent on the roles and responsibilities of the job)
- The employee has previously had a lower level check and are moving into a regulated activity, which now requires them to have a higher level disclosure under the terms of the Safeguarding Vulnerable Groups Act
- The new position requires them to work with a different vulnerable group and they are required to have a check against one or both barred lists
- There has been a break of service for more than three months between leaving the old position and taking up the new position

- There is a concern about that individual's suitability for the post
- It is mandatory for employees changing post to complete a new self declaration form.

The Trusts reserve the right to ask existing employees in relevant positions for a disclosure check to undertake a fresh DBS check if their actions or activities give cause for concern. The grounds for this could be allegations of inappropriate behaviour made by a child or vulnerable adult, or a colleague, parent, carer or member of the public. In such circumstances a full investigation will be carried out in accordance with the relevant Trust policies.

If during the course of employment an employee is arrested, charged, cautioned or convicted of any criminal offence, they must notify the circumstances to their line manager as soon as possible, this includes any pending court appearance, bind-overs, absolute and conditional discharges. A failure to disclose such information to the Trusts may result in disciplinary action, including dismissal, being taken by the Trust.

Employees are also required to declare if they are the subject of a Police investigation, in the UK or abroad, which may lead to one of the above sanctions. The reason for this disclosure is for The Trusts to protect its reputation and safeguard the interests of its patients, and to provide appropriate support to the individual employee. Failure to disclose such information may result in disciplinary action being taken by the Trust.

Any employee refusing to comply with a DBS Disclosure request will be advised that their deliberate and unreasonable refusal to carry out this fundamental legal requirement and/or to comply with this contractual obligation will lead to the employee being subject to disciplinary action, including dismissal, in line with the Trust's Disciplinary/Capability Policy and Procedure.

The Trusts will assure employees that any information about convictions that are not relevant to their current post will have no impact on their continued employment with the Trust.

8.7 Staff Recruited From Overseas

When recruiting employees or engaging students from abroad a 'certificate of good standing/conduct' must be obtained before the employee leaves the country they are currently residing.

The Disclosure and Barring Service can only access criminal records held on the Police National Computer (PNC) in England, Wales and Scotland (there is also some conviction data held on the PNC from Northern Ireland)

Where the position meets the criteria for a disclosure check, The Trusts will only request a DBS check if they have previously lived in the UK.

All overseas police checks will be in accordance with that country's justice system and with UK requirements.

9 STAFF NOT DIRECTLY EMPLOYED BY THE TRUST

9.1 Agency workers and locums

Agencies used by the Trusts should be approved by Procurement. The contract stipulates 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. The Trusts takes assurances from the Procurement Contract that the appropriate checks are in place.

In exceptional circumstances where an approved agency cannot fulfil the assignment and a non-approved Agency is used, the Hiring Manager, must assure themselves the appropriate employment checks have been undertaken and that they are satisfied that the individual should be working. An agency profile must be submitted to the Temporary Staffing Department give assurances that the appropriate checks are in place.

If the agency worker is requested out of office hours, it is the Hiring Manager's responsibility to verify with the agency that the appropriate checks are in place.

9.2 Doctors in Training

Doctors on educationally-approved rotational training will be regarded as being in continuous employment during the term of training and therefore required to have a DBS check, as a minimum, once every three years, rather than each time they change rotation.

Where the doctor will be working with children The Trusts will need evidence that the DBS check was at the correct level and that a check has been made against the PoCA List (pre October 2009), or Children's Barred List (post October 2009). In these circumstances The Trusts will not require a further check until the 3 year period has elapsed.

Where the post involves working with vulnerable adults the Trusts will need evidence that the check was at the correct level and that a check had been made against the Vulnerable Adult's Barred List (post October 2009). Doctors appointed to training programmes before October 2009 who hold a valid enhanced DBS check within the last 3 years will not normally be required to have a fresh check against the vulnerable adults list until that three year period elapses.

In all cases the Trusts will seek written assurances from the host/previous employer that appropriate satisfactory clearances have been obtained within the last 3 years. If the above criteria cannot be met a Risk Assessment will need to be carried out by the Supervising Consultant and Medical Staffing to determine whether or not the doctor can commence in post prior to receipt of a satisfactory DBS clearance.

The Trusts may undertake DBS checks more frequently than 3 years, but any additional checks must be proportionate to risk e.g. where assurances cannot be obtained from the host/previous employer, or the new post changes the level of check required under the terms of the Safeguarding Vulnerable Groups Act.

9.3 Volunteers

The trigger for a DBS check is the same regardless of whether the individual is a paid employee or unpaid volunteer. Should a volunteer engage in paid employment with the Trust, a fresh DBS disclosure must be completed, regardless of level.

9.4 Private Contractors / Maintenance Workers etc

In many cases, the work or services of the contractor, trade or maintenance worker will either not be eligible for a check (because they do not have access to patients) or will not legally be required to have a criminal record check. For example, many clinical specialists who train staff to use equipment, engineers, electricians, plumbers, window cleaners, gardeners would not have access to patients and therefore would not be eligible.

It should be noted that it is illegal to insist that a criminal record check on all contracted staff is a condition of a tender, unless the services provided meet the eligibility for a check.

The requirement for a DBS check and level of check (standard or enhanced) in all cases is dependent on the duties and responsibilities they will be undertaking.

Further details can be obtained from the Recruitment Department.

9.5 Work experience placements

Work experience placements will not be required to have a DBS check, however it is expected that these people will be working in areas that have undertaken a risk assessment and will be working under appropriate levels of supervision at all times.

9.6 Split Contracts / Honorary Contracts / Research Passports

Staff who hold a substantive post within one Trust but are required to work in another NHS organisation do not necessarily need a fresh DBS check. The Trust must seek written assurances from the individual's host / substantive employer that appropriate checks have been carried out at the correct level.

The Trust may request a fresh DBS check if assurances by the host organisation cannot be obtained.

10 TRAINING AND AWARENESS

10.1 Advice and support will be provided by the HR team to support staff and managers in adhering to this policy and their understanding of dealing with disclosure information.

10.2 The HR team will raise awareness of this policy through the publication of information on iCare and Contact and to advise staff of changes to the policy through the staff bulletin and ratification processes.

11 REFERENCES

This policy should be read in conjunction with the following:

- Disclosure and Barring Service Code of Practice
- NHS Employers – Employment Checks Guidelines
- Department of Health – Regulated Activity (adults)
- Guidance for Line Managers when Receiving Positive Disclosure and Barring Service (DBS) Disclosures
- Recruitment and Selection Procedure
- Equal Opportunities Policy
- Policy Statement: Recruitment of Ex-offenders
- Policy statement: Secure storage, handling, use, retention and disposal of disclosure and disclosure information

12 CONTACT DETAILS

12.1 Any queries regarding this policy should be directed to the HR team of the Directorate of Workforce and Organisational Development.

- Recruitment Manager – 01803 656753 (ext. 56753)
- HR Helpline – 01803 655754 (ext. 55754)
- HR department – 01803 654506 or 01803 210475

13 MONITORING, AUDIT AND REVIEW PROCEDURES

13.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the Directorate of Workforce and Organisational Development unless legislative changes determine otherwise.

Appendix 1

RECRUITMENT OF EX-OFFENDERS

1. South Devon Healthcare NHS Foundation Trust (from here on in known as SDHT) is the umbrella organisation for criminal records checks therefore also manages the process for other healthcare providers in the South Devon area.
2. As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, SDHT 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.
3. SDHT is committed to the fair treatment of its staff, potential staff or users of its services, regardless of gender, colour, ethnic or national origin, age, socio-economic background, disability, religious or political beliefs, family circumstances, sexual orientation, other irrelevant distinction, or offending background.
4. The policy on the recruitment of ex-offenders, is made available to all Disclosure applicants at the outset of the recruitment process.
5. 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. Candidates will be selected for interview based on their skills, qualifications and experience.
6. A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. Disclosures using the Disclosure and Barring Service will only be required for posts which are considered eligible for checks. For those positions where a Disclosure is required, job adverts and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position. In such circumstances the offer will be conditional on the outcome of the DBS disclosure.
7. Where a Disclosure is to form part of the recruitment process, all applicants called for interview are encouraged to provide details of their criminal record at this stage in the application process. It is requested that this information is sent under separate confidential cover, to a designated person within SDHT and the Trust undertakes that this information is only be seen by those who need to see it as part of the recruitment process.
8. The Trusts ensure that all those who are involved in the recruitment process have been suitably briefed to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
9. A Central review panel will determine the outcome of employing a person with a criminal record in order to ensure equity across the organisation.



10. At interview, or in a separate discussion, there should be an open and measured discussion 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.
11. The Trust undertakes to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.
12. Having a criminal record will not necessarily bar an individual from working. This will depend on the nature of the position and the circumstances and background of the offence(s). However, any refusal to apply for a disclosure will be taken into account in the recruitment decision. Issues that the Trust will take into account in deciding whether to offer an applicant a position will include:
 - whether the conviction or other matter revealed is relevant to the position in question;
 - the seriousness of any offence or other matter revealed;
 - the length of time since the offence or other matter occurred;
 - whether the applicant has a pattern of offending behaviour;
 - whether the applicant's circumstances have changed since the offending behaviour
 - other relevant matters, and
 - the circumstances surrounding the offence and the explanation(s) offered by the convicted person.
13. If a candidate fails to disclose a criminal record after subsequently being employed, they may be dismissed on the grounds of failure to declare information / fraud, as this constitutes an act of gross misconduct as per the Trust's policy.

Appendix 2

POLICY STATEMENT: SECURE STORAGE, HANDLING, USE, RETENTION & DISPOSAL OF DISCLOSURE AND DISCLOSURE INFORMATION

General principles

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust, South Devon Healthcare NHS Foundation Trust & Torbay and Southern Devon Care 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 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters, which is available to those who wish to see it on request.

Storage and access

Disclosure information should be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

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 Disclosure(s) information has been revealed and 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 was requested and for which the applicant's full consent has been given.

Retention

Once a recruitment (or other relevant) decision has been made, the Trust does not keep Disclosure information for any longer than is necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six months, we will consult the DBS about this and will give full consideration to the data protection and human rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

The Trusts will only record the following:

- Date of a Disclosure
- Name of individual
- Type of Disclosure
- Post in question
- Unique issue number
- Recruitment decision



Disposal

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, notwithstanding the above, we may keep a record of the date of issue 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.

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

Appendix 3

DBS RISK ASSESSMENT

Employees with regular access to Children and/or Vulnerable Adults should not commence in employment until the Trust has received a satisfactory DBS clearance.

In exceptional circumstances where there are significant operational difficulties the candidate may commence employment providing the following steps are followed:

Step 1 – *safeguarding measures are in place*

Step 2 – *risk assessment completed by Hiring Manager*

Step 3 - *approval from the appropriate Director or nominated Deputy*

| | | | |
|--|--------------------------------------|-----------------------------|--|
| Candidate | | Job Title | |
| Manager | | Job Title | |
| Department | | | |
| STEP 1: Safeguarding measures (for completion by Recruitment Department) | | | |
| Date disclosure sent to DBS | <input type="checkbox"/> Yes - date: | <input type="checkbox"/> No | |
| Clear self declaration information | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| Satisfactory reference from most recent employer | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| Copy of previous DBS (CRB) submitted | <input type="checkbox"/> Yes - date: | <input type="checkbox"/> No | |
| Is the previous DBS (CRB) clear | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| Satisfactory registration check (if applicable) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| If answered 'YES' to all the above send form to Hiring Manager to complete Step 2. If answered 'NO' the candidate should not commence employment. | | | |
| STEP 2: Risk assessment (for completion by Hiring Manager) | | | |
| What is the impact on the service and how detrimental would it be for the Trust if this individual did not start until the DBS clearance is received <u>and</u> confirm there is no alternative cover available for this post in the interim? | | | |
| | | | |
| Safeguards are in place to restrict access to children and/or vulnerable adults | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| Candidate will not be left unsupervised with vulnerable groups | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| By signing this form you are accountable for the safety of clients who may come into contact with the named individual whilst waiting for their DBS clearance. | | | |
| Manager's Signature: | | Date: | |
| <i>Once complete send this form to the appropriate Director or nominated Deputy</i> | | | |
| STEP 3: Approval from Director or nominated Deputy | | | |
| Electronic Signature: | | Date: | |

Appendix 4

DBS FLOWCHART

