

The Newcastle upon Tyne Hospitals NHS Foundation Trust

Employment Policies & Procedures

Pre-Employment Checks & Use of the Disclosure and Barring Service

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GENERAL POLICY STATEMENT

The Trust has a duty of care to protect patients from harm, particularly children and vulnerable adults.

The Trust seeks to comply with NHS Employment Check Standards, by undertaking certain pre-employment checks on new employees before they are appointed and certain post-appointment checks on existing employees when they are changing their job.

This policy applies to all applications for Trust positions (prospective employees) and staff in ongoing NHS employment. This includes permanent staff, staff on fixed-term contracts, volunteers, students, trainees, contractors, highly mobile staff, temporary workers (including locum doctors), those working on the Trust Bank, and other workers supplied by an agency.

1. Aims

To ensure:

- all staff new into post meet the requirements of legislation and the NHS Employment Check Standards
- all staff removed from regulated activity on grounds related to safeguarding vulnerable groups are reported to the DBS in accordance with the requirements

2. Duties (roles and responsibilities)

2.1 The Executive Team is accountable to the Trust Board for ensuring Trust-wide compliance with policy.

2.2 Directorate Managers and Heads of Service are responsible to the Executive Team for ensuring policy implementation.

2.3 Managers are responsible for ensuring policy implementation and compliance in their area(s).

2.4 Human Resources are responsible for ensuring policy implementation and compliance in recruitment of new, existing NHS staff and existing employees.

2.5 Staff are responsible for complying with policy.

3. Definitions

Disclosure - The term that is used to describe the service provided by the Disclosure and Barring Service (DBS) and the document issued to the individual when a DBS check has been completed

4. Pre-employment checks

4.1 The required checks cover:

Check	External Candidate Process	Internal Candidate Process
<p>Criminal record checks Checks are mandatory for all staff who have contact with children and/or vulnerable adults in the course of their normal duties, or who are in a position of Trust, The requirement for a DBS check should be made clear in the job description, person specification and advert.</p>	<p>All individuals to complete a model declaration form (form A for those whose role requires a DBS check and form B for those who do not – see 5.54)</p> <p>Make Disclosure application or Update Service Status Check to the Disclosure and Barring Service (DBS) and where appropriate an ‘Adults First’ check (see 5.18 – 5.22 below)</p> <p>Request Children List and/or Vulnerable Adults List check where appropriate</p> <p>Request overseas police check where necessary</p> <p>Evidence must be recorded on ESR</p>	<p>A previous DBS check may be accepted, ensuring there has been no break in service of more than 3 months and the check is fit for purpose (i.e. SD or ED). This must be evidenced on the file</p>
<p>Employment history and reference including competence, personal qualities, disciplinary record</p>	<p>For all new appointees coming into the NHS for the first time the Trust will seek to validate a minimum of three years continuous employment and/or training including details of any gaps in service. The number of references may differ for each individual, depending on how many episodes of employment/training they may have had in the last three years</p>	<p>Previous reference (and employment history checks) checks undertaken by the Trust may be accepted provided they have been undertaken in accordance with the NHS Employment Check Standards, are evidenced on file and the Recruiting Manager does not wish to seek additional information from the current manager.</p>

	<p>prior to the date of interview. Where an individual has been with one employer for three years or more, one confirmation of employment/training is sufficient, provided that all requested details have been confirmed by the previous employer. Where a prospective employee has changed employment frequently within the last three years, a sufficient number of confirmations must be obtained to cover the continuous three years history.</p> <p>Where there are gaps in employment or training history, employers will need to seek appropriate assurances from the individual, via a personal statement and, where in any doubt, should obtain suitable personal references.</p> <p>Where an appointee is moving from another NHS organisation references will be sought from the individual's current/last NHS employer. The Trust will determine whether any additional references are required to provide adequate assurances</p>	<p>The Recruiting Manager should confirm, via email, that they have sought additional information or that they have decided not to seek this.</p>
<p>Professional Registration and qualification (if necessary)</p>	<p>Confirm with the professional body for registration (e.g. NMC, GMC, and HCPC) that the individual is registered. Fitness to practice and Alert notice checks must also be carried out.</p> <p>If a qualification(s) is an essential requirement for the position (and is not required for professional registration), request the original certificate, Place a copy on the file</p>	<p>Professional registration, Fitness to practice and Alert notice checks must be carried out and evidenced on file.</p> <p>If qualification(s) requirement has not changed, the previous check can be accepted and should be evidenced on file.</p> <p>Request the original certificate for any additional qualifications that are an essential requirement for the position</p>

<p>Identity Checks</p>	<p>View:</p> <ul style="list-style-type: none"> two proofs of photographic identity (e.g. passport and photo driving licence), and one proof of address (e.g. a utility bill or bank statement); or one proof of photographic identity and two other forms of identity to verify address <p>Documents must be original and at least one document must contain a signature</p> <p>If photographic documentation is not available, refer to lists 2 and 3 of the NHS Employer Check Standard: Identity checks for alternative documentation.</p> <p>Record verification of Identity on ESR</p>	<p>Previous checks undertaken by the Trust may be accepted provided they have been undertaken in accordance with the NHS Employment Check Standards and are evidenced on file. This is subject to;</p> <p>a) there being no significant difference to the current NHS Check Standards and</p> <p>Verification of identity must be recorded on ESR</p>
<p>Right to work</p>	<p>View right to work documents (e.g. passport of a UK or EEA citizen); validate the documents; copy and store</p> <p>Refer to the Prevention of Illegal Working policy for further information.</p> <p>Checks must be evidenced on file</p>	<p>Previous checks undertaken by the Trust may be accepted provided they have been undertaken in accordance with the NHS Employment Check Standards and are evidenced on file. The exception is an employee with temporary leave to remain; repeat checks will be required to ensure continued compliance with legislation.</p>
<p>Occupational Health</p>	<p>Successful candidates sent link to Occupational Health Questionnaire to be completed and returned. Occupational Health reviews questionnaire in conjunction with requirements of role to be offered.</p>	<p>Previous checks undertaken by the Trust may be accepted provided there it was undertaken in accordance with the NHS Check Standards, recorded on file and there is to be no significant change in duties or health.</p>

All the above checks (where applicable) must be completed before an appointment is made. Please refer to 5.23 and 5.48 for exceptions to this provision.

- 4.2 The LET will provide evidence on an annual basis that the employment check standards for Doctors in Training are subject to formal audit and reported to the LET Review Group.
- 4.3 **Agency Workers and Contractors, including Locum Doctors.** Prior to the Trust booking an agency worker or using a Contractor, the Agency and Contractor will ensure that the individual has provided and completed the relevant documentation to satisfy the above NHS Standard checks (refer to the Booking Procedure for Agency Workers, Policy regarding the use of Contractors and Locum Booking Procedure for more information).
- 4.4 It is essential that all persons working in the NHS are trustworthy and reliable. Many problems can be avoided if thorough pre-employment checks are undertaken before a post is filled.
- 4.5 Failure by an individual to provide accurate and truthful information at the time of applying for a position is a serious matter. Where it is found that they intentionally or recklessly provided inaccurate information or withheld information that is relevant to their appointment, they can be dismissed if they are an employee, or in the case of a person seeking employment with the Trust, have their offer of employment withdrawn. Referral will also be made to the Counter Fraud Specialist for consideration of a criminal investigation.

5. Disclosure and Barring Service (DBS) - Background

- 5.1 The Criminal Records Bureau (CRB) was established by the Government in April 2002 to implement Part V of the Police Act 1997. The DBS was established under the Protection of Freedoms Act 2012 and carries out the functions previously undertaken by the CRB for England and Wales and the Independent Safeguarding Authority (ISA) for England, Wales and Northern Ireland. Functions of the CRB and ISA were transferred to the DBS under the Protection of Freedoms Act 2012 and it became operational on 1 December 2012. The DBS provides background checks on individuals for employment related and volunteering purposes. This includes information about criminal convictions, cautions, reprimands and final warnings as well as local police information. These checks help facilitate safer recruitment to protect children and adults.
- 5.2 The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account. Guidance and criteria on the filtering of these cautions can be found on the [Disclosure and Barring Service website](#)
- 5.3 Checks are made by a Registered Body (or Person). These are defined as organisations (or persons) who are likely to ask exempted questions under the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 ("the Exceptions Order").

- 5.4 From 17 June 2013, a DBS [Status] check can be carried out using the DBS on-line Update Service provided the individual is registered with this service - see section 5.25 below. (NB. Where this policy refers to a 'DBS Check' it is intended to mean both a new Disclosure Certificate request and/or performing a Status Check using the Update Service where possible).
- 5.5 An exempted question is one which may not normally be asked in the recruitment process (e.g. do you have any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) by SI 2013 1198), but is required in determining a person's suitability for a particular post due to its role, activities and responsibilities.
- 5.6 The Police Act 1997 (s113A) enables an employer to request a standard criminal record check (a Standard Disclosure) on any individual who is working in a role listed in the Exceptions Order, which includes any employment which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of their normal duties.
- 5.7 The Police Act 1997 (s113B) enables an employer to request an enhanced criminal record check (an Enhanced Disclosure) for the purposes prescribed in the Police Act 1997 (Criminal Records) Regulations 2002 ("the Police Act regulations").
- 5.8 Not all NHS staff are eligible for a criminal record check, it depends on whether their role falls within the Exceptions Order. The level of check (Standard or Enhanced) is dependent on whether the role falls within the Police Act regulations. The Exceptions Order and the Police Act determine eligibility for a check and the level required, but do not prescribe which individuals need to be checked. Eligibility needs to be determined by assessment of role, activities, the level of access to patients permitted to the person and responsibilities of the particular post.
- 5.9 All posts are regarded as being covered by the Exception Order if they:
- a) involve regulated activity relating to children and vulnerable adults as per the current definitions, or before the coming into force of sections 64, 65 and 66 of the Protection of Freedoms Act 2012.
 - b) are concerned with the provision of care services to vulnerable adults and the post holder will have access to vulnerable adults in the normal course of their duties
 - c) any work in a further education institution or 16-19 Academy where the normal duties of that work involve regular contact with children
 - d) are concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of their normal duties.

- e) are entitled for the Financial Conduct Authority or the competent authority for listings to ask exempted questions to fulfil their obligations under the Financial and Markets Act 2000
 - f) require the post holder to be a barrister or solicitor
 - g) are regarded as being in a 'position of trust' (e.g. Chief Executives, Board-level Directors, senior management or finance managers where they are in charge of public funds and/or internal budgets)
- 5.10 All individuals for such posts are required to disclose whether they have any criminal convictions (including those spent), bind-overs, cautions, reprimands and final warnings. This does not include certain spent convictions and cautions which are 'protected' as described in 5.2 above. For further information refer to guidance on the website which can be found [here](#). All Disclosure applications and Status Checks are administered by the Human Resources Department. All Disclosure requests, with the exception of Status Checks and applications processed through the Sensitive Application Process are processed electronically on behalf of the Trust by an external provider under DBS 'umbrella' arrangements.

Standard Disclosure (SDs)

- 5.11 All posts concerned with the provision of health services that undertake work listed in the Exceptions Order (i.e. where the type of work enables the person to have 'access to persons in receipt of such services in the course of [their] normal duties'), including those regarded as being in a position of Trust are eligible for a SD. Appointment to all such posts is subject to a satisfactory SD.
- 5.12 The term 'access' only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is no contact with patients. Posts that purely involve having access to records are not covered under the terms of the Exceptions Order, therefore, are not eligible for a SD, or an Enhanced Disclosure (ED).
- 5.13 SDs contain information on all spent (old) and unspent (current) cautions, convictions, reprimands and final warnings which are not subject to protection under the DBS filtering rules (see 5.2). The Trust will undertake SDs on:
- a) non-clinical posts where the post holder will be required to interact with patients (adults and/or children) as part of normal day-to-day duties, but is not required to have direct physical contact e.g. receptionist, ward clerk, bereavement officer
 - b) non-clinical posts where the post holder will not be required to interact with patients (adults and/or children) as part of normal day-to-day duties, but may have incidental contact e.g. domestic assistant on a ward, Estates staff working in a patient area
- 5.14 SDs cannot be used to request a *barred list check.

(* Barred lists contain details of individuals who are barred from working with children and/or adults).

Enhanced Disclosure (EDs)

- 5.15 EDs contain the same information as a SD, but may also include local police (non-conviction) information (i.e. 'approved information') if the police feel it is relevant to disclose. It is a criminal offence to pass on details of this information without written authority from the Police.
- 5.16 All posts that undertake regulated activity with children and/or adults as defined by the Safeguarding Vulnerable Groups Act (amended by the Protection of Freedoms Act 2012) will be subject to an ED and relevant barred list check. (NB For a barred list check to be carried out the relevant section of the Disclosure application must be completed).
- 5.17 Posts that do not fall under the new (September 2012) definition of regulated activity, but do fall under the definitions of regulated activities prior to September 2012 will be subject to an ED without a barred list check.

DBS Adults First Service

- 5.18 DBS Adult First is a service provided by the Disclosure and Barring Service that can be used in cases where, exceptionally, a person is permitted to start work under supervision with adults before a full DBS Certificate has been obtained, subject to receipt of confirm that no match exists for this person on the adults barred list. DBS Adult First is not a substitute for a full DBS Certificate and care must be taken when making recruitment decisions.
- 5.19 DBS Adult First checks should be used only in exceptional circumstances and where appropriate authorisation has been provided (see 5.20) and when absolutely necessary. Requests carry strict criteria:
- the position must require a criminal record check by law
 - the position must be eligible for access to the DBS adults' barred list
 - the Trust must have requested a check of the DBS adults' barred list on the DBS application form
- 5.20 Adults first checks require the following authorisation;
- Non-medical staff: Directorate Manager and Head of Workforce Engagement and Information, HR.
 - Medical staff: Medical Director and Head of Medical and Dental Resourcing & Trust Reward.

Full consideration should be given to the ability to demonstrate sound reasons for not waiting for the full disclosure, additional safeguarding measures to be put in place until the outcome of the full disclosure is known and the additional

cost associated with the use of the Adults First Service. Considerations should be recorded on the individual's personal file.

- 5.21 The employee should be informed that employment remains conditional until a full satisfactory enhanced DBS disclosure has been received.
- 5.22 A DBS Adult First check is not appropriate where a person intends to work with both children and adults. Those working with both groups will need to wait for the DBS Certificate to be returned to find out whether a person is barred from working with children. There is no equivalent quick check of the children's barred list.

Regulated Activity for Adults (persons aged 18 years or over)

- 5.23 The new definition of regulated activity relating to adults defines the activities provided to any adult as those which, if any adult requires them, means the adult is considered vulnerable at that particular time.
- 5.24 There are six categories described in the Safeguarding Vulnerable Groups Act 2006 within the new definition of regulated activity. Regulated activity for adults is:
 - a) Providing health care – provision by a health care professional, or under the direction or supervision of one.
 - b) Providing personal care – physical assistance with eating, drinking, toileting, washing, bathing, dressing, oral care or care of skin, nails or hair (but not where this involves only cutting hair) in connection with the adult's age, illness or disability. This also includes anyone who trains, instructs or provides advice on the provision of personal care, or those who prompt and then supervise an adult to do one of the above.
 - c) Providing social work – the activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing on-going support to clients.
 - d) General household matters - assistance with managing a person's cash, bills and/or shopping on their behalf because of the adult's age, illness or disability.
 - e) Assistance in the conduct of an adult's own affairs (under formal appointment), for example, by virtue of an enduring power of attorney.
 - f) Conveying adults to, from, or between places where they receive health care, relevant personal care or social work because of their age, illness or disability. This includes Patient Transport Service drivers and hospital porters, but does not include family and friends, or licensed taxi drivers, or licensed private hire drivers. Trips for pleasure are also excluded.

There is no requirement for a person working or volunteering with adults to do the activities outlined above a certain number of times within a certain period before they are regarded as engaging in regulated activity.

A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

Regulated Activity for Children (persons aged under 18 years)

5.25 The new definition of regulated activity relating to children is set out in three parts by the Protection of Freedoms Act 2012. A person can be in regulated activity because of what they do (activities), where they work (establishments) or who they are (specified position). The new definition of regulated activity is described in detail in the Safeguarding Vulnerable Groups Act 2006.

Regulated activity for children is:

- a) *Unsupervised activities: teaching, training, instruction, caring for or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children.

A person carrying out such activities under regular day-to-day supervision by another person, who is also engaging in regulated activity, is not undertaking regulated activity. The supervision must be reasonable in all the circumstances to ensure the protection of children.

Within the Trust, employees (who are not healthcare professionals) may or may not be deemed to be working under reasonable supervision. To avoid doubt and safeguard children, such employees should be regarded as undertaking regulated activity and be subject to an ED with barred list check.

- b) *Work for a limited range of establishments ('specified places') with the opportunity for contact with children, for example, schools, children's homes and childcare premises. A volunteer carrying out supervised activities under reasonable day to day supervision by another person, who is also engaging in regulated activity, is not undertaking regulated activity, however, a supervised employee working for a specified establishment does come under regulated activity.

Children's hospitals are **not** categorised as 'specified places'.

The requirement to consider all other positions that have the opportunity for contact with children against eligibility for an ED does not apply.

Activities by a person contracted (or volunteering) to provide occasional or temporary services (which are not teaching, training or supervision of children) is not regulated activity e.g. maintenance contractors.

* Work under a) or b) above is regulated activity only if it is done regularly. "Regularly" means:

- i. by the same person
 - ii. in the NHS this is once a month or more often, or
 - iii. on 4 or more days in a 30-day period, or
 - iv. overnight (even if carried out only once). (“Overnight” means at any time between 2am and 6. am, and with an opportunity for face-to-face contact with children)
- c) Providing healthcare – provision of all forms of health care relating to physical or mental health including palliative care and procedures similar to medical and surgical care, or health care under the direction or supervision of a regulated health care professional. Health care that is not by a health care professional is not regulated activity.
- d) Providing personal care – physical assistance (or prompting with supervision or training, or providing advice or guidance) in connection with: eating or drinking; toileting; washing, bathing or dressing for reasons of age, illness or disability.
- e) Registered child minding and foster-caring.
- f) Day to day management or supervision of any person who is engaging in regulated activities, is also regulated activity.

The activities described in points c), d), e) or f) are regarded as regulated activity, irrespective of how many times the individual in that role will carry out these duties with children.

Barred Lists: Adults and Children

- 5.26 It is an offence under the Safeguarding Vulnerable Groups Act for any person who is barred from working with adults and/or children to apply for, or engage in regulated activity, or for an employer to knowingly permit a person to engage in regulated activity from which they are barred.
- 5.27 Checks against the barred lists apply to all regulated activity and should be completed before an individual is permitted to undertake any form of regulated activity.

When to request a DBS check

- 5.28 In exceptional circumstances, a risk-based decision may be made to appoint or temporarily redeploy whilst the outcome of a DBS check is awaited – for example, in order for the individual to do their induction training, or to undertake other duties which would not include them engaging in any form of regulated activity. In any such cases, the following will apply:
- a) An appropriate DBS check must have been applied for (and an Adults First Service check if appropriate).

- b) Safeguards must be put in place to manage the appointee (i.e. supervision, restricted duties and access to patients) until the Disclosure has been obtained. The safeguards must be signed off in advance by the Directorate Manager (or person with equivalent or higher authority) – see Appendix 2

The employee should be informed in writing that employment remains conditional until a full satisfactory enhanced DBS disclosure has been received.

- 5.29 A new DBS check is not required where existing employees move jobs within the Trust and their roles and responsibilities have not changed. The trigger for a new check is where:
- a) They have never had a DBS check before and are moving to a position that requires one
 - b) Their role has changed and there is a requirement for a higher level check, or a check against one or both barred lists e.g. a Staff Nurse on an adult ward moving to a paediatric ward.
 - c) There is a concern about the employee's suitability for the post
 - d) The employee has had a break in service of more than 3 months between leaving their old post (with the Trust) and starting the new one, (e.g. career break, secondment, retired returner)

DBS Update Service

- 5.30 The DBS Update Service became available on 17 June 2013. It provides the facility for an individual to (voluntarily) register with the service which will keep their DBS record status up to date at all times. Registration is subject to Disclosure application (which must be made by the employer/prospective employer) and an annual subscription fee. After registering (and consent from the individual), their DBS status can be checked on-line instantly. Provided the status check meets requirements and is satisfactory, there is no need for a fresh Disclosure application. Staff will be made aware of the Update Service and encouraged to register whenever a new Disclosure application is made. The individual will be liable to pay the annual subscription fee.
- 5.31 To carry out a Status Check, the Trust must see an original copy of the current DBS certificate and use specified information from it to apply for the check:
- DBS certificate number
 - Current surname of the DBS certificate holder – as recorded on the DBS certificate
 - Date of birth of the DBS certificate holder – as recorded on the DBS certificate

5.32 The Trust is only able to use a Status Check from the Update Service where all of the following conditions are satisfied:

- The individual is registered with the service
- Their consent has been obtained
- The Trust is legally entitled to carry out a Standard or Enhanced DBS check, including barred list check
- The check meets requirements and is satisfactory

Students

5.33 DBS checks apply to students who, as part of their professional qualification, are required to carry out a clinical placement where they will undertake work that falls within the Exceptions Order, Police Act regulations and/or regulated activity.

5.34 The Education Provider will carry out a DBS check on students before they commence training. Written assurance must be sought that the Education Provider has carried out an appropriate check at the correct level. Where this assurance cannot be obtained a new DBS check should be obtained.

5.35 Students may take up their placement before a Disclosure is obtained provided a risk assessment is completed (see Appendix 2) and appropriate measures are in place e.g. full supervision.

5.36 A student who takes up employment with the Trust after training is subject to fresh pre-employment checks in accordance with the Trust's Recruitment and Selection policy.

Trust Bank Workers

5.37 Bank Workers who do not hold a substantive NHS contract must have the necessary level of check carried out on an annual basis. Where possible, this should be completed using the Update Service.

5.38 A Bank Worker could potentially work in any area within the Trust, therefore, all professionally qualified healthcare workers are subject to an ED application including a relevant barred list. All other bank workers excluding A&C staff are entitled to an ED without barred list check.

5.39 The Trust Bank will handle all matters relating to DBS checks for Bank Workers.

5.40 If an employee with an existing disclosure and relevant barred list(s) check (where appropriate, as per 5.33) joins the Bank, they will be subject to satisfaction of the conditions contained in paragraph 5.24 above before they can start.

- 5.41 If an employee joins the Bank and does not have an existing disclosure, the relevant application must be made including the relevant barred list(s) check (where appropriate, as per 5.33) prior to the individual commencing work.
- 5.42 If a Bank Worker is recruited from outside the Trust, a new disclosure including a relevant barred list(s) check (where appropriate, as per 5.33) *should be obtained before they start. (*See paragraph 5.23 above for exceptions).

Agency Workers

- 5.43 Agency worker providers are required to carry out the necessary level of check on an annual basis.
- 5.44 Authorised bookers of agency workers should ensure that agency staff booked to work in a post which requires an ED/SD have a satisfactory Disclosure including a relevant barred list(s) check (where applicable) for the work they will be doing before they undertake that work. The agency must confirm to the authorised booker:
- a) Level of Disclosure obtained (Standard or Enhanced)
 - b) Date Disclosure was issued or Status Check performed (must be within the last 12 months)
 - c) Barred list(s) checked
 - d) Result of checks
 - e) Whether any 'approved information' was disclosed

The authorised booker must confirm (or otherwise) that all checks are satisfactory and fit for purpose.

Clinical Access Placements, Honorary Contract Holders, Observers, Volunteers

- 5.45 The eligibility criterion for a DBS and barred list check is the same regardless of whether the individual is a paid employee, observer, placement or unpaid volunteer.
- 5.46 A Disclosure application for a volunteer is free. The definition of a 'volunteer' is outlined in the Police Act 1997 (Criminal Records) Regulations 2002 as:
- i. *"A person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit some third party other than, or in addition to, a close relative"*

- 5.47 For DBS and barring purposes, it is deemed that 'unpaid' means not in receipt of any payment (e.g. remuneration, allowance, financial benefit, payment in kind, or other means of support) in relation to the activity. The individual must not, therefore:

- i. receive payment for activities
- ii. be on a placement/work experience
- iii. be on a course that requires them to do the job role
- iv. be in a trainee position that will lead to a full time role/qualification

Doctors in Training

- 5.48 Guidance from NHS Employers in relation to doctors on an educationally approved training rotation states they should be checked, as a minimum, once every three years rather than each and every time they change rotation. In general, if a check at the correct level has been carried out within the last three years and written assurance is obtained from the 'host' organisation or previous employer of this, no further checks should be required provided the new post does not change the level of check required. Where the new post does change the level of check (and/or barred list requirement) a new Disclosure must be obtained.
- 5.49 An ED and relevant barred list check will be obtained at the start of the training programme and it will be ensured that it is fit for purpose for the full rotation.

Doctors in training employed by the Lead Employer Trust (LET) are required to have a DBS check every 3 years. In the unlikely event that the LET is unable to provide a satisfactory DBS check for a trainee (i.e. the latest check is still in progress), under the DBS regulations the trainee will be able to continue employment if they are accompanied at all times when dealing with patients until the clearance is confirmed. An appropriate individual within the relevant directorate will be nominated and agree to chaperone the trainee on behalf of the Trust at all times. The LET will make this request and will provide the Chaperone Agreement Paperwork.

Contractors

- 5.50 Standard or Enhanced DBS checks are only legally permitted for positions that are exempt under the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 i.e. where individuals have contact with patients in the course of normal duties. The trigger for a Disclosure and the level of Disclosure is dependent upon the work to be carried out. Managers must ensure that contract workers have the necessary type and level of Disclosure including a relevant barred list check (where applicable) before work is undertaken – see below:

Standard Disclosure – Required where the contractor will have direct contact with patients in the course of their normal duties

Enhanced Disclosure with barred list(s) check – required where contractor will be working in regulated activity

Enhanced Disclosure without barred list(s) check – required where the contractor will be undertaking activities that were eligible for an ED and barred list check before 10 September 2012.

Work experience placements

- 5.51 The minimum age limit for criminal record checks has been set in the Protection of Freedoms Act 2012. This means that employers must not apply for a criminal record check for individuals under the age of 16. Mature learners who are college/university students over the age of 16 years will require a recent DBS check. Providing a recent DBS has been undertaken and this can be evidenced a new DBS will not be required providing;
- a) there was nothing untoward on the DBS, and this has been confirmed in writing by the University.
 - b) the student is attending for observational placements for no more than 10 days and no direct access to patients as defined in paragraph 5.12 above.
 - c) the student is fully supervised and monitored at all times.
 - d) the University provides full indemnity. Indemnity can be provided through CNST arrangements for non-college/university individuals, providing the learner is over 16 and on a programme in accordance with this policy.

Authenticity of DBS Certificates

- 5.52 Security features are:
- a) a 'crown seal' watermark repeated down the right hand side which is visible on the surface and when held up to light
 - b) a background design incorporating the word 'disclosure' which appears in a wave-like pattern across both sides of the document. The colour is uniform across the front, but alternates between pink and green on the reverse
 - c) fluorescent inks and fibres that are visible under UV light
 - d) ink and paper that will change colour in the presence of water or solvent-based liquid

If there is any doubt about the authenticity of a Disclosure, or it is suspected that it has been altered, the DBS should be contacted immediately.

Portability of Disclosures

- 5.53 Portability refers to the re-use of a Disclosure certificate after the date and specific purpose it was originally issued. A Disclosure certificate has no term of validity and only provides information known at the point of issue.
- 5.54 Where an individual is registered with the DBS Update Service, a Status Check can be used – see section above.

- 5.55 An employer can use a previously issued Disclosure, but this is not without risk. The Trust recognises that for some appointments there may be exceptional circumstances where portability may be necessary.
- 5.56 Portability will only apply where there is an urgent need to appoint due to an identified risk to patient safety, or for induction purposes and where it is not possible to use the DBS Update Service to perform a Status Check.
- 5.57 Exceptional circumstances should be identified to Human Resources by the Recruiting Manager. These should be passed to the relevant HR Officer to decide each case on its merits. The Senior HR Manager should be involved in decisions as necessary.
- 5.58 New employees will be allowed to start work in exceptional circumstances before a new DBS check is completed, provided **all** of the following safeguards are met:
- a) HR has applied for a new Disclosure (and Adults First Service check if appropriate)
 - b) The employee's current Disclosure (not a photocopy) has been evidenced by HR
 - c) The Disclosure is fit for purpose i.e. Standard or Enhanced with relevant Barred List check where appropriate
 - d) The Disclosure is dated within the last 30 months from the date of the conditional offer letter from the Trust (no exceptions)
 - e) The employee's continuous employment (in any employment) between the date of the current Disclosure and present day has been evidenced from references
 - f) The employee has signed a declaration stating they have not had any police cautions, convictions, warnings or bindovers since the date the current Disclosure was issued
 - g) The current Disclosure has been verified by HR by contacting the Counter signatory (confirm reference number, identity details, and whether 'additional information' was included). If any details cannot be confirmed, the new employee cannot start work until the Trust's DBS checks are completed
 - h) A risk assessment (see Appendix 2) has been completed and appropriate arrangements (e.g. no access to patients and/or full supervision) will be in place when the employee starts
 - i) The candidate's consent to contact the Counter signatory on the Disclosure must be obtained and the Counter signatory must be written to by a Counter signatory of this Trust using the standard letter at Appendix 1

Model Declaration Forms

- 5.59 All positions within the Trust are regarded as 'positions of trust' and therefore all prospective employees and current employees transferring internally are required to complete a Model Declaration Form prior to commencement. Where the position meets the criteria for a DBS check the individual must complete Form A, and where it does not they must complete Form B.

Recruitment Process

- 5.60 To avoid any delays in processing a Disclosure application, only successful candidates at interview for whom a Disclosure is required will be required to attend HR/ Staff Bank with their necessary proofs of identity, or attend with copies of their previous Disclosure Certificate to enable a Status Check to be performed where possible or for a DBS application to be processed.
- 5.61 Proofs of identity must be checked to verify original documentation has been provided and that they verify the identity of the individual. Photographic evidence is particularly important e.g. passport, photo-driving licence.
- 5.62 At conditional offer letter stage the candidate will receive electronically a DBS form where they will need to complete the applicant section. Once HR/ Staff Bank have completed the documentation seen at the appointment in the DBS application the form will be submitted for processing to the Trust's Counter signatory before being submitted to the DBS.
- 5.62 A Disclosure Certificate is issued to the individual only. The Trust receive the outcome of the DBS electronically. If the Disclosure Certificate 'contains information' the individual will be asked to attend HR with the Disclosure Certificate where a copy will be taken. The copy will be passed to the relevant HR Officer who will liaise with the Recruiting Manager. All offers of employment are conditional on all pre-employment checks having been completed to the satisfaction of the Trust.
- 5.63 Individuals should be aware that they have a contractual obligation to declare any cautions, convictions, reprimands or final warnings they may subsequently be subject to during the term of their employment.

Record Keeping

- 5.64 The Trust recognises its responsibilities to comply fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures, Disclosure information, Status Checks and Model Declaration Forms. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and information provided on a Model Declaration Form.

- 5.65 When a Disclosure is received, the date of issue, date of receipt , Disclosure Number, level of check and List checks undertaken will be recorded on ESR and in the individual's personal file. A record will be retained on the individual's personal file to confirm that a Model Declaration Form had been completed and received. The Disclosure (including Status Checks) and Model Declaration Form will be retained centrally for six months then be destroyed by secure means i.e. shredded, then pulped or burned. Access to Disclosure information will be strictly controlled and limited to those who are entitled to see it as part of their duties. Where an individual is employed under a certificate of sponsorship, the Trust has a specific duty to retain a copy of the migrant's Disclosure and Barring Service (DBS) check on the individual's personal file where required for the role undertaken by the sponsored migrant.
- 5.66 In accordance with section 124 of the Police Act 1997, Disclosure information will only be passed to those who are authorised to receive it in the course of their duties. It is recognised that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

Overseas Police Checks

- 5.67 NHS Employment Check Standards strongly recommend requesting a certificate of good conduct or overseas criminal record check when recruiting from abroad. This is in addition to any requirement in this policy to obtain a DBS Disclosure. In a small number of cases, overseas criminal records are also held on the Police National Computer and these would be revealed as part of a DBS check.
- 5.68 An overseas criminal record check should also be carried out where an individual does not have a 5 year history of address in the UK. If an individual has spent a consecutive period of six months or more outside of the UK in any one country, during the last 5 years and during that consecutive period they have been in any country for more than 30 days at the date of application submitted, then overseas criminal record checks (or where the country will not provide this, a certificate of good conduct) should be undertaken. The cost of any overseas criminal record checks will be borne by the individual.
- 5.69 A DBS Disclosure, including relevant barred List check (where applicable) must be obtained even if the individual claims they have never lived in the UK before.
- 5.70 Guidance on how to access criminal record information from other countries is available [here](#)

If a country is not listed on the DBS website, contact can be made with the country's representative in the UK. Contact details for those countries that have a representative in the UK can be found on the [Foreign and Commonwealth website](#) or by Tel: 020 70081500

Where an individual has declared that that they have been serving overseas with HM Armed Forces in the past five years, the Trust will request them to

submit an extract from their military record instead. The extract must be original, state that it covers all periods served overseas, provide information in relation to any convictions, cautions, reprimands or final warnings received during the periods concerned, and be from an identifiable source so that information can be verified. Further information about requesting an extract of a military record can be found on the SIA website [here](#).

- 5.71 Where an individual is employed under a certificate of sponsorship, the Trust has a specific duty to retain a copy of the migrant's Disclosure and Barring Service (DBS) check on the individual's personal file where required for the role undertaken by the sponsored migrant.

Employing People with a Criminal Record

- 5.72 The Trust undertakes to treat all individuals for positions fairly. It undertakes not to unlawfully discriminate against any subject of a Disclosure on the basis of conviction, or other information revealed.
- 5.73 A criminal offence will not automatically disqualify a person, nor automatically result in dismissal in the event of employment.
- 5.74 In accordance with the Trust's Recruitment & Selection policies, at least one member of a recruitment panel should have received appropriate training in recruitment and selection practice.
- 5.75 If a Disclosure contains information previously not disclosed, or gives cause for concern, the matter will be investigated by the Recruiting Manager in conjunction with the Human Resources Department. A decision will be made concerning the suitability of the candidate for employment.
- 5.76 Careful consideration will be given to the following key points:
- a) The nature of the offence(s)
 - b) When it occurred i.e. how long ago and at what age
 - c) Whether the individual has a pattern of offending behaviour, for example, if there are multiple offences
 - d) Whether these, or other factors, such as the individual's failure to disclose relevant information, make them unsuitable
 - e) Whether employment includes Regulated Activity
- 5.77 If following the investigation the candidate is deemed to be unsuitable for employment, the Recruiting Manager shall withdraw the conditional offer of employment. In the event that the individual has commenced in employment, a disciplinary hearing will be convened in accordance with the Disciplinary Procedure. The officer conducting the hearing shall have authority to consider dismissal. In cases of serious misdirection i.e. if the applicant is applying for a position which involved a regulated activity from which they are barred where an offer is withdrawn or employment terminated, a referral will be made to the DBS.

6. Equality and Diversity

6.1 The Trust is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on any grounds. This document has been appropriately assessed

7. Monitoring Compliance

Standard / process / issue	Monitoring and audit			
	Method	By	Committee	Frequency
Monitoring of the process in relation to the six pre-employment checks, ensuring that all pre-engagement checks are being completed in accordance with NHS Employment Check Standards. This includes reporting from ESR and personal file audits to identify: a) That all appointments are made in accordance with the necessary pre-employment checks, including DBS checks required in this policy b) That a risk assessment is recorded for all posts where it is applicable	Monitoring of ESR reports and random sample of file audit	Director of Human Resources	HR Heads of Department	Annually

8. Consultation and Review

This policy has been reviewed in consultation with the Employment Policies and Procedures Consultative Group

9. Implementation (including raising awareness)

A summary of the key changes will be notified to managers following implementation. Further advice and guidance will be available from the Human Resources Department.

Author: Director of Human Resources

Confidential – Addressee-Only

Dear

Disclosure and Barring Service

The person named below has applied for a position with this Trust that requires a valid Standard/Enhanced (*delete as appropriate*) Disclosure from the Disclosure and Barring Service (DBS). They have a Standard/Enhanced (*delete as appropriate*) Disclosure and have given consent (see Section 1 below) to contact you to verify certain details.

I would be grateful if you could provide me with the information requested in Section 2 below by return. This will be treated in strict confidence and handled only in accordance with the DBS Code of Practice.

If you wish to verify the source of this letter, please contact:

Name: _____

Tel Number: _____

Section 1

To be completed by person giving consent

I _____ *full name*, Date of Birth _____

Having been offered the position of _____

with The Newcastle upon Tyne Hospitals NHS Foundation Trust, consent to

_____ *counter signatory*, who countersigned my original

disclosure application, confirming such details relating to the Disclosure issued to me

by the Disclosure and Barring Service on _____, reference

number _____ to _____

Trust counter signatory,

as may be necessary to assist with an assessment of my suitability for the position.

Signed: _____ Date: _____

Section 2

To be completed by the Counter signatory named on the Disclosure Form

1. Did you employ the above person between _____ and _____? YES/NO
2. Did you carry out a Standard or Enhanced Disclosure check? SD/ED
3. If ED, was 'approved information' provided by the Police? YES/NO
4. Did you check the barred list for children? YES/NO
5. Did you check the barred list for adults? YES/NO
6. Did you follow the DBS Guidance when considering their suitability? YES/NO
7. Did the above person's behaviour give you cause for concern? YES/NO
8. Date of Disclosure _____

Thank you for your assistance.

Yours sincerely

Name & Designation
& Counter signatory No. (Reg'd Body No.: 20176600008)

Appendix 2

Risk assessment for the appointment of staff before completion of DBS and barred list checks

This form must be authorised by the Directorate Manager, or officer of equivalent (or higher) authority.

A: Person mostly unsupervised

B: Person will have access to children and/or vulnerable adults as part of normal duties

C: Person mostly supervised

D: Person will not have access to children and/or vulnerable adults as part of normal duties

A & B = High Risk

Yes/No

Cannot start with children and/or vulnerable adults unless 5.58 is satisfied

A & D = Medium Risk

Yes/No

Can start with risk assessment

C & B = High Risk

Yes/No

Cannot start with children and/or vulnerable adults unless 5.58 is satisfied

C & D = Low Risk

Yes/No

Can start with risk assessment

**How will the level of risk be managed?
(Standard day and out-of-hours)**

Who will take personal responsibility?

Name: (please print).....
Designation:
Signature: **Date:**
Print Name:
Designation.....