Policy Title: Disclosure and Barring Service Policy

<table>
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<tr>
<th>Reference</th>
<th>POL/WOR/024</th>
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<tr>
<td>Version</td>
<td>1.0</td>
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<tr>
<td>Date Ratified</td>
<td>30/04/2019</td>
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<tr>
<td>Next Review Date</td>
<td>30/04/2022</td>
</tr>
<tr>
<td>Date Published</td>
<td>02/05/2019</td>
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<tr>
<td>Accountable Director</td>
<td>Director of Workforce &amp; OD</td>
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<tr>
<td>Policy Author</td>
<td>Recruitment Manager</td>
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Please note that the Intranet / internet Policy web page version of this document is the only version that is maintained.

Any printed copies or copies held on any other web page should therefore be viewed as “uncontrolled” and as such, may not necessarily contain the latest updates and amendments.
Data Protection Legislation:

The Trust(s) are committed fully to compliance with the requirements of the General Data Protection Regulations (GDPR) 2016 and the Data Protection Act (DPA) 2018. The GDPR and DPA legislation aims to balance the requirements of organisations to collect, store and manage various types of personal data in order to provide their services, with the privacy rights of the individual about whom the data is held.

The GDPR and DPA legislation covers both manual and computerised records in any format, where the record contains details that can identify, directly or indirectly data on a natural person or persons. The DPA sets out principles which must be followed by those who process data; it gives rights to those whose data is being processed.
Policy Title: Disclosure and Barring Service Policy (Joint)  

Policy On A Page

SUMMARY & AIM

This policy is to support the Recruitment and Selection policy in relation the safe recruitment of staff, temporary workers and volunteers working in regulated activities.

The policy outlines the statutory requirements and provides an overview of the process for managing Disclosure and Barring Service (DBS) checks in line with the NHS pre-employment check standard.

TARGET AUDIENCE:

This policy applies to all applicants, employees and individuals working or volunteering for the Trust including bank and agency staff.

TRAINING:

All staff involved in the processing of DBS will be provided with required guidance and information in order to advise managers appropriately.

KEY REQUIREMENTS

- All new starters entering the Trust that work in a patient facing environment or in an environment that falls within the criteria for a DBS will require a DBS check.

- For some roles the DBS check is a legal requirement and forms part of the NHS pre-employment check standards. No staff should start in post without this check in place.

- Seek advice and guidance from the Recruitment Manager and/or HR Advisor/ Business Partner regarding any concerns.

- As a regulated activity provider, the Trust has a legal duty to refer to DBS where conditions are met.

- The costs of DBS checks will be passed onto the applicant/member of staff except for volunteers who do not need to pay.
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1. **INTRODUCTION**

This Policy outlines the requirements for DBS checks as detailed in the NHS Employment Checks standards, and has been written to provide clarity and guidance to all those who work or volunteer, or are planning to work or volunteer with children or vulnerable groups and those recruiting them.

It also explains the Trust’s legal duty to refer to the DBS in certain circumstances and the process for making a referral.

2. **PURPOSE**

This policy outlines the legal and mandated Disclosure and Barring checks the Trust must carry out when appointing staff and volunteers who have direct, regular access to patients in the course of their normal duties. This information will be used to help managers make informed recruitment decisions and so protect vulnerable patients.

- The Trust will treat all applicants with a criminal record fairly and will not discriminate unfairly against the subject of the Disclosure on the basis of conviction or other information revealed.
- The Trust will make recruitment and employment decisions in relation to those with criminal convictions, taking account of all relevant information available at the time.
- A criminal conviction will not automatically debar a person from employment with the Trust.
- Only successful candidates will be subject to a DBS check. The weight given to the conviction will depend on the nature of the offence, the age at which it was committed and its relevance to the duties of the post.
- The Trust will make a referral to the DBS if concerns arise that an employee or individual working or volunteering for the Trust may have harmed a child or vulnerable adult, or put a child or vulnerable adult at risk of harm.

3. **POLICY DETAILS:**

The DBS Code of Practice sets out the obligations that must be met by recipients of Disclosure information, a copy of which is available on the home office website on the DBS homepage.

3.1 **Level of Check**

There are three levels of DBS disclosure:

- **Standard**

  This checks for spent and unspent convictions, cautions, reprimands and final warnings.
**Enhanced**

This includes the same information as the standard check plus any additional information held by local police that’s reasonably considered relevant to the role being applied for.

**Enhanced with a Check of the Barred Lists**

The enhanced check also includes a check of the DBS barred lists.

The level at which a disclosure requested depends on whether the individual is working in a “Regulated Activity” or not.

CPFT and NCUH complies fully with the DBS Code of Practice regarding the fair use and handling of disclosure information in assessing applicants’ suitability for positions of trust.

**3.2 Assessing eligibility for a check**

Not all positions are eligible for a DBS check. Employers must ensure they are legally entitled to seek information about an individual’s criminal history before requiring workers and volunteers to have a DBC check.

The trigger for a DBS check and the level of check required is determined by the type of activities the individual in that role will be undertaking and the level of access this will allow them to have with patients.

The interactive [https://www.nhsemployers.org/case-studies-and-resources/2018/08/dbs-eligibility-tool](https://www.nhsemployers.org/case-studies-and-resources/2018/08/dbs-eligibility-tool) on the NHS employers’ website can be used to help determine whether a position meets the criteria for a check.

**3.3 Rehabilitation of Offenders (ROO) Act 1974**

The ROO Act sets out to help people who have been convicted of a criminal offence and ensure they are treated fairly. In general, a person convicted of a criminal offence and who receives a sentence of no more than two and half years in prison benefits from the Act if they are not convicted again during a specified period. This period is called the rehabilitation period.

In general terms, the more severe a penalty is the larger the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be “spent”. Thereafter, the person is not obliged to reveal or admit its existence in most circumstances, including when applying for a job.

Some professions however within the Health and Social Care sector are exempt from this. The Act states: ‘Any employment or other work which is 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 his normal duties.’ This would therefore include roles such as Doctor, Nurse and Health Care Assistant.

3.4 Recruitment Documentation/Process

All applicants will be advised that the Trust has a policy statement on the recruitment of ex-offenders, a copy of which is included on the NHS jobs website. This will inform applicants that the successful applicant will be required to complete a Disclosure and Barring Service application if applicable to the post.

Where the post requires a disclosure, the successful applicant will be informed in their conditional offer letter with guidance on how to register their details in order for the Trust to complete the necessary check.

As part of the disclosure procedure the successful candidate will need to produce documentary proof of identity after offer stage. Original documentation must be provided, photocopies are not acceptable.

These details will be passed to the recruitment teams who manage the online system used to progress and track DBS checks.

3.5 Commencement of Employment

It is the policy of the Trust that no applicant will be allowed to commence employment or volunteering until they have completed the disclosure form and had their identity documentation verified.

The majority of posts within the Trust will come under the definition of a ‘Regulated Activity’. Employment cannot commence for these posts until a satisfactory disclosure form has been returned by the DBS. For other posts employment can commence however, where a DBS disclosure is required the employment remains conditional of receipt of a satisfactory disclosure. This will be monitored by the Workforce department.

The exception to this rule would be for posts, which are designed specifically to offer an opportunity for university graduates to consolidate their learning in a temporary role before returning to continue their studies. For example, Assistant Psychologist posts. For such posts a written risk assessment must be completed and the individual cannot commence in the ‘Regulated Activity’. This means they cannot work with vulnerable adults or children until clearance is received and can only perform non-clinical duties. The risk assessment must be completed no later than the first day in the workplace and a copy forwarded to the HR department for retention.

3.6 Existing Employees and Volunteers

Existing employees changing jobs within the Trust will be required to complete Disclosure forms in the following circumstances:
• They have never had a DBS check before and are moving to a position that requires a check.

• They have previously had a standard level check and are moving into a position which required them to have a higher level of disclosure.

• The new position requires them to work with a different vulnerable group and they are required to have a check against one or both barred lists.

• There has been a break of service for more than three months between leaving the old position and taking up the new position.

Volunteers are required to renew their DBS every 3 years. Please refer to volunteer policy.

3.7 Applicants with an Existing Disclosure

The Trust will accept a recent (within the last year) DBS check (at the same level) from a former employer to speed up the recruitment process and entry into the Trust where the original certificate can be produced. However the Trust will require the individual to undertake a further DBS disclosure. The reason for this is that there may have been information provided to the previous organisation that was not contained on the Disclosure itself. In such cases the offer of employment will still be conditional until a satisfactory, up to date disclosure is received.

3.8 Assessing the Relevance of Criminal Records

Having a conviction will not necessarily bar someone from employment with the Trust. This will depend upon the circumstances and background to the offence(s) and the nature of the work or position being sought. The Trust will only take a criminal record into account when the conviction is relevant. Since questions about criminal records are only asked of the successful candidate, job applicants can feel assured that having a criminal record will play no part in the initial selection process.

Where a DBS discloses a criminal record, The Recruiting Manager with advice from Recruitment Manager and/or HRBP/Advisor will carry out an assessment to decide the relevance of the criminal record and the suitability of the individual to carry out the duties of the post.

To reach a fair and balanced decision this assessment will involve an evaluation of the associated risks. Protection of the applicant’s rights and interests must be weighed against the rights and interests of patients, employees and the public, including the Trust’s duties and responsibilities towards these or other groups. Each case will be considered on its individual merits but will take into account the following factors as a minimum:

• The relevance of the offence to the duties and responsibilities of the post.
• The nature and level of the contact with children and other vulnerable groups.

• What responsibility the post has for finance and other resources.

• The freedom of action in the post and the level and nature of available supervision.

• What level of contact the post has with the public.

• The seriousness of the offence and its relevance to the safety of other people and resources.

• The length of time since the offence was committed.

• Details of the circumstances that led to the offence (e.g. domestic or financial problems).

• Changes to the individual’s circumstances that make re-offending less likely.

• Whether the individual has a history of re-offending.

• The country in which the offence was committed, for example what is an offence in Scotland is not necessarily an offence in England and Wales.

Before a final recruitment decision is made the applicant will have the opportunity to discuss the disclosure information with the Recruiting Manager. This will provide the applicant with the opportunity to explain, question and promote their own views.

Applicants also have the right to appeal to the DBS if they think a mistake has been made about their identity or if they feel the information disclosed to the Trust is incorrect. The Trust will normally allow a reasonable amount of time for the applicant to exhaust this right of appeal before finalising a decision.

Once a decision has been made, the Recruiting Manager will contact the applicant to explain the decision reached and this will be confirmed in writing by the Recruitment team.

Where a Disclosure reveals the existence of a criminal record, the Recruitment Team will check to ensure that this information has been declared by the applicant prior to appointment. Should a criminal record not have been declared, the Recruiting Manager will be notified. The circumstances of the criminal record and the reason for non-declaration by the applicant will be considered and may result in a withdrawal of offer. For existing staff the matter will be investigated, the investigation may lead to disciplinary action including dismissal, if the Trust considers that the applicant deliberately withheld information about their criminal record.
Managers should be aware that different cultures, beliefs or religions may condone some activities which could be identified as a criminal offence in England and Wales and this type of offence should not adversely impact on an individual being employed by the Trust. Likewise people should not be discriminated against because they have a criminal record from another country for an offence which would not be an offence here such as being gay, or having a sexual relationship outside of marriage.

3.9 Doctors in Training

A doctor in training will not be required to provide a new disclosure each time they rotate to a new training post under the same lead employer, where they move to a new lead employer a new check is required.

3.10 Agency Workers and Locums

Agency workers, locums and other temporary highly mobile staff must be checked at least once per year unless they are registered with the update service and confirmation can be received. If they cannot provide evidence of such a check, a new check should be made prior to the temporary worker starting in post. Whilst it is the responsibility of the supplying Agency to ensure the check is in place the central Agency team will oversee this and request evidence. For long term placements the Agency team carry out an annual review to ensure a new check is undertaken when required and any disclosures are considered in line with policy.

3.11 Students

Although not a legal requirement to obtain a DBS check before a student/trainee starts their placement, it is better if it is in place for patient care and safety. Where there has been a delay in processing a disclosure, students can start their placement with appropriate supervision.

The DBS check will be requested by the Higher Educational Institution as part of their admissions procedure for healthcare students where a training placement has been arranged with the Trust. The level of disclosure will be agreed with the Trust.

For all placements that involve ‘regularly caring for, training, supervising or being in sole charge of children or vulnerable adults’ an enhanced disclosure will be required.

3.12 Staff Recruited from Abroad

The DBS offers advice for employers wanting information about obtaining, and the availability of, criminal record information in a number of countries using a fax back facility. It also explains how an individual can obtain a copy of his or her criminal record or certificate of good conduct from overseas. For more information visit https://www.gov.uk/government/organisations/disclosure-and-barring-service or call the overseas information enquiry team on 0870 0100 450.
Where a DBS check cannot be obtained a risk assessment must be undertaken.

3.13 Duty to Refer to DBS

As a regulated activity provider, the Trust has a legal duty to refer to DBS where conditions are met. This applies even when a referral has also been made to a Local Authority Safeguarding Team or Professional Regulator. When a person is referred, DBS considers if they need to be added to a barred list(s).

It is the responsibility of the Care Group’s Senior Leadership Team to ensure that a referral is made.

A referral must be made in cases when both of the following conditions have been met:

Condition 1: you withdraw permission for a person to engage in regulated activity with children and/or vulnerable adults. Or you move the person to another area of work that is not regulated activity. This includes situations when you would have taken the above action, but the person was re-deployed, resigned, retired, or left. For example, a clinician resigns when an allegation of harm to a patient is first made.

Condition 2: You think the person has carried out one of the following:
Engaged in relevant conduct in relation to children and/or adults. An action or inaction has harmed a child or vulnerable adult or put them at risk or harm or; satisfied the harm test in relation to children and / or vulnerable adults. e.g., there has been no relevant conduct but a risk of harm to a child or vulnerable still exists, or;
been cautioned or convicted of a relevant (automatic barring either with or without the right to make representations) offence.

Help in referring someone to DBS may be obtained by telephoning the barring helpline on 01325 953795 or via e-mail email dbsdispatch@dbs.gsi.gov.uk.

3.14 DBS Charges

The full costs of the DBS check, including the administration fee paid to the 3rd party responsible for processing the checks on behalf of the Trusts, will be paid by the individual employee. This includes staff joining the organisation or internal staff applying for new posts. Costs will be reclaimed via salary deductions the arrangements for which will be agreed with the individual by the recruiting manager prior to starting in post.

Where the Trusts instigates a change of role for example, as a result of organisational change, the Trust will meet the costs of the check where required.
4. TRAINING AND SUPPORT

All staff involved in the Recruitment and Selection process are required to attend training which is provided by the Recruitment Team. The Recruitment Team and other workforce teams associated with inputting DBS information attend regular training and update sessions from the Recruitment Manager and outside organisation such as the DBS in order to comply with changes in legislation.

5. PROCESS FOR MONITORING COMPLIANCE

The process for monitoring compliance with the effectiveness of this policy is as follows:

<table>
<thead>
<tr>
<th>Aspect being monitored</th>
<th>Monitoring Methodology</th>
<th>Reporting</th>
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<tbody>
<tr>
<td>DBS checks are completed in line with this policy:</td>
<td>Audit of 20 cases</td>
<td>Presented by Recruitment Manager, Committee WF&amp;OD SMT</td>
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<tr>
<td>Posts requiring a check had a check completed at the appropriate level including barred lists</td>
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<td>Enhanced Checks were complete prior to commencement in post</td>
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<td>Any convictions were considered in line with policy</td>
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<tr>
<td>Legal duty to refer to DBS is complied with</td>
<td>Annual audit of cases where conditions for referral are met</td>
<td>Associate Director of HR/Principle HRBP, WF&amp;OD SMT</td>
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</table>

Wherever the above monitoring has identified deficiencies, the following must be in place:

- Action plan
- Progress of action plan monitored by the WF&OD SMT
- Risks will be considered for inclusion in the appropriate risk registers
6. REFERENCES:

NHS Employment Check Standards  
http://www.nhsemployers.org/your-workforce/recruit/employment-checks/criminal-record-check
https://www.legislation.gov.uk/ukpga/2006/47/contents
Protection of Freedoms Act 2012  
http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted
Department Of Health document on Regulated Activity.  

7. ASSOCIATED DOCUMENTATION:

Recruitment and Selection Policy  
Agency Workers Policy  
Disciplinary Policy  
Disciplinary and Capability Policy for Medical and Dental Staff  
Volunteer Policy

8. DUTIES (ROLES & RESPONSIBILITIES):

8.1 Chief Executive / Trust Board Responsibilities:

The Chief Executive and Trust Board jointly have overall responsibility for the strategic and operational management of the Trust, including ensuring that Trust policies comply with all legal, statutory and good practice requirements.

8.2 Executive Director Responsibilities: Director of Workforce and OD

The Director of Workforce & OD is responsible for being involved in the development and sign off of the policy to should ensure that the policy meet statutory legislation and guidance where appropriate. They must ensure the policy is kept up to date by the relevant author and approved at the appropriate committee.

8.3 Recruiting Managers Responsibilities:

- Ensuring that candidates are not unfairly discriminated against during the recruitment and selection process on the basis of criminal convictions held  
- Ensuring that confidentiality is maintained regarding any convictions disclosed by candidates at any stage of the recruitment process.  
- Ensuring that risk is assessed at the point of interview if a conviction is declared and taking a reasonable and pragmatic approach.

8.4 Staff and Volunteers Responsibilities

Are required to comply with the requirements of the policy and disclose any subsequent criminal convictions, reprimands, cautions and warnings which may occur whilst they are at application stage, employed or are volunteering for the trust
8.5 Workforce - Recruitment Responsibilities:

Will administer the checking process and provide advice and guidance where required.

8.6 Approving Committee Responsibilities: Joint Partnership Forum

The Chair of the approving committee, Joint Partnership Forum, will ensure the policy approval is documented in the final section of the Checklist for Policy Changes. The committee will agree the approval of the final draft of the policy.

The WF and OD Senior Management Team are responsible for the monitoring of this policy.

9. ABBREVIATIONS / DEFINITION OF TERMS USED

Keep lists in alphabetical order

<table>
<thead>
<tr>
<th>ABBREVIATION</th>
<th>DEFINITION</th>
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<tbody>
<tr>
<td>CPFT</td>
<td>Cumbria Partnership NHS Foundation Trust</td>
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<td>CRB</td>
<td>Criminal Records Bureau</td>
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<td>DBS</td>
<td>Disclosure and Barring Service</td>
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<td>HR</td>
<td>Human Resources</td>
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<td>HRBP</td>
<td>Human Resources Business Partner</td>
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<td>ISA</td>
<td>Independent Safeguarding Authority</td>
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<td>NCUH</td>
<td>North Cumbria University Hospitals NHS Trust</td>
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<td>ROO</td>
<td>Rehabilitation of Offenders</td>
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<td>SMT</td>
<td>Senior Management Team</td>
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<td>WF &amp; OD</td>
<td>Workforce and Organisational Development</td>
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<tr>
<th>TERM USED</th>
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<tr>
<td>Disclosure and Barring Service</td>
<td>The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).</td>
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<tr>
<td>Barred Lists</td>
<td>The Safeguarding Vulnerable Groups Act 2006 contained the legislation to create two new Barred Lists. These are:</td>
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<td>- A list of people barred from working with children; and</td>
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<td></td>
<td>- A list of people barred from working with vulnerable adults.</td>
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<td></td>
<td>These lists are separate but aligned. They allow DBS to keep a record of:</td>
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<td></td>
<td>- individuals who will not be permitted to work in regulated activity with children and/or vulnerable adults; and</td>
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<td></td>
<td>- Individuals who can only work with children and/or vulnerable adults in controlled activities with safeguards.</td>
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<tr>
<td>TERM USED</td>
<td>DEFINITION</td>
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<tr>
<td>Certain extremely serious offences result in automatic barring. It is important to note that the DBS do not have any investigation powers and can only record the information given by employers to help record a pattern of behaviour to decide if someone should be barred or not.</td>
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<tr>
<td>It is important to note</td>
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<td>• It is a criminal offence for a barred person to work, or volunteer in a regulated activity.</td>
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<td>• It is a criminal offence for an employer to knowingly employ (either on a paid or voluntary basis) a barred person in regulated activity.</td>
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<td>• Where a person is removed from regulated activity by an employer because the person has caused harm to a child or vulnerable adult, the DBS must be notified.</td>
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<td>A criminal record arises from a conviction in a court of law. There are also police records. Cautions, reprimands and warnings are issued by the Police as an alternative to prosecution, usually for less serious offences and usually after an offence is admitted. Criminal records do not normally include speeding and other minor driving or traffic offences.</td>
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<tr>
<td>The Disclosure and Barring Service class an adult (a person aged 18 or over) as vulnerable when they are receiving one of the following services:</td>
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<tr>
<td>• Health care;</td>
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<td>• Relevant personal care;</td>
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<td>• Social care;</td>
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<td>• Assistance in relation to general household matters by reason of age, illness or disability;</td>
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<td>• Relevant assistance in the conduct of their own affairs; or</td>
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<tr>
<td>• Conveying (due to age, illness or disability in prescribed circumstances).</td>
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<tr>
<td>The term 'regulated activity' relating to children is defined in law and describes an activity, which involves working with children, whether this is in a paid or unpaid capacity. In general terms, regulated activity relating to children comprises:</td>
<td></td>
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<tr>
<td>• Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice / guidance on well-being, or drive a vehicle only for children.</td>
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<td>• Relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional.</td>
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<td>• Registered childminding and foster-carers.</td>
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<tr>
<td>• Moderating online forums or chat rooms provided mainly for children where the person has access to the content and contact with users of the service.</td>
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</table>
TERM USED | DEFINITION
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Regulated Activity (relating to vulnerable adults) | • Providing health care to an adult or providing health care under the direction or supervision of a health care professional.
• Providing personal care, such as physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability.
• Training, instructing or offering advice/guidance related to eating/drinking, going to the toilet, washing/bathing, dressing, oral/skin/hair or nail care to adults who need it because of their age, illness or disability.
• Providing social work (the provision by a social care worker of social work).
• Assistance with cash, bills and/or shopping.
• Assistance in the conduct of a person's own affairs.
• Conveying an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, personal, or social care; or between places where they have received or will be receiving health, personal or social care. This does not include family, friends or taxi drivers.

DOCUMENT CONTROL

| Equality Impact Assessment Date | 02/01/2019 |
| Sub-Committee & Approval Date | Partnership Forum 03/04/2019 |

History of previous published versions of this document:

<table>
<thead>
<tr>
<th>Trust</th>
<th>Version</th>
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<th>Review Date</th>
<th>Date Published</th>
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<tbody>
<tr>
<td>CPFT</td>
<td>Pol/004/027</td>
<td>Sep 2017</td>
<td>Sep 2020</td>
<td>Sep 2017</td>
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NCUH had no pre-existing policy.
Statement of changes made from previous version

<table>
<thead>
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<th>Version</th>
<th>Date</th>
<th>Section &amp; Description of change</th>
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<tbody>
<tr>
<td>Pol/004/027</td>
<td>Sep 2017</td>
<td>• Added Data Protection statement to front of policy</td>
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<td>• 3.2 Added in section on assessing eligibility for a check</td>
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<tr>
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<td></td>
<td>• 3.9 Re-worded section to make it clearer when Drs on rotation require a new check</td>
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<tr>
<td></td>
<td></td>
<td>• 3.13 Added in section setting out the charging arrangements for DBS checks</td>
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<tr>
<td>V0.1 of Joint Policy</td>
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<td>• Put into Joint template</td>
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List of Stakeholders who have reviewed the document

<table>
<thead>
<tr>
<th>Name</th>
<th>Job Title</th>
<th>Date</th>
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<tbody>
<tr>
<td>Julie Thompson</td>
<td>Head of Workforce Services</td>
<td>December 2018</td>
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