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POLICY FOR EMPLOYING EX-OFFENDERS AND PEOPLE WITH A CRIMINAL RECORD

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Contents

1. POLICY STATEMENT.....	3
2. SCOPE OF POLICY	3
3. RESPONSIBILITIES	4
4. REHABILITATION OF OFFENDERS ACT 1974	4
5. DISCLOSURE.....	5
6. USE OF DISCLOSURE INFORMATION.....	5
7. WITHDRAWING AN OFFER OF EMPLOYMENT	6
APPENDIX 1	8
APPENDIX 2	15
APPENDIX 3	16
APPENDIX 4.....	22

1. POLICY STATEMENT

Velindre University NHS Trust provides equality of opportunity for all job applicants with the required qualifications, experience skills, knowledge and personal qualities as outlined in the job description and person specification for the post. Therefore, the Trust welcomes applications from a diverse range of applicants, including ex-offenders and those with a spent or unspent criminal record.

In accordance with the Rehabilitation of Offenders Act 1974, an applicant's criminal convictions will only be taken into account during the recruitment process, where it is relevant to the post applied for. As the Trust has an exemption order under the above Act, any cautions, reprimands or final warnings, which are not criminal convictions, will also be considered as part of this process.

Having a conviction will not necessarily prevent applicants from being appointed to posts within the Trust. This will depend on the nature of the post that the applicant has applied for and the circumstances and background to their offence(s).

2. SCOPE OF POLICY

This policy applies to all applicants who apply for a post within the Trust. As the Trust has an exemption order, which overrules the employment rights of ex-offenders, as outlined in the Rehabilitation of Offenders Act 1974 i.e. they do not have the right to conceal information in respect of spent convictions when applying for jobs within the National Health Service (NHS). All applicants are therefore required to disclose on their application form, any information regarding spent or unspent criminal convictions, cautions, bind overs, reprimands or final warnings.

The Trust uses the Disclosure and Barring Service (DBS), as part of its recruitment process to help it to assess the suitability of applicants appointed to posts, which will require them to work with vulnerable groups, including children in the course of their normal duties, or those to be employed in a financial role.

Please visit the Government website for further information on this service:

<https://www.gov.uk/disclosure-barring-service-check/overview>

Velindre University NHS Trust is an equal opportunities employer, which is committed to the fair treatment of all job applicants, regardless of their;

- Age
- Convictions Background (criminal or otherwise)
- Ethnic Origin
- Gender Identity
- Gender
- Physical or Mental Disability
- Race
- Religion / Belief
- Responsibilities for Dependants
- Sexual Orientation

The Trust is committed to not discriminating unfairly against any applicant, where they disclose an unspent or spent criminal conviction, a caution, bind over, reprimand or final warning.

All candidates shortlisted for interview will be selected on the basis of their qualifications, experience, skills, knowledge and personal qualities as specified in the post's job description and person specification. The declaration of a conviction etc. will not necessarily prevent applicants from being shortlisted for interview or appointed to a post within the Trust. Conviction information will only be considered, to determine the candidate's suitability in respect of the post applied for.

3. RESPONSIBILITIES

3.1 Recruiting Manager

The recruiting manager has a responsibility to ensure that they are up to date with the recruitment and selection guidance and processes.

If the recruiting manager wishes to consider an applicant who has disclosed a conviction, caution, bind over, reprimand or final warning they must undertake a risk assessment, to assess the relevance of the conviction etc. against the post the individual is applying for. This risk assessment must be considered and signed off by the relevant Head of Service / Director before an offer of employment is made. In such circumstances advice should be sought from the People and OD Department.

3.2 People and OD Department

The People and OD Department is required to:

- Provide accurate and up to date advice on the legislation and principles that govern the recruitment and selection process for ex-offenders and individuals with a criminal record.
- Ensure that managers have adequate information, guidance and support to fulfil their role in the fair recruitment and selection of staff.

4. REHABILITATION OF OFFENDERS ACT 1974

The Rehabilitation of Offenders Act was introduced to help restore the reputation of individuals who had been convicted of an offence but have since reformed and not committed any further offences. The Act specifies the period of time that an offender is required to disclose previous convictions etc., including when applying for a job. The Act was extended to cover [police cautions](#) in 2008. (A caution is considered to be spent as soon as it is given).

Amendments to the Rehabilitation of Offenders Act 1974 were also made by the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) in England and Wales and came into effect during March 2014. This Act changed the way some rehabilitation

periods are set, so that they are fairer and better to reflect the seriousness of the sentences imposed.

Details of specific sentences / periods are set out within **Appendix 1** of this policy.

4.1 EXCEPTIONS ORDER 1975

There is an Exceptions Order within the Act, which sets out when the non-disclosure of an offence does not apply. The Order covers posts that involve particular risks, such as those working with vulnerable children or adults within the healthcare sector and financial services. Where applicants are applying for a post that will require them to work with vulnerable patients or deal with financial matters they are required to disclose all their previous convictions, whether they are 'spent' or 'unspent'. A list of Excepted Professions, Offices, Employment and Work is set out in **Appendix 2**.

The majority of Trust posts are exempt from the Act, as this legislation sets out that:

"Where a post is concerned with the provision of health services and it is of such of a kind that requires the post holder to have access to persons in receipt of healthcare services, in the course of their normal duties"

Extract based on wording taken from the Exceptions Order (1975)

In such instances the applicant is required to disclose 'spent' as well as 'unspent' convictions on their application form.

Should applicants require any additional information regarding how this act applies to their application, they should contact their local Probation Officer, Citizen Advice Bureau, solicitor, or consult the Home Office's rehabilitation document:
https://assets.publishing.service.gov.uk/media/653f7e52d10f3500139a6b20/30102023___Guidance_on_the_Rehabilitation_of_Offenders_Act_1974_and_The_Exceptions_Order_1975.pdf

5. DISCLOSURE

To ensure that all job applicants are familiar with the Trust's policy in relation to disclosure of convictions etc. all job advertisements will clearly state if a Basic, Standard, Enhanced or Enhanced with barred lists DBS Check is a requirement for the post. The NHS Wales application form will also contain a statement that will inform applicants that they are required to disclose any unspent or spent criminal convictions, cautions, bind overs, reprimands or final warnings, as part of the recruitment process.

6. USE OF DISCLOSURE INFORMATION

The Trust provides recruitment interview training for all of its managers, which covers the Rehabilitation of Offenders Act 1974 and the DBS Code of Practice, in relation to employing ex-offenders. Managers are also provided with relevant information regarding this aspect of the recruitment process in the Trust's policy and procedure for

dealing with disclosure of a criminal background for those employed to work with patients and children. This training and information ensures that all interview panel members are able to identify and assess the relevance of convictions, cautions, reprimands and final warnings and explore the circumstances and background sensitively of such convictions etc. with candidates who are shortlisted for interview.

Where an applicant discloses information regarding convictions etc. on their application form, the Trust will ensure that this information is treated confidentially and only divulged to those who need to access it for recruitment processes i.e. interview panel members and People and OD Department.

The lead Interview panel member will conduct a DBS risk assessment (**Appendix 4**) with any candidates made a conditional offer to explore the circumstances and background to their conviction etc. and their rehabilitation, to assess their suitability for employment in the post.

7. WITHDRAWING AN OFFER OF EMPLOYMENT

It is against the law to refuse someone a job because they have got a spent conviction or caution, unless it is because the DBS check shows that they are unsuitable for the post they have applied for (see Exemptions **Appendix 2**).

Where an applicant has a conviction, caution, bind over, reprimand or final warning and they fail to disclose this information on their application form, it could result in the withdrawal of an offer of employment

The Trust reserves the right to withdraw an offer of employment following a Disclosure and Barring Service (DBS) check (Standard or Enhanced), where it reveals a conviction etc. which renders the appointee unsuitable to work directly or indirectly with vulnerable patients / children or a finance related post.

In such circumstances, the lead interview panel member will contact the appointee to discuss the information divulged in the DBS Check and explain why the offer of employment is being withdrawn.

In accordance with the Rehabilitation of Offenders Act (1974) Exception Order, all applicants are required to disclose information in respect of unspent and spent convictions, cautions, reprimands and final warnings on their application form. Where applicants fail to disclose this information and it is later found that they have a conviction, etc. it could result in disciplinary action, including dismissal.

8. EQUALITY IMPACT ASSESSMENT STATEMENT

The Trust is committed to ensuring that, as far as is reasonably practicable, the way it provides services to the public and the way it treats its employees reflects their individual needs and does not discriminate against individuals or groups.

The Trust has undertaken an Equality Impact Assessment (EQIA) and received feedback on this policy and the way it operates. The Trust wanted to know of any

possible or actual impact that this procedure may have on any groups in respect of gender (including maternity and pregnancy as well as marriage or civil partnership) race, disability, sexual orientation, Welsh language, religion or belief, gender, transgender, age or other protected characteristics.

The assessment found that there was no impact to the equality groups mentioned and this policy will have a positive impact on all of the 'protected characteristic' groups where appropriate the Trust will make plans for the necessary actions required to minimise any stated impact to ensure that it meets its responsibilities under the equalities and human rights legislation.

9. GETTING HELP

Further information and support is available from your divisional People and OD Department.

APPENDIX 1

REHABILITATION PERIOD PER SENTENCE

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
<ul style="list-style-type: none">• Sentence of imprisonment for life• Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over four years for a schedule 18 offence• Sentence of preventive detention• Sentence of detention at His Majesty's pleasure• Sentence of custody for life• Public protection sentences* (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for	These sentences are excluded from rehabilitation and so will always be disclosed	These sentences are excluded from rehabilitation and so will always be disclosed

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
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dangerous offenders)

*A public protection sentence (the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006 means a sentence of imprisonment or detention, as detailed above, imposed for specified sexual and violent offences.

A custodial sentence of more than 4 years (not for a schedule 18 offence)	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
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A custodial sentence* of more than 1 year and up to, or consisting of, 4 years	The end of the period of 4 years beginning with the day on which the sentence (including	The end of the period of 2 years beginning with the day on which the sentence (including
--------------------------------------------------------------------------------	------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
	any licence period) is completed	any licence period) is completed
A custodial sentence of 1 year or less	The end of the period of 12 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 6 months beginning with the day on which the sentence (including any licence period) is completed
Removal from His Majesty's service	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
A sentence of service detention	The end of the period of 12 months beginning with the day on which the sentence is completed	The end of the period of 6 months beginning with the day on which the sentence is completed

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
A severe reprimand or reprimand under the Armed Forces Act 2006	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
Driving endorsements	5 years from the date of conviction	2 years 6 months from the date of conviction
Driving disqualification	When the period of the disqualification has passed	When the period of the disqualification has passed
Simple caution, youth caution**	Spent immediately	Spent immediately
Conditional caution, youth conditional	3 months or when caution ceases to have effect if earlier	3 months or when caution ceases to have effect if earlier

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered	
caution, diversionary caution**			
A fine	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed	
A compensation order	The date on which the payment is made in full	The date on which the payment is made in full	
Absolute discharge	Spent immediately	Spent immediately	
Relevant orders*** (orders that impose a disqualification, disability, prohibition or other penalty)	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered	
	further order' as in these cases it will remain unspent	further order' as in these cases it will remain unspent	states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent

*Suspended custodial sentences are treated the same as custodial sentences for this purpose. It will be the length of the sentence imposed by the court, not the period it is suspended for that dictates when it will become spent.

**Diversionary cautions and community cautions were introduced under the PCSC Act 2022 and are due to come into force in 2024.

***Relevant orders include:

1. community and youth rehabilitation orders,
2. conditional discharge orders,
3. hospital orders,
4. bind overs,
5. referral orders,
6. care orders, and
7. earlier statutory orders and
8. any order imposing a disqualification, disability, prohibition, penalty, requirement or restriction, or is otherwise intended to regulate the behaviour of the person convicted.

Source: <https://www.gov.uk/guidance/rehabilitation-periods> (Updated 28/10/2023)

N.B. Sentences exceeding 4 years are never spent. In such cases it is the sentence imposed by the court which is relevant and not the length of time actually served in prison / young offenders institution. A sentence counts in the same way, whether an individual is actually sent to prison or the sentence is suspended.

Where an individual received two or more prison sentences in the course of the same court case, the rehabilitation period depends on whether the sentences are ordered to take effect **concurrently** (*at the same time*) or **consecutively** (*one after the other*).

For example, if two, six month sentences are to be served concurrently, the convictions are treated separately, giving each conviction a rehabilitation period of seven years (aged 18 years and over).

If the sentences are to be served consecutively, they are treated as a single term of 12 months, with a rehabilitation period of 10 year (aged 18 years and over).

Source: The Liberty Guide to Human Rights – Spent Convictions and the Rehabilitation of Offenders (2002)

APPENDIX 2

EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS AND WORK

Listed below are the relevant excepted NHS professions set out in the Act:

- Medical practitioner;
- Chartered accountant, certified accountant;
- Dentist, dental hygienist, dental auxiliary;
- Nurse, midwife;
- Ophthalmic optician, dispensing optician;
- Pharmaceutical chemist;
- Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act;
- Registered osteopath;
- Registered chiropractor; or
- Chartered psychologist.

Listed below are the relevant NHS excepted offices, employment and work set out in the Act:

Any employment or other work which is concerned with the provision of care services to vulnerable adults 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 vulnerable adults in receipt of such services in the course of his normal duties.

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.

APPENDIX 3
VELINDRE NHS TRUST
Guidance on Posts Requiring Disclosure and Barring Service Checks

POST	Enhanced Check (With Barred List -Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	No DBS Check Required
Administrative Staff (Ward/clinical area based – including co-ordinating clinics)			YES	
Administrative Staff (Not based on a ward/clinical area)				NONE
Allied Health Professionals (Other allied health professional staff who practice healthcare)	YES			
Biomedical Scientists (With patient contact)	YES			
Biomedical Scientists (No patient contact)				NONE
Clinic Collection Assistants	YES			
Clinic Support Assistants	YES			
Clinical Scientists (With patient contact)	YES			
Clinical Scientist (No patient contact)				NONE
Catering Staff (Required to work on ward/clinical area(s))			YES	

POST	Enhanced Check (With Barred List Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	No DBS Check Required
Catering Staff (Not Required to work on ward/clinical area(s))				NONE
Counsellors	YES			
Dieticians	YES			
Drivers (Not required to transport patients)				NONE
Drivers (Required to transport patients)	YES			
Estates and Maintenance Staff (Required to work on / have access to ward/clinical area(s))			YES	
Estates and Maintenance Staff (Not required to work on / have access to ward/clinical area(s))				NONE
Finance Staff (Chartered / Certified accountants)		YES		
Finance Staff (undertaking administrative related finance work)				NONE
Healthcare Science Practitioners (with patient contact) <i>Formerly known as MTOs</i>	YES			

POST	Enhanced Check (With Barred List Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	No DBS Check Required
Healthcare Science Practitioners (No patient contact) <i>Formerly known as MTOs</i>				NONE
Healthcare Support Workers	YES			
Healthcare Support Workers (WBS Laboratories no patient contact)				NONE
Housekeeping Staff (Required to work on ward/clinical area(s))			YES	
Housekeeping Staff (Not required to work on ward/clinical area(s))				NONE
Management Staff (Required to work or access ward/ clinical area(s))/patient contact.			YES	
Management Staff (Not required to work or access ward / clinical area(s)).				NONE
Medical Secretaries			YES	
Medical Record Staff (Required to visit wards/clinical areas/patient contact)			YES	
Medical Record Staff (Not required to visit wards/clinical areas)				NONE

POST	Enhanced Check (With Barred List Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	No DBS Check Required
Medical Staff	YES			
Nurses (Qualified)	YES			
Nurses (Unqualified)	YES			
Occupational Therapists	YES			
Pharmacists	YES			
Pharmacy Technical Officers (With direct patient contact)	YES			
<i>Assistant</i> Pharmacy Technical Officer (With direct patient contact)	YES			
Phlebotomists	YES			
Psychologists	YES			
Porters (Who are involved in transferring patients)			YES	
Porters (Not involved in transferring patients)				NONE
Physiotherapists	YES			
Radiographers	YES			
Scientists (With patient contact)	YES			
Security Staff		YES		
Speech and Language Therapists	YES			

POST	Enhanced Check (With Barred List Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	No DBS Check Required
Volunteers (Not required to work on ward / clinical area(s))				NONE
Volunteers (Required to provide personal care to patients)	YES			
Volunteers (Required to assist with shopping for patients)	YES			
Volunteers (Required to transfer patients)			YES	

STANDARD CHECKS

A standard 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.

Eligibility for Standard Checks

Employers may carry out standard level DBS Checks to assess a person's suitability for work listed in the Exceptions Order i.e. where the type of work enables the person to have 'access to persons in receipt of such services in the course of [their] normal duties'. The term 'access' only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is no contact with patients. **Please note** that positions that purely involve having access to records are not covered under the terms of the Exceptions Order and therefore employers cannot obtain a standard or enhanced DBS Check for these positions

ENHANCED CHECKS

An 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' on the enhanced check certificate.

There are two levels of enhanced check – an enhanced disclosure check for regulated activity i.e. *with* barred list information (Regulated Activity) and an enhanced disclosure *without* barred list information.

Eligibility for Enhanced Checks For Regulated Activity (is work that involves close and unsupervised contact with vulnerable groups including children, and which cannot be undertaken by a person who is on the Disclosure and Barring Services Barred List)

Individuals seeking work in a regulated activity position must be checked against the DBS lists of those barred from working in regulated activity. This check is accessed through the process of applying for an Enhanced DBS Check for regulated activity.

Eligibility for an Enhanced DBS Check

Following recent changes to the eligibility criteria, there are some positions which are no longer eligible for an enhanced disclosure *with* a barred list check. Employers may continue to obtain an enhanced DBS check i.e. *without* a barred list check for those positions that were previously eligible under the Safeguarding Vulnerable Groups Act (SVGA) before 10 September 2012 but no longer fall within the new definition of regulated activity.

APPENDIX 4

DBS RISK ASSESSMENT FORM



DBS RISK ASSESSMENT

This risk assessment should be completed by the recruiting manager, with support from the People and OD team. The candidate should be given an opportunity to fully explain any convictions that they have prior to commencement in post.

PART A – EMPLOYEE / APPLICANT DETAILS

Applicant Details and Appointed Post Information			
Name	Click or tap here to enter text.		
Job title on appointment	Click or tap here to enter text.		
Contracted Hours	Full-time <input type="checkbox"/> Part-time <input type="checkbox"/>	If part-time please state the number of contracted hours per week	00.00 Hrs Per Week
Division / Organisation	Click or tap here to enter text.	Department	Click or tap here to enter text.
Expected Start Date	Click or tap to enter a date.		
Level of DBS required for post	Choose an item.		
Pre-screening Commencement in Post			
Please see note 1 below			
To be completed for commencement in post that requires a DBS check, prior to a certificate being returned			
Did the applicant declare any criminal convictions on their application form?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If Yes, please provide details of the offence:			
Click or tap here to enter text.			
Have you obtained satisfactory employer references?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Does the individual have a DBS from a previous employer that is less than 3 years old?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Will the role require regular unsupervised contact with children or vulnerable adults?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

Are you able to reduce unsupervised contact with patients or donors until the DBS certificate has been returned?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Please provide details of how you can reduce this contact:		
Click or tap here to enter text.		
Convictions noted on DBS certificate		
<i>Please see note 2 below</i>		
To be completed prior to commencement in post when a conviction has been noted on the DBS certificate		
Did the applicant declare any criminal convictions on their application form?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Do the details on the DBS certificate represent what the candidate declared on their application form?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Please provide detail of the conviction (see note 2)		
Click or tap here to enter text.		
Are the convictions relevant to the work the candidate will be undertaking?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Have employer references been obtained for the candidate that explore their suitability to undertake the role?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Please provide summary of references and periods covered		
Click or tap here to enter text.		
Has the candidate worked in a similar role to the one they will be undertaking, since committing the offence?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the role require regular unsupervised contact with children or vulnerable adults?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, does the returned disclosure inform that the candidate is barred from working with children or vulnerable adults?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

PART B – APPOINTING OFFICER DECISION

Please outline your decision to move forward.	Click or tap here to enter text.		
<i>I confirm the decision has been made to the best of my knowledge as the recruiting manager given the information presented to me at the time of the risk assessment.</i>			
Name	Click or tap here to enter text.		
Position Title	Click or tap here to enter text.		
Signed		Date	Click or tap to enter a date.

People and OD Support Officer			
Name	Click or tap here to enter text.		
Position Title	Click or tap here to enter text.		
Signed		Date	Click or tap to enter a date.

A record of this risk assessment should be retained on the employee's file
 In cases where the candidate commences in post prior to a DBS certificate ensure this risk assessment is regularly reviewed until the DBS certificate is returned.