

Managers Guidance: DBS Checks

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1. Scope of Guidelines

The purpose of this document is to provide guidance to managers on the purpose and process of used when assessing Disclosure and Barring Service (DBS) checks in Islington CCG. This document is meant to act as a guide and recruiting managers may need to consult with the Designated Nurse or Human Resources if they are unclear as to whether a post meets the criteria for requesting a DBS check.

Before an organisation considers asking a person to apply for a criminal record check through DBS, they are legally responsible for ensuring that they are entitled to submit an application for the job role.

Part V of the Police Act 1997 makes criminal record checks available for positions that are identified as exempt under the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (as amended). Not all NHS staff will require a DBS check, but such checks are mandatory for all staff who have direct physical contact with persons in receipt of health services in the course of their normal duties. The trigger for a check and the level of check is based on a risk assessment against the roles and duties of the position being offered and the type of contact the individual will have with vulnerable groups.

These guidelines should be used in conjunction with the Islington CCG Recruitment & Selection Policy.

This guidance applies to all staff working within Islington CCG including those holding an Honorary Contract.

2. Disclosure and Barring Service

On the 1 December 2012 the Criminal Records Bureau (CRB) changed to become the Disclosure & Barring Service (DBS). Criminal record and barring checks have the purpose of helping to prevent unsuitable people from entering the NHS workforce and gaining access to vulnerable groups. The criminal record relate to data held about the individuals criminal history.

Not all individuals being appointed into positions within the NHS require criminal record or barring checks. The need and level of the check is determined by the activities and the type of access to patients they will have as part of their role.

The DBS check is only one part of the recruitment and selection process, therefore this guide should be used in conjunction with the Recruitment and Selection Policy.

3. Types of DBS checks and eligibility

The recruiting manager is responsible for identifying if the position requires a DBS check and, should a check be required to determine which level of check is necessary for the position.

There are a number of levels of Disclosure: Basic, Standard, Enhanced (excluding the barred list check) and Enhanced (including the barred list check for roles that carry out regulated activity).

3.1 Basic Check

A basic disclosure is generally carried out on a person working in a position of trust or working in premises unsupervised.

3.2 Standard Check

Standard DBS checks show details of both spent (old) and unspent (current) convictions including cautions, reprimands and warnings held on the Police National Computer.

This level of check does not show whether a person is barred from working with children or adults.

This type of check is carried out where employees do not provide direct healthcare but have access to personal sensitive medical records about children or vulnerable adults

3.3 Enhanced check - without barred list information

Enhanced checks contain the same information as standard DBS checks but may also include any non – conviction information held by local police. To be eligible to apply for an enhanced check without barred list information, the individual must be involved in the activities outlined in section 4 below, at least once a week on an on-going basis, more than 4 days in any 30 day period

3.4 Enhanced check - with barred list information

The information that can be requested at this level of disclosure is

- Adults barred list check
- Children's barred list check
- An adults and children's barred list check

This is only available to those individuals engaged in regulated activity with children and/or adults.

4. **Regulated Activity**

The new definition of **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.
- i. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
 - ii. Registered child minding; and foster-carers.

The new definition of regulated activity relating to **adults** no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

In its broad term, there are six categories within the new definition of regulated activity, these are:

- Healthcare
- Personal Care
- Social Work
- Assistance with Cash bills or shopping
- Assistance with the conduct of their own affairs
- Conveying services

5. Rehabilitation of offenders Act

The purpose of the Rehabilitation of Offenders Act 1974 is to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law.

Under the 1974 Act, following a specified period of time which varies, according to the disposal administered or sentence passed, cautions and convictions (with the exception those resulting in prison sentences of over four years and all public protection sentences) may become spent. As a result the offender is regarded as rehabilitated. This means that for most purposes, the 1974 Act treats a rehabilitated person as if he or she had never committed, or been charged, prosecuted, convicted of or sentenced for the offence and, as such, they are not required to declare their spent caution(s) or conviction(s), for example, when applying for most jobs or insurance, some educational courses and housing applications.

6. Portability and Frequency

The DBS define portability as meaning the re-use of a disclosure obtained for a position in one organisation and later used for another position in another organisation.

The information recorded on a disclosure has no term of validity and only provided information known about the person up to the point of issue. For this purpose it is strongly recommended that the CCG do not use previously obtained disclosures.

A new DBS check is not normally required where an existing employee who has previously had a DBS check, moves internally into a new job where the roles and responsibilities do not require a different level of check.

A new requirement would be triggered where:

- The individual has never had a criminal check before and is moving to a position that now requires a check
- The new position significantly changes the individual's role and responsibilities or level of contact, i.e involvement in a regulated activity.

2. Procedure for DBS applications

- Once a post has been identified as requiring a DBS check and the appropriate level has been assessed as outlined above, the HR Recruitment team will identify if the prospective employee requires a new DBS check.
- The individual completes the DBS form online through Healthjobs and must bring supporting documentation in person to HR to ensure that the documents are checked with the individual present to verify their identity.
- The HR team will check documentation against a list of DBS requirements. A list of approved forms of ID is available from HR. Photocopies of the documents are retained on the personal file. No photocopies of the DBS application form will be retained.
- The online form is re-checked by HR for approval and confirmation of which level of check required – standard or enhanced – and where enhanced which list(s) to be checked. The details are entered onto The Electronic Staff Records (ESR), the online form is forwarded to the DBS.
- The procedure followed must ensure confidentiality and compliance with the Data Protection Act 1998

7. Disclosure reports – Storage and Destruction

The DBS certificate will only be sent to the applicant, even if it contains any criminal record information. Therefore the applicant will be requested to contact HR to bring in the original certificate for checking and copying. The applicant's permission must be obtained to copy the certificate and they will be asked to sign the copy to confirm their consent. The storage procedure will be explained to them.

Where a disclosure indicates no criminal history, this will be recorded on ESR together with the date received and the date of the disclosure report. The recruiting manager will be informed that the applicant/employee has been cleared to commence in post (subject to all other pre-employment checks).

Once a decision has been made as to whether to appoint or not, the DBS Certificate and self-declaration of Criminal Conviction form will be kept for no longer than six months from appointment, and six months from where the applicant has been unsuccessful, to allow for the consideration and resolution of any disputes or complaints. After this time the certificate and self-declaration form will be removed and destroyed confidentially.

Failure by an existing staff member to provide accurate and truthful information at the time of applying for a position will be considered as a disciplinary matter, which could result in dismissal or withdrawal of an offer of employment.

8. Positive Disclosures

The disclosure will state whether the individual has a criminal record, including any details of convictions, cautions, reprimands or final warnings.

Information obtained through DBS checks assists managers make an informed decision on whether or not to appoint a prospective employee. The decision rests with the CCG as to whether to employ a person whose DBS check reveals a conviction or other relevant information. The information provided should be carefully considered in the light of all the relevant circumstances and judged on a case-by-case basis.

If a disclosure indicates a conviction, caution or other record, the disclosure will be recorded and stored on the individual's electronic file. The counter-signatory will make checks to ascertain whether the information reported had been declared on either the application form, at interview or on the self-declaration form.

If the issues on the disclosure certificate have not been previously declared, the recruiting manager will be informed and will be required to contact the candidate to ascertain why they failed to disclose this information, as this will normally result in the offer of employment being withdrawn. The recruiting manager will discuss the candidate's explanation for failing to make the declaration with a member of HR. In exceptional circumstances and following discussions with the appropriate head of service / general manager a decision may be taken to accept the candidates' explanation for failure to disclose.

In the event that there are convictions/ cautions recorded on the disclosure these should be brought to the attention of the Director of Service and a view obtained on the appropriateness of proceeding.

9. Arrangements for checking Agency Workers

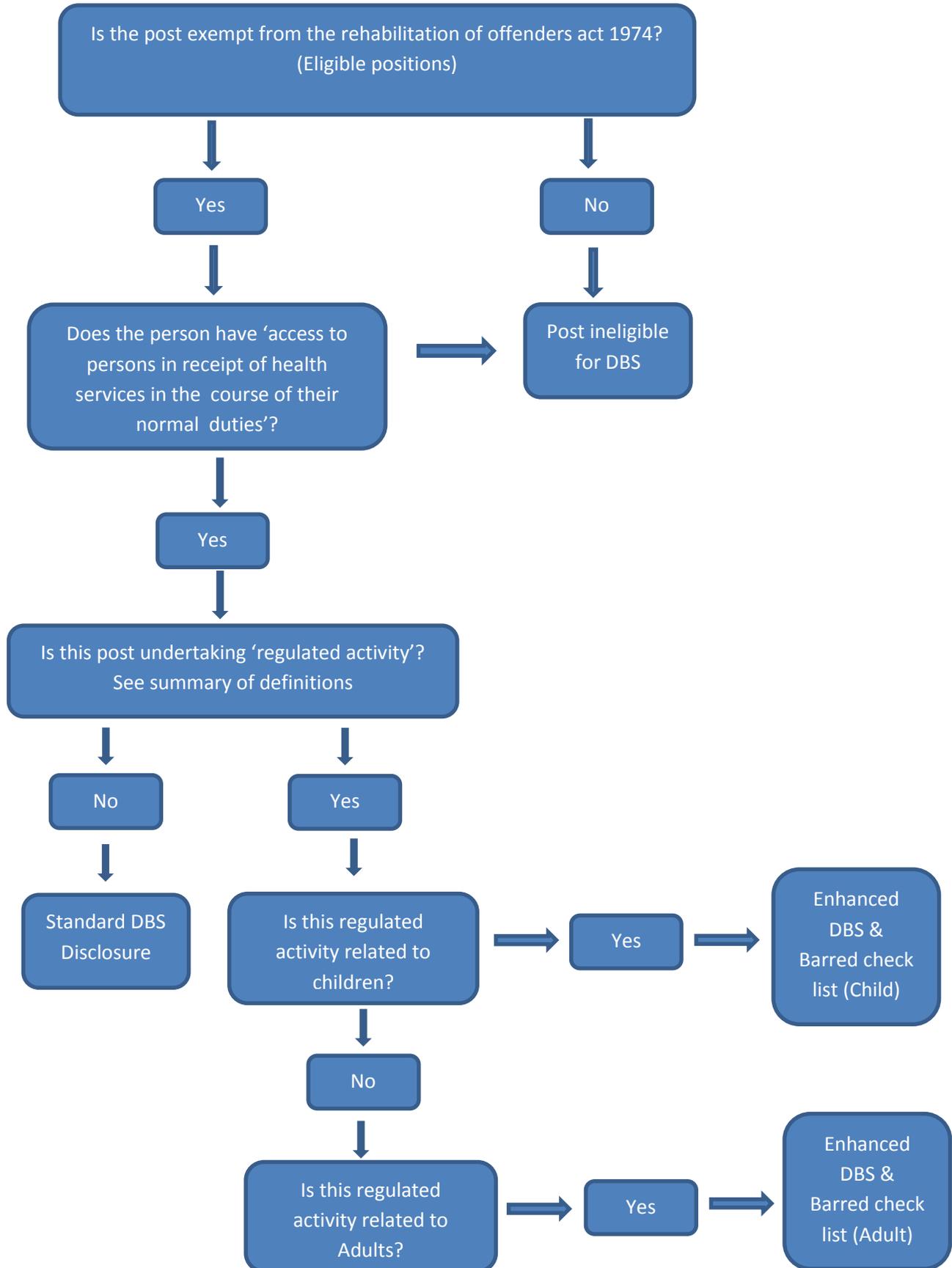
The CCG must assure itself that the appropriate DBS checks have been obtained within the last 12 months by seeking and evidencing assurances from the agency.

10. Further Information

- www.gov.uk/government/dbs-factsheet-06.pdf
- www.gov.uk/disclosure-and-barring-service
- www.nhsemployers.org
<http://www.nhsemployers.org/~media/Employers/Publications/Criminal%20record%20and%20barring%20checks%2025%20July%202013.pdf>
- Barring information helpline
Tel: 01325 953795
dbsdispatchteam@dbs.gsi.gov.uk
- Disclosure information customer services
Tel: 0870 90 90 811
customerservices@dbs.gsi.gov.uk

Appendix 1 – Disclosure & Barring Service Eligibility Flow Chart

(Please see Appendix 1 of the NHS Employers Guidance for a more detailed decision tree)



Appendix 2: Process for Dealing with Positive Disclosures

Where a positive disclosure is made the following process must be applied:

- The counter-signatory informs the recruiting manager of the positive declaration and confirms if discussions were had at interview in relation to disclosure of convictions. The interview notes are checked by the counter-signatory.
 - The recruiting manager contacts the applicant by telephone to invite to a meeting to discuss the declaration. In some cases a discussion over the telephone may suffice.
 - A member of the HR team can be made available to attend this meeting if the recruiting manager feels this is required.
2. The meeting with the applicant should follow the format below:
- Reassure the applicant regarding confidentiality.
 - Ensure that the applicant/ employee is aware of the requirement to declare as outlined in the application process.
 - Seek the applicant's confirmation that the details on the certificate are accurate. Should the applicant dispute this, advise them to contact the DBS and do not proceed further with the appointment until this is resolved, unless satisfied that the details are no bar to commencement.
 - Discuss the applicant's reasons for non-disclosure.
 - Discuss the information on the form and circumstances surrounding it.
 - Explain that you will need to contact a senior HR colleague to discuss and agree whether the application can proceed further.
 - Explain that the applicant will be kept informed and notified of the outcome. This will be confirmed in writing where a negative decision is made.
 - The counter-signatory will make a note on the applicants personal file of dates of discussions and outcomes and record outcome on the DBS decisions spreadsheet.
3. In making a decision, consideration must be given to the following:
- any legal or regulatory requirements
 - the nature of the offence
 - its relevance to the position being applied for
 - the length and type of sentence issued
 - the length of time since it was committed
 - whether the applicant has a pattern of offending behaviour, e.g there are multiple offences
 - Whether the applicant's circumstances have changed since the offending behaviour. E.g where the offence was time-limited or committed as a juvenile and the individual has taken on responsibilities in life to enhance their standing in society, through education or voluntary work
 - The circumstances surrounding the offending behaviour and the explanation offered by the individual.
4. In exceptional circumstances and following discussions with the appropriate head of service/ general manager a decision may be taken to accept the candidates' explanation for failure to disclose. The applicant will be informed and a note retained on their personal file.
5. Where a decision is made to withdraw the conditional offer, this will be confirmed in writing.

Appendix 3 - DBS Definitions

Bind-over

A bind-over is an order about future conduct designed to reduce crime and increase public safety. The individual concerned is required to keep the peace for a fixed period of time as specified by the court.

Caution

A caution is 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: **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.

Child

A child is a person aged under 18.

Conditional Discharge

Conditional discharge is where no further action is taken against an offender unless they commit a further offence within a given period (no more than 3 years)

Court Conviction

Arises from offences tried at Court.

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).

Data Protection Act

The Data Protection Act 1998 regulates the use of information about an individual and requires that any person, or organisation, who is to use information about an individual, uses it in accordance with the Data Protection principles. The Act also introduces safeguards in relation to sensitive personal data which may include information on ethnic or racial origin; political opinions; religious beliefs; physical or mental health; and criminal records.

Department for Children, Schools and Families (DCSF)

Formerly known as the Department for Education and Skills (DfES). The DCSF is the government department responsible for improving the focus on all aspects of policy affecting children and young people, as part of the government's aim to deliver educational excellence

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.

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.

Disclosure Scotland

Disclosure Scotland is part of the Scottish Criminal Record Office and provides access to criminal conviction data in Scotland. They can provide a basic disclosure service to employers within England and Wales. A basic disclosure is an application for details about 'unspent' convictions only. All applications for standard and enhanced disclosures for England and Wales must still be obtained from the DBS in Liverpool.

Exceptions Order

The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 sets out those occupations and positions exempt from the provisions of the ROA. These are generally positions of trust; where there is a valid need to see a person's full criminal history in order to assess their suitability for a position. This information is intended as general guidance only. It must not be regarded as a definitive interpretation of the Act. Anyone requesting further guidance should seek legal advice.

Exempted Question

An exempted question is a valid request for a person to reveal their full criminal history (including spent convictions) and is made possible by virtue of the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974.

Final Warning

A formal verbal warning given by a police officer to a young person who admits their guilt for a first or second offence. However, unlike a reprimand, the young person is also assessed to determine the causes of their offending behaviour and a programme of activities is identified to address them.

Police National Computer (PNC)

The central police database against which all criminal record checks will be made.

Rehabilitation of Offenders Act (ROA) 1974

The Rehabilitation of Offenders Act (ROA) 1974 enables some criminal convictions to become 'spent', or ignored, after a 'rehabilitation period' (see below).

Rehabilitation Period

A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a job or when involved in criminal or civil proceedings (*see further details under 'spent' conviction*).

Reprimand

A reprimand is given to young offenders (aged 17 and under) who have committed their first offence.

Spent conviction

The Rehabilitation of Offenders Act (ROA) 1974 sets out to make life easier for many people who have been convicted of a criminal offence and who have since lived on

the right side of the law. A person convicted of all but the most serious criminal offences and who receives a sentence less than 2.5 years in prison, benefits from the Act if they are not convicted again during a specified period. This is called the rehabilitation period (*as described above*). In general terms, the more severe a penalty is, the longer the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'. In most circumstances an employer cannot refuse to employ someone, or dismiss them, on the basis of a spent conviction. Generally, spent convictions do not have to be declared, unless the individual is applying for a position of trust. In such circumstances, an employer is entitled to ask a candidate to reveal details of all convictions, whether spent or not. This is, in part, to ensure that children and other vulnerable groups are adequately protected from those in positions of authority over them. These positions of trust, or 'excepted' professions, are set out in the Rehabilitation of Offenders Act (Exceptions) Order.

Suspended sentence

A suspended sentence is when a person sentenced to prison is not actually sent to prison - provided they keep out of trouble for the period of the suspension

Volunteer

Volunteers should undergo the same pre-employment checks as for a paid staff. The definition of a volunteer throughout these standards refers to:

"A person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than/or in addition to close relatives"

Warning

A final warning is given to young offenders (aged 17 and under) who have committed a second offence. Police will refer the young offender to a youth offending team.

Appendix 4 – CCG posts requiring a DBS check

Below shows a list of roles recorded on ESR as requiring a DBS. This report was run in November 2015. Please contact HR for a more up to date, revised list.

Role	Level of Disclosure Required
Medicines Management Pharmacist	Enhanced
Head of Medicines Management	Enhanced
Deputy Head of Medicines Management	Enhanced
Deputy Head of Medicines Management	Enhanced
Medicines Management Pharmacist	Enhanced
Chief Operating Officer	Standard
Director of Quality & Integrated Governance	Enhanced
Commissioning Manager - Children's Acute and Integrated Care	Enhanced
PPI & Engagement Manager	Standard
Nursing and Organisational Development Manager	Enhanced
Designated Nurse (Children)	Enhanced
Designated Professional [Adults]	Enhanced