

## ELIGIBILITY FOR CRIMINAL RECORD CHECKS IN THE NHS

This document sets out a number of different example scenarios to help employers in the NHS make a more informed decision about whether or not a role is eligible for a criminal record check through the Disclosure and Barring Service (known as a DBS check).

Eligibility for a DBS check is determined by the type of activities the worker or volunteer will be undertaking, and the level of contact they will have with children and/or adults in receipt of health care services.

The examples outlined in this document are intended as a guide only. This document should be read in conjunction with the [criminal record and barring check standard](#) which outlines in more detail the legal requirements to obtain a DBS check.

### Type of DBS checks

The [Exceptions Order](#) made under the [Rehabilitation of Offenders Act 1974<sup>1</sup>](#) (the "ROA Exceptions Order") lists the types of work, activity, employment or professions, including volunteering, for which an employer can legally obtain a criminal record check.

Employers are legally responsible for ensuring that the position being recruited to is eligible under the current legal provisions for a check through the Disclosure and Barring Service.

The different levels of DBS check which are relevant to NHS positions are outlined below:

**STANDARD** – to be eligible for this level of check, the position must be included in the ROA Exceptions Order. Paragraph 13 of Part II under Schedule 1 to this Order specifically refers to any employment or other work which is concerned with the provision of health services and which enables the person to have access to persons in receipt of such services in

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<sup>1</sup> Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, S.I. 1975/1023

the course of [their] normal duties.

The standard DBS certificate will include information held in England and Wales on the Police National Computer (including all convictions and cautions that are not protected by the DBS filtering rules<sup>2</sup>, police reprimands, and warnings. It may also include any relevant convictions in Scotland and Northern Ireland.

**ENHANCED** – there are two types of enhanced disclosure as outlined below. To be eligible to request an enhanced DBS check, the position must be included in both the ROA Exceptions Order **and** the Police Act 1997 (Criminal Records) Regulations 2002 (the “Police Act Regulations”) as work with adults, and/or work with children.

**Enhanced check without barred list information** - to be eligible to request this type of enhanced check, the position must in addition to the above, meet the **original** definition of regulated activity as defined by the [Safeguarding Vulnerable Groups Act 2006](#) (prior to amendments being introduced under the Protection of Freedom’s Act 2012).

The enhanced certificate will include the same information as outlined under a standard DBS check but may also include any additional intelligence held by local police force(s), which is deemed relevant to the position being recruited to.

**Enhanced check with barred list information** – to be eligible to request this type of enhanced check the position must, in addition to the above, be specifically listed in the Police Act Regulations as being eligible for information held on the adults and/or children’s barred list(s).

Employers should refer to the definition of regulated activity as outlined by the Safeguarding Vulnerable Groups Act 2006 (amended by the Protection of Freedom’s Act 2012 which came into force from 10 September 2012). Further clarity about the definition of regulated activity can be found in the guidance documents below:

- [the definition of regulated activity with adults \(Department of Health\)](#)
- [the definition of regulated activity with children \(Department for Education\)](#)

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<sup>2</sup> The DBS Filtering Rules came into force from 29 May 2013. From this date certain minor and old convictions and cautions are “protected” which means that they will not be disclosed as part of a DBS check. Individuals are no longer required to disclose this information, and employers are no longer legally entitled to ask for, or consider this information as part of their recruitment processes.

More information about the [DBS filtering rules](#) can be found on the NHS Employers website.

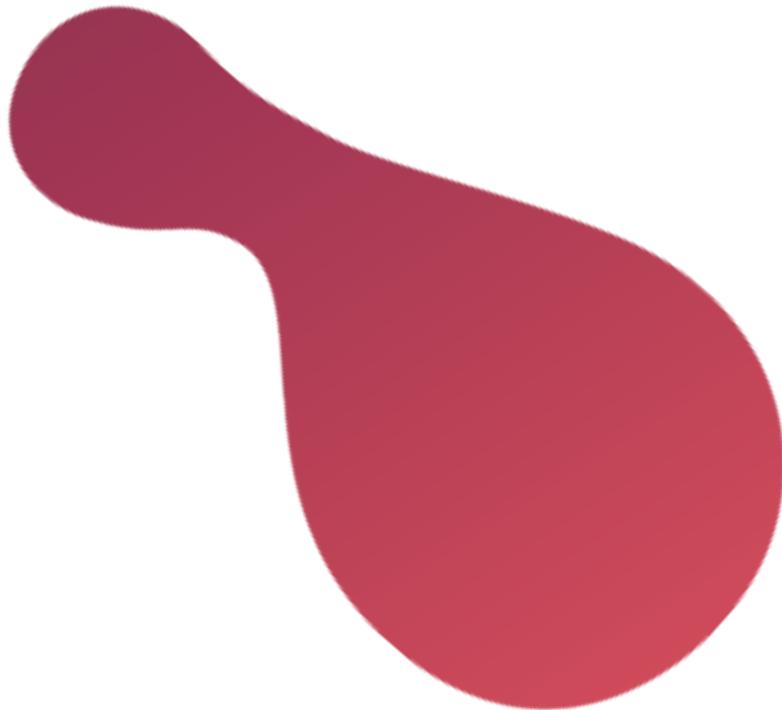


This type of enhanced check will disclose the same information as outlined in the section above but, in addition, will also include any information held on the children's and/or adults' barred list(s) maintained by the DBS, as appropriate to the role.

It is unlawful for an employer to obtain barred list information on anyone other than those who are undertaking regulated activity under the Safeguarding Vulnerable Groups Act 2006 (as amended).

When applying for all levels of DBS check, it will be important for employers to clearly indicate which "workforce" individuals will have access to (i.e. adults, children, or adults and children), to ensure that they only have access to information which they are legally entitled to.

Information obtained as part of a DBS check should be handled sensitively in line with the Data Protection Act 1998 and considered, without prejudice, against all other information gained as part of the recruitment process.





## Scenario based examples

The scenarios provided below demonstrate how different activities in the same job role can impact on what level of DBS check you will need to undertake. It will therefore be important that an appropriate risk-based assessment is made against the job description to ensure that the right level of check is obtained.

### Access to patient records

Ranjit applies for a job dealing with patient records in *Any-town NHS Trust*. The area of the hospital she will be working in is not accessible to patients, but she has to walk past several wards where patients are being treated to get to her area of work.

In this case, although Ranjit may have some access to patients on route to her area of work, this likely to be purely incidental (i.e. no more than that of a visitor to the hospital site). Her normal duties would purely involve her having access to patient identifiable data which **would not in itself make the position eligible to have a standard or enhanced DBS check.**

If however, her role also involved her having access to patients as part of her normal duties (e.g. her normal place of work is on a ward area), then consideration should be given to eligibility for a **standard DBS check.**

### Cleaner

Peter applies for a job as a cleaner at an acute trust. He will be required to clean ward areas of the hospital.

In this case, Peter's duties will involve him working in ward areas on a day to day basis which would allow him to have access to patients, therefore this position would be eligible for a **standard DBS check.**

However, if his cleaning duties were restricted to other areas of the hospital site where he did not have direct patient contact e.g. public access areas, or office blocks, then the position **would not be eligible for any level of DBS check.**

## Moving to another NHS organisation

Peter leaves his job as a cleaner at *Any-town NHS Trust* after six months and applies for an identical role at *New-town NHS Foundation Trust*.

DBS certificates do not have a prescribed term of validity, therefore employers should make a risk based decision when considering previously disclosed information, this will depend on a number of factors, for example:

- is the new role identical or similar to the applicant's previous role?
- is the previous DBS check at the correct level for the new role?
- have there been any changes to legal requirements since the last check was obtained which would trigger the need for a new check?

In this scenario, the roles and responsibilities of the new job will be the same, given that the previous check was undertaken six months ago, the prospective employer may consider this as less of a risk and decide to accept the previous check.

If Peter had subscribed to the DBS Update Service when he had his initial DBS check with *Any-town NHS Trust*, his prospective employer would be able to seek his permission to access information about his criminal record status online, thus speeding up the time to recruit.

For further information, please refer to our [guide to using the DBS Update Service](#) which can be found on the NHS Employers website.

## Health support worker

Jill applies for a job at *Any-town NHS Trust* as a health support worker on an adults ward.

Jill's work as a health support worker will include undertaking regulated activity with adults and therefore the position is eligible for an **enhanced check with adults barred list information**.



## HR advisor

Lucy applies for a position as a HR advisor at *Any-town NHS Trust*. She will be located in an administration block on the hospital premises and will not have access to patients.

Administrative and secretarial roles which are located in a separate building away from patient areas **are not normally eligible for a standard or enhanced DBS check.**

Only where the individual's normal place of work or their activities involve them having access to patients (i.e. where their normal place of work or activities are carried out on ward areas and where they are likely to have regular interaction with patients) should employers consider eligibility for a **standard DBS check.**

## Receptionist in a general practice

Melissa applies for a position as a receptionist at *New-Town Medical Centre*. Her role will require her to work with two other receptionists, greeting patients as they arrive, checking them in, and arranging appointments. She will also be required to collect patient notes and ensure that this vital records go to the right healthcare practitioner.

The scope of duties undertaken by reception staff can vary from one GP practice to another but generally speaking they would not normally be required to undertake a regulated activity and therefore such a role **would not be eligible for an enhanced check with barred list information.**

Given that Melissa would be interacting with patients as part of her normal duties, the position would fall eligible for a **standard DBS check.**

## Gardener – maintaining hospital grounds

Bert is applying for a new position with *Any-town NHS Trust* as a gardener. The role requires him to maintain the hospital grounds. The role includes looking after plants growing outside of the hospital building, in and around car parks and making sure the grounds are well tended.

Bert will be responsible for maintaining the hospital grounds, therefore any contact with patients is likely to be purely incidental so his position is **not eligible for a standard or enhanced DBS check.**



## Work experience placement

Serpil is 15 years old. She is thinking about a career in the NHS, but before she explores what type of role she would be interested in, she has asked her head teacher to support her to get some work experience in a trust. She has managed to secure a two week work experience placement at *Anytown NHS Trust*.

Generally students on work experience placements would not be undertaking regulated activity, and any contact with patients should be fully supervised, therefore such positions **are not eligible for a DBS check**.

In such cases, it is also important to note that employers are not legally permitted to request a criminal record check on a child under the age of 16.

## Supervising a child on a work experience placement

Andrew currently works as a receptionist at *Anytown NHS Trust* and has been asked if he will supervise Serpil during her time with the trust on a work placement, as she has expressed an interest in learning what it's like working in the main reception area of a hospital.

Supervising a child on a work experience placement, is not in itself a regulated activity so **would not require an enhanced check with barred list information**.

In this case, Andrew's normal role as a receptionist would have required a standard level check when he was appointed. The fact that he has been asked to supervise Serpil during her placement does not impact on the level of check required, or trigger the need for him to have a repeat check.

However, if Andrew was specifically employed to supervise children under the age of 16, and he would be providing these arrangements to children unsupervised, then this would be deemed a regulated activity and an **enhanced check with children's barred list information** would apply.

## Training placement

Sally has enrolled on a nursing pre-registration degree programme. One element of the course is to complete nursing placements in various NHS settings, for which she will receive credits towards her qualification.

Although Sally will be supervised during her placement, she will be delivering health and personal care under the definition of regulated activity, therefore she would require an **enhanced check with barred list information**. Depending on access, this check should include a check against the adults' and/or children's barred lists.

Given that Sally is likely to move to different NHS settings while she is training, it would be beneficial for her to subscribe to the DBS Update Service, to help prevent the need for duplicate DBS checks. This might be something that's encouraged when she first registers onto the training programme.

## Senior house officer

Dr Johnson, a senior house officer, moves as part of a rotational training programme from *Any-town NHS Trust* to *New-town NHS Foundation Trust*. He was subject to an enhanced disclosure with a barred list check at *Any-town* six months ago.

Doctors on rotational training programmes are regarded as being in continuous employment for the full period of their training programme. Due to the frequency by which doctors on training programmes have to change placements across different departments and NHS organisations, the normal trigger for a DBS check would be disproportionate to risk. Because they are undertaking regulated activity, these positions would be eligible for an **enhanced check with barred list information**.

Where it is highly probable that doctors will be providing health care to both children and adults during the term of their training programme, it is highly recommended that a check against both barred lists is obtained to prevent the need for any unnecessary duplication of checks as they move from placement to placement.

Given the transient nature of their posting in the NHS, doctors on rotational training programmes should be informed about the benefits of subscribing to the DBS Update Service, either when they first start their training programme, or when they are next due to have their three-yearly check.

## Healthcare assistant

Mohamed applies for a position as a healthcare assistant on an adults ward. His duties will also include assisting elderly patients to eat their meals where they are too frail or ill to feed themselves.

Mohamed is undertaking a regulated activity therefore the position requires an **enhanced check with adult barred list information**.

Regulated activity includes the provision of 'relevant personal care' - for example, where the individual would be providing physical assistance to patients such as spoon feeding, or prompting and supervising them to eat because without that assistance (due to age, illness or disability) they would not be able to do so for themselves.

## Hospital porter

Henry applies for a job as a hospital porter. His role will involve him transporting adults to and from different departments and wards.

Not all porters will require a DBS check as this will be dependent on the type of activities they will be undertaking and their level of access to patients.

In this case, Henry will be undertaking regulated activity as he will have responsibility for transporting adults who are in receipt of health care (defined as "conveying" under the Safeguarding Vulnerable Groups Act) and therefore the position is eligible for an **enhanced check with adults barred list information**.

If however, his role as a porter did not involve transporting adults and was more specifically involved in the removal of waste from a ward area or undertaking general maintenance work on ward areas where patients are located, this would not be regulated activity. In such cases, consideration should be given against eligibility of the position for a **standard DBS check**.

If his responsibilities purely involve transporting blood samples, medical equipment or laundry where he had no contact, or merely incidental contact with patients, then the role **would not be eligible for any level of DBS check**.

## Driver – Children’s Acute Transport Service

Dave is applying for a new position as a driver in the Children’s Acute Transport Service (CATS) in his region. His role will include transporting critically ill children to and from paediatric intensive care units as part of a specialist paediatric retrieval service.

In this case, Dave will be responsible for driving a vehicle which is predominantly used for transporting (“conveying”) children to and from paediatric intensive care units across the region on a day to day basis. This may also include transporting the child’s carer or supervisor.

Under the definition of regulated activity, the conveying of children must be provided ‘frequently’ (i.e. once a week or more, 4 days or more in any 30 day period, and/or overnight). Given that Dave will be conveying children as part of his normal duties, his role will be eligible for an **enhanced check with children’s barred list information**.

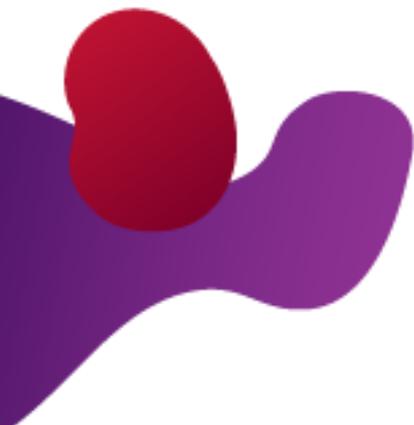
Employers will find it useful to refer to guidelines issued by the Department of Education in relation to further clarity on [the definition of regulated activity with children](#).

## Volunteer - hospital restaurant

Harry is applying as a volunteer to work in the restaurant located on the ground floor at *New-town NHS Foundation Trust*. He will be required to prepare and serve food over the counter, but is not required to deliver food to ward areas.

The hospital restaurant is open to members of the public, staff, and patients.

Although Harry may serve patients who choose use the restaurant, any contact with them would be regarded as purely incidental, therefore this position is **not eligible for a standard or enhanced check**.



## Volunteer - providing trolley service on a ward

Raquel volunteers in the hospital restaurant but her duties also require her to provide a trolley service selling cold food and drinks to patients in ward areas.

As Raquel is providing a service concerned with the provision of health services which allows her access to patients on ward areas in the course of her normal duties, she would be eligible for a **standard check**.

If her responsibilities also required her to physically assist or prompt patients to eat where they are unable to do this themselves because of their age, illness or disability, then the activities she would be undertaking would be regarded as regulated activity and she would be eligible for an **enhanced check with barred list information**.

## Psychotherapy and counselling position

Sarah is applying for a position providing psychotherapy and counselling to adults. This position involves both in a face-to-face and telephone interaction with adults in receipt of health care at *New-Town NHS Foundation Trust*.

Psychotherapy and counselling (but not life coaching) is regarded as regulated activity, where this is provided to an adult who is receiving health care from, or under the direction or supervision of, a health care professional. Therefore, this position would be eligible for an **enhanced check with adults barred list information**.

This is regardless as to whether or not psychotherapy and counselling is provided to the adult face-to-face and/or over the telephone.

## Human resources director

Harry has applied for a position as the human resource director at *Anytown NHS Trust*.

Harry would not be directly responsible for the management or supervision of anyone engaging in a regulated activity. His role would therefore **not be eligible for an enhanced check with barred list information.**

Employers may wish to undertake a free online check against the list of directors which is held by [Companies House](#) to seek assurances that individuals applying for any such roles have not been disqualified as a director, or are subject to any restrictions.

## General practice manager

Ijaz has applied for a position as a general practice manager, as part of his role he will be responsible for the day-to-day management of doctors and nursing staff employed within the practice.

General practice managers are providing a regulated activity on the basis that they would be responsible for the day-to-day management or supervision of doctors and nurses who would be providing a regulated activity. Therefore this position would be eligible for an **enhanced check with barred list information.**

## Pharmacist

Victor has applied for a position as a community pharmacist. He will be required to work closely with GPs, nurses and other health care professionals providing advice on medication and ensuring that prescribed dosages are correct. He will also have responsibility for dispensing medication and counselling patients on their proper use.

Victor is a registered healthcare professional providing a regulated activity and therefore his role would be eligible for an **enhanced check with barred list information.**

Staff working in community pharmacies, who are not registered healthcare professionals, are not in regulated activity. For example, a person who works in a high street pharmacy providing health advice to customers over the counter are not in regulated activity and would **not be eligible for an enhanced with barred list information.**

## Contractor - engineer

Vincent is appointed through an external contractor as an engineer working in the estates team within *New-Town NHS Foundation Trust*. His role involves the installation of systems, in facilities management, and maintenance anywhere within the hospital site.

The type of work contractors are required to do on NHS premises can be far reaching and not all positions will be eligible for a DBS check. It is essential for employing organisations to clearly stipulate in their contract arrangements with third party staffing providers, whether or not the position meets the eligibility criteria for a DBS check and most importantly, at what level.

In this case, Vincent would not be undertaking regulated activity and therefore his position would **not be eligible for an enhanced DBS check.**

However, given that this position may involve him undertaking work on ward areas where he would have access to patients in the course of his normal duties, the employing organisation should consider whether these activities meet eligibility for a **standard level DBS check.**

## Contractor - supplying and servicing laboratory equipment

Craig provides services to the NHS through an external contractor. His role involves supplying and servicing laboratory equipment. He does not have access to patients.

Craig's role would **not be eligible for a standard or enhanced DBS check** as he is not providing health care services, and is unlikely to have contact with patients.

## Emergency call handler

Philippa has applied for a position as an emergency call handler dealing with NHS 111 calls. She will be providing health-related advice to adults under the direction of a health care professional.

Eligibility for a DBS check for any such position depends on the type of advice and guidance the call handler is required to give. In this case, Philippa would be providing health care advice to adults under the direction or supervision of a health care professional, which would be regarded as a regulated activity, therefore an **enhanced check with barred list information would be required.**

However, where call handlers (who are not health care professionals themselves) provide advice or guidance but not under the direction or supervision of a health care professional, then an **enhanced check without barred list information** should be considered.

Call handlers who purely act as an information directory, such as giving contact details for health services to adults, or where they redirect calls through to a health care professional who then provides the health related advice or guidance to an adult, **would not be required to have a standard or enhanced check.**

## Paramedic

Ellie has been appointed as a paramedic at *New-Town Ambulance Trust*. As the most senior healthcare professional at the scene of an accident or other emergency, she will be required to assess the patient's condition and give essential treatment. She will administer oxygen and drugs and use high-tech equipment, such as defibrillators, spinal and traction splints, and intravenous drips, as needed.

Ellie will be providing "healthcare" under the definition of regulated activity and therefore her position will be eligible for an **enhanced check with barred list information.**

Given that she may be required to administer treatment to both adults and children, a check against both barred lists should be obtained.

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