

North East Derbyshire District Council

Union Employee Consultation Committee

9th June 2014

<p>Disclosure and Barring Service Policy</p>

Report of the Assistant Director – Human Resources

This report is public

Purpose of the Report

- To advise the Union Employer Consultation Committee of the updated Disclosure and Barring Service Policy 2014.

1 Report Details

- 1.1 The Disclosure and Barring Service Policy replaces the previous Criminal Records Bureau Policy.
- 1.2 As part of the agreed actions following a LEAN review in 2013 into DBS procedures, an audit of all posts has been undertaken to identify which posts are considered regulated activity relating to children and/or adults.
- 1.3 The DBS no longer issue certificates to employers, so employees/prospective employees are required to bring their certificates into HR and Payroll for verification.
- 1.4 The DBS have introduced an online update service which lets applicants keep their DBS certificates up to date online and allows employers to check if updated information is held on an individual.
- 1.5 At its meeting on 21 March 2014, SAMT agreed that employees/prospective employees would be required to register with the DBS online update service so that status checks can be carried out on an annual basis, and the cost would be reimbursed.

2 Conclusions and Reasons for Recommendation

- 2.1 Failure to comply will be a criminal offence.

3 Consultation and Equality Impact

- 3.1 None

4 Alternative Options and Reasons for Rejection

4.1 None

5 Implications

5.1 Finance and Risk Implications

5.1.1 The current cost of a DBS Enhanced Disclosure with Barred List check is £44.

5.1.2 The current cost of the online update service is £13 per employee, which is paid annually.

5.1.3 To date approximately 132 established and casual posts require a DBS Enhanced Disclosure check on a three year rolling programme, which at a cost of £44 each amounts to just over £5,800. The need for these re-checks will reduce once employees are registered on the DBS online update service.

5.2 Legal Implications including Data Protection

5.2.1 Employing an individual to work in regulated activity while knowing they are barred will be a criminal offence and will carry a significant penalty.

5.3 Human Resources Implications

5.3.1 Having recruitment processes that attract, retain and develop a skilled and flexible workforce, while achieving value for money in service delivery and fairness is a key area for Human Resources.

6 Recommendations

6.1 That the Union Employer Consultation Committee supports the Disclosure and Barring Service Policy 2014 and recommends its approval by Council.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	N/A
District Wards Affected	N/A
Links to Corporate Plan priorities or Policy Framework	

8 Document Information

Appendix No	Title
A.	Disclosure & Barring Service (DBS) Policy
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Human Resources Advisor	x7013

DISCLOSURE AND BARRING SERVICE (DBS) POLICY

(DBS is the new name for the Criminal Records Bureau – CRB)

1 Policy Statement

This policy applies to all employees of Bolsover District Council and North East Derbyshire District Council and includes both paid and volunteer positions.

The Council aims to promote equality of opportunity for all and welcomes applications from all members of the community.

The Council is committed to safeguarding the welfare of those accessing our services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. However, this duty must be carried out with due regard to all other legislation including the Protection of Freedoms Act 2012, the Data Protection Act (1998) and the Human Rights Act (1998).

As an organisation using the Disclosure and Barring Service (DBS), formerly the Criminal Records Bureau (CRB), the Council fully complies with the DBS Code of Practice.

The Council recognises the importance of employment in the rehabilitation of ex-offenders and will only take criminal records into account for recruitment purposes when the conviction is relevant. After a certain length of time, some sentences are considered spent and must be disregarded. Unless the nature of the work means that a role is exempt, applicants are not required to disclose convictions which are spent under the Rehabilitation of Offenders Act 1974.

Having an unspent conviction will not necessarily bar applicants from employment.

2 DBS Checks

For applicants who are offered employment in posts which require undertaking any form of regulated activity an Enhanced DBS Check must be undertaken and this must include a check to ensure that the successful candidate is not barred from working with children and/or adults in vulnerable circumstances. (See Appendix A)

Regulated activity is defined by the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012, and includes roles where individuals are required to work unsupervised with children or in a limited range of establishments with opportunity for contact with children; or working with adults

providing healthcare, personal care, social work, assistance with cash, bills and/or shopping, assistance in the conduct of a person's own affairs or conveying children or adults for particular reasons. The definition of regulated activity with regard to children is detailed in Appendix B and definition of regulated activity with regard to adults is detailed at Appendix C.

It is an offence for individuals on the Barred Lists to apply for posts in Regulated Activity. We will not employ someone to work in Regulated Activity with children if they have been barred through the DBS Children Barred List, or someone to work with vulnerable groups who are barred through the DBS Adult Barred List. In addition if the Council receives an application from a person for either paid or voluntary work who is barred from working with children or adults, the Council will make a referral to the DBS to notify them of the individual's attempt to apply for barred work.

The minimum age that someone can have a DBS check is 16 years old.

3 Roles and Responsibilities

The HR and Payroll team along with the Strategic Alliance Management Team and managers will determine if a post involves regulated activity and therefore requires a DBS check.

An audit of all relevant posts will take place annually to ensure that safeguards continue to be met and we are fully compliant with the DBS Code of Practice.

4 Cost of Disclosure

The cost of the DBS Disclosure checks relating to appointments to Council posts will be met by the Council

Checks for volunteers are free. A volunteer is currently defined by the DBS as a person who performs an 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.

5 Requesting a Disclosure

A disclosure is only requested for the successful candidate following the selection process.

Re-checks for existing employees who are subject to a DBS clearance should be completed every three years until ratification with the DBS Online Update Service.

As the DBS no longer issue Disclosure Certificates to organisations, when an individual receives their certificate from the DBS they must take it into HR and Payroll for verification. This applies to prospective employees as well as current employees.

6 Update Service

All existing employees who require an enhanced DBS check will need to subscribe to the online update service (DBS Online Update Service). This means that if an employee moves to another position within the Council, providing it is with the same workforce that is on their DBS certificate, they will not need another DBS check as the Council will be able to carry out an online status check to ensure that their disclosure is still valid. The online status check will be carried out on an annual basis.

For new applicants to the Council who already have an enhanced DBS certificate for the relevant workforce and who are signed up to the online update service, the Council will accept this disclosure and carry out an online status check to ensure that their disclosure is still valid.

If the online status check reveals a change in the disclosure status then a new DBS check will be required.

If existing or new employees are applying for a position within a different workforce - moving from adult workforce to children's workforce or vice versa - then a new DBS check will be required.

The Council will reimburse employees the cost of the annual subscription to the online update service.

7 Spent or Unspent Convictions

If a disclosure or online status check reveals information about spent or unspent convictions which may make the individual unsuitable for the applied post, or continuing in their current post, the appointing or line manager, along with HR and Payroll, will discuss the situation with the individual in line with the DBS Code of Practice and through use and completion of Appendix D – Checklist for Employees with Adverse Disclosures. The individual will be asked to sign the completed risk assessment to verify the information provided and give permission for the risk assessment to be stored securely and later destroyed in accordance with the policy on the secure storage, handling, use, retention and disposal of disclosures and disclosure information.

When assessing any disclosure or declared conviction information received, consideration will be given to a range of issues and the risk assessment will support

a manager's decision enabling them to assess the suitability of the applicant for their proposed position in light of matter(s) disclosed on their DBS certificate.

If a candidate has made a false declaration on their application form then the Council will not be able to confirm the appointment. If the disclosure certificate contains information that was not revealed by the candidate or additional information from the Police is received, it will be necessary to hold a further discussion with the candidate and undertake a further review against any risk assessment before deciding to confirm or withdraw the offer of employment. HR and legal advice should be sought at this point.

8 Security and Confidentiality

Disclosure information will be treated with the utmost confidentiality and will be kept in a secure place in line with the Data Protection Act. Access to disclosure information is restricted to only those individuals who have a requirement to see it in the course of their duties. Information will only be disclosed to third parties in exceptional circumstances and with the consent of the DBS.

9 Retention

Disclosures will be kept by the Council for a maximum of 6 months after a recruitment decision has been made. Disclosures will then be destroyed by secure means.

10 Disputes

If an employee believes that the information provided in a DBS check is inaccurate or incorrect, then it is the responsibility of the individual to raise this with the DBS. The Council will base any decision on the information provided by the DBS and this decision will be final.

11 Employees with Adverse Disclosures

Where existing employees, who have not been previously checked, or their post requires a re-check and subsequently have an adverse disclosure result, HR and Payroll will discuss this with the employee and relevant line manager. Legal advice may also be sought. It may be appropriate to move the employee to an alternative post with no access to children and/or vulnerable groups depending on the nature of the disclosures and pending the outcome of a full investigation. If there are no suitable duties the employee could undertake during this period which does not bring them into contact with children/vulnerable adults the manager will give consideration to suspending the employee on full pay pending the outcome of a disciplinary investigation.

APPENDIX A

<u>POSTS REQUIRING AN ENHANCED DBS CHECK FOR REGULATED ACTIVITY RELATING TO CHILDREN AND ADULTS</u>		
DIRECTORATE	BDC	NEDDC
GROWTH		Affordable Warmth Energy Assistant
		Affordable Warmth Energy Co-ordinator
		Handyperson
		Neighbourhood Outreach Project Assistant
		Neighbourhood Outreach Project Co-ordinator
		Senior Community Employment Advisor
OPERATIONS	ASB Investigating Officer	Community Safety Manager
	Benefits Visiting Officer	Visiting Officer
	Community Ranger	
	Domestic Violence Officer	
	Housing Enforcement Manager	
	Housing Needs Manager	
	Revenues Visiting Officer	
	Senior Parenting Practitioner	
TRANSFORMATION		Housing Strategy and Young Persons Manager
<u>POSTS REQUIRING AN ENHANCED DBS CHECK FOR REGULATED ACTIVITY RELATING TO CHILDREN</u>		
TRANSFORMATION	Arts Development Officer	Duty Officer
	Community Sports Coach	Fitness Instructor
	Exercise/Fitness Improvement Coach	Gymnastics Coach
	Exercise/Fitness Referral Officer	Head Attendant
	Extreme Sports Coach	Health Referral Operations Officer
	Facilities Plan/Dev Officer	Healthy Lifestyles Instructor
	Instructor	Leisure Attendant
	Leisure Attendant	Senior Duty Officer
	Leisure Supervisor	Sports Coach
	Leisure Trainer Assessor	Swimming Instructor
	Manager (PVOAC)	Trampoline Coach
	Outdoor Recreation Officer	
	Play Area/Open Spaces Warden	
	Ranger/Instructor	
	Senior Leisure Supervisor	
	Senior Sports Development Officer	
	Special Projects Officer	
	Sports Coach	
	Sports Development Officer	
	Sports Dev Officer (Wheeled Sports)	
	User Engagement Officer	
<u>POSTS REQUIRING AN ENHANCED DBS CHECK FOR REGULATED ACTIVITY RELATING TO ADULTS</u>		
GROWTH		Housing Strategy and Older Persons Manager
		Private Sector and Housing Options Manager
		Housing Options Officer
OPERATIONS	Mobile Warden	

	Scheme Manager	
	Support Officer	

APPENDIX B

REGULATED ACTIVITY RELATING TO CHILDREN

General exceptions:

Regulated activity relating to children does not include:

- Family arrangements and personal, non-commercial arrangements.
- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children.

Regulated activity relating to children is:

1. Teaching, training or instruction of children:

- Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period **or** at any time overnight (between 2am-6am *and* with an opportunity for face-to-face contact with children);
- NOT supervised – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity;
- NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- NOT activity merely incidental to activity with adults

2. Care or supervision of children (except that covered by points 6 or 7):

- Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period **or** at any time overnight (between 2am-6am *and* with an opportunity for face-to-face contact with children);
- NOT supervised – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity (unless providing relevant personal care or health care by or under a professional – see point X and X below);
- NOT health care provided otherwise than by or under a health care professional;
- NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- NOT activity merely incidental to activity with adults.

3. Advice or guidance:

- a. Provided wholly or mainly for children;
- b. Relating to their physical, emotional or educational well-being;
- c. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period **or** at any time overnight (between 2am-6am *and* with an opportunity for face-to-face contact with children);
- d. NOT legal advice; and
- e. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose.

4. Moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period; and
- b. NOT activity by a person who does not have access to the content of the matter or contact with users.

5. Driving a vehicle being used only for conveying children and their carers/supervisors

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period; and
- b. Done under an agreement, either with the driver or with a person with whom the driver works, for gain or not.

6. Relevant personal care

- a. Either:
 - i. Physical help with eating or drinking necessary due to illness or disability;
 - ii. Physical help with toileting, washing, bathing or dressing necessary due to age, illness or disability;
 - iii. Prompting, with supervision, in relation to i or ii where the child is otherwise unable to decide; or
 - iv. Any form of training, instruction, advice or guidance given to the child in relation to i or ii.
- b. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- c. NOT activity merely incidental to activity with adults.

7. Health care provided for children

- a. By, or under the direction or supervision of, a health care professional;

- b. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- c. NOT activity merely incidental to activity with adults.

8. Childminding

- a. On domestic premises, for reward; and
- b. With a requirement to register, or voluntary registration, under Childcare Act 2006.

9. Fostering a child

- a. NOT care arranged by family members, not for reward; and
- b. NOT LA fostering a child with a barred person who is, or lives with, a relative of the child.

10. Day-to-day management or supervision on a regular basis of a person providing regulated activity as described by points 1-7 and 11 (or in relation to points 1, 2 and 11, activity which would be regulated activity if it was unsupervised).

11. Activity carried out at certain establishments:

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period;
- b. Carried out for in connection with the purposes of the establishment;
- c. Gives the person the opportunity, in carrying out their work, to have contact with children;
- d. NOT activity by a person contracted or volunteering to provide temporary or occasional services (and not mentioned in points 1-7 above);
- e. NOT supervised volunteering – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity; and
- f. Carried out at one of the following establishments:
 - i. A school;
 - ii. A pupil referral unit;
 - iii. A nursery school;
 - iv. An institution for the detention of children;
 - v. A children's home;
 - vi. A children's centre; or
 - vii. Any childcare premises, including nurseries (but not including the home of a parent of at least one child to whom the childcare is provided).

REGULATED ACTIVITY RELATING TO ADULTS

General exception:

Regulated activity relating to adults does not include:

- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity relating to adults.

Regulated activity relating to adults is:

1 Health care provided for adults:

- g. By, or under the direction or supervision of, a health care professional.
- h. Includes first aid provided by a person acting on behalf of an organisation established for the purpose of providing first aid.

2 Relevant personal care:

- a. Either:
 - i. Physical help with eating, drinking, toileting, washing, bathing, dressing, oral care or care of skin, hair or nails, necessary due to age, illness or disability;
 - ii. Prompting, with supervision, in relation to i where the person is otherwise unable to decide; or
 - iii. Any form of training, instruction, advice or guidance given to the person in relation to i.

3 Relevant social work:

- a. Provided by a social care worker to an adult who is a client or potential client; and
- b. Required in connection with any health, education or social services provided.

4 Day to day assistance in relation to general household matters:

- a. Either:
 - i. Managing the person's cash;
 - ii. Paying the person's bills; or
 - iii. Shopping.
- b. Necessary by reason of age, illness or disability.

5 Relevant assistance in the conduct of an adult's own affairs:

- a. Anything done on behalf of a person by virtue of:
 - i. A lasting power of attorney;
 - ii. An enduring power of attorney;

- iii. A court order appointing a deputy or making decisions on the person's behalf;
- iv. The appointment of an independent mental health/capacity advocate;
- v. The provision of independent advocacy services; or
- vi. The appointment of an appointee to receive the person's benefit payments.

6 Conveying:

- a. Necessary by reason of age, illness or disability;
- b. Transporting to, from or between places where the person receives health care, personal care or social work; and
- c. NOT by family, friends or taxi drivers.

[Note: The above definition of conveying is currently only in Home Office guidance, the relevant Regulations are yet to be produced.]

7 Certain inspection functions

8 Day-to-day management or supervision on a regular basis of a person carrying out regulated activity as described by points 1-6.

Note: There is *no* requirement for the above activities to be done a certain number of times before they become regulated activity.

NAME OF CANDIDATE/EMPLOYEE: _____

CHECKLIST FOR EMPLOYEES WITH ADVERSE DISCLOSURES

When deciding on the relevance of offences to particular posts the following risk assessment must be completed

General

- How serious is the offence and its relevance to the safety of other employees, customers, clients or property
- How long is it since the offence occurred?
- Was the offence a one-off, or part of a history of offending?
- Has the individual's circumstances changed since the offence was committed, making re-offending less likely?
- Has the offence been decriminalised by Parliament?
- In which country was the offence committed? (Some activities are offences in Scotland and not in England and Wales and vice versa?)

Post Specific

- Does the post involve contact in any way with vulnerable groups?
- What is the post-holder's level of supervision?
- Does the post involve responsibility for finance or valuable items?
- Does the post holder come into direct contact with the public in general?
- Will the nature of the job present the opportunity in the workplace for the post holder to re-offend?
- If the post-holder did re-offend would this have a detrimental effect on the reputation of the Council?

Date of interview to discuss criminal record history

Record of discussion (key points)

Decision (including rationale)