



Disclosure and Barring Service Policy

July 2019



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CONTROL SHEET FOR DBS Policy

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DBS Policy

1. Introduction

This policy sets out the approach to criminal background checks within Bolsover District Council.

2. Scope

This policy applies to all employees in both paid and volunteer positions.

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, as amended principally by the Protection of Freedoms Act 2012 and the Rehabilitation of Offenders Act 1974 (as amended in 2013). However this duty must be carried out with due regard to all other legislation including the Data Protection Act (2018), the Human Rights Act (1998) and in line with the General Data Protection Regulations (GDPR).

As an organisation using the Disclosure and Barring Service (DBS), 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. 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 (as amended in 2013). (See Appendix A)

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

The Safeguarding Vulnerable Groups Act 2006 (as amended), identifies a number of offences which prevent barred people from working in regulated activities. The Council, as an employer and regulated activity provider, and individuals can be convicted of a criminal offence if a person who is barred from engaging in a particular activity does actually engage in that activity. A regulated activity provider also commits an offence if they permit a person to engage in a regulated activity while knowing or having reason to believe that the individual is barred.

The maximum sanctions for these offences are fines of up to £5,000 or up to five years in prison.

3. 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 B).

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 C and definition of regulated activity with regard to adults is detailed at Appendix D.

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 adults at risk who are barred through the DBS Adult Barred List. In addition if the Council receives an application form 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.

Other roles are identified by legislation as being eligible for an Enhanced Level DBS check without a check against the children or adults barred list. This means that it is at the employer's discretion as to whether a DBS check should be undertaken.

Users of the Public Services Network (PSN) are required to comply with the Baseline Personnel Security Standard: this is the minimum recruitment check required for all people with access to Government assets. Within this compliance a basic disclosure must be undertaken for those employees with administrative privileges across the Council's IT applications, and that check must have satisfactory results (Appendix B).

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

4 Roles and Responsibilities

Human Resources (Organisational Development) along with Managers and the Strategic Alliance Management Team 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.

5. Cost of Disclosure

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

If a prospective employee decides at a later date that they wish to decline the offer of appointment made to them, they will be charged for the cost of the DBS and Update Service check.

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 some third party other than or in addition to a close relative.

6. Requesting a Disclosure

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

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

7. Update Service

All new and existing employees who require an enhanced DBS check must subscribe to the DBS Online Update Service.

It is the employee's responsibility and a contractual obligation to keep this subscription up to date on an annual basis. If any employee fails to renew the subscription they will be charged for both the new DBS check and re-registering on the update service due to breaching the terms and conditions of employment. This may also result in disciplinary action and suspension from work pending receipt of an updated disclosure check.

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.

The online status check will be carried out on an annual basis. If the online status check reveals a change in the disclosure status then a new DBS check will be required. Employees have a duty to inform their manager of any cautions or convictions they receive immediately. Failure to do so may result in disciplinary action being taken.

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.

8. Use of Disclosure Information

A disclosure is only requested for a successful candidate following the recruitment and selection process or as a routine recheck for existing employees.

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 Human Resources, will discuss the situation with the individual in line with the DBS Code of Practice and through use and completion of Appendix E – Checklist for Employees with Adverse Disclosures.

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.

9. Security, Confidentiality, Storage and Retention

Disclosure information will be treated with the utmost confidentiality and kept in a secure place. Access to disclosure information is restricted to 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.

Disclosures will be kept by the Council for a maximum of six months after a recruitment decision has been made. This is to allow for the consideration and resolution of any disputes or complaints. Disclosures will then be destroyed by secure means.

The Council will however keep a secure record of the name of the employee, the position for which the disclosure was requested, the unique reference number and date of the disclosure, and a record of the details of the recruitment decision made as a result. All information will be processed fairly, and in accordance with the provisions of the General Data Protection Regulations.

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, Human Resources will discuss this with the employee and their 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 adults at risk depending on the nature of the disclosure 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/adults at risk, the line manager will give consideration to suspending the employee on full pay pending the outcome of a disciplinary investigation.

Policy Statement on the Recruitment of Ex-Offenders

As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), the Council complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly.

The Council undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.

The Council will only ask an individual to provide details of convictions and cautions that it is legally entitled to know about. Where a DBS certificate at the enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended). The Council will only ask an individual about convictions and cautions that are not protected.

The Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, gender reassignment, religion, sexual orientation, marriage and civil partnership, maternity and pregnancy, age, and physical or mental disability or offending background.

The Council 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. The Council selects all candidates for interview based on their skills, qualifications and experience.

An application for a criminal record check is only submitted to the DBS after a risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all job adverts and invite to interview letters will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.

The Council ensures that those involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences and have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, eg the Rehabilitation of Offenders Act 1974 as amended.

At interview, or in a separate discussion, the Council ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal or an offer of employment.

The Council complies fully with the DBS Code of Practice and make a copy available on request. The Council will discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

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:

- a. 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);
- b. NOT supervised – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity;
- c. 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
- d. NOT activity merely incidental to activity with adults

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

- a. 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);
- b. 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 6 and 7 below);
- c. NOT health care provided by or directed or supervised by a health care professional;
- d. 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
- e. 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 such as St John Ambulance but not first aid in the workplace.

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 or licensed private hire drivers.

7 Certain inspection functions

8 Day-to-day management or supervision on a regular basis of a person who is providing a regulated activity relating to adults is also a regulated activity.

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:

Interview conducted by:

Record of discussion (key points)

Decision (including rationale)