



# Draft Disclosure and Barring Service Policy

Xxxxx 2016

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# 1. Purpose

- 1.1 This policy sets out the framework that the Council applies for processing Disclosure and Barring Service (DBS) certificate requests. This policy also covers the employment of ex-offenders, who have the right under the Rehabilitation of Offenders Act 1974 to have convictions considered as 'spent' after a specified period, subject to certain conditions. However, certain posts are exempt from the Act.
- 1.2 All posts which require the post-holder to engage in regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006, or which require the post-holder to engage in regulated activity relating to vulnerable adults within the meaning of Schedule 4 Part 2 of that Act, are exempt from the Rehabilitation of Offenders Act. For example, any form of teaching, training, care or supervision of children will be exempt, as will be any form of training, teaching, care or supervision of vulnerable adults.
- 1.3 This policy replaces all previous documentation or local arrangements related to the Council's DBS or Criminal Records Bureau (CRB) processes.

# 2. Scope

- 2.1 This policy applies to all applicants who apply for permanent, fixed term, temporary or casual contracts with the Council and certain contractors within the Council. The policy also applies to internal non-employed candidates and staff already in employment with the Council, whose original role did not previously require a DBS check but have moved to a new role that does. Specific arrangements apply for those engaged to work on a temporary basis via an employment agency (see section 13). The policy should be read in conjunction with the Council Recruitment and Selection policy.

# 3. General Principles

- 3.1 The Council is committed to:
  - Safeguarding the children and vulnerable adults that it serves;
  - Complying with its data protection duties when handling, using, retaining and disposing of information;
  - Implementing safer recruitment and selection processes that ensure that those who are unsuitable to work with children or with vulnerable adults are prevented from doing so;
  - Making applicants aware during the recruitment process that if an Enhanced or Standard DBS disclosure (as applicable) can be obtained in respect of the role recruited to, the Council will require that disclosure to be provided by them before they can start in the role

# 4. Definitions

The following definitions apply:

- **'Regulated Activity':** this means certain activities including work relating to children or to vulnerable adults, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA) as amended by the Protection of Freedoms Act 2012 (PoFA)
- **'spent' conviction** - where a certain amount of time has passed since the date of the conviction then certain convictions need not be disclosed

## **5. Promoting equality and inclusion**

- 5.1 The Council is committed to applying its equality policy to all stages of its recruitment and selection process and actively promotes equality of opportunity for all and recognises that candidates with a criminal history can bring a valuable range of skills and talents.
- 5.2 Candidates are selected for interview and appointment based on their qualifications, skills and experience and a criminal history will not automatically bar an individual from gaining or remaining in continued employment with the Council. Assessment is made as to the risks posed to the Council, its employees, clients, the public and others with a decision being made accordingly.

## **6. Roles and responsibilities**

### **6.1 Prospective and current employees**

Prospective and current employees are responsible for:

- 6.1.1 Providing the Council via the Recruitment Team (SSC HR) with the original Disclosure Certificate;
- 6.1.2 Disclosing convictions, cautions, reprimands, police final warnings and if required relevant non conviction information on their application. The Code of Practice can be obtained from the DBS website;
- 6.1.3 Existing employees must immediately declare any new convictions, cautions, reprimands, police final warnings and if required relevant non conviction information, and confirm whether or not there are any changes to their previous disclosure, provided that they are not required to declare more information than they could obtain through a DBS disclosure sought in respect of their role.
- 6.1.4 Understanding that breaches of this policy may lead to disciplinary action.

### **6.2 Line Managers/Prospective Line Managers**

Line managers and prospective line managers are responsible for:

- 6.2.1 Detailing in recruitment literature and job descriptions the roles that require a DBS disclosure and the level of disclosure required
- 6.2.2 Discussing with the prospective employee any relevant matters revealed in a disclosure related to 'unspent' convictions before a decision about the withdrawal of any conditional offer of employment is considered, unless the nature of the position allows the Council to ask questions about a candidate's entire criminal record, in which case any relevant matters revealed in a disclosure are to be discussed.
- 6.2.3 Requesting a DBS disclosure once a conditional offer of employment has been made following an interview
- 6.2.4 Sharing DBS disclosure information on a need to know basis and for maintaining its confidentiality;
- 6.2.5 Checking the DBS status of all agency workers before they are allowed to work in areas of identified risk.
- 6.2.6 DBS rechecking of existing employees
- 6.2.7 Dealing with any breaches of this policy in accordance with the disciplinary policy.

### **6.3 Human Resources**

Human Resources are responsible for:

- 6.3.1 Interpreting and advising on this policy;
- 6.3.2 Co-ordinating the monitoring of the recruitment procedures to ensure that prospective employees with criminal convictions are treated equally in respect of the legislation.

## **7. Enhanced and Standard DBS Checks**

- 7.1 An Enhanced Disclosure contains information held by police and government departments and gives details of spent and unspent convictions, cautions, reprimands, final warnings and other non-conviction information held on the Police National Computer (PNC).
- 7.2 An Enhanced DBS check with barred list checks is undertaken on all individuals whose duties include Regulated Activity. All school-based posts engaged by the school require Enhanced DBS checks.
- 7.3 Checks are also made to see if the person is included in one or both of two ISA Barred Lists of people unsuitable to work in social care services for adults or children. These checks help to establish a person's suitability for a post.
- 7.4 An Enhanced DBS check without a barred list check is only completed for individuals whose duties do not include Regulated Activity, but which may still be eligible for an Enhanced Check.
- 7.5 Roles whose duties do not include Regulated Activity may be eligible for a Standard DBS check if the duties are included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. A standard DBS disclosure contains only details of spent and unspent convictions, cautions, reprimands and final warnings held on the PNC.
- 7.6 If the recruitment literature does not refer to the role being exempt or having a requirement to complete a DBS Disclosure then it can be assumed that a DBS Disclosure does not have to be provided in connection with the recruitment to the role.

## **8. DBS Barred lists**

- 8.1 DBS Children's Barred list and the DBS Adults Barred list contain details of those individuals barred from Regulated Activity relating to children and from Regulated Activity relating to vulnerable adults.
- 8.2 Individuals who appear on these lists cannot be considered for roles that involve the Regulated Activity from which they are barred as they are considered unsuitable to work involving children or adults.
- 8.3 It is a criminal offence to engage someone to work in Regulated Activity when barred, where the person permitting this knows or has reason to believe that they are barred from that activity. The Council has a legal duty to inform the police where a Disclosure reveals that an applicant/existing staff member who is named on a barred list applies for work or is performing work for the Council from which s/he is barred.
- 8.4 It is a criminal offence for a person on the DBS Children's Barred list to seek to engage in regulated activity relating to children, and for a person on the DBS Adults Barred list to seek to engage in regulated activity relating to vulnerable adults, unless in either case the individual did not know, and could not be reasonably be expected to know, that s/he was barred from that activity.

## 9. Interim DBS waiver

- 9.1 There may be circumstances where the Council may need to start a Social Worker who does not have a DBS certificate issued in respect of their recruitment to that role. This is operated via a waiver process.
- 9.2 The interim waiver process is only possible where the individual is either:
- 9.2.1 An **existing agency worker** who has been working for the Council for more than three months. The individual must have a DBS check dated within the last three years considered satisfactory by the Council and completed to the Council's satisfaction all other pre-employment checks. The waiver is only valid for six months to allow time for the new DBS check to be received; or
- 9.2.2 A **new employee who is in supervised employment**, which means that the individual cannot visit sites or interact with children or vulnerable adults without someone else present. The individual must have a DBS check dated within the last three years considered satisfactory by the Council and completed to the Council's satisfaction all other pre-employment checks. The waiver is only valid for six months to allow time for the new DBS check to be received.
- 9.3 The Hiring Manager must complete and countersign the Interim Waiver Form (available on the intranet) to confirm that all criteria have been met and that any risks have been considered and mitigated.
- 9.4 The interim waiver must be approved by a Director or designated authorised signatory. A candidate should not start work in a role that requires a DBS certificate until this waiver has been authorised.

## 10. Relevant matters revealed in a disclosure

- 10.1 The line manager and an HR Adviser will meet with the individual to discuss any relevant matters that are revealed in a disclosure. The decision about whether or not to continue with an offer of employment or whether to take any further action against an existing employee will depend upon the outcome of the discussion and of any further investigation which is carried out. Existing employees have the right to be accompanied by a trade union representative or workplace colleague to the meeting. A copy of the DBS Disclosure or Unspent convictions Authorisation Form is available on the intranet.
- 10.2 The discussion will explore:
- The seriousness of the offence and the relevance to the position in question, safety of other employees, clients, the public and property;
  - The length of time since the offence(s) occurred;
  - Whether it was a one-off offence or a part of a pattern of offences;
  - The circumstances of the applicant/ employee at the time the offence(s) occurred;
  - Whether their circumstances have changed and if they are likely to re-offend;
  - If the offence has been decriminalised or if convicted in another Country whether it is criminal in the UK;
  - The degree of remorse or otherwise of the applicant/employee.
- 10.3 Convictions, cautions, reprimands and final warnings for offences of a violent or sexual nature are taken extremely seriously.

## **11. Gender recognition certificates**

- 11.1 Transsexual individuals who have undergone gender reassignment may apply for a gender recognition certificate, which allows the individual to be legally considered as being of the acquired gender as part of the Gender Recognition Act 2004.
- 11.2 To maintain confidentiality a person who is required to undergo a DBS check as part of the recruitment process may apply to the DBS who have a special application procedure to maintain gender confidentiality. This applies where the individual has no criminal convictions and where there is no other information held by any Police Authority.
- 11.3 If the individual has convictions, cautions, reprimands and final warnings under their previous gender that are considered relevant to the post, then the individual's gender change would become evident through the provision of conviction and other information on the DBS disclosure certificate showing both gender names.

## **12. Checks on Members**

- 12.1 Enhanced DBS checks and Barred list checks are required for Members who are engaged in Regulated Activity. Enhanced DBS checks without barred list checks are required for Members who are members of the Cabinet or who carry out 'supervised' work ( whether or not paid) in a specified place (including schools) , where the work gives the Member the opportunity to have contact with children,

## **13. Agency workers, consultants and overseas applicants**

- 13.1 Agency and consultants
  - 13.1.1 Agency workers and consultants covering roles in the Council that require a DBS check must have a satisfactory DBS disclosure at the highest level for which the role is eligible. The Council requires the agency or organisation that supplied the agency cover/consultant to have responsibility for obtaining the disclosures.
  - 13.1.2 The Council is not responsible for obtaining a DBS Disclosure for any workers supplied to it by an agency or other organisation.
- 13.2 Overseas applicants
  - 13.2.1 As the DBS disclosure is restricted to information held by police forces in the UK, as part of its pre-employment checks the Council may require overseas applicants or foreign nationals to obtain a Certificate of Good Conduct from the relevant embassies or police forces. The DBS website contains information on how to apply for a Certificate of Good Conduct.

## **14. Failure to declare convictions/other offences when required**

- 14.1 If the Council later finds out about a conviction, caution, reprimand or a police final warning that the individual was required to declare and did not, the Council can take further action, which may include disciplinary action including dismissal.
- 14.2 Criminal offences must not be committed at work. If a criminal offence is committed outside of work the Council will decide whether the offence has an impact on the work of the individual.

- 14.3 If the Council decides that an offence committed by an existing employee has an impact on the work or brings the Council into disrepute, it will take whatever action is deemed appropriate, which could include disciplinary action or dismissal.

## **15. DBS data handling, storage, retention, and disposal**

- 15.1 As an organisation using the Disclosure and Barring Service (DBS) checking service to help assess the suitability of applicants for positions of trust, the Council complies fully with the DBS's code of practice regarding the correct handling, use, storage, retention and disposal of certificates and certificate information.

### 15.1 Storage and access

- 15.1.1 SSC HR keep disclosure information securely in lockable non-portable storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

### 15.2 Handling

- 15.2.1 In accordance with section 124 of the Police Act 1997, disclosure information is only passed to those authorised to receive it in the course of their duties. If anyone has been found to have revealed information to those not authorised to receive it in the course of their duties the Council will take whatever action that is deemed to be appropriate. This could include disciplinary action.

### 15.3 Retention

- 15.3.1 Once recruitment (or other relevant decision) has been made Disclosures are normally retained for no longer than six months from the date of issue to allow for the resolution of any disputes or complaints.

- 15.3.2 Disclosure information may in very exceptional circumstances, be kept for longer than six months.

- 15.3.3 In these circumstances the Council will consult the DBS about this and give full consideration to the Data Protection and Human Rights of the individual before doing so and the usual conditions regarding safe storage and controlled access apply during this time.

### 15.4 Usage

- 15.4.1 Certificate information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given

### 15.5 Disposal

- 15.5.1 Once the retention period has elapsed, the Council will ensure that any DBS certificate information is immediately destroyed by suitable means (shredding, pulping or burning). While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin).

- 15.5.2 The Council will not retain a photocopy or other image of the Disclosure.

- 15.5.3 The Council will retain details of the type of Disclosure certificate issued, the Disclosure unique reference number, the name of the individual, the position for which the certificate was requested and the date of issue. A record of the recruitment decision will also be held.

## **16. Acting as an umbrella body**

- 16.1 The Council is not acting as an umbrella body for any other organisation.



## **17. Monitoring**

17.1 SSC HR is responsible for monitoring the application of this policy.

## **18. Further Advice**

18.1 Further advice is available from SSC HR contactable on 0208 489 7000 or via the SSC Self Service portal.