

People Management – Policy and Guidance

Disclosure & Barring Service (DBS) Policy

October 2018



Contents

	Page
The Disclosure and Barring Service	4
Scope	4
Policy Statement	5
Type of Checks/Disclosures	5
Eligibility for DBS Checking	6
Regulated Activity	6
Frequency of DBS Checking/Rechecking	8
Portability of DBS Checks	8
The Recruitment Process and DBS Checking	9
Countersignatories and Identity Verifiers	10
Checks for non-employees	11
When a criminal record is declared or revealed on a Disclosure	12

The Disclosure and Barring Service (DBS)

1. The DBS provides a facility for organisations to make safer recruitment decisions via a check against different types of information such as police records and information held on the barred list for children and adults.
2. Employers are allowed to ask for information in relation to a person's history under the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 (as amended) in certain circumstances including where employees work in a regulated activity. Checks can only be requested where it is proportionate and relevant to the role and where it is required by statute.
3. The Council is a Registered Body with the DBS and the People Services team provides a service for the appropriate check to be made to the DBS in accordance with the scope of this Policy. To do so, the Council must comply with the DBS Code of Practice.

<https://www.gov.uk/government/publications/dbs-code-of-practice>

Scope

4. This Policy applies to all those (over the age of 16) who work (paid or unpaid) or volunteer in roles which require DBS checks, including:
 - Employees
 - Job Applicants/Prospective employees
 - Casual workers
 - Agency workers
 - Contractors
 - Elected Member with portfolio for Education and Children
 - Elected Member with portfolio for Social Care & Health (including Adoption and Fostering)
 - Elected Member as Chair of Regulatory Committee – Licensing
 - School Governors with responsibility for safeguarding or who meet the threshold in relation to unsupervised and regular access to children

- Foster carers/Supported Lodgings Providers
- People required to access some Government databases
- Organisations for whom the Council acts as an Umbrella Body

Policy Statement

5. Safeguarding of vulnerable groups is regarded as paramount. Therefore, where a post has been identified as requiring a DBS check, the employee must **not** commence work until that check has been received and assessed by People Services and the Recruiting Manager.
6. The Authority will check existing staff where required. The re-checking period required by the appropriate regulatory or professional body such as Care Inspectorate Wales or Social Care Wales **or ESTYN** will apply. Employees may be required to sign up to the DBS Update Service to enable appropriate re-checks to be made and are informed accordingly.
7. Schools must comply with the [Staffing Maintained Schools \(Miscellaneous Amendments\) Wales Regulations 2007](#) and the [Safeguarding Vulnerable Groups Act](#) which identifies School establishments as a place of Regulated Activity.
8. Information supplied via the DBS checking process is confidential personal data and must not be relayed to anyone who is not entitled to see it.
9. Any individual found to be in breach of this policy may be subject to disciplinary action.
10. The Council reserves the right to withdraw access to this service where an organisation using the umbrella body service fails to comply with this policy.

Types of Checks/Disclosures

11. There are 3 types of check/disclosure which the Council may request from the DBS.

Standard Disclosure

Shows spent and unspent convictions, cautions, reprimands and final warnings. To be eligible for a standard level DBS certificate, the position must be included in the [Rehabilitation of Offenders Act \(ROA\) 1974 \(Exceptions\) Order 1975](#). (See Appendix A and the Annex included in the DBS Guide to Eligibility below).

Enhanced Disclosure

Shows the same as a standard check plus any information held by local police that's considered relevant to the role.

To be eligible for an enhanced level DBS certificate, the position must be included in both the [ROA Exceptions Order](#) and in the [Police Act 1997 \(Criminal Records\)](#) regulations.

Enhanced check with barred lists

Shows the same as an enhanced check plus whether the applicant is on the list of people barred from working with these service users.

To be eligible to request a check of the children's or adults' barred lists, the position must be eligible for an enhanced level DBS certificate as above and be specifically included in the [Police Act 1997 \(Criminal Records\)](#) regulations as able to check the appropriate barred list(s).

Eligibility for DBS Checking

12. The Recruiting Manager and the counter-signatory are responsible for making sure the job role is eligible for checking. Checks can only be requested **after** a job offer is made. Please refer to the Appendices linked to this Policy to assist your assessment. If you are unsure about whether a post requires a DBS check, please contact the HR Recruitment Team. Guidance is also available on the DBS website – at the following link.

[DBS guide to eligibility](#)

Regulated Activity

13. The definition of regulated activity can be summarised as follows:

Regulated Activity – Children

Children are under 18 years old.

Regulated activity refers to unsupervised activities relating to the teaching, training, instructing, caring for or supervising children or providing advice/guidance on wellbeing or driving a vehicle solely for children eg school transport drivers.

Supervision means day to day supervision and regular means carried out by the same person on a frequent basis – once a week or more often, on 4 or more days in a 30 day period or where the work involves overnight supervision.

Health care which is provided by or under the direction of a regulated health care professional or personal care for children such as assisting with washing and dressing, is classed as regular even if the activity is only carried out once. Eg visiting health advisors.

Schools

The Safeguarding Vulnerable Groups Act identifies School establishments as a place of Regulated Activity and as such all individuals working regularly with unsupervised access to children, within this environment must have an Enhanced DBS and barred list (children) children.

Regulated Activity – Adults

Adults are aged 18 and over.

Regulated activity refers to anyone providing personal care to an adult in a regulated setting eg hospital, care home, day care centre, sheltered housing.

Personal care includes teaching, training, instructing, caring for or supervising adults or providing advice/guidance on wellbeing.

Health care which is provided by or under the direction of a regulated health care professional.

Providing social work including assessing or reviewing the need of health or social care services and providing ongoing support to clients.

Assisting an adult with the management of cash, bills and/or shopping where it is required because of their age, illness or disability.

Assisting an adult with their own affairs under the Mental Capacity Act 2005 or other relevant legislation eg Adult's deputy.

Drivers or assistants who transport adults because of their age, illness or disability, to and from health care, personal care or social work activities, appointments, etc.

14. Please also see the DBS Guide to Eligibility. If you are unsure whether the area of work is regulated and eligible for DBS checking, please contact your HR/Recruitment Advisor.

[DBS guide to eligibility](#)

Frequency of DBS Checking/Rechecking

15. Those who work in posts which are required to be registered with the Care Inspectorate Wales (CIW) will be asked for an updated DBS disclosure every three years in accordance with statutory guidance issued by the Welsh Government. These posts include all posts in-
 - older people's residential care homes;
 - children's residential/ respite Centres;
 - all staff within Domiciliary Services (except support staff); and,
 - Responsible Individuals (RI's).

Please see guidance for further information-

<https://gov.wales/docs/dhss/publications/180201statutory-guidanceen.pdf>

Employees in roles which require re-checks will be expected to join and maintain a subscription with the DBS Update Service to allow for re-checks to be undertaken. The Council will not reimburse any costs associated with this.

16. There is no legal requirement to re-check any other staff who work in regulated activity/settings including those who work in schools. If a School Governing Body wishes to re-check their staff then they must ensure that their Policy allows for this and has been agreed by the Governing Body. The cost of these checks is payable by the School/Department.

Portability of DBS Checks

17. DBS disclosures are required for all new (to the Council) employees who are appointed to work in a post which requires a DBS check **before** commencing employment.

18. Existing employees who are offered work in a post which requires a DBS disclosure must be checked if:

a) They have not previously undergone a DBS check; **OR**

b) They have undergone a check but their DBS certificate is more than three years old; **OR**

c) The DBS certificate is three years old or less but is not valid for the post for which they have applied **OR**

d) They hold the appropriate DBS certificate but are moving to a post which is significantly different to the current post eg driver to teaching assistant.

19. Employees are required to advise their manager/headteacher of any criminal convictions during their employment and a change in circumstances will lead to a new DBS check being required. Failure to advise of a change in circumstances may result in disciplinary action.

The Recruitment Process and DBS Checking

20. The HR Recruitment Team provides a DBS checking service (at the point of job offer) to all services including schools.

21. There are strict guidelines regarding which posts can be included for DBS checking purposes. Therefore it is essential a clear and concise job profile enables the service and the HR Recruitment Team/Advisor to assess what type of check is required before advertisement. The Job Profile must contain the justification for the type and level of check. A DBS check will not be requested until the HR Recruitment Team is satisfied that it is justified.

22. Recruiting managers are expected to read, understand and follow the relevant Recruitment and Selection Policy. **INSERT LINK TO POLICY (currently underdevelopment)**

23. Where a DBS check is required, the recruitment information including the advertisement will make this clear. The DBS Code of Practice and Policy Statement relating to the Recruitment of Ex-Offenders and DBS checking will be made available to job applicants via the Council's internet jobs pages.

24. Applicants for posts requiring DBS checks will be provided with the opportunity to disclose details of a criminal record. This information is treated in strictest confidence and will only be available to those who need it as part of the recruitment process. An offer of employment may be withdrawn from applicants who fail to reveal relevant information or where after receiving a DBS disclosure, the applicant is considered unsuitable for the role.

25. Applicants who have worked or resided overseas for twelve months or more in the previous ten years (excluding members of UK armed forces and their families) will be advised to seek certificates at their own cost from the relevant countries in accordance with the relevant DBS Guidance.

[Guidance for criminal records checks from overseas applicants](#)

26. It is an offence to employ someone to work in a role involving work with children if they have been barred through the DBS Childrens barred list or where the work is with adults, through the DBS Adults barred list.
27. It is an offence for someone to apply or volunteer for work for which they have been barred via the DBS barred lists. If this happens, it will be reported to the relevant authorities.
28. The Council uses the **[Carmarthenshire.employmentcheck.org.uk](https://carmarthenshire.employmentcheck.org.uk)** online system to undertake DBS checks. New employee details will not be set up for HR and payroll purposes until **all** pre-employment checks, including DBS checks, are completed satisfactorily. For details of the full pre-employment check requirements please refer to [our Recruitment intranet pages](#)

Countersignatories and Identity Verifiers

29. It is the responsibility of every Countersignatory and Identity Verifier to:
- a) Undertake all training required and provided in relation to their responsibilities;
 - b) Keep up to date with information and guidance provided by the Disclosure and Barring Service, the Council and other relevant sources;

- c) Maintain full and accurate records where required;
- d) Seek advice if they are unsure about any area of responsibility in relation to DBS and pre-employment checking.

Checks for non-employees

32. **Agency Workers**

The Agency is the employer of the workers it provides. It must therefore carry out the same level of checks as required by this Policy and the post assessment. Service managers must ensure that the Agency provides written confirmation that DBS and all other pre-employment checks have been undertaken before the worker commences their placement.

33. **Contractors**

The organisation providing the service/contractors is the employer. It must therefore ensure that the appropriate DBS and pre-employment checks are undertaken. Contractors are required to comply with this Policy and this should be provided during the procurement process. Separate guidance is available at: [XXXXXX \(Link to be inserted\)](#)

Note: The Passenger Transport Service coordinates DBS checks for its contractors.

34. **Volunteers**

The DBS define a volunteer as '*a person who performs 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*'.

The DBS does not charge for providing disclosures for volunteers but before submitting a request for a volunteer, you must be satisfied that they will not:

- benefit financially from the position for which the application is being submitted
- receive any payment (except for travel and other approved out-of-pocket expenses)
- be on a work placement
- be in a trainee position or undertaking a course of study that will lead to a full time role/qualification
- be a paid foster carer or a member of a foster care household

[DBS Guidance on Volunteers](#)

35. **Elected Members**

There is no general requirement for Elected Members to be DBS checked. However, the duties performed by some EM's are likely to meet the definition of "regulated activity" or fall within the Rehabilitation of Offenders Act 1974 (Exceptions Order 1975). The following positions will therefore be eligible for an Enhanced Disclosure (including checks against the barred lists for Children and/or Adults where relevant):

- Elected Member with portfolio for Children and Education
- Elected Member with portfolio for Social Care & Health (including Adoption and Fostering)
- Elected Member as Chair of Regulatory Committee – Licensing

36. **School Governors**

DBS checks will be undertaken for School Governors with responsibility for safeguarding or who meet the threshold in relation to unsupervised and regular access to children. This will be the responsibility of the School.

When a criminal record is declared or revealed on a Disclosure

37. Disclosures containing previous convictions and/or cautions are not necessarily a bar to obtaining a position. However, failure to disclose such convictions where it is required may be seen as an attempt to obtain employment by deception and, as such, would usually result in withdrawal of the offer of an employment.
38. Where the convictions and/or cautions have been declared at the application stage, then this should not be taken into account during the shortlisting process. Candidates who are shortlisted for interview should be provided with the opportunity to discuss their disclosure with the Recruiting Manager/Headteacher.
39. If, after an offer of employment is made, a DBS check reveals any undeclared information then the Recruiting Manager should review the information, seek advice from their Recruitment or HR Advisor and discuss with the applicant where appropriate before making a decision regarding suitability and whether the appointment should proceed.
40. When reviewing any information provided directly by the applicant or via the DBS disclosure, service managers should keep an open mind, focus on the ability to do the job and consider the following:
- Is the disclosure relevant to the job/position?
 - How serious is it?
 - How recent is the conviction? Is it spent?

- Have the applicant's circumstances changed since the convictions?
- What explanation has the applicant provided?

It may be useful to review this information in conjunction with other checks such as references.

41. Where the disclosure relates to a School Governor or Head Teacher, the school is advised to seek advice from the Director of Education and Children.
42. A record of the decision should be kept and communicated in writing to the HR Recruitment team and the applicant.
43. The same questions should be asked of an existing employee who declares a criminal conviction or where a new DBS check reveals criminal convictions. A record of the decision should be communicated in writing to the Recruitment team.