

**Guidance for Line Managers when Receiving Positive Disclosures:**

**Standard Operating Procedure**

**Contents Page**

|  |  |  |
| --- | --- | --- |
| Section | Title | Page Number |
| 1 | Background | 3 |
| 2 | Procedure to be followed when recruiting (new employees) | 3 |
| 3 | Procedure to be followed for Peer Support Workers/ Service Users | 5 |
| 4 | Procedure to be followed for existing employees | 6 |
| 5 | Appeals to the Disclosure and Barring Service  | 8 |
| 6 | Filtering System and 5 yearly checks | 8 |
| 7 | Non-Disclosure | 8 |
| Appendix 1 | Filtering of offences from a criminal record check | 9 |
| Appendix 2 | DBS: Cautions/Convictions/Bindover Information – Record of Interview form | 10 |
| Appendix 3 | Positive DBS Risk Assessment form | 13 |
| Appendix 4 | Positive DBS Risk Assessment form (Service Users) | 15 |

1. **BACKGROUND**
	1. The suitability for employment of a person with a positive Disclosure and Barring Service (DBS) disclosure will vary, depending on the nature of the job and the details and circumstances of any caution/conviction/bindover. Deciding on the relevance of cautions/ convictions/bindovers to specific posts is not an exact science. An assessment of an applicant’s positive DBS circumstances should be weighed against the risk assessment criteria for the job. It should be remembered that employing people on the basis of information provided in an application form and a short interview, irrespective of whether they have a positive DBS or not, is never risk free. Line Managers responsible for recruitment need to identify what risks might be involved and what precautions are put in place in order to provide satisfactory safeguards.
	2. The administration of the current DBS system is undertaken jointly by the Recruiting Manager together with the Resourcing Services Team or Medical Staffing Team for medical practitioners. The final decision on whether to continue with the appointment or an individual’s employment is the Line Manager’s or for new employees the Recruiting Manager. The Resourcing Services Team or Medical Staffing Team will refer any positive disclosures directly to the appropriate Line Manager or Recruiting Manager for further investigation. This document outlines the procedure to be followed on receipt of a positive disclosure and refers to appointments, re-checks and notifications via the DBS Up-Date Service of any changes to a DBS Statement.
	3. Under the DBS filtering system introduced in May 2013 certain old and minor cautions and convictions will no longer be disclosed in a criminal record certificate. However, specified offences (because of their serious nature) will always be included in a DBS disclosure regardless as to whether they are spent or unspent, refer to Appendix 1.
	4. It is important that action on positive disclosures is taken without delay to ensure compliance with statutory guidance, NHS Employment Check Standards and Safer Recruitment Procedures.
2. **PROCEDURE TO BE FOLLOWED AT RECRUITMENT (NEW EMPLOYEES)**
	1. Where, during the recruitment process, there is a positive disclosure returned, the Resourcing Services Team/Medical Staffing Team are responsible for alerting the Recruiting Manager and the relevant HR Advisor via telephone or by e-mail.
	2. The Recruiting Manager will make arrangements to discuss the disclosure with the prospective employee and complete the Disclosure and Barring Service (DBS) Cautions/Convictions/Bindover Information Record of Interview form – Appendix 2. The Recruiting Manager must have sight of the original disclosure certificate in order to undertake a full risk assessment, as the Trust does not receive a copy of the disclosure certificate directly, the prospective employee must present with their original document at the interview.
	3. Following the discussion the line manager must undertake a risk assessment by completing the Positive DBS Disclosure Risk Assessment form - Appendix 3. Each case should be assessed on an individual basis and in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. The risk assessment should take into account the following guidance:
* the seriousness of the caution/conviction/bindover and its relevance to the safety of other employees, customers, clients and property
* the length of time since the caution/conviction/bindover 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 offence involved a child/children or an adult
* whether the applicant’s circumstances have changed since the offence was committed, making reoffending less likely
* the country in which the offence was committed; some activities are offences in Scotland and not in England and Wales and vice versa
* whether the offence has since been decriminalised by Parliament
* the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.
* whether the behaviour could pose a risk to service users/clients
* does the post involve one-to-one contact with children or other vulnerable groups such as employees, customers and/or clients
* what level of supervision does the post holder receive
* does the post involve direct contact with the public
* will the nature of the job present any opportunity for the post holder to reoffend in the place of work?
* has the applicant fully disclosed the conviction/caution/bindover
* has the conviction/caution/bindover come to light retrospectively
* Establish whether any regulatory body such as the GMC, NMC or HPC (list is not exhaustive) are aware of the conviction/caution or bindover and took any action
	1. The answers to the above will help determine the relevance of cautions/convictions/bindovers to specific posts. For example, paedophile, or child pornography offences would almost certainly disqualify any person required to work with children; some violent offences would be relevant to positions involving unsupervised contact with the public; fraud should be considered in relation to posts involving the handling of significant amounts of money; and theft in relation to posts involving the handling of stock.
	2. Following completion of Appendix 3 the Recruiting Manager will make a decision whether to continue with the offer of employment or to withdraw it. Where the decision is made not to continue with the offer of employment the Recruiting Manager is responsible for conveying their decision to the prospective employee. In all circumstances the Recruiting Manager must return the completed documentation to the Recruitment Services Team/Medical Services Team under confidential cover. Where the offer of employment is not withdrawn the completed forms should be stored in an envelope marked ‘strictly confidential’ and retained on the Personal File as a record of the Line Manager’s decision.
1. **PROCEDURE TO BE FOLLOWED AT RECRUITMENT (PEER SUPPORT WORKERS/ SERVICE USERS)**
	1. It is not unusual for applicants to peer posts to have a criminal history. The challenge for the service is to assess the risk involved in employing the person and make judgments about the likelihood of criminal acts being repeated. This has to be undertaken on a case-by-case basis and the decision needs to take into account the seriousness of the offence, when it occurred and its potential relevance to the role.
	2. Where, during the recruitment process, there is a positive disclosure returned, the Resourcing Services Team are responsible for alerting the Recruiting Manager and the Employee Relations Team.
	3. The Recruiting Manager will make arrangements to discuss the disclosure with the prospective employee and their clinical team and complete the Disclosure and Barring Service (DBS) Cautions/Convictions/Bindover Information Record of Interview form – Appendix 2. The Recruiting Manager must have sight of the original disclosure certificate in order to undertake a full risk assessment, as the Trust does not receive a copy of the disclosure certificate directly, the prospective employee must present with their original document at the interview.
	4. Following the discussion, the line manager must undertake a risk assessment in conjunction with the service user’s clinical team by completing the Positive DBS Disclosure Risk Assessment form - Appendix 4. Each case should be assessed on an individual basis and in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. The risk assessment should take into account the following guidance:
	* the opinion of the service user’s clinical team
	* the seriousness of the caution/conviction/bindover and its relevance to the safety of other employees, customers, clients and property
	* the length of time since the caution/conviction/bindover 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 offence involved a child/children or an adult
	* whether the applicant’s circumstances have changed since the offence was committed, making reoffending less likely
	* the country in which the offence was committed; some activities are offences in Scotland and not in England and Wales and vice versa
	* whether the offence has since been decriminalised by Parliament
	* the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.
	* whether the behaviour could pose a risk to service users/clients
	* does the post involve one-to-one contact with children or other vulnerable groups such as employees, customers and/or clients?
	* what level of supervision does the post holder receive
	* does the post involve direct contact with the public?
	* will the nature of the job present any opportunity for the post holder to reoffend in the place of work?
	* has the applicant fully disclosed the conviction/caution/bindover
	* has the conviction/caution/bindover come to light retrospectively
	* Establish whether any regulatory body such as the GMC, NMC or HPC (list is not exhaustive) are aware of the conviction/caution or bindover and took any action
	1. The answers to the above will help determine the relevance of cautions/convictions/bindovers to specific posts. For example, paedophile, or child pornography offences would almost certainly disqualify any person required to work with children; some violent offences would be relevant to positions involving unsupervised contact with the public; fraud should be considered in relation to posts involving the handling of significant amounts of money; and theft in relation to posts involving the handling of stock.
	2. Following completion of Appendix 4 the Recruiting Manager will make a decision whether to continue with the offer of employment or to withdraw it. Where the decision is made not to continue with the offer of employment the Recruiting Manager is responsible for conveying their decision to the prospective employee. In all circumstances the Recruiting Manager must return the completed documentation to the Recruitment Services Team/Medical Services Team under confidential cover. Where the offer of employment is not withdrawn the completed forms should be stored in an envelope marked ‘strictly confidential’ and retained on the Personal File as a record of the Line Manager’s decision.
2. **PROCEDURE TO BE FOLLOWED FOR EXISTING EMPLOYEES**
	1. Where an employee discloses to their Line Manager they have been arrested, charged, cautioned or convicted of any criminal offence, including any notification of any pending court appearances, bind-overs, absolute and conditional discharges the Line Manager has responsibility for completing the Disclosure and Barring Service (DBS) Cautions/Convictions/Bindover Information Record of Interview form – Appendix 2.
	2. Where an employee is registered with the DBS Up-date Service and the Trust receives notification of a change in their DBS Statement, the People & Culture department has the responsibility for notifying the Line Manager via telephone or e-mail.
	3. Where employees are not registered with the DBS Up-date Service and are subject to a 5 yearly renewal process, in circumstances whereby the Trust is notified of a positive disclosure they will be contacted by the People & Culture department to arrange to meet with their Line Manager and to provide them with sight of their original disclosure certificate. The People & Culture department also has responsibility for notifying the Line Manager via telephone or e-mail of the fact that a positive disclosure has been issued.
	4. The Line Manager has responsibility for contacting the employee and making arrangements to discuss the positive disclosure or notification of change and to complete the Disclosure and Barring Service (DBS) Cautions/Convictions/Bindover Information Record of Interview form – Appendix 2.
	5. In all of the above circumstances following the completion of Appendix 2 the Line Manager should then complete Appendix 3 by reference to paragraphs 2.3 and 2.4.

Following completion of Appendix 3 the options available to the Line Manager are:

* To continue in post with no further action
* Redeployment to another role whilst further internal and/or external investigation takes place
* Suspension whilst investigation continues
* Disciplinary process is invoked
	1. The completed forms should be stored in an envelope marked ‘strictly confidential’ and retained on the Personal File as a record of the Line Manager’s decision.
	2. Where an employee fails to provide their Line Manager with sight of their positive disclosure certificate when reasonably requested to do so, this may result in an employee being removed from their post, suspension of pay and formal action being taken under the Trust’s Disciplinary Procedure. The Line Manager should seek advice from a HR Advisor in these circumstances.
1. **APPEALS TO THE DISCLOSURE AND BARRING SERVICE**
	1. Occasionally an individual will challenge the contents of a DBS disclosure. The DBS will let the Trust know if this happens and inform us of the outcome. The DBS may also provide confidential information to the Trust which is non disclosable to the individuals concerned this information will need to be assessed in line with the guidance in this document.
2. **FILTERING SYSTEM AND – 5 YEARLY CHECKS**
	1. Following a judgment made by the Court of Appeal in 2013 which stated that ‘disclosure of all convictions and cautions in a criminal record certificate contravened with Article 8: Right to Respect for Private and Family Life, of the Human Rights Legislation, the DBS introduced a filtering system that applies a strict set of rules that must be satisfied before any decision as to whether information should be/should not be disclosed in a criminal record certificate (Appendix 1). Employees who received a positive disclosure in 2011, 2012 and early 2013 may, on renewal of their DBS Check, now return a clear disclosure under the filtering system. In these circumstances any documentation relating to this should be removed from a Personal File. Further advice may be obtained from the People & Culture Department.
3. **NON-DISCLOSURE**
	1. Where it is identified that a new or existing employee has a conviction that they have failed to declare, they may be referred to counter fraud and dismissed on grounds of failure to declare information / fraud as this constitutes an act of gross misconduct.

**APPENDIX 1**

**Filtering of Offences from a Criminal Record Check**

Following a judgment made by the Court of Appeal in 2013 which stated that ‘disclosure of *all* convictions and cautions in a criminal record certificate contravened with Article 8: Right to Respect for Private and Family Life, of the Human Rights Legislation, the DBS introduced a filtering system that applies a strict set of rules that must be satisfied before any decision is made as to whether information should be/should not be disclosed in a criminal record certificate.

Ensuring patient and public safety is paramount, therefore certain ‘specified offences’ will always be disclosed and a list of these can be found on the DBS website <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

# Convictions

In relation to **convictions** committed by an adult (aged 18 and above), information will not be disclosed where **all four** conditions outlined below are met:

* + - 11 years have elapsed since the date of the conviction
		- it is not listed in the ‘specified offences’
		- it did not result in a custodial sentence **and**
		- the individual does not have more than one conviction

In relation to **convictions** committed by individuals under the age of 18, they will not be disclosed where **all four** conditions outlined below are met:

* + - 5.5 years have elapsed since the date of the conviction
		- it is not listed in the ‘specified offences’
		- it did not result in a custodial sentence **and**
		- the individual does not have more than one conviction

# Cautions

In relation to **cautions** issued to an adult (aged 18 and above) they will not be disclosed where **both** conditions are met:

* + - 6 years have elapsed since the date of issue **and**
		- where the caution does not appear on the specified list of offences

In relation to **cautions** issued to those under 18, they will not be disclosed where **both** conditions are met:

* + - 2 years have elapsed since the date of issue **and**
		- where the caution does not appear on the specified list of offences

**APPENDIX 2**

**Guidance for Line Managers when Receiving Positive Disclosures**

**Disclosure and Barring Service (DBS): Cautions/Convictions/Bindover Information**

**Record of Interview Form**

Note to interviewer: the questions listed below are intended to be a guide. The purpose of the interview is to gather as much information as possible in order to make an informed decision as to the employment or continued employment of an individual.

|  |
| --- |
| **Section A: To Be Completed In All Cases** |
| Employee/Prospective Employee Name |  |
| Employee/Prospective Employee Job Title |  |
| Post Exempt from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975? | Yes [ ]  No [ ]  |
| Category | New Appointee [ ]  Re-check [ ]  Volunteer [ ]  Update Service [ ]  |
| Manager’s Name |  |
| Manager’s Job Title |  |
| Name of other Persons Present and Job Title |  |

|  |
| --- |
| **Section B: To Be Completed When Positive Disclosure Certificate Has Been Issued To Existing Or Prospective Employee** |
| Purpose of Meeting | To discuss notification of a positive disclosure certificate being issued to a prospective or existing employee. |
| Line Manager/Recruiting Manager must have sight of original Positive Disclosure Certificate and complete the following: |
| For existing employees - why have you failed to bring this to our attention/failed to provide positive disclosure certificate? |  |
| Do you agree that the information on the disclosure is correct? If not, why not? |  |
| Is it/are they spent or unspent? |  |
| Can you explain in more detail the circumstances/situation which led to the offences? |  |
| Has there been a change in your circumstances that is relevant to the conviction, since the offence? e.g. financial or domestic situation |  |
| How do you feel about the offence (check attitude to the offence)? |  |
| Any other questions interviewer may wish to ask to be included here |  |
| Are you subject to any police investigations at present? Can you give further details? |  |
| Is there a Probation Officer assigned to you? |  |
| Is there anything else we would need to consider/you wish to draw to our attention? |  |
| **Summary of Discussion** |
|  |

Existing employees only - Refer to 4.10 of the Disclosure and Barring Service Checks (DBS) Policy and Procedure and inform the employee disciplinary action may be taken where there has been a failure to disclose the information.

|  |
| --- |
| **Section B: To Be Completed When A Notification Of Change To A DBS Statement Has Been Received (DBS Update Service)** |
| Purpose of Meeting | To discuss the notification of change to an employee’s DBS Statement (notified electronically to the Trust) |
| We have been notified of a change of status to your DBS Statement, please explain the circumstances that has led to this |  |
| Why have you not informed me as your Line Manager? |  |
| Is there anything else we would need to consider/you wish to draw to our attention? |  |
| **Summary of Discussion** |
|  |

|  |  |
| --- | --- |
| Manager’s Signature |  |
| Interviewee’s signature |  |
| Date |  |

**In all circumstances Line Manager’s/Recruitment Manager’s must proceed to complete the Risk Assessment Form.**

For prospective employees the DBS Cautions/Convictions/Bindover Information Record of Interview and Positive Disclosure Risk Assessment Forms should be returned under confidential cover to Recruitment Services Team/Medical Staffing Team for inclusion on the Personal File. For existing employees the forms should be stored in a sealed envelope marked ‘confidential’ and retained on the Personal File as a record of the Line Manager’s decision.

**APPENDIX 3**

**Positive Disclosure and Barring Service (DBS) Risk Assessment**

To be used following a DBS positive disclosure and must be completed by the appropriate Recruiting Manager/Line Manager to record the decision making process.

|  |
| --- |
| **Section A: To Be Completed In All Cases** |
| Employee/Prospective Employee Name |  |
| Employee/Prospective Employee Job Title |  |
| Post Exempt from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975? | Yes [ ]  No [ ]  |
| Category | New Appointee [ ]  Re-check [ ]  Volunteer [ ]  Update Service [ ]  |
| Manager’s Name |  |
| Manager’s Job Title |  |
| HR Representative Name |  |

|  |  |  |
| --- | --- | --- |
| **Post Specific** | **Yes/No** | **Comments** |
| Does the post involve one to one contact with children or vulnerable groups? |  |  |  |
| Does the post involve any direct responsibility for finance or items of value? |  |  |  |
| Does the post involve direct contact with the public? |  |  |  |
| Has the applicant fully disclosed the conviction? |  |  |  |
| Has the conviction come to light retrospectively? |  |  |  |
| Are there any safeguarding issues in relation to the conviction, i.e. adults/children (consider ISA guidelines)?If yes, seek advice from HR/Safeguarding Lead |  |  |  |
| **Applicant/****Risk Assessment of Post** | **Level of Risk** | **Comments and/or any measures to mitigate the risk where medium or high** |
| **Low** | **Med** | **High** |
| What level of supervision will the post holder receive? |  |  |  |  |
| The seriousness of the offence and its relevance to the safety of the patients, other employees and property. |  |  |  |  |
| The length of time since the offence occurred. See guidance notes regarding spent convictions/caution/bindovers |  |  |  |  |
| The age of the applicant at the time of the conviction/caution/bindover. See guidance notes regarding conviction/caution/bindover |  |  |  |  |
| Any relevant information offered 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. Check whether several convictions emanated from the one act. |  |  |  |  |
| Whether the applicant’s circumstances have changed since the offence was committed, making re-offending less likely. |  |  |  |  |
| 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. |  |  |  |  |
| Does the nature of the job present any opportunities for the post holder to re-offend in the place of work? |  |  |  |  |
| Where all risks are identified as low, the application may proceed. If there are potential safeguarding issues this should be discussed with the relevant HR Advisor/Safeguarding Leads |
|  |
| **Section B: To Be Completed in All Cases (Please Tick)** |
| 1 | To proceed with offer of employment (recruitment stage only) |  |
| 2 | Withdrawal of offer of employment (recruitment stage only) |  |
| 3 | To continue in post with no further action (re-checks or changes to DBS Statement only) |  |
| 4 | Redeployment to another role whilst further investigation (re-checks or changes to DBS Statement only) |  |
| 5 | Suspension from duty whilst investigation continues (re-checks or changes to DBS Statement only) |  |
| 6 | Disciplinary Process to be invoked – 4.10 of the Disclosure and Barring Service Checks (DBS) Policy and Procedure (re-checks or changes to DBS Statement only) |  |
| Manager’s Signature |  | Date |  |
| HR Representative Signature |  | Date |  |
| Head of Service Signature |  | Date |  |

**APPENDIX 4**

**Positive Disclosure and Barring Service (DBS) Risk Assessment (Service Users)**

To be used following a DBS positive disclosure and must be completed by the appropriate Recruiting Manager/Line Manager to record the decision-making process.

|  |
| --- |
| **Section A: To Be Completed In All Cases** |
| Employee/Prospective Employee Name |  |
| Employee/Prospective Employee Job Title |  |
| Post Exempt from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975? | Yes [ ]  No [ ]  |
| Category | New Appointee [ ]  Re-check [ ]  Volunteer [ ]  Update Service [ ]  |
| Manager’s Name |  |
| Manager’s Job Title |  |
| HR Representative Name |  |

|  |  |  |
| --- | --- | --- |
| **Post Specific** | **Yes/No** | **Comments** |
| Does the post involve one to one contact with children or vulnerable groups? |  |  |
| Does the post involve any direct responsibility for finance or items of value? |  |  |
| Does the post involve direct contact with the public? |  |  |
| Has the applicant fully disclosed the conviction? |  |  |
| Has the conviction come to light retrospectively? |  |  |
| Are there any safeguarding issues in relation to the conviction, i.e. adults/children (consider ISA guidelines)?If yes, seek advice from HR/Safeguarding Lead |  |  |
|  |
| **Applicant/****Risk Assessment of Post** | **Level of Risk** | **Comments and/or any measures to mitigate the risk where medium or high** |
| **Low** | **Med** | **High** |
| What level of supervision will the post holder receive? |  |  |  |  |
| The seriousness of the offence and its relevance to the safety of the patients, other employees and property. |  |  |  |  |
| The length of time since the offence occurred. See guidance notes regarding spent convictions/caution/bindovers |  |  |  |  |
| The age of the applicant at the time of the conviction/caution/bindover. See guidance notes regarding conviction/caution/bindover |  |  |  |  |
| Any relevant information offered 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. Check whether several convictions emanated from the one act. |  |  |  |  |
| Whether the applicant’s circumstances have changed since the offence was committed, making re-offending less likely. |  |  |  |  |
| 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. |  |  |  |  |
| Does the nature of the job present any opportunities for the post holder to re-offend in the place of work? |  |  |  |  |
| Where all risks are identified as low, the application may proceed. If there are potential safeguarding issues this should be discussed with the relevant HR Advisor/Safeguarding Leads |
|  |
| **Clinical Team Recommendation/Comments on Suitability** |
|  |
|  |
| **Section B: To Be Completed in All Cases (Please Tick)** |
| 1 | To proceed with offer of employment (recruitment stage only) |  |
| 2 | Withdrawal of offer of employment (recruitment stage only) |  |
| 3 | To continue in post with no further action (re-checks or changes to DBS Statement only) |  |
| 4 | Redeployment to another role whilst further investigation (re-checks or changes to DBS Statement only) |  |
| 5 | Suspension from duty whilst investigation continues (re-checks or changes to DBS Statement only) |  |
| 6 | Disciplinary Process to be invoked – 4.10 of the Disclosure and Barring Service Checks (DBS) Policy and Procedure (re-checks or changes to DBS Statement only) |  |
| Manager’s Signature |  | Date |
| HR Representative Signature |  | Date |
| Head of Service Signature |  | Date |