



<b>Title</b>	<b>DBS Policy</b>
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<b>Date Implemented</b>	<b>June 2020</b>
<b>Date to be revised</b>	<b>June 2023</b>

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## 1. Introduction

Emerge is committed to ensuring that appropriate pre and post-employment checks have been undertaken on its volunteers and other workers to ensure that clients are protected. The aim of this policy is to set out the requirements of Emerge alongside the Trust in relation to Disclosure and Barring (DBS) checks at appointment and on 3 yearly renewals.

Emerge will ensure that it adheres to the Disclosure and Barring Service Code of Practice which requires organisations to use the Disclosure information fairly and:

- Not to discriminate against candidates on the basis of unrelated criminal offences
- To ensure data security
- To comply with the recommendations for the retention of records
- To comply with reasonable requests from the DBS to undertake assurance checks. Copies of the Code of Practice are available from the DBS website on [www.gov.uk/dbs](http://www.gov.uk/dbs)

## 2. Principles

The following key principles outline Emerge's approach to DBS checks:

- Emerge will ensure that disclosure information is treated fairly and without discrimination whilst ensuring a safe and robust recruitment process
- Emerge will not accept a DBS check undertaken through any other organisation
- Where the volunteer or other worker has registered with the DBS Update Service, the check is at the required level, Emerge has been granted permission to register an interest in their DBS statement and is able to confirm a valid DBS check is in place, they will not require a new check
- The DBS process will form part of the pre-employment checks for all newly appointed volunteers
- Emerge will assess the relevance of disclosure information to the suitability for volunteering of an individual.
- Compliance with equality, human rights, employment legislation, all statutory and mandatory requirements
- Compliance with the DBS Code of Practice.
- Maintain a rolling programme of 3 yearly checks.

## 3. Scope and Purpose

The policy applies to all Emerge volunteers.

The purpose of this policy and associated guidance is to:

- Set out the requirements to undertake DBS checks
- Prevent any inappropriate and/or illegal checks

- Ensure consistency and fair treatment

This policy has been written in line with the NHS Employment Check Standards for Disclosure and Barring Service checks.

#### **4. Duties and Responsibilities**

##### **4.1 Management Committee**

The Management Committee have a responsibility to oversee this policy and ensure that appropriate processes and actions are in place to prevent illegal checks being undertaken and ensure those that are required are undertaken at the appropriate level.

The Management Committee is responsible for ensuring that this policy is effectively and appropriately implemented. They are also responsible for ensuring that the processes within the policy are monitored and non-compliance is acted upon.

##### **4.2 Care Group Directors/Corporate Directors**

The Management Committee have responsibility for ensuring appropriate action is taken when a volunteer fails to comply with their responsibilities under this Policy.

##### **4.3 The Workforce and Development Department - Recruitment Team**

The Workforce and Development Department are responsible for providing support and guidance on the implementation of this Policy where issues or concerns are raised either during the recruitment process or during the course of a volunteer's recruitment, this includes providing advice to the Management Committee when in receipt of a positive disclosure.

The Recruitment Team are responsible for ensuring that DBS checks are undertaken in accordance with the requirements of this Policy, the DBS requirements, the DBS Code of Practice and Employment Check Standards. They will ensure that all appropriate information is entered into the ESR database and for maintaining a rolling programme of 3 yearly checks. Where volunteers are registered with the DBS Update Service the Recruitment Team are responsible for checking the authenticity of the disclosure certificate, obtaining the consent of the volunteer for the Recruitment Team to register an interest in their DBS Statement, making an on-line check, implementing a process for renewing these DBS checks annually via the automated checking system and for highlighting any changes in the check immediately to Emerge and the HR Advisor. The Recruitment Team have responsibility for ensuring that any adverts placed confirm the requirements of this Policy to any prospective volunteers.

##### **4.4 Recruiting Managers**

The Recruiting Managers have responsibility for ensuring that they inform the Recruitment Team of the level of check required for any position being advertised or changed. Recruiting Managers must ensure that they are familiar with their responsibilities under this Policy, including the requirements for DBS Checks for volunteers when receiving a positive disclosure.

The Recruiting Managers should ask potential volunteers relevant questions about declared previous convictions at interview.

Recruiting Managers are responsible for ensuring that disclosed information is treated fairly and without discrimination in line with Emerge's guidance and to be aware of their volunteer's responsibility to disclose information under their terms and conditions of recruitment.

Recruiting Managers are responsible for undertaking risk based assessments on positive disclosures and checking the authenticity of disclosure certificates. Recruiting Managers are responsible for ensuring appropriate action is taken when an employee fails to comply with Emerge's renewal process or fails to provide them with sight of their disclosure certificate when reasonably requested to do so.

#### 4.5 All Volunteers

All volunteers at Emerge have a responsibility to abide by this policy. If during the course of their volunteering they are arrested, charged, cautioned or convicted of any criminal offence then they are contractually required to notify the management committee of the circumstances of the same as soon as possible, this includes notification of any pending court appearance, bind-overs, absolute and conditional discharges. Failure to do so will result in formal action being taken under Emerge's Disciplinary Policy and may result in relinquishing their position.

### 5. The Disclosure Service

#### 5.1 Rehabilitation of Offenders Act

Detailed guidance on spent and unspent criminal offences can be found within the Guidance for Line Managers when Receiving Positive Disclosures.

Emerge's Policy statement on the recruitment of ex-offenders can be found at Appendix 1.

#### 5.2 Levels of checking and eligibility for check

The need for a check and the level of check is determined by the activities and the type of access to clients which volunteers will have as part of their role.

##### 5.2.1 Posts not exempt from the Rehabilitation of Offenders Act

It is illegal to carry out a DBS check on any post that is not exempt under the Rehabilitation of Offenders Act (Exceptions) Order, and to do so could make Emerge liable for legal action.

The DBS regularly monitors its registered bodies to ensure they are not carrying out ineligible checks. Persistent misuse of the criminal record checking system can lead to decisions being taken by the DBS to de-register an organisation from carrying out checks.

### 5.2.2 Posts exempt from the Rehabilitation of Offenders Act

Where the position is listed as exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, Emerge is entitled to seek information about all spent and unspent convictions that are not subject to the filtering rules and that any information disclosed will be verified by obtaining a standard or enhanced check by requesting a DBS Check.

There are currently four levels of DBS Checks available depending on the nature of the role. These are known as basic, standard, enhanced without a check of the barred list(s) and enhanced with a check of the barred list(s).

### 5.2.3 Basic Disclosure

A basic disclosure may be obtained where the prospective volunteer will occupy a position of Trust and the duties of the post mean they are not eligible for an alternative level of check. Such posts may include, but are not limited to director level posts or those working in senior finance roles.

### 5.2.4 Standard Level DBS Check

To be eligible for a standard level DBS Check, the post must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This check contains details of both spent (old) and unspent (current) convictions, including cautions, reprimands and final warnings held in England and Wales on the Police National Computer (PNC). Most of the relevant convictions in Scotland and Northern Ireland may also be included.

A standard check may be undertaken where 'the work is concerned with the provision of health services or similar and which is of such a kind as to enable the volunteer to have 'access to persons in receipt of such services in the course of their normal duties'. 'Access to persons' does not include positions which only allow limited or incidental contact with clients.

A standard level of check does not check against either of the barred lists and should not be applied for when a volunteer is working in a 'regulated activity'.

### 5.2.5 Enhanced Level DBS Check

To be eligible for an enhanced level DBS check, the post must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) Regulations. The enhanced check contains the same information as a standard check but also includes any non-conviction information held by local police, where they consider it to be relevant to the post. This information is referred to as 'approved information' and is included on the enhanced check certificate.

In a small number of cases, the enhanced level DBS Check may also include additional non-criminal record information from the local police where this is thought necessary in the interests of preventing or detecting crime.

An enhanced level of check does not check against either of the barred lists.

### 5.2.6 Enhanced Level DBS Check with Check of the Barred List(s)

To be eligible for an enhanced level DBS check with either or both of the barred list(s) a volunteer must be expected to be working in a regulated activity with either children or adults or both. It must be specifically listed in the Police Act 1997 (Criminal Records) Regulations.

Emerge has a legislative requirement to request barring checks to be conducted for volunteers working in a regulated activity under the Protection of Freedoms Act 2012 which amended the Safeguarding Vulnerable Groups Act 2006 in September 2012.

Guidance and advice on the level of check required for a post may be obtained from the Recruitment Team Leader or The Workforce and Development Department.

## 6. Regulated Activity

A, 'regulated activity' is defined under the Safeguarding Vulnerable Groups Act (2006) as amended by the Protection of Freedoms Act (2006) as any activity involving working or volunteering with children and/or adults, which meets specific criteria. Reference should be made to Appendix 3 for further information about 'regulated activity'. Either one or both of the barred lists can be checked depending on the responsibilities of the post.

It is illegal for an employer to knowingly employ someone in a regulated activity when the employer knows that the person is barred from that regulated activity

It is also an offence for a barred person to work or seek to work in regulated activity within a sector from which they are barred. In the event a prospective employee appears on the Barred List guidance should be sought from the DBS.

Where it is indicated on a DBS application form that the prospective volunteer will be working or volunteering with adults or children within a regulated activity, an enhanced level disclosure will be required with reference to the appropriate barred list(s).

## 7. Procedure to be followed at Recruitment Stage

All posts requiring a DBS Check will be clearly referred to in the advertisement for the post and all offers of volunteering will be made on condition of receipt of a satisfactory disclosure at the appropriate level for any post where one is required.

The following principles will apply:

- Only the applicant successful at interview will be required to complete the DBS application documentation
- Prospective volunteers will be advised of the level of DBS Check required
- Prospective volunteers will be advised that a criminal record will not automatically exclude them from being appointed.

- All applicants will be required to complete a declaration form as part of the pre-employment check process. The declaration form is mandatory within the NHS and will vary dependent upon whether the post is exempt from the Rehabilitation of Offenders Act. Declaration forms will ask prospective volunteers to declare criminal convictions, counter-fraud investigations, dismissal by reason of misconduct and fitness to practice proceedings.
- Prospective applicants will be required to produce their disclosure certificate to the Recruiting Manager or the Recruitment Team to allow a check for authenticity and, in cases of a positive disclosure, in order for a full risk assessment to be completed
- A conditional offer cannot be confirmed until all the appropriate information has been received / considered

### **8. Starting work before the return of a satisfactory disclosure**

A prospective volunteer will not be allowed to start working in a 'regulated activity' prior to a satisfactory disclosure being received. In exceptional circumstances where the health, safety and welfare of volunteers and/or clients may be affected then a risk based assessment should be made using the relevant risk assessment form and as a minimum the following must apply:

- DBS disclosure applied for
- All other checks have been received and are satisfactory
- Individual is not working with children
- Safeguards are put in place to manage / supervise the individual
- A DBS Adult First Check (check of the Adults barred list) has been returned and no adverse information is present

Where an individual is not engaged in a 'regulated activity' but has access to clients in the normal course of their duties, then a risk based assessment should be undertaken using the relevant risk assessment form and signed by an authorised person and the individual to confirm they are aware of any restrictions on their role and this should be held on file until the DBS Check has been provided.

### **9. Assessing the Relevance of Criminal Records**

The suitability for volunteering of an individual with a criminal record will vary, depending on the nature of the job and details of the circumstances of any conviction. To facilitate this process, an individual's criminal record should be assessed 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 Recruiting Manager will need to make a fair, non-discriminatory assessment based on the individual's skills, experience and suitability for the post. Where the DBS Check indicates that the DBS has made a barring decision against one or both of the barred lists, it is illegal for Emerge to allow the individual to be engaged in a regulated activity from which they are barred.



## 10. Work Experience Placements

Work experience placements for students under 16 will not require a DBS Check. However it is expected that these young people and those aged 16 - 18 will be in areas that have undertaken a risk assessment and will be working under appropriate levels of supervision at all times.

## 11. Transgender Applicants

DBS provide a confidential checking service for transgender applicants who do not want to reveal details of their previous identity to a potential employer by using the DBS confidential checking service: [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk)

## 12. Legal Duty to Refer to the DBS

Emerge has a legal responsibility to refer a volunteer to the DBS in circumstances whereby:

- They have permanently removed a volunteer from a regulated activity through dismissal or where they would have removed or transferred that person from a regulated activity if they had not left or resigned
- They believe the volunteer has been cautioned or convicted of a relevant (automatic barring) offence
- They believe the volunteer has engaged in relevant conduct in relation to children and/or adults for example an action or inaction (neglect) that has harmed a child or adult or put them at risk of harm
- They have satisfied the Harm Test in relation to children/or adults – for example there has been no relevant conduct but a risk of harm to a child or vulnerable adult still exists

Further guidance on making a referral is available on the DBS website at [www.gov.uk/government/dbs-factsheet-01.pdf](http://www.gov.uk/government/dbs-factsheet-01.pdf)

It is an offence not to refer someone to the DBS in the above circumstances. In the event of a prospective volunteer or existing volunteer, appearing on the Barred List, Emerge will be given guidance by the DBS along with the DBS check.

## 13. Disclosure Certificates

Certificates are no longer issued to Emerge and only to the prospective volunteer. In circumstances where a positive disclosure is issued to a volunteer or prospective volunteer they will be required to produce the original DBS disclosure certificate to the Recruiting Manager, who will then follow the Guidance For Managers when Receiving Positive Disclosures. When the prospective volunteer or volunteer provides Emerge with sight of the disclosure certificate Emerge will record the following key details in ESR:

- The name of the individual and issue date of the certificate
- The level of the check requested, including any checks against one or both of the barred lists

- The position for which the certificate was requested
- The unique reference number of the certificate
- Where the update service is subscribed to the individual's unique reference number

Where a volunteer or prospective volunteer fails to provide sight of the positive disclosure certificate, when reasonably requested to do so and without justifiable reason, then any offer of recruitment will be withdrawn or, in the case of an existing volunteer, they may be removed from their post and formal action taken under Emerge's Disciplinary Policy which may result in their dismissal.

#### **14. Confidentiality and Data Protection**

Emerge will comply with the DBS Code of Practice. The DBS code is in place to ensure that Emerge meets their obligations when receiving the sensitive information available to them and that the information will be used fairly and that sensitive personal information disclosed by the DBS is handled and stored appropriately and is kept only for as long as necessary.

#### **15. Portability**

Disclosure Certificates issued for a post with another organisation are not accepted by Emerge for recruitment purposes. Portability will only be acceptable in cases whereby a prospective volunteer is registered with the DBS Update Service and they have given consent for Emerge to register an interest in their DBS statement.

#### **16. References**

- Disclosure and Barring Code of Practice
- <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

#### **Appendix 1**

##### Policy Statement on the Recruitment of Ex-Offenders

As an organisation using the DBS Disclosure services to assess an applicant's suitability for positions of Trust, Emerge complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.

Emerge is committed to the fair treatment of its volunteers, potential volunteers or users of its services, regardless of race, gender, religion, sexual orientation, age, physical / mental disability or offending background.

Emerge actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records.

A Disclosure is only requested when it is felt appropriate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms, job adverts and recruitment information will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.

Emerge encourages all applicants to provide details of their criminal record at an early stage in the application process, ie: on the application form. The Trust guarantees that this information will only be seen by those who need to see it as part of the recruitment process.

At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matters 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 or dismissal if already in post.

Emerge makes every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and makes a copy available if required.

Emerge undertakes to discuss any matters revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer.

If there are any discrepancies between the information disclosed by an individual and the information in the Disclosure Certificate, the individual will be offered the opportunity to discuss these with an authorised individual before a final decision is made about their suitability for volunteering.

All reasonable attempts will be made to resolve any discrepancies. However, if it is not possible to do so, Emerge will reserve the right to withdraw the offer of volunteering. Individuals will be advised to use the DBS Disputes Procedure if they believe the information contained within the Disclosure Certificate to be incorrect.

Having a criminal record will not necessarily bar people from working with Emerge. This will depend on the nature of the position and the circumstances and background of the offences. A legal update came into effect on 10th March 2014 that revises the amount of time that an offence is regarded as being 'spent' for the purposes of the Rehabilitation of Offenders Act.

When deciding whether an appointment to a post can be made an individual's previous convictions will be considered, taking into account the following information:

- Whether the offence(s) or other matters revealed are relevant to the post in question
- The seriousness of the offence(s) or other matters revealed
- The length of time since the offence(s) or other matters occurred
- Whether the applicant has a pattern of offending behaviour
- The circumstances surrounding the commission of the offence(s)

If a candidate fails to disclose a criminal record after subsequently being engaged, they may be dismissed on grounds of failure to declare information / fraud as this constitutes an act of gross misconduct.

## **Appendix 2**

### Security of the Data

Emerge treats the unauthorised access or disclosure of sensitive data as a disciplinary offence. It could also constitute a criminal offence under the Data Protection Act, GDPR and Section 124 of the Police Act.

The management committee, as recipients of disclosure information, are responsible for ensuring that it is only available to those who need to have access to it in the course of their duties.

Disclosure information should not normally be kept on personal files except in exceptional circumstances.

The Disclosure document itself is no longer sent to the requesting party but is sent directly to the applicant. The individual is required to provide an original copy of any positive disclosure to the Recruiting Manager in order for a full assessment to be made. The relevant details outlined below are entered on to ESR.

In circumstances where Disclosure information is requested by a third party in connection with legal proceedings, eg: in a case submitted to an Employment Tribunal, the DBS must be notified immediately and prior to the release of the information.

### Retention of Records

The DBS has recommended that The Trust, who action the DBS application, keep a record of the following:

- The name of the individual and issue date of the certificate
- The level of the check requested, including any checks against one or both of the barred lists
- The position for which the certificate was requested
- The unique reference number of the certificate
- Where the update service is subscribed to the individual's unique reference number

In addition, a written record may be kept of those to whom any Disclosure information has been revealed.

### Appendix 3

#### Definition of a Regulated Activity

The provision of health care by any health care professional or the provision of health care under the direction or supervision of a health care professional is a regulated activity. The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by The Protection of Freedoms Act 2012).

#### Regulated activity relating to children

The new definition of 'regulated activity' relating to children comprises only:

- (i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
- (ii) Work for a limited range of establishments ('specified places') with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers.

Work under (i) or (ii) is regulated activity only if done regularly.

(iii) Relevant personal care, for example washing or dressing; or healthcare by or supervised by a professional.

(iv) Registered child-minding and foster-carers.

#### Regulated activity relating to Adults

The new definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. The new definition identifies the particular activities undertaken that lead to the adult being considered vulnerable at that particular time regardless of how often they are undertaken. The focus is on the activities needed by the adult, not where the activity takes place, i.e. the frequency test has been removed. An individual only needs to engage in the activities listed below once to be carrying out regulated activity relating to adults:

- Healthcare for adults provided by, or under the direction or supervision of a regulated health care professional
- Personal care for adults involving hand-on physical assistance with washing and dressing, eating, drinking and toileting
- Social work
- Assistance with an adult's cash, bills or shopping because of their age, illness or disability arranged via a third party
- Assisting in the conduct of an adult's own affairs under a formal appointment
- Conveying (transporting) adults for reasons of age, illness or disability to, from, or between places where they receive healthcare, personal care or social work arranged via a third party