



DBS EMPLOYING PERSONS WITH CRIMINAL CONVICTIONS PROCEDURE

Document Reference:	PR002
Document Status:	Approved
Version:	V4.0

DOCUMENT CHANGE HISTORY

Initiated by	Date	Author (s)
Tracey Leghorn	19th August 2013	Natalie Kinsella
Version	Date	Comments (i.e., viewed, or reviewed, amended approved by person or committee)
V2.0 6	December 2013	SPF Chairs sign off amendments following changes from CRB to DBS
V3.0	10 Jan 2014	SPF Ext April 2013 + April 2016

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Version	Date	Comments (i.e., viewed, or reviewed, amended approved by person or committee)
V3.1	30 June 2015	Sarah Atkins – reviewed with minor updates
V3.2	03 August 2015	Review by HR Policy Group
V3.3	03 January 2020	Review by HR Policy Sub-Group
V3.4	26 February 2020	Sent to SPF and ELT for approval
V4.0	12 March 2020	Approved by ELT
V4.0	17 April 2023	Policy extended to January 2024 by CRG

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Document Reference	People and Culture Directorate
Recommended at Date	Staff Partnership Forum on 26 February 2020
Approved at Date	CRG on 17 April 2023
Review date of approved document:	31 January 2024
Equality Impact Assessment	March 2020
Linked procedural documents	Recruitment and Selection Procedure Driving Licence Procedure
Dissemination requirements	All managers and staff, via staff bulletins and the intranet
Part of Trust's publication scheme	Yes / No? YES

The East of England Ambulance Service NHS Trust has made every effort to ensure this policy does not have the effect of unlawful discrimination on the grounds of the protected characteristics of: age, disability, gender reassignment, race, religion/belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity. The Trust will not tolerate unlawful discrimination on the basis of, spent criminal convictions, Trade Union membership or non-membership. In addition, the Trust will have due regard to advancing equality of opportunity for and fostering good relations between; people from different groups and people with protected characteristics.

This policy applies to all employees (whether permanent, fixed term or temporary) working at all levels and grades for the Trust, including senior managers, directors, non-executive directors, and

on secondment, honorary contracts and volunteers. All Trust policies can be provided in alternative formats if required.

East of England Ambulance Service Trust recognises its obligation of supporting the requirements of the Modern Slavery Act 2015 and any future legislations. A prime objective of the Trust is to eradicate modern slavery and human trafficking and recognises the significant part it must play in both combatting it and supporting victims. The Trust is also committed to ensuring that its supply chains and business activities are free from any ethical and labour standards abuse.

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1. Procedure Statement

1.1

The Trust is committed to implementing fair and effective procedure and practice for recruiting and retaining people with criminal convictions based on a full assessment of the risks involved.

1.2

This procedure has been developed in accordance with recommended DBS and Chartered Institute of Personnel and Development (CIPD) and NHS Employers guidelines and has been written in partnership by management and staff side.

2. Scope

2.1

This Procedure applies to all:

- staff employed by the Trust
- applicants to posts in the Trust
- casual workers
- volunteers
- Non-Executive Directors
- Placement Students
- PAS/Agency workers

3. Access to the Procedure

3.1

All employees, applicants to posts, casual workers and volunteers are entitled to access to this procedure which is located in the HR Policies and Procedures Folders and/or on the Trust's Intranet. However, if you require this procedure in any other format, please seek guidance from the Human Resources Department, your line management, or Trade Union Representative.

3.2

Any employee or casual worker can seek guidance from line management, their trade union representative or the Human Resources Department.

3.3

External applicants to posts and volunteers can seek guidance from the Human Resources Department by calling their nearest office in either Bedford 01234 243200, Chelmsford 01245 444456, or Norwich 01603 424255. 3.3 Individuals and managers may also wish to consult related Trust procedures such as the DBS Criminal Record and Barring Checks Procedure and the DBS Storage and Handling Procedure

4. Roles and Responsibilities

4.1

The Human Resources Department is responsible for keeping the provisions within this procedure in line with employment legislation and best practice people management principles such as those set out in the DBS Code of Practice Guidelines.

4.2

Managers, HR staff and trade union representatives are responsible for providing advice and guidance to employees on the application of this procedure. Advice for applicants, casual workers and volunteers will be provided by the Human Resources Department.

4.3

Management and trade union representatives are responsible for bringing any mutually beneficial improvements to this procedure to the attention of the Trust.

5. Gathering Information

5.1

The Trust should advise in any advertisement, recruitment briefs to agencies recruiting on our behalf and contractors if a Criminal Record Check including a Child and Adult Barred list check were

appropriate, will be required, particularly if the job is exempted from The Rehabilitation of Offenders Act (ROA) 1974.

5.2

Applicants should be informed at the outset if criminal record information will be requested from them. This will provide a basis for the applicant to decide whether or not to apply for the post. This information will be used only to assess the applicant's suitability for employment insofar as it is relevant as assessed in line with the principles outlined within this procedure.

5.3

Where the Trust decides to ask applicants about criminal records, it will do so in such a way as to encourage honesty. For example, by issuing a statement expressing its willingness to consider ex-offenders.

5.4

Any information relating to criminal records required from applicants will be sought before making a final recruitment decision. At this stage, where appropriate, an application will be made to the relevant body for a DBS certificate.

5.5

The process for dealing with Disclosure Certificates received at the point of a job offer is outlined in Appendix 1.

6. Limitations of Disclosure

6.1

It is acknowledged that where information is revealed by a Standard or Enhanced check, the Disclosure will generally only provide the basic facts such as the name, date of offences and the associated sentence. It will not put them into context.

6.2

Disclosures may not provide information on people convicted abroad, although the DBS will draw on data on the Police National Computer.

6.3

Disclosure information should not be relied upon as the sole means to determine suitability. It should support rigorous recruitment checks, not replace them.

7. Additional Information

7.1

The Protection of Freedoms Act removed the provision that the Police would make additional information available to a potential employer without that information ever being disclosed to the applicant. This has been removed to ensure transparency and openness of the disclosure process.

7.2

As part of their common law powers, the Police will still be able to share relevant information with prospective employers. This decision is made by the police service who will assess the relevance and reliability of local information, in relation to the position applied for.

8. Assessing the Relevance of Criminal Records

8.1

The Trust acknowledges that deciding on the relevance of convictions to specific posts is not an exact science. In some cases the relationship between the offence and the post will be clear enough for the Trust to decide easily on the suitability of the applicant for the job. In other cases the suitability for employment of a person with a criminal record will be less clear and will vary depending on the nature of the job and the details and circumstances of any convictions.

8.2

The Trust will weigh up an assessment of an applicant's skills, experience and conviction circumstances against the risk assessment criteria for the job as outlined in Appendix 2.

8.3

An applicant's criminal record will be assessed in relation to the tasks that they will be required to perform and the circumstances in which that work will be carried out.

8.4

In line with best practice, the Trust will consider the following points when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers or clients?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct contact with the public?
- Where are the main duties of the post holder likely to be undertaken?
- Will the nature of the job present any opportunities for the post holder to re-offend in the course of work?

8.5

For preferred candidates who have met the requirements of the person specification and has disclosed a criminal record, the relevance of each offence will be considered by the Trust and/or where appropriate discussed with the applicant, taking into account the following issues:

- the seriousness of the offence and its relevance to the safety of other employees, customers, clients or property;
- the honesty of the applicant in disclosing the information when requested;
- the length of time since the offence occurred;

- any relevant information offered by the applicant about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties;
- whether the offence was a one-off, or part of a history of offending;
- whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely
- whether the offence has been decriminalised by Parliament
- the country in which the offence was committed. Some activities are offences in Scotland and not in England and Wales, and vice versa;
- the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

8.6

A summary of the process for assessing the job for risk is included within Appendix 2.

8.7

Once a conviction and/or caution has been assessed against someone's suitability for a role they would not normally be reviewed again and the matter would be considered closed. Therefore only new entries onto a DBS record or a change in role within the organisation (to one which is substantially different) would require the Trust to undertake a review of someone's suitability.

9. Managing Sensitive Information

9.1

The Trust will ensure that information regarding offences is kept confidential, so that applicants feel confident that information about their convictions will not be disclosed to anyone unless there is a specific reason for doing so.

9.2

Only persons directly involved in recruitment will be informed of an applicant's criminal record.

9.3

On request, a successful applicant will be informed who in the organisation has been told about the conviction and the reasons for this. If the individual's line manager was not directly involved in the recruitment process, they will only be informed of the offence if it is directly connected with the job.

9.4

Offence information will be stored and handled in accordance with the Trust's DBS Storage and Handling Procedure.

10. Recruitment Decisions

10.1

Recruitment decisions will be made on the basis of all information released by the Disclosure and Barring Service and other rigorous recruitment checks in accordance with good recruitment practice, including safer recruitment.

10.2

If the decision is made to withdraw a provisional offer of an appointment, the applicant will be informed of that decision. It may be that matters revealed in the Disclosure certificate justify such a decision or, provides evidence that, in the view of the Trust, the applicant is unsuitable for the position.

10.3

In the event that a decision is made to withdraw a provisional offer, the applicant will be directed to charities which help ex-offenders such as Unlock or Nacro.

11. Reviewing Policies and Procedures

11.1

The Trust is committed to involving managers, employees and their representatives in its development of procedure on employing people with criminal records.

11.2

All new posts will be reviewed by the Human Resources Department in conjunction with relevant management to assess whether they involve any risk, to establish the appropriate DBS level for the new post, before the post is advertised.

11.3

Staff involved in recruitment will be provided with guidance on the employment of ex-offenders and the Rehabilitation of Offenders Act.

11.4

The Trust will provide all unsuccessful applicants with relevant feedback related to their convictions.

12. Seeking Disclosure For An Existing Employee Found To Have a Criminal Record

12.1

All employees are contractually obliged to disclose any convictions, cautions, reprimands or warnings, which would not be filtered in the line with the new DBS guidance (see Section 14.3 below).

12.2

If it becomes appropriate to seek Disclosure information in relation to an existing employee and it is found that they have failed to disclose any unspent convictions, cautions, reprimands or warnings, the Trust will firstly establish whether the conviction is relevant to the post.

12.3

All new information will then be assessed in terms of relevance to the job as per Section 8 of this procedure.

12.4

If information is found to be relevant and serious, the Trust will consider a range of options, which might include the introduction of safeguards where this is reasonably practical and/or movement to another job or, potentially dismissal.

13. Enhanced Checks With Barred List Information and Regulated Activity

13.1

Employers have a legislative requirement to request barring checks for employees and prospective employees in positions defined as regulated activity under the Protection of Freedoms Act 2012, which amended the Safeguarding Vulnerable Groups Act 2006.

13.2

Regulated Activity is defined by the Safeguarding Vulnerable Groups Act 2006 as amended, principally by the Protection of Freedoms Act 2012 and includes roles where individuals are required to work unsupervised with children or working with adults in the categories defined below:

- Healthcare
- Personal care
- Social work
- Assistance with cash, bills or shopping
- Assistance with the conduct of their own affairs
- Conveying services

13.4

It is an offence for any organisation to 'knowingly' appoint or continue to allow an individual who is barred from working with children and/or adults to engage in a regulated activity with that group.

13.5

The barring checks are accessed through the process of applying for an enhanced criminal record disclosure.

14. The Rehabilitation of Offenders Act 1974

14.1

The Rehabilitation of Offenders Act 1974 enables criminal convictions to become 'spent', or ignored, after a 'rehabilitation period'. After this period, with certain exceptions, a person with a conviction is not normally obliged to mention it when applying for a job. The Act is more likely to help people with few and/or minor convictions because further convictions usually extend rehabilitation periods. People with many convictions, especially serious convictions, may not benefit from the Act unless the convictions are very old.

14.2 Rehabilitation Periods

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, which are known as the 'buffer period'. Other rehabilitation periods start from the date of conviction or the date the penalty was imposed.

The rehabilitation periods for sentences with additional 'buffer periods' which run from the end date of the sentence are shown in the table below:

Sentence / disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the license period)	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the license period)
Custodial sentence* of over 4 years or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3 ½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order **	1 year	6 months

* Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence

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of youth custody, a sentence of corrective training and a sentence of Borstal training.

**In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

The following table sets out the rehabilitation period for sentences which do not have 'buffer periods' and for which the rehabilitation period runs from the date of conviction:

Sentence / disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered)	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered)
Fine	1 year	6 months
Conditional discharge	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order*	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance Centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order

Sentence / disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered)	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered)
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

*Compensation Orders – it is important that individuals obtain proof of payment from the court and keep this document to prove that the compensation order has been paid in full.

Sentences which are not covered by the 1974 Act:

The following sentences are exempt from the 1974 Act and can never become spent:

- a. Sentence of imprisonment for life;
- b. Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years;
- c. Sentence of preventive detention;
- d. Sentence of detention during Her Majesty’s pleasure or for life;
- e. Sentence of custody for life;
- f. Public protection sentences (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders).

Rehabilitation periods for motoring offences:

An endorsement for a road traffic offence listed in Schedule 2 to the Road Traffic Offenders Act 1988, imposed either by the court or by means of a fixed penalty notice (FPN) is a sentence for the purposes of the 1974 Act and may become spent after 5 years (or two and half years where the offender is under 18). Road traffic legislation specifically provides for a FPN in these circumstances to be treated as a conviction and dealt with as such under the 1974 Act. Penalty points and a driving disqualification imposed by the court on conviction may become spent when they cease to have effect (penalty points have effect for three years as set out in road traffic legislation). Where the court imposes more than one sentence or penalty for the offence then the longest rehabilitation period determines when the conviction may become spent. A fixed penalty notice (FPN) can be used to deal with minor road traffic offences, but it is not a criminal conviction or a caution and the 1974 Act does not apply.

14.3 Filtering

14.4

On 29 May 2013, legislation came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure under the Exceptions Order (1975), this is known as filtering. In addition employers will not be able to take certain old and minor cautions and convictions into account when making decisions about an individual and their employment with the Trust.

14.5

Under the new provisions of the Exceptions Order 1975 (2013) as described in 14.4 above, all cautions and convictions for specified serious violent and sexual offences and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults will remain subject to disclosure. In addition, all convictions resulting in a custodial sentence will remain subject to disclosure as defined in 14.2 above. Guidance on the filtering rules and offences that will never be removed from a certificate can be found at www.gov.uk/db

15. Glossary of Terms

Cautions

Given when there is sufficient evidence for a conviction but it is not considered to be in the public interest to institute criminal proceedings. Cautions have traditionally been used most for juvenile and first time offenders.

Code of practice

Code published by the DBS that sets out the requirements with which organisations using Disclosure information must comply.

Conviction(s)

Arise from offences tried at court.

Criminal records

Contain details of convictions, as well as cautions, reprimands, final warnings, etc.

Police National Computer

The central police database against which all checks will be made.

Registered body

An employer or other agency registered with the DBS to administer Standard and Enhanced Disclosures.

Schedule Four offence

Under the Criminal Justice and Court Services Act 2000, adults convicted of a Schedule Four offence and given a hospital or guardianship order or a custodial sentence of 12 months or more are banned from working with children.

16. Useful Organisations

Unlock

Maidstone Community Support Centre, 39-48 Marsham Street, Maidstone, ME14 1HH Tel: 01634 247350 Website: www.unlock.org.uk

Nacro

Walkden House, 16-17 Devonshire Square, London, EC2M 4SQ Tel: 0300 123 1889 Website: www.nacro.org.uk

Advisory, Conciliation and Arbitration Service

Head Office: Euston Tower, 286 Euston Road, London NW1 3DP Tel: 0300 123 1100 Website: www.acas.org.uk

Chartered Institute of Personnel and Development

Head Office: 151 The Broadway, Wimbledon, London, SW19 1JQ. Tel. No. 0208 612 6200 Website: www.cipd.co.uk

Disclosure and Barring Service

DBS Disclosure Service: DBS customer services, PO Box 3961, Royal Wootton Bassett, SN4 4HF

DBS certificate disputes : PO Box 165, Liverpool L69 3JD Tel: 03000 200 190 Website: www.gov.uk/DBS

Code of Practice for Registered Bodies, DBS

Department for Education and Skills – Adult Disadvantage Policy Division

Tel: DfE Helpline: 0370 000 2288 Website: www.dfes.gov.uk

Department of Health General

Enquiries: 39 Victoria Street, London SW1H 0EU Tel: 020 7210 4850 Website: www.doh.gov.uk

The Protection of Children Act 1999: A practical guide for all organisations working with children, Department of Health

Home Office

2 Marsham Street, London, SW1P 4DF

Tel: 0207 035 4848 Website: www.homeoffice.gov.uk

Wiping the Slate Clean, Home Office

Safe from Harm: Safeguarding the welfare of children in voluntary organisations in England and Wales, Home Office

Criminal Justice and Court Services Act 2000: Protection of children guidance, Home Office

Trade Union Congress

Congress House, Great Russell Street, London WC1B 3LS

Tel: 020 7636 4030 Website: www.tuc.org.uk

Rehabilitation of Offenders Act 1974

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

Police Act 1997

www.hmso.gov.uk/acts/acts_1997/1997050.htm

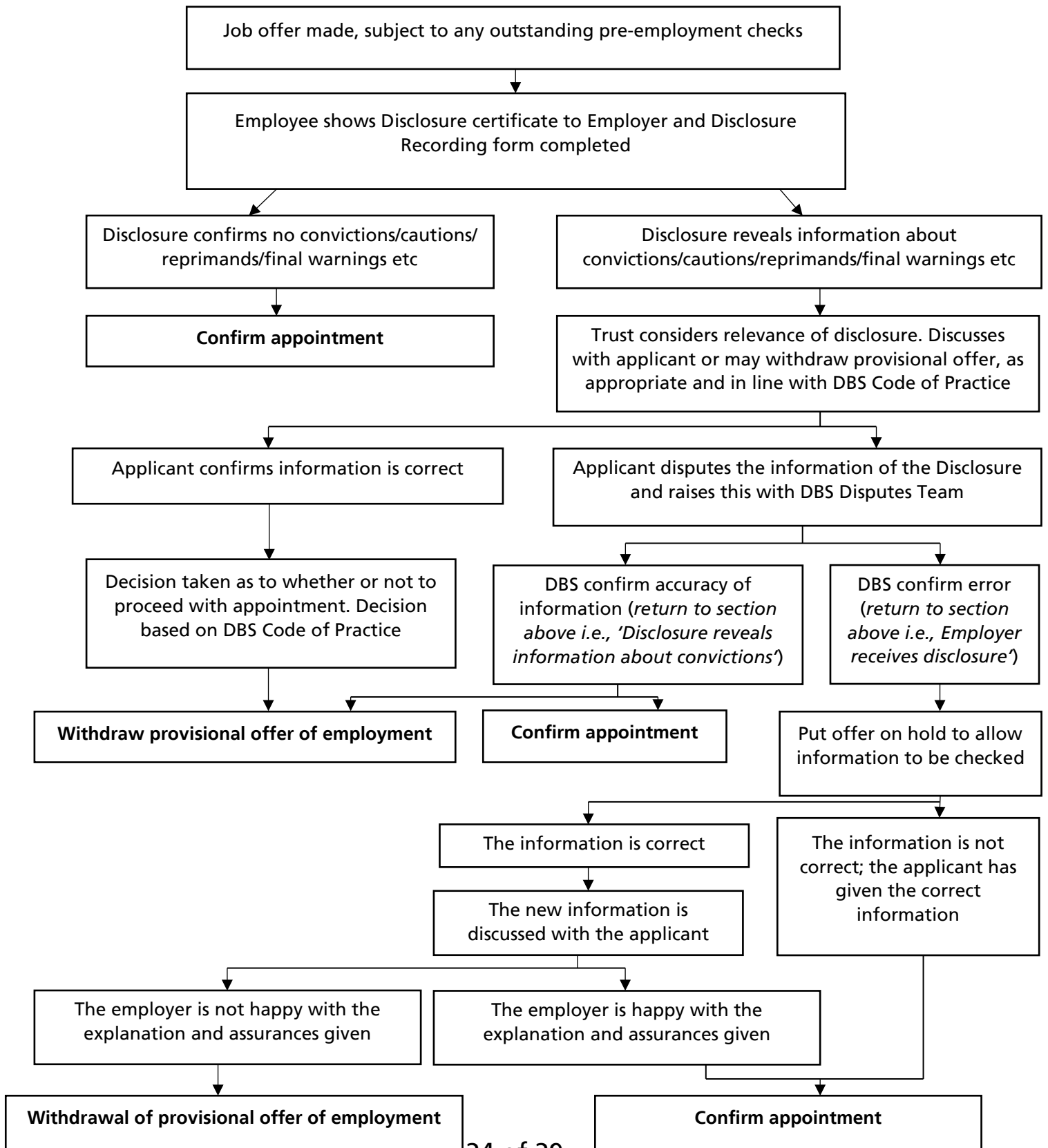
17. Procedure Review

17.1

This procedure will be reviewed every three years or more frequently if significant changes to its effective operation are necessary.

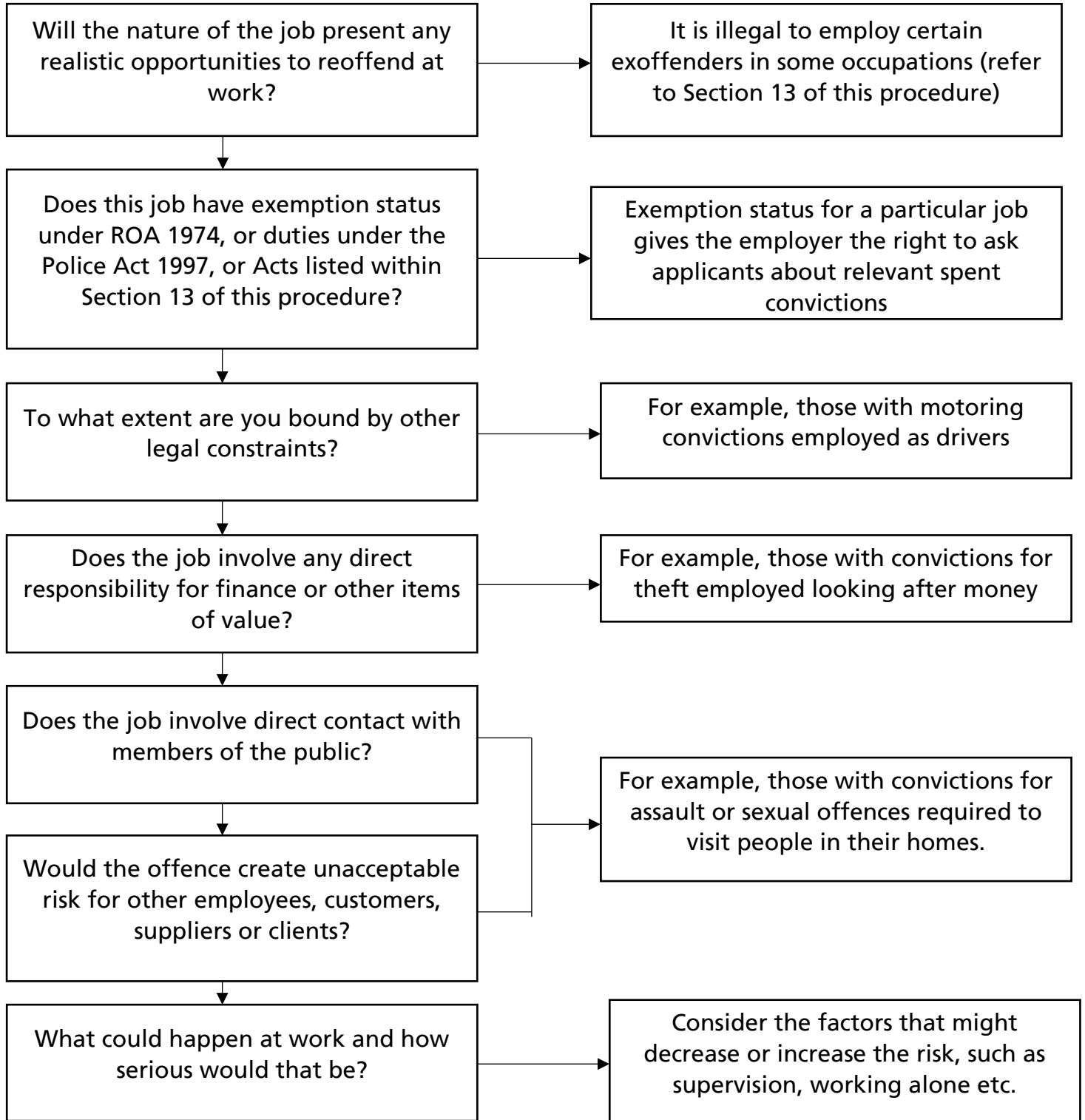
APPENDIX 1

Dealing with Disclosures at the Point of a Job Offer



APPENDIX 2

Assessing the Job For Risk



APPENDIX 3 - EQUALITY IMPACT ASSESSMENT

EIA Cover Sheet		
Name of process/policy	DBS EMPLOYING PERSONS WITH CRIMINAL CONVICTIONS PROCEDURE	
Is the process new or existing? If existing, state policy reference number	EXISTING	
Person responsible for process/policy		
Directorate and department/section	HR	
Name of assessment lead or EIA assessment team members	EqIA Panel members	
Has consultation taken place? Was consultation internal or external? (please state below):	Internal via HR Policy Sub-Group & EQIA Panel	
The assessment is being made on:	Guidelines	
	Written policy involving staff and patients	X
	Strategy	
	Changes in practice .	
	Department changes	
	Project plan	
	Action plan	
Other (please state) Training programme		

EQUALITY ANALYSIS					
<p>What is the aim of the policy/procedure/practice/event?</p> <p>The Trust is committed to implementing fair and effective procedure and practice for recruiting and retaining people with criminal convictions based on a full assessment of the risks involved. This procedure has been developed in accordance with recommended DBS and Chartered Institute of Personnel and Development (CIPD) guidelines, and has been written in partnership by management and staff side.</p>					
<p>Who does the policy/procedure/practice/event impact on?</p>					
Race	X	Religion/belief	X	Marriage/Civil Partnership	X
Gender	X	Disability	X	Sexual orientation	X
Age	X	Gender re-assignment	X	Pregnancy/maternity	X
<p>Who is responsible for monitoring the policy / procedure / practice / event? HR</p>					
<p>What information is currently available on the impact of this policy/procedure/practice/event?</p> <p>HR Metrics</p>					
<p>Do you need more guidance before you can make an assessment about this policy/procedure/ practice/event? No</p>					
<p>Do you have any examples that show that this policy/procedure/practice/event is having a positive impact on any of the following protected characteristics? Yes/No, If yes please provide evidence/examples:</p>					

Race	X	Religion/belief	X	Marriage/Civil Partnership	X
Gender	X	Disability	X	Sexual orientation	X
Age	X	Gender re-assignment	X	Pregnancy/maternity	X

Please provide evidence:

Are there any concerns that this policy/procedure/practice/event could have a negative impact on any of the following characteristics? No, if so please provide evidence/examples:

Race	X	Religion/belief	X	Marriage/Civil Partnership	X
Gender	X	Disability	X	Sexual orientation	X
Age	X	Gender re-assignment	X	Pregnancy/maternity	X

Please provide evidence:

Not with the policy, possible risk of disproportionate % of staff from certain protected characteristic groups being impacted upon.

Action Plan/Plans - SMART

- Specific
- Measurable
- Achievable
- Relevant
- Time Limited

Evaluation Monitoring Plan/how will this be monitored?

Who

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How

By

Reported to