

## PR04 - DBS/Disclosure Policy and Procedure

Category: Human Resources Sub-category: Recruitment, Induction and Training







### Policy Review Sheet

Review Date: 10/11/17 Policy Last Amended: 10/11/17

Next planned review in 12 months, or sooner as required.

Note: The full policy change history is available in your online management system.

Business Impact:	Low	Medium	High	Critical
		X		
Changes are important, but urgent implementation is not required, incorporate into your existing workflow.				

 Reason for this review:	Scheduled review
 Were changes made?	Yes
 Summary:	Review of the policy and minor updates where necessary. Changes made to renewal of DBS timescales.
 Relevant Legislation:	<ul style="list-style-type: none"> <li>• The Police Act 1997</li> <li>• Rehabilitation of Offenders Act 1974 (Exceptions) Order</li> <li>• The Care Act 2014</li> <li>• Data Protection Act 1998</li> <li>• Safeguarding Vulnerable Groups Act 2006</li> </ul>
 Underpinning Knowledge - What have we used to ensure that the policy is current:	<ul style="list-style-type: none"> <li>• Government, (1997), <i>The Police Act 1997</i>. [Online] Available from: <a href="http://www.legislation.gov.uk/ukpga/1997/50/contents">http://www.legislation.gov.uk/ukpga/1997/50/contents</a> [Accessed: 09/11/2017]</li> <li>• Government, (1975), <i>Rehabilitation of Offenders Act 1974 (Exceptions) Order</i>. [Online] Available from: <a href="http://www.legislation.gov.uk/uksi/1975/1023/contents/made">http://www.legislation.gov.uk/uksi/1975/1023/contents/made</a> [Accessed: 09/11/2017]</li> <li>• Government, (1998), <i>The Data Protection Act 1998</i>. [Online] Available from: <a href="http://www.legislation.gov.uk/ukpga/1998/29/contents">http://www.legislation.gov.uk/ukpga/1998/29/contents</a> [Accessed: 18/12/2017]</li> <li>• Government, (2006), <i>Safeguarding Vulnerable Groups Act 2006</i>. [Online] Available from: <a href="http://www.legislation.gov.uk/ukpga/2006/47/pdfs/ukpga_20060047_en.pdf">http://www.legislation.gov.uk/ukpga/2006/47/pdfs/ukpga_20060047_en.pdf</a> [Accessed: 09/11/2017]</li> </ul>
 Suggested action:	<ul style="list-style-type: none"> <li>• Notify relevant staff of changes to policy</li> <li>• Training sessions</li> <li>• Impact assessment/action plan</li> <li>• Confirm relevant staff understand the content of the policy</li> <li>• Encourage sharing the policy through the use of the QCS App</li> </ul>

## PR04 - DBS/Disclosure Policy and Procedure

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## PR04 - DBS/Disclosure Policy and Procedure

### 1. Purpose

- 1.1 To ensure that all employees, paid and unpaid, including volunteers, bank staff, staff on honorary contracts and others not covered by the term employee are aware that this policy applies to them.
- 1.2 To ensure that those members of staff who are engaged in a regulated activity with vulnerable adults and/or children are subject to a DBS check of the appropriate level.
- 1.3 To ensure that Eleven Sisters Community Support Services Ltd complies with its duties under the Rehabilitation of Offenders Act 1974 (Exceptions) Order.
- 1.4 To ensure that Eleven Sisters Community Support Services Ltd only employs people who are safe to work with Service Users.
- 1.5 To ensure compliance with the CQC Guidelines.
- 1.6 To support Eleven Sisters Community Support Services Ltd in meeting the following Key Lines of Enquiry:

Key Question	Key Line of Enquiry (KLOE)
SAFE	S3: How does the service make sure that there are sufficient numbers of suitable staff to support people to stay safe and meet their needs?
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

1.7 To meet the legal requirements of the regulated activities that Eleven Sisters Community Support Services Ltd is registered to provide:

- The Police Act 1997
- Rehabilitation of Offenders Act 1974 (Exceptions) Order
- The Care Act 2014
- Data Protection Act 1998
- Safeguarding Vulnerable Groups Act 2006

### 2. Scope

2.1 The following roles may be affected by this policy:

- All staff

2.2 The following people may be affected by this policy:

- Service Users

2.3 The following stakeholders may be affected by this policy:

- Commissioners
- External health professionals
- Local Authority
- NHS

### 3. Objectives

3.1 To ensure Eleven Sisters Community Support Services Ltd has a clear, straightforward policy outlining when a DBS check will be required, at what level and how this will be maintained on an ongoing basis.

3.2 To ensure all members of staff who are carrying out regulated activities are aware that they will need a DBS check.

## PR04 - DBS/Disclosure Policy and Procedure



### 4. Policy

4.1 Eleven Sisters Community Support Services Ltd use the DBS service to help assess the suitability of applicants for positions of trust.

4.2 Eleven Sisters Community Support Services Ltd comply fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of disclosures and information.

4.3 Eleven Sisters Community Support Services Ltd comply 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.

4.4 Eleven Sisters Community Support Services Ltd considers that members of staffs' roles will fall within the groups requiring DBS checks and that are **Excepted Roles** allowing Eleven Sisters Community Support Services Ltd to ask questions about any spent convictions as set out below:

- Any work defined as regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006
- Any work defined as "work with children" in regulation 5C of the Police Act 1997 (Criminal Records) Regulations 2002
- Any work defined as regulated activity relating to adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act 2006
- Any work defined as "work with adults" in regulation 5B of the Police Act 1997 (Criminal Records) Regulations 2002
- Any office or employment which is concerned with:
  - The provision of care services to vulnerable adults; or
  - The representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment
  - And which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services

4.5 However, Eleven Sisters Community Support Services Ltd will also consider and undertake a risk assessment of each role to ascertain the level of checks to be undertaken (if any) in line with the appropriate guidance issued by the Disclosure and Barring Service and in accordance with the flow chart that supports this policy.

4.6 Eleven Sisters Community Support Services Ltd will comply with the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) Order as set out in this policy.

## PR04 - DBS/Disclosure Policy and Procedure

### 5. Procedure

**5.1** A DBS certificate will be requested as part of Eleven Sisters Community Support Services Ltd's pre-recruitment checks following an offer of employment for any role which has been assessed as requiring a DBS check, including volunteering roles.

**5.2** The recruiting manager will determine whether a DBS check is required for the post and the appropriate level. The Disclosure & Barring Service Eligibility Flowchart supporting this policy provides a useful guide for managers.

**5.3** Eleven Sisters Community Support Services Ltd expects all current and prospective members of staff to voluntarily disclose any spent and unspent convictions. Eleven Sisters Community Support Services Ltd is entitled to ask about spent convictions on the basis that the role is an **Excepted Role** as outlined above. For guidance on when a conviction will be unspent please see the table that supports this policy.

**5.4** As an organisation assessing an applicants' suitability for positions which are included in the **Rehabilitation of Offenders Act 1974 (Exceptions) Order** using criminal record checks processed through the Disclosure and Barring Service (DBS), Eleven Sisters Community Support Services Ltd complies fully with the code of practice and undertakes to treat all applicants for positions fairly.

Eleven Sisters Community Support Services Ltd undertakes not to discriminate unfairly against any person who is the subject of a criminal record check on the basis of a conviction or other information revealed.

Eleven Sisters Community Support Services Ltd can only ask an individual to provide details of convictions and cautions that the organisation is legally entitled to know about. A DBS certificate at either standard or enhanced level can legally be requested where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended. It is Eleven Sisters Community Support Services Ltd's view that most of the job roles provided by The Agency will be excepted roles and the organisation will be entitled to request details of any spent convictions.

**5.5** Eleven Sisters Community Support Services Ltd can only ask an individual about convictions and cautions that are not protected.

**5.6** Eleven Sisters Community Support Services Ltd is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background.

**5.7** Eleven Sisters Community Support Services Ltd actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records.

**5.8** Eleven Sisters Community Support Services Ltd select all candidates for interview based on their skills, qualifications and experience.

**5.9** Eleven Sisters Community Support Services Ltd ensures that all those in the organisation who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences.

**5.10** Eleven Sisters Community Support Services Ltd also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

**5.11** An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that a DBS certificate will be required as a condition of employment in the event of the individual being offered the position.

**5.12** At interview, or in a separate discussion, Eleven Sisters Community Support Services Ltd ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment or, if the employment has commenced, dismissal from that employment. Eleven Sisters Community Support Services Ltd considers that failure to reveal information that is directly relevant to the

## PR04 - DBS/Disclosure Policy and Procedure

position sought would be an act of gross misconduct.

**5.13** Eleven Sisters Community Support Services Ltd makes every subject of a criminal record check submitted to DBS aware of the existence of the code of practice and makes a copy available on request.

**5.14** Eleven Sisters Community Support Services Ltd undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

**5.15** The Disclosure and Barring Service (DBS) offers four types of criminal record check:

- **Standard DBS** check contains details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions. These are shown on a criminal records check
- **Enhanced DBS** check contains the same details as a standard check, together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for
- **Enhanced DBS & Barred List Check (Child)** includes information from the DBS's children's barred list and is only available for those individuals engaged in regulated activity with children and a small number of posts as listed in the Police Act regulations, for example, prospective adoptive parents
- **Enhanced DBS & Barred List Check (Adult)** includes information from the DBS's adults barred list and is only available for those individuals engaged in regulated activity with adults and a small number of posts as listed in the Police Act regulations

### 5.16 Regulated Activities

The new definition of regulated activity relating identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. There are **six** categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people). A broad outline of these categories is set out below.

- **Providing Healthcare** – Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a healthcare professional
- **Providing Personal Care** – Anyone who:
  - Provides 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 an adult's age, illness or disability
  - Prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision or
  - Trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails 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 which is required in connection with any health care or social services to an adult who is a client or potential client
- **Assistance with Cash, Bills and/or Shopping** – The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf
- **Assistance in the Conduct of a Person's Own Affairs** – Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here
- **Conveying** – A person who transports 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, healthcare, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers

### 5.17 Disclosure Prior to Engagement

Eleven Sisters Community Support Services Ltd takes it duties to protect Service Users from unsuitable people gaining access to them very seriously. Eleven Sisters Community Support Services Ltd balances this duty with respect for human rights, privacy and compliance with the Data Protection Act.

Prospective employees are required to disclose any criminal convictions, warnings or reprimands at all stages of the recruitment and selection process. This will include all spent, as well as, unspent convictions, cautions,

## PR04 - DBS/Disclosure Policy and Procedure

reprimands. Candidates will be informed that failure to disclose could result in a conditional offer being withdrawn. Candidates will also be informed that any disclosure will be held in confidence and discussed only with the HR team as appropriate.

### 5.18 Procedure for DBS Applications

Eleven Sisters Community Support Services Ltd may be a registered body with the DBS and is entitled to carry out and countersign applications for DBS checks themselves. However, in the event that Eleven Sisters Community Support Services Ltd is not a registered body, Eleven Sisters Community Support Services Ltd engages an umbrella body who is a registered body and is entitled to countersign and carry out applications for DBS checks on The Agency's behalf. There is an expectation that if Eleven Sisters Community Support Services Ltd is a registered body or if an umbrella body is being used for the undertaking of DBS checks that the DBS code of practice is complied with.

Eleven Sisters Community Support Services Ltd will first make an assessment of the post to be filled to determine whether a DBS check is necessary and, if so, at what level. It is expected that **Enhanced Disclosures** will be most often required. The check will be an Enhanced level for those employees having direct access to Service Users, and Standard level for those who do not have direct access. Best practice dictates that Enhanced Level checks are used in all instances, due to the practical difficulties of ensuring that a person subject to only a Standard check never has unsupervised access to Service Users.

Eleven Sisters Community Support Services Ltd or the umbrella body will then send a DBS application form to the individual who has been offered the role. The individual must complete this fully and completely, disclosing all information. It is a condition of any offer of employment made to an individual that they consent to Eleven Sisters Community Support Services Ltd applying for a DBS check and that the individual will provide a copy of the DBS certificate upon receipt. It is also a condition of employment that the individual permits the retention of the certificate on their file.

Once the DBS check has been carried out the DBS will send to the individual a copy of the certificate. Eleven Sisters Community Support Services Ltd expects the individual to provide a copy of the DBS certificate to them within 7 days of receipt. Failure to do so may result in the withdrawal of any conditional job offer. Eleven Sisters Community Support Services Ltd will retain a copy of the certificate on the personnel file (secured appropriately) as evidence that this check has been undertaken.

### Renewal Checks

Eleven Sisters Community Support Services Ltd will carry out renewal checks on every member of staff in line with any contractual requirements or as agreed by Eleven Sisters Community Support Services Ltd. If the member of staff is signed up to the update service or if Eleven Sisters Community Support Services Ltd has reasonable cause to request an update the decision to renew the DBS will be agreed by Eleven Sisters Community Support Services Ltd.

### 5.19 DBS Update Service

Eleven Sisters Community Support Services Ltd may require candidates and current employees who already have existing DBS to sign up to the DBS Update Service and consent to The Agency having access to it. This allows the organisation to carry out checks to see if any new information has come to light since the date of the original check. It is Eleven Sisters Community Support Services Ltd's decision as to whether the organisation will pay this fee on behalf of the candidate or employee.

### 5.20 Handling and Disposal of Disclosure Information

Eleven Sisters Community Support Services Ltd will take the following steps when handling and disposing of disclosure information:

- Ensure that disclosures are available only to those who need to have access to them in the course of their duties relevant to recruitment and vetting. The DBS maintains a record of all those to whom certificates and certificate information has been revealed. It is a criminal offence to pass disclosure information to anyone who is not entitled to receive it
- Ensure that disclosure information is kept in secure conditions in a locked, non-portable container (wherever possible in rooms to which access is limited to staff engaged in recruitment work). Keys or combinations to the container must not be freely available within the organisation and access must be restricted to named individuals who are entitled to see it as part of their duties
- Ensure that no copies of disclosure information (in any format) are made without the prior agreement of

## PR04 - DBS/Disclosure Policy and Procedure

- the DBS or as the result of a stipulated requirement relating to its e-channel service
- Use certificate information only for the specific purpose for which it was requested and for which the applicant's full consent has been given
- Retain disclosure information only for as long as is necessary and for a maximum of six months following the recruitment decision for which it was obtained unless a dispute is raised or, in exceptional circumstances, where DBS agreement is obtained. It should not be kept on file simply in case it is useful in the future. The DBS will only permit extended retention when it considers it appropriate after taking into account both human rights and data protection rules
- Dispose of disclosure information securely (by shredding, pulping or burning). Self-evidently, copies of disclosures must be destroyed with the originals, although the DBS anticipates that employers will wish to retain details of:
  - The name of the candidate
  - The date of the search
  - The type of search
  - The position
  - The DBS reference number and
  - The recruitment decision taken
- Open confidential waste sacks and other open receptacles (even if they eventually lead to secure disposal after the waste leaves the building) are considered to be an inappropriate method of disposal. In most cases, employers will wish to use shredders to dispose of disclosure information, preferably also disposing of the shredded information securely
- Ensure that any additional police information, including information as to its existence, is not revealed to the disclosure applicant and is disposed of in the appropriate manner and at the appropriate time

### 5.21 Positive Disclosure

If there is a positive disclosure in any returned DBS check then this does not automatically mean that the person should not be employed. The organisation should review the nature of the information disclosed against the role the person will be undertaking and make a decision on the suitability of employment. Any decision should be based upon a robust, fair, transparent and equitable risk assessment process that is specific to the content of the disclosure and the role to be undertaken. Any decision made regarding the person's employment should be recorded and able to be justified. The actual DBS disclosure should be held in line with data protection and the process highlighted in 5.20.



## PR04 - DBS/Disclosure Policy and Procedure

### 6. Definitions

#### 6.1 Caution

- A formal warning about future conduct given by a senior police officer, usually in a police station, after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution, generally used for juvenile or first-time offences. Basically, there are two types of caution, which we have noted below
- **Simple Caution** - previously known as a formal caution - is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from appearing in court and to reduce the likelihood of them offending again
- **Conditional Caution** - introduced by the Criminal Justice Act 2003, differs from a simple caution in that the offender must comply with certain conditions to receive the caution and to avoid prosecution for the offence they have committed. Like simple cautions, conditional cautions aim to keep lower level offenders out of court. The conditions are usually in the form of rehabilitation or reparation where the offender is requested to repair/or make good the damage caused. The offender may be requested to pay financial compensation

#### 6.2 Child

- A person aged under 18

#### 6.3 Criminal Record

- A record of convictions held on the Police National Computer (PNC) for individuals convicted of crimes (includes information on cautions, reprimands, final warnings and bind-overs)

#### 6.4 Disclosure

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

#### 6.5 Disclosure & Barring Service (DBS)

- The DBS provides access to information about criminal convictions and other police records to help employers make an informed decision when recruiting staff across England and Wales

### Key Facts - Professionals

Professionals providing this service should be aware of the following:

- All health and social care providers registered with CQC, including dental and primary medical services, are responsible for checking the suitability of their staff
- Providers should undertake checks at the appropriate level for staff and volunteers who are eligible for them. They should consider the eligibility of everyone employed, including: contracted staff, temporary staff, bank staff, practitioners working under practising privileges, volunteers, students and learners, and contractors. In general, and dental practices, as well as GPs and dentists, this is likely to include health visitors, nursing staff, and dental technicians. It may also include front office reception staff, depending on their duties, which can vary greatly depending on the size of the practice
- Providers should risk-assess different roles and look at their responsibilities and activities to determine if staff are eligible for a DBS check and to what level. The CQC expects providers to be able to show they have undertaken this risk assessment, especially where they have decided not to undertake a check
- There is no requirement for a service that directly employs its own staff to repeat DBS checks within a set period. For example, there is no blanket rule such as re-checking all employees every three years. However, employers can re-check their staff whenever they think it is necessary. Any additional checks should be proportionate to risk

## PR04 - DBS/Disclosure Policy and Procedure

### Further Reading

As well as the information in the 'Underpinning Knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

**CQC Guidance on DBS Checks** - <http://www.cqc.org.uk/sites/default/files/20171016%20Disclosure%20and%20barring%20service%20checks%20guidance%20100646%20v7.pdf>

**CSSIW Disclosure and Barring Service Checks** - <http://cssiw.org.uk/providingacareservice/register/dbs/?lang=en>

**Disclosure and Barring Service Website** - <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

### Outstanding Practice

To be outstanding in this policy area you could provide evidence that:

- Carry out and retain records of full risk assessments for each role regardless of level
- Follow best practice and carry out enhanced checks on all prospective members of staff
- Ensure a clear re-checking practice is established and maintained consistently without exception
- Ensure as far as is possible that all members of staff are signed up to the update service
- The wide understanding of the policy is enabled by proactive use of the QCS App

### Forms

The following forms are included as part of this policy:

Title of form	When would the form be used?	Created by
Changes to Rehabilitation Periods	To determine which convictions are spent and unspent	QCS

## Changes to Rehabilitation Periods

Sentence	Old Rehabilitation Period (pre-March 2014)	New Rehabilitation Period
Custodial sentence over 4 years or a public protection sentence (a custodial sentence for specified sexual and violent offences)	Never spent	Never spent
Custodial sentence (over 2½ years, up to 4 years)	Never spent	7 years (beginning with the day on which the sentence, including any period on licence, is completed)
Custodial sentence (over 6 months, up to 2½ years)	10 years (from date of conviction)	4 years (beginning with the day on which the sentence, including any period on licence, is completed)
Custodial sentence (up to 6 months)	7 years (from date of conviction)	2 years (beginning with the day on which the sentence, including any period on licence, is completed)
Fines	5 years	1 year (beginning with the date of the conviction in respect of which the fine is imposed)
Absolute Discharge	6 months	No rehabilitation period

## Changes to Rehabilitation Periods

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