

# HR Policy and Procedures

<b>Section:</b> D46	
<b>Title:</b>	Disclosure and Barring Policy
<b>Purpose:</b>	To provide guidance to schools in relation to Disclosure and Barring Checks and to support safe recruitment in a fair and consistent way.
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<b>Supersedes:</b>	DBS Policy – Version January 2013
<b>Consultation:</b>	This policy has been formulated in consultation with the NUT, NASUWT, ATL, ASCL, NAHT, GMB and Unison and agreed with NUT, NASUWT, ATL, ASCL, NAHT, GMB and Unison

## Policy Revision History

Revision number	Date	Amendment	Revised by
00	January 2013	New Policy	Julia Langmead
01	May 2015	Legislative Update	Julia Langmead
02			
03			

## Policy adoption

<b>Policy adopted by the Governing Body of:</b>	
<b>Date adopted by the Governing Body:</b>	
<b>Signed by Chair of Governors:</b>	



## Contents

Section		Pages
1.	Purpose of the Policy	4
2.	Aims of the Policy	4
3.	Scope	5
4.	Legal Framework	5
5.	Disclosure & Barring Service (DBS)	5-6
6.	Disclosure Scotland	6
7.	Roles and Responsibilities	6-8
8.	Criminal Record Checks and Eligible Positions	8-10
9.	Recruitment and Selection	10-11
9.1	Portability	11-13
9.2	Commencement of work pending receipt of Criminal Record Disclosure	13-14
9.3	Disclosure of a criminal offence	14
9.4	Agency and third-party staff	14-15
9.5	Volunteers in the Council / Schools	16
9.6	Fees for Criminal Record Checks	16-17
10.	Existing Employees, Council Members, Volunteers, Relevant Contractors, Consultants, Agency Staff and Other Workers	17
10.1	Renewal of Criminal Record Checks	17
10.2	Criminal Record Check not previously required	17
10.3	Disclosure of a criminal offence	17-18
10.4	Informing the Council or School of changes to circumstances	18-19
11.	Inspections	19
12.	Management and Use of Criminal Record Disclosure Information	19
13.	Related Policies and Procedures	19
14.	Sources of Information	19-20

Appendix 1	Guidance Note – Referral to the Disclosure & Barring Service (DBS)	21-22
Appendix 2	Definition of Regulated Activity (Adults)	23-24
Appendix 3	Definition of Regulated Activity (Children)	25-26
Appendix 4	Eligibility for DBS Barred List Checks – Adults and Children	27
Appendix 5	Criminal Record Disclosure, Internal Portability Checklist	28
Appendix 6	Risk Assessment Form – Commencement of work pending receipt of Criminal Record Disclosure	29-31
Appendix 7	Guidance Note – Receipt of Unclear Criminal Record Disclosure - New appointments and existing employees	32-35
Appendix 8a	Risk Assessment Form – Receipt of Unclear Criminal Record Disclosure, New Appointments	36-39
Appendix 8b	Risk Assessment Form – Receipt of Unclear Criminal Record Disclosure, Re-check for an existing employee or worker	40-44
Appendix 9	Policy Statement On The Recruitment Of Ex-Offenders	45-46
Appendix 10	Policy Statement on the Management and Use of Criminal Record Disclosure Information	47-48

## **1 Purpose of the Policy**

The purpose of this Policy is:-

- 1.1 to ensure that appropriate criminal record checks are undertaken as part of safe recruitment and employment practices throughout the Council and Dudley Schools, and in accordance with relevant legal requirements;
- 1.2 to ensure that vulnerable groups including children are protected whilst engaged in services provided and/or organised by the Council and Dudley Schools;
- 1.3 to ensure that criminal record checks are undertaken, where applicable, in order to comply with HMG Baseline Personnel Security Standard (BPSS);
- 1.4 to provide employees, managers and Head Teachers with clear and consistent advice and guidance on the use and processing of criminal record checks.

## **2 Aims of the Policy**

As an organisation using the Disclosure & Barring Service (DBS) and Disclosure Scotland to assess applicants' suitability for positions of trust, the Council undertakes:-

- 2.1 to comply fully with the DBS and Disclosure Scotland Codes of Practice;
- 2.2 to comply with provisions in relevant legislation, including those for the protection of vulnerable groups including children;
- 2.3 to treat all applicants for positions fairly; and
- 2.4 not to discriminate unfairly against any subject of a criminal record Disclosure, on the basis of a conviction or other information revealed. Please refer to Appendix 9.

The overall objective of the Council's Equality and Diversity Policy is to:-

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity; and
- foster good relations between people from different backgrounds.

The objective applies to all groups protected under the Equality Act 2010. The Council will also make sure that it does not treat less favourably on any grounds that cannot be shown to be justified people protected by other legislation, such as that covering trade union or political activities, social class, where a person lives or spent convictions.

### **3 Scope**

This policy applies to all Council Members and employees. It also includes volunteers, relevant contractors, consultants, agency staff and other workers appointed by the Council or School to undertake work directly for the Council or School.

Throughout the document, references to 'Line Manager' apply to Council Directorates; references to 'Head Teacher' apply in Schools.

This policy also applies in Schools where the Council is not the employer but the School has decided to adopt this policy.

### **4 Legal Framework**

**The application for and use of criminal record Disclosures is based on a number of separate pieces of legislation. This policy is written in accordance with the following legislation, as listed, or as amended:-**

- Protection of Freedoms Act 2012, Part 5
- Safeguarding Vulnerable Groups Act 2006
- Rehabilitation of Offenders Act 1974, and associated Guidance
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013
- Police Act 1997 Part V and associated Regulations
- Data Protection Act 1998
- Care Standards Act 2000
- Children Act 2004

### **5 Disclosure & Barring Service (DBS)**

5.1 The DBS was established 1 December 2012 under the Protection of Freedoms Act 2012 and merged the functions previously carried out by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA).

The primary role of the DBS is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children, through its criminal record checking and barring functions.

5.2 **Checking Service.** This only allows employers to access the criminal record history of people working, or seeking to work in certain positions, especially those that involve working with children or adults in specific situations.

The DBS searches police records and, in relevant cases, barred list information, and then issues a DBS Disclosure to the applicant and employer to help them make an informed recruitment decision.

5.3 Referrals and Barring. The barring side of the DBS processes referrals about individuals who have harmed or pose a risk of harm to children and/or vulnerable groups.

#### 5.3.1 The DBS:-

- makes decisions about who should be placed on the children's barred list and/or adults Barred List and prevented by law from working with vulnerable groups including children;
- reviews barring decisions to include someone on a DBS Barred List(s);
- reviews a person's inclusion on a DBS Barred List(s);
- reaches decisions as to whether to remove an individual from a DBS Barred list(s).

5.3.2 An employer or volunteer manager is breaking the law if they knowingly employ someone in a Regulated Activity with a group from which they are barred from working.

They have a legal duty to make a referral to the DBS when one of their workers or volunteers has harmed or poses a risk of harm to a child or vulnerable adult.

For information about Regulated Activity, please refer to Section 8.3. For further information on the duty to refer to the DBS, please refer to Appendix 1.

5.3.3 A barred person is breaking the law if they seek, offer or engage in Regulated Activity with a group from which they are barred from working, be it paid or voluntary.

## 6 **Disclosure Scotland**

Disclosure Scotland is an Executive Agency of the Scottish Government. It provides criminal history information to organisations and potential employers to assist them to make safer and more informed recruitment decisions. Dudley Council uses this service to obtain 'Basic' Disclosures, which are not available from the Disclosure and Barring Service. These are processed via Capita on behalf of the Council.

## 7 **Roles and Responsibilities**

7.1 In line with the DBS Code of Practice, there are a number of different roles and responsibilities in respect of applications submitted to the Disclosure and Barring Service.

#### 7.1.1 **Registered Body**

Dudley Metropolitan Borough Council is a Registered Body, which is registered to access the DBS checking service. It also provides an Umbrella Service, countersigning DBS applications and requesting DBS checks for other organisations who are not directly registered with the DBS.

As a Registered Body, the Council, its Lead Signatory and designated Countersignatories must comply with the DBS Code of Practice, which governs registration with the DBS, and the application for and handling of DBS Disclosure information. The obligations in the Code are determined by the Police Act.

#### 7.1.2 **Lead Signatory**

The Assistant Director of HR and Organisational Development is the nominated Lead Signatory, and has overall responsibility for the use of the DBS process within the Council and is the key contact with the DBS. The Lead Signatory approves and maintains a list of Countersignatories, and is the final decision maker on whether a DBS application should be submitted, where there are discrepancies in practice and legal requirements.

#### 7.1.3 **Countersignatories**

There are designated Countersignatories in the Council, who are responsible for countersigning DBS applications.

#### 7.1.4 **ID Evidence Checkers**

There are ID Evidence Checkers throughout the Council and in Schools, who have been trained and are authorised to check and validate the information provided by an applicant on the DBS application form and to verify the identity of the applicant.

### 7.2 **HR team**

7.2.1 It is the role of the Operational and Policy HR teams to:-

- brief, advise and support managers and supervisors in the application of this Policy;
- regularly review and revise this Policy.

7.2.2 It is the role of the Transactional HR team to:-

- process criminal record applications and maintain appropriate records;
- advise managers and supervisors regarding the application process for criminal record checks;
- maintain a record of all Countersignatories and ID Evidence Checkers, and their signed ID Evidence Checking Agreements;
- brief and update ID Evidence Checkers on any changes to the Policy and processes.

### **7.3 Employees, Council Members, Volunteers, Relevant Contractors, Consultants, Agency staff and other Workers**

All persons covered by the scope of this Policy must adhere to it, undergoing criminal record checks as required by DMBC or the School, in accordance with the Policy and/or legal requirements. They must also inform their line manager, Head Teacher or the Operational HR team of any changes to their circumstances which may update the status of their criminal record Disclosure, ie if they are charged or convicted of a crime, or they receive a caution, final warning or other form of reprimand in relation to a criminal offence (refer to Section 10.4).

### **7.4 Line Managers and Head Teachers**

Line Managers and Head Teachers are responsible for ensuring that:-

- 7.4.1 criminal record checks are undertaken, where legally required and/or in accordance with this Policy, for any person they appoint to undertake work directly for the Council or School;
- 7.4.2 all other relevant checks are undertaken, and that appropriate working and safeguarding practices are in place;
- 7.4.3 they assist in ensuring that further criminal record checks are undertaken when required;
- 7.4.4 if a disclosure is made to them by any worker they have appointed, they discuss this with the Operational HR team.

## **8 Criminal Record Checks and Eligible Positions**

- 8.1 A criminal record check searches an applicant's details against criminal records and other sources. For some jobs, information will also be provided as to whether an applicant has been barred from working with vulnerable groups including children.

The following four levels of criminal record checks are currently available:-

Basic	Provides details of an individual's convictions held at national level which are unspent.
Standard	Contains details of all spent and unspent convictions cautions, reprimands and final warnings from the Police National Computer, which have not been filtered in line with legislation.
Enhanced	Contains the same Police National Computer information as a Standard check, together with any information held locally by police forces if they reasonably believe it to be relevant to the post applied for.
Enhanced + Barred List(s) Check	Contains the same details as an Enhanced check, and whether the person is on the relevant DBS Barred List(s) (children and/or adults).

- 8.2 Dudley MBC or the School will determine the level of criminal record check submitted in order to comply with legal requirements, or in order to meet inspection requirements or safeguarding practices. There are certain activities and work which a person who has been barred by the DBS must not undertake, and therefore the organisation must request a check of the relevant DBS Barred List.

This decision is based on the nature of the work, rather than the individual applying for or already in that post.

Where an individual has multiple contracts, the level of criminal record check for each post will be determined. One criminal record check may also cover other contracts which require a criminal record check at the same level or lower, dependent upon the nature of the work. However, there may be a legal requirement for more than one criminal record check, dependent upon the nature of the work.

- 8.3 Under the Rehabilitation of Offenders Act (ROA) 1974 a person with a criminal record is not required to disclose any spent convictions unless the position they are applying for, or are currently undertaking, is listed as an exception under the Act.

The professions, positions and types of work that are known as the exceptions are listed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This is the gateway for entitlement to request a DBS Check at the Standard level.

This covers people working or volunteering with vulnerable groups including children, as well as those who work in other positions of trust. The following links to the 'DBS checks: eligibility guidance'.

<http://www.homeoffice.gov.uk/publications/agencies-public-bodies/dbs/dbs-checking-service-guidance/eligibility-guidance>

Whether the level of DBS check undertaken is Standard, Enhanced or Enhanced with a Barred List check, will depend upon other legal requirements.

There is certain work which meets the definition of Regulated Activity, as referred to in the ROA 1974 (Exceptions) Order 1975 and defined in the Safeguarding Vulnerable Groups Act 2006, or as amended. A person who has been barred by the DBS must not undertake work and activities which are classed as Regulated Activity. Therefore, posts which meet this definition, will be eligible for an Enhanced DBS and Barred List Check (children and/or adults). The definitions of Regulated Activity introduced in the Protection of Freedoms Act are detailed in Appendix 2 (Adults) and Appendix 3 (Children).

The following link provides a more detailed description of 'Regulated Activity in relation to Children'. Factual Note by HM Government.  
<http://media.education.gov.uk/assets/files/pdf/r/regulated%20activity%20children%20full%20information%20ewni%20final%202012-06-01.pdf>

The following link provides a more detailed description of 'Regulated Activity (Adults)'. Factual Note by Department of Health.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216978/Regulated-Activity-Adults-Dec-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216978/Regulated-Activity-Adults-Dec-2012.pdf)

Appendix 4 details eligibility for the DBS Barred Lists checks. Before Dudley MBC or a School considers asking a person to make an application for a Standard or Enhanced DBS check, they are legally responsible for ensuring that they are entitled to ask that person to reveal any conviction history they might have.

Where a post is not included in the Rehabilitation of Offenders Act (ROA) 1974 Exceptions Order, Dudley MBC or a School may require a criminal record check at the Basic level.

- 8.4 Where a criminal record check is not already required for the role, a 'Basic' Disclosure check may be required in order for the Council to comply with HMG Baseline Personnel Security Standard (BPSS).

## **9 Recruitment and Selection**

When required by Dudley MBC or a School, job applicants and other persons covered by the scope of this Policy will be asked to undergo a criminal record check at the appropriate level, as outlined in Section 8.

It is not acceptable to carry out a Status Check obtained via the DBS Update Service, where the individual has subscribed to this service, instead of a full check.

The criminal record checking process is outlined in the People Matters section on iDudley, at the link below. Further guidance and support to proceed with a criminal record check is available from the HR Transactional Services team.

<http://idudley/idudley/people-matters/recruiting/dbs/>

Reference should also be made to the appropriate Recruitment and Selection Procedure.

The above guidance also outlines the requirement to explain to applicants and Volunteers the purpose of disclosure and barring, and the policy which is in place. Those who do not agree to submit a criminal record Application Form will be refused the appointment.

Information for applicants is also contained in the 'Recruitment Pack' on the Council's website.:

<http://www.dudley.gov.uk/jobs-and-careers/council-and-schools-jobs/recruitment-pack/>

Schools are also obliged to record details of criminal record checks and other pre-recruitment checks which have been undertaken, on the Single Central Record

In addition, in accordance with the Keeping children safe in education – childcare disqualification requirements – supplementary advice, all new appointments (including new volunteers/governors) in relevant settings, must be required to complete a self declaration form during any recruitment process and certainly prior to commencing work.

Further information and specific guidance for Schools is available:

- on the YourHR website;;
- in statutory guidance at the links below;

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

- and from the HR Supporting Schools team.

## 9.1 Portability

The following guidelines will ensure that appropriate checks have been undertaken, and safeguarding practices are in place, prior to an existing employee transferring to another role within the Council or a Dudley School, or being appointed to an additional contract.

9.1.1 Portability refers to the re-use of criminal record checks.

9.1.2 The Council has adopted an internal portability policy, in line with the following principles. Where applicable, this will allow portability of the DBS Disclosure between Dudley Schools and Council Directorates for existing workers.

- i. A previous criminal record Disclosure can be accepted if it was undertaken by Dudley MBC as the Registered body;
- ii. The date of issue of the DBS Disclosure is less than three years;
- iii. The client group is not changing, eg the previous criminal record Disclosure was issued to work with children and the new or additional role applied for is also to work with children;
- iv. There is not a significant change in the type of role, provided that there are no additional requirements; including 'home-based' work with vulnerable groups including children;
- v. The new post requires a criminal record check at the same level as the original criminal record Disclosure (refer to Section 8);
- vi. The line manager / Head Teacher contacts the Transactional HR team to obtain confirmation regarding the previous criminal record check, ie the date of issue, the level of check, the job title and/or 'workforce', and whether it was clear' or 'cleared with risk assessment';
- vii. Providing the normal safe recruitment processes have been followed, including obtaining references, medical clearance and ID verification;
- viii. If a concern has arisen as a result of any pre-appointment check, a new criminal record check should be undertaken.

For posts within the Council, the Criminal Record Disclosure, Internal Portability Checklist (Appendix 5) must be completed and saved on the applicant's personal file. In Schools, the Single Central Record must be completed.

9.1.3 There are considerations to make when accepting a previously issued check:

- i. Using a previously-issued criminal record Disclosure does not constitute a fresh criminal record check. The person's criminal record or other relevant information may have

changed since it was issued.

- ii. A previously issued criminal record Disclosure is only relevant to the specific position and/or type of 'workforce' applied for under the previous application.
- iii. Information revealed through a criminal record check can only be passed to individuals who need to see it as part of the recruitment decision for which the criminal record check was requested or is being considered.

9.1.4 If contacted by another organisation about a previously issued criminal record check, this must be in writing, and there must be written consent from the individual for the information to be disclosed. Only the following information must be provided:-

Whether or not the information provided by the other organisation reflects that which appears on the Council's record of the criminal record check.

## 9.2 **Commencement of work pending receipt of criminal record Disclosure**

9.2.1 Where a criminal record Disclosure is required for a post, it should normally be obtained before an individual commences work in that post.

Where a criminal record check is required to meet the HMG Baseline Personnel Security Standard (BPSS), an individual who has been recruited or engaged from outside the Council must not commence in the role until a Disclosure has been received which is acceptable to the Council, unless they can undertake the role without access to the Council's ICT network.

However, it is recognised that this may place additional pressures on Services, impacting on service provision and staffing resources. Therefore, Chief Officers and Head Teachers have determined the posts where, in exceptional circumstances, an individual may be permitted to commence work prior to the receipt of the criminal record Disclosure. This is subject to:

- the criminal record check Application Form having been submitted to the HR Transactional Services team prior to the individual starting work; and
- the Council's standard Risk Assessment Form (Appendix 6) having been fully completed and signed by the Line/Appointing Manager, a Chief Officer or Head Teacher or Recruitment Governor (as appropriate), and the Head of

HR or Lead Signatory. This must be saved on the applicant's personal file.

This will ensure that full consideration is given to safe recruitment practices, so that all other pre-employment checks have been satisfactorily completed and that appropriate supervision is in place.

An individual must not commence work in the post until these requirements have been met.

9.2.2 The DBS does not provisionally bar a person whilst considering a referral, so it is essential that caution is exercised and correct procedures are adhered to when recruiting to posts working with vulnerable groups including children.

9.2.3 Where an individual commences work in these circumstances, they should be informed that they will be subject to additional supervision. The nature of the supervision and the roles of the staff undertaking the supervision should be specified. The arrangements should be reviewed regularly until the criminal record Disclosure is received. If a School allows an individual to start work in Regulated Activity before the DBS certificate is available, then they should ensure that the individual is appropriately supervised and that all other checks, including a separate barred list check, have been completed.

9.2.4 Any offer of employment will remain subject to satisfactory pre-employment checks, which include a criminal record Disclosure which is deemed satisfactory by the Council or the School.

### 9.3 **Disclosure of a criminal offence**

A criminal record, in itself, will not necessarily prevent a person from being appointed. It will be considered according to the nature of the role.

The process outlined in Appendix 7 must be followed and the Council's standard Risk Assessment Form (Appendix 8) completed, when the Council or the School receives:-

- a criminal record Disclosure which contains information of convictions, cautions, reprimands, final warning, or other relevant information such as the person has been charged, is awaiting sentencing or is under police investigation; or
- information that the individual is on the DBS's List(s) of individuals barred from engaging in Regulated Activity with children and/or vulnerable adults.

#### 9.4 **Agency and third-party staff**

It is the line manager's or Head Teacher's responsibility to ensure that an individual working through an Agency, or third party organisation, has completed an appropriate criminal record check. This includes the Council's internal agency arrangements. This check must be undertaken by the Agency or third party organisation, who will pay the fee. The line manager or Head Teacher must contact the Agency or third party organisation to obtain written details of:

- the date of issue of the criminal record Disclosure;
- the name of the subject;
- the type of Disclosure;
- the position and the 'workforce' for which the criminal record Disclosure was requested;
- the unique reference number; and
- any information detailed on the criminal record Disclosure.

Costs for the Disclosure are to be borne by the Agency or third party organisation.

Criminal record checks must be dated within the previous 12 months and have been issued to the current Agency, or third party organisation, with whom the candidate is registered, or engaged. If there has been a break in service with the Agency, or third party organisation, of three consecutive months or more during the previous 12 months, a new criminal record check will be required.

It is not acceptable to carry out a Status Check obtained via the DBS Update Service, where the individual has subscribed to this service, instead of a full check.

Where these checks have not taken place, the manager may be subject to the Council's or School's Disciplinary Procedure.

#### 9.5 **Volunteers in the Council / Schools**

A volunteer will only qualify for a free-of-charge criminal record check if they meet the DBS definition of a volunteer, as defined in the Police Act 1997 (criminal records) Regulations 2002:

'A person engaged in 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 and not a close relative.'

More information can be found at the following link:

<https://www.gov.uk/dbs-check-requests-guidance-for-employers#volunteer-applications>

9.5.1 A Volunteer should only be required to complete a criminal record Application Form, for a Standard or Enhanced DBS check, if the work they will be undertaking is listed in the

Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This covers people working or volunteering with vulnerable groups including children, as well as for those who work in other positions of trust.

As outlined in Section 8, whether the level of DBS Check required is Standard, Enhanced or Enhanced with a Barred List check, will depend upon other legal requirements.

There are certain activities and work which a person who has been barred by the DBS must not undertake. Therefore, if the work of the Volunteer falls within the definition of Regulated Activity, the organisation must request a check of the relevant DBS Barred List.

- 9.5.2 The criminal record check is one part of the wider, safer recruitment and working practices. Therefore, line managers and Head Teachers must ensure that all other appropriate checks are undertaken before engaging a Volunteer, and that appropriate working and safeguarding practices are in place.
- 9.5.3 It is important that line managers and Head Teachers explain to Volunteers the purpose of criminal record checks and the Policy which is in place.
- 9.5.4 Please refer to Section 12 with regard to the requirements for the management and use of criminal record Disclosures and Disclosure information.
- 9.5.5 Volunteers must be informed that they are required to disclose any of the following to their line manager, Head Teacher or the Operational HR team whilst undertaking work for the Council or School:-
- that they have been charged or convicted of a crime, or received a caution or other form of reprimand or final warning;
  - that they are awaiting sentencing;
  - that they are under police investigation.

In all cases, the above information must be declared as soon as they have been informed of any of the above, to allow the Council or School to assess the potential risks to vulnerable groups including children.

Consideration will be given to the impact upon the work being undertaken by the Volunteer, in liaison with the Assistant Director for HR and Organisational Development or Head

Teacher as appropriate. The process outlined in Section 10.3 will be followed.

## **9.6 Fees for Criminal Record Checks**

The Council or School is responsible for all charges for criminal record checks, with the exception of those for Volunteers who meet the DBS definition of a volunteer and which are carried out free of charge by the DBS. Fees for agency workers and contractors are the responsibility of the supplier.

## **10 Existing Employees, Council Members, Volunteers, Relevant Contractors, Consultants, Agency Staff and Other Workers**

### **10.1 Renewal of Criminal Record Checks**

Where a person covered by the scope of this Policy has completed a criminal record check, and they continue in a role where a criminal record Disclosure is required, a full criminal record check will be required at least every three years.

Where a 'Basic' Disclosure check is undertaken purely to meet the HMG Baseline Personnel Security Standard (BPSS), a renewal will not normally be required.

In all cases, a new criminal record check will be required where information comes to light to suggest that a further check, or renewal, should be carried out earlier than the three years, or where a criminal allegation is made against the employee/worker.

Where legal requirements stipulate that re-checking is undertaken more frequently, a new criminal record check will be required.

Once in post, a person who refuses a legitimate request to undertake a criminal record check, will be subject to the Council's or School's Disciplinary Procedure.

### **10.2 Criminal Record Check not previously required**

A person covered by the scope of this Policy may be required to undertake criminal record checks during the course of their employment, volunteering, or appointment with the Council or School, as a result of changes to legal requirements, or in order to meet inspection requirements or safeguarding practices. All persons will be expected to comply with such requirements, including those persons who were employed, were volunteering or were appointed before criminal record checks were introduced.

Chief Officers, Heads of Service and Head Teachers, in conjunction with the Operational HR team, will identify those persons who require

criminal record checks, and the level of check, dependent upon the nature of their post.

### **10.3 Disclosure of a criminal offence**

Where a criminal record Disclosure confirms an offence and the individual is already in post, this will be assessed by the Chief Officer, Head of Service or the Head Teacher, in consultation with the Operational HR team.

A criminal offence will not, in itself, necessarily prevent a person from continuing in their current role, however it will be assessed according to the severity of the offence and the impact on the person's position.

The process outlined in Appendix 7 must be followed and the Council's standard Risk Assessment Form (Appendix 8) completed, when the Council or the School receives:-

- a criminal record Disclosure which contains information of convictions, cautions, reprimands, final warnings, or other relevant information such as the person has been charged, is awaiting sentencing or is under police investigation; or
- information that the individual is on the DBS Barred List(s) of individuals barred from engaging in Regulated Activity with children and/or vulnerable adults; or
- information from the individual that they have received a conviction, caution, charge, final warning or other form of reprimand, or that they are awaiting sentencing or are under police investigation.

### **10.4 Informing the Council or School of changes to circumstances**

During the course of their employment, volunteering or appointment, an individual must disclose any of the following to their line manager, Head Teacher or the Operational HR team:

- that they have been charged or convicted of a crime, or received a caution, final warning, or other form of reprimand;
- that they are awaiting sentencing;
- that they are under police investigation.

In all cases, the above information must be declared as soon as the individual has been informed of any of the above, to allow the Council or School to assess the potential risks to vulnerable groups including children.

Consideration will be given to the impact upon the position held by the individual, in liaison with the Assistant Director for HR and Organisational Development. The process outlined in Section 10.3 will be followed.

Any information declared will be recorded and noted on the individual's personal file.

If an employee/worker fails to disclose any of the above information, they may be subject to the Council's or School's Disciplinary Procedure.

## **11 Inspections**

Statutory requirements in relation to DBS Disclosures are set by the Government.

Officers employed by Ofsted to carry out inspections will interpret the requirements in close consultation with the Department for Education and will check that an organisation is meeting these requirements. Further guidance is available at [www.ofsted.gov.uk](http://www.ofsted.gov.uk).

The Care Quality Commission (CQC) is responsible for carrying out inspections for Care Homes, and guidance relating to their requirements is available at

<http://www.cqc.org.uk/content/criminal-record-checks>

For all other service areas subject to inspections, the appropriate Regulatory Body provides information regarding their requirements.

## **12 Management and Use of Criminal Record Disclosure Information**

In accordance with the DBS Code of Practice, and the Disclosure Scotland Code of Practice, Dudley MBC has a written Policy Statement on its storage, access, handling, use, retention and disposal of criminal record Disclosures and Disclosure information. This is detailed in Appendix 10.

## **13 Related Policies and Procedures**

In addition to this Policy, reference is made to criminal record checks in the following policies and procedures:-

- Guidance for Safer Working Practices for Adults who work with Children and Young People.
- Recruitment and Selection Procedure.
- Code of Conduct.

## 14 **Sources of Information**

Disclosure & Barring Service (DBS) at [www.homeoffice.gov.uk/agencies-public-bodies/dbs/](http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/) and <https://www.gov.uk/disclosure-barring-service-check/overview>

Disclosure Scotland at:  
<http://www.disclosurescotland.co.uk/>

Department for Education at [www.education.gov.uk](http://www.education.gov.uk)

Keeping Children Safe in Education, Statutory guidance for schools and colleges:- <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

Ofsted at [www.ofsted.gov.uk](http://www.ofsted.gov.uk)

**Guidance Note – Referral to the Disclosure & Barring Service (DBS)**

**1 When a referral must be made**

Employers and voluntary organisations have a legal duty to make a referral to the DBS when one of their workers or volunteers, who works in a Regulated Activity, has harmed or poses a risk of harm to a child or a vulnerable adult.

When an allegation is made, it should be noted that a referral should be made when information and evidence have been gathered to support the allegation, and the criteria for making a referral have been met. A referral should not be made when an allegation is first made. An investigation must be undertaken and sufficient evidence gathered, in order to establish if the allegation has foundation.

Without evidence or information for the DBS to consider, an allegation will be closed down as there will be no basis on which the DBS can proceed. The DBS has no investigatory powers and relies upon the evidence provided with a referral and any other evidence that it may gather.

A referral must be made when the following criteria have been met:-

- a. The organisation has dismissed or removed an individual from working with children and/or vulnerable adults (or would or may have if the person had not left or resigned or retired etc) or
- b. An individual has resigned, retired or transferred to another post, and information subsequently becomes available, whereby had the information been available when the individual was in post, it would have led to dismissing or considering dismissal.

AND,

because the organisation believes the person has:-

- a. Been cautioned or convicted for a relevant (automatic barring) offence; or
- b. Engaged in relevant conduct in relation to children and/or vulnerable adults (ie an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm); or
- c. Satisfied the Harm Test in relation to children and/or vulnerable adults (ie there has been no relevant conduct (ie no action or inaction) but a risk of harm to a child or vulnerable adult still exists).

## **2 Who makes the referral**

The decision to refer should be made by the Chair of the disciplinary panel (in the case of a dismissal), or the relevant Chief Officer (in the case of a suspension, transfer or subsequent information coming to light). The referral process should be completed by the Head of Service with operational responsibility, with support from the Operational HR Team, and in liaison with the Safeguarding team as appropriate. The DBS Referral Form should then be signed by the Chief Officer responsible for the area and an Operational HR Team Manager. In certain circumstances, a referral may also be made by the Safeguarding team.

## **3 The information required**

A referral should be made by using the DBS Referral Form. This, together with instructions on completing the form, are available on the DBS website. Supporting evidence must be included, as detailed on the form. The information required includes such documentation as:-

- Appointment and employment documentation;
- Job Description;
- Investigation reports and statements;
- Letters – dismissal, investigation, resignation;
- Minutes of Strategy Meetings;
- Police Reports.

## **4 Requests for information from the DBS**

The organisation also has a legal duty to respond to requests from the DBS for information about a current or former worker.

## **5 Further information**

Detailed guidance notes and the Referral Form are available on the following website, together with contact details for the DBS Helpline:

<https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>

**Definition of Regulated Activity (Adults)**

The Protection of Freedoms Act introduced a new definition of Regulated Activity from 10 September 2012.

The definition of Regulated Activity for adults defines the activities provided to any adult as those which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time.

Adults will no longer be labelled as 'vulnerable' because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult being provided for by the activities.

There are six categories (described in detail in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006) within the new definition of Regulated Activity:-

**1 Providing health care**

Provision by a healthcare professional or under the direction or supervision of one. This may include psychotherapy and counselling, first aid administered on behalf of an organisation established for the purposes of providing first aid. This does not include workplace first aiders, members of peer support groups or life coaching.

**2 Providing personal care**

Physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails (but not where this involves only cutting hair) because of the adult's age, illness or disability. This also includes anyone who trains, instructs or provides advice on the provision of personal care or those who prompt and then supervise an adult to one of the above.

**3 Providing social work**

**4 Assisting with general household matters**

Assisting with managing a person's cash, paying a person's bills or shopping on their behalf because of the adult's age, illness or disability.

**5 Assisting in the conduct of a person's own affairs**

**6 Conveying**

Conveying adults to, from, or between places, where they receive health care, relevant personal care or social work because of their age, illness or disability. This includes hospital porters, patient transport service drivers and assistants,

ambulance technicians and emergency care assistants but does not include taxi or licensed private hire drivers.

**Please note** that the frequency test has been removed and an individual only needs to engage in a defined activity once to be carrying out Regulated Activity and the new definition removes the word 'vulnerable' when describing Regulated Activity relating to adults.

Certain elements of the original scope of Regulated Activity set out in the Safeguarding Vulnerable Groups Act (SVGA) 2006 will not be changed:-

- An adult is a person aged 18 years or over.
- A person whose role includes the day-to-day management or supervision of any person engaging in Regulated Activity, is also in Regulated Activity.
- Regulated Activity for adults excludes activity carried out in the course of family relationships and personal, non-commercial relationships.

Family relationships include close family (eg parents, siblings, grandparents) and the relationship between two people who live in the same household and treat each other as family.

Personal, non-commercial relationships are arrangements where no money changes hands or if any money does change hands it is not part of a commercial relationship (eg giving a friend petrol money to drive you to the hospital), and the arrangement is made between friends or family friends.

*Source: CRB News, September 2012*

The following link provides a more detailed description of 'Regulated Activity (Adults)'. Factual Note by Department of Health.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216978/Regulated-Activity-Adults-Dec-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216978/Regulated-Activity-Adults-Dec-2012.pdf)

### Definition of Regulated Activity (Children)

The Protection of Freedoms Act introduced a new definition of Regulated Activity from 10 September 2012.

The definition of Regulated Activity relating to children is set out in three parts. A person can be in Regulated Activity because of what they do (activities), where they work (establishments) or who they are (specified position). The definition of Regulated Activity is described in detail in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 and covers:-

#### **1 Unsupervised activities**

Teach, train, instruct, care for or supervise children, or provide advice/guidance on wellbeing, moderate a public electronic interactive service or drive a vehicle only for children carried out on a frequent, intensive or overnight basis. An individual carrying out activities as above, under reasonable day-to-day supervision by another person who is also engaging in Regulated Activity is not undertaking Regulated Activity.

#### **2 Establishments**

Work for a limited range of establishments (schools, nursery schools, childcare premises, children's homes, children's centres) with the opportunity for contact with children carried out on a frequent, intensive or overnight basis. A volunteer carrying out supervised activities under reasonable day-to-day supervision by another person who is also engaging in Regulated Activity is not undertaking Regulated Activity, however a supervised paid employee working for a specified establishment does come under Regulated Activity.

#### **3 Activities by a person contracted (or volunteering) to provide occasional**

or temporary services (which are not teaching, training or supervision of children) is no longer Regulated Activity (eg maintenance contractors) but please remember, as stated above, supervised paid employees in specified establishments are in Regulated Activity.

#### **4 Providing healthcare**

Provision by a healthcare professional or under the direction or supervision of one. This may include psychotherapy and counseling, first aid administered on behalf of an organisation established for the purposes of providing first aid. This does not include workplace first aiders, members of peer support groups or life coaching.

## **5 Providing personal care**

Physical assistance (or prompting with supervision or training or providing advice or guidance) with eating or drinking because of illness or disability, physical assistance (or prompting with supervision or training or providing advice or guidance) with going to the toilet, washing or bathing or dressing because of age, illness or disability.

## **6 Registered childminders and foster carers**

## **7 Day-to-day management or supervision of individuals carrying out Regulated Activity relating to children**

*Source: CRB News, September 2012*

For statutory guidance on supervision, visit the Department of Education website.

<http://media.education.gov.uk/assets/files/pdf/s/supervision%20guidance%20revised%20sos%20sept%202012.pdf>

The following link provides a more detailed description of 'Regulated Activity in relation to Children'. Factual Note by HM Government.'

<http://media.education.gov.uk/assets/files/pdf/r/regulated%20activity%20children%20full%20information%20ewni%20final%202012-06-01.pdf>

**Eligibility for DBS Barred List Checks – Adults and Children**

**Who should have a Children’s barred list check?**

From 10 September 2012, the only people who will be eligible for checks against the children’s barred list are:

- Those in Regulated Activity with children (the new definition from 10 September 2012).
- Actual or prospective foster parents.
- Persons aged 16 and over living in the same household as a foster or prospective foster parent.
- Persons aged 16 and over living in the same household as a foster or prospective private foster parent.
- People who provide or wish to provide childminding or day care.
- Persons aged 16 and over who have regular contact with children because they either live on the premises where day care or childminding is or will be provided, or because they work or will work on those premises at times when the day care or childminding is or will be provided.
- Persons aged 16 and over who have regular contact with children and who are members of a household of a person who is being or has been assessed for the purposes of engaging in Regulated Activity relating to children, where both individuals live on the premises where the Regulated Activity would normally take place, eg spouse of a boarding school manager where the manager and the spouse live on site at the school.
- Prospective adopters.
- Persons aged 18 and over living in the same household as a prospective adopter.
- Applicants for a Taxi or PHV licence.

**Who should have an Adults barred list check?**

Only those people who work in a Regulated Activity with adults (the new definition from 10 September 2012) or applicants for a Taxi or PHV licence can apply for an Adults barred list check. In all other cases and roles, checks of the barred lists cannot be requested.

**Criminal Record Check, Internal Portability Checklist**

<p>Checklist to be used for existing workers when giving consideration to using an existing criminal record Disclosure, undertaken by Dudley MBC, for a new post (transfer or additional post) in Dudley MBC or a Dudley School, in another department and/or establishment.</p>	
<p><b><i>To be completed by the Transactional HR Services team.</i></b></p>	
<p><b>Name of applicant:</b></p>	
<p><b>Employee ID Number:</b></p>	
<p><b>Details of previous criminal record check.</b></p>	
<p><b>Date of issue:</b></p>	
<p><b>Job title and/or 'workforce' for which the criminal record check was undertaken:</b></p>	
<p><b>Disclosure number:</b></p>	
<p><b>Level of check:</b></p>	
<p><b>'Clear' or 'cleared with risk assessment':</b></p>	
<p><b>Job title of new post:</b></p>	
<p><b><i>To be completed by the Line/Appointing Manager / Head Teacher.</i></b></p>	
	<b>Tick, as appropriate:</b>
The criminal record check was undertaken by and issued to Dudley MBC	
The date of issue of the criminal record Disclosure is less than three years	
The client group is not changing	
There is not a significant change in the type of role, and there are no additional requirements	
The new post requires a criminal record check at the same level than the original criminal record Disclosure	
All other recruitment checks have been undertaken and no concerns have been raised	
The applicant has been questioned to ascertain that there have been no new convictions, cautions, charges or other forms of reprimand since their most recent criminal record Disclosure	

Name of Line/Appointing Manager / Head Teacher:	
Signed:	
Date:	
Name of Operational HR Officer:	
Signed:	
Date:	

Date saved on applicant's recruitment / personal file:	
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**APPENDIX 6**

**Risk Assessment Form -  
Commencement of work pending receipt of Criminal Record Disclosure**

<p>Chief Officers and Head Teachers have determined the posts where, in exceptional circumstances, an individual may be permitted to commence work prior to the receipt of the criminal record Disclosure. A Risk Assessment must be completed in every case, in order to ensure ALL other pre-employment checks have been satisfactorily completed and that the decision-making process is clear and consistent. Once completed, if the appointment is confirmed, the form must be submitted to the HR team to be retained on the employee's personal file.</p>				
<b>SECTION 1: To be completed by the Line/Appointing Manager / Head Teacher</b>				
<b>Post to be filled:</b>				
<b>Date post became/becomes vacant:</b>				
<b>Name of applicant:</b>				
<b>Date interviewed:</b>				
<b>Type of Check:</b>	Enhanced + Barred List	Enhanced	Standard	Basic
<b>Criminal Record Check Certificate No: (taken from the completed DBS/Disclosure Scotland Application Form, which must have been sent to the DBS/Disclosure Scotland prior to commencement)</b>				
<b>Date Criminal Record Check Application Form sent to the DBS/Disclosure Scotland:</b>				
<b>Has the applicant declared any previous cautions/convictions:</b> If yes, please confirm that you have discussed this with the applicant and have satisfied yourself that this does not pose a risk to their appointment.			Yes	No
<b>Medical Check completed:</b>			Yes	No
<b>Essential Qualifications checked:</b>			Yes	No
<b>Right to work in the UK check completed:</b>			Yes	No
<b>Prohibition from teaching check (where applicable):</b>			Yes	No
<b>CCJ Check completed (where applicable)</b>			Yes	No

<p><b>Are there any unexplained gaps in employment history on the Application Form:</b> If yes, has this been satisfactorily explained by the applicant. Please provide details.</p>	<p>Yes Yes</p>	<p>No No</p>
<p><b>Does the applicant have a clear reference from a recent employer, with recent and relevant knowledge of the employee, which contains no reservations regarding suitability to work with vulnerable groups including children.</b> Please provide details.</p>	<p>Yes</p>	<p>No</p>
<p><b>Has advice been sought on any matter from the HR team.</b> If so, please provide details.</p>	<p>Yes</p>	<p>No</p>
<p><b>Is the post essential to the provision of a statutory service.</b> If so, please provide details.</p>	<p>Yes</p>	<p>No</p>
<p><b>Please state what special arrangements are being put in place to reduce all identified risks pending receipt of the criminal record Disclosure.</b></p>		
<p><b>Are you confident that all work with vulnerable groups including children will be closely supervised, by an employee with an appropriate level of criminal record Disclosure.</b></p>	<p>Yes</p>	<p>No</p>
<p><b>Are you confident that the person will not be given any responsibility for high risk activities (eg overnight stays, sports activities etc).</b></p>	<p>Yes</p>	<p>No</p>

<b>In light of the above does the applicant constitute an acceptable 'risk'.</b>	Yes	No
<b>Declaration:</b>	I confirm that this appointment is essential to the safe operation of my service. I confirm that all other pre-employment checks have been satisfactorily completed. I understand the Council's / School's policy on appointment pending a criminal record Disclosure, and will follow the Policy in respect of supervision, activities undertaken etc.	
<b>Name:</b>		
<b>Signed:</b>		
<b>Date:</b>		
<b><i>SECTION 2: To be completed by a Chief Officer / Head Teacher / Recruitment Governor</i></b>		
<b>Declaration:</b>	I understand the Council's / School's policy on appointment pending a criminal record Disclosure. I have discussed this with the Line/Appointing Manager / Head of Service and the HR team, and having considered the above assessment, I believe the applicant does / does not* constitute a risk for the following reasons: Therefore, the applicant should / should not* be offered this post.	
<b>Name:</b>		
<b>Signed:</b>		
<b>Date:</b>		
<b><i>SECTION 3: To be completed by the Head of Human Resources, or nominee, or Lead Signatory for the Council</i></b>		
<b>Declaration:</b>	I agree / disagree* with the decision to appoint /not appoint* the applicant for the following reason(s).	
<b>Name:</b>		
<b>Signed:</b>		
<b>Date:</b>		

**Guidance Note -  
Receipt of Unclear DBS Disclosure -  
New appointments and existing employees**

- 1 The Transactional HR Services Team will contact the Line/Appointing Manager or Head of Service or Head Teacher when notification is received from the DBS/Disclosure Scotland that a criminal record Disclosure contains information of convictions, cautions, reprimands, or other relevant information disclosed by the Police; or information that the individual is on the DBS List(s) of individuals barred from engaging in Regulated Activity with children and/or vulnerable adults. Only the applicant receives a copy of the criminal record Disclosure. The Line/Appointing Manager or Head of Service or Head Teacher, must contact the applicant/employee to ask them to bring in their Disclosure Certificate.
- 2 The relevant Risk Assessment Form should be completed (refer to Appendices 8a and 8b). These include a link to the Home Office Guidance on the Rehabilitation of Offenders Act 1974, incorporating information on rehabilitation periods.
- 3 The following should be assessed:-
  - Whether the offence bars the person from working with children and/or vulnerable adults;
  - The job requirements detailed in the job description and person specification;
  - The nature of the offence(s); when it/they happened; and the circumstances involved;
  - The nature/length of the sentence;
  - Patterns of offending; and efforts to avoid re-offending;
  - The seriousness of the offence and relevance to the safety of children, vulnerable adults, other employees, customers, service users and property;
  - The length of time since the offence occurred, ie how successful has rehabilitation been; likelihood of re-offending;
  - Information offered by the applicant about the circumstances of the offence eg domestic or financial difficulties;

- Whether the criminal record was declared, ie honesty and integrity of the applicant.
- 4 Advice may be sought from the Safeguarding team with regard to the protection of vulnerable groups including children. Advice may be sought from the Information Governance team in relation to use of the Council's ICT network.
  - 5 Any decision should take into account Dudley Council's Policy Statement on the Recruitment of Ex-Offenders (Refer to Appendix 9).
  - 6 A criminal record Disclosure is received which identifies that an applicant is listed on the DBS Barred List(s) (children and/or adults).
    - 6.1 It is unlawful for an organisation to appoint or continue to employ someone, who they know is on the DBS Barred List(s), in a post which is covered by the definition of Regulated Activity.
    - 6.2 Checks of the DBS Barred List(s) may only be requested for individuals who will be working in Regulated Activity.
    - 6.3 It should be noted that names may be referred to the above lists on a temporary basis, ie during suspension pending the outcome of criminal or disciplinary proceedings. Where this is the case, advice should be taken from the HR Team before reaching a decision.
    - 6.4 A person who is barred from working with children and/or adults is breaking the law if they seek, offer or engage in Regulated Activity with a group they are barred from. Therefore, if this arises, referral must be made to the Safeguarding Team and the Police, by the Assistant Director in the area where the recruitment is taking place, with advice from the HR team and the Safeguarding team about whether a "position of trust" meeting is required.

### **New appointments**

- 7 The Chief Officer or Head Teacher will make the decision whether or not to appoint the applicant, in consultation with an Operational HR Officer.
- 8 The Line/Appointing Manager or Head of Service or Head Teacher, must contact the applicant to ask them to bring in their Disclosure Certificate. Following discussion with an Operational HR Officer, they must subsequently contact or meet with the applicant, where possible, to discuss their criminal record Disclosure and the information received. This discussion is necessary in order to obtain the full facts of the circumstances and to check the accuracy of the information received and that it relates to the applicant.

If the applicant has a dispute regarding the accuracy of the information, they should be advised to contact the DBS/Disclosure Scotland direct.

9 If the applicant confirms the information provided, the following process should be followed:-

- 9.1 Withdraw the offer of employment, if the offence(s) are deemed serious enough to preclude employing the individual. The applicant must be contacted as soon as possible and informed that it has been decided not to further their application on the basis of unsatisfactory pre-employment checks. This must be confirmed in writing.
- 9.2 Where, in consultation with the Operational HR Officer, it is deemed that the offence(s) is/are of a minor nature and do not pose a risk to vulnerable groups including children, the Chief Officer or Head Teacher may choose to confirm the appointment, subject to the following:-
  - 9.2.1 The applicant should be asked to attend a further meeting as necessary (refer to point 7);
  - 9.2.2 Reference is made to the Council's / School's Disclosure & Barring Policy;
  - 9.2.3 The applicant is made aware that any further criminal offence, which has implications upon the employment contract, will be viewed seriously;
  - 9.2.4 Consideration is given to any measures which could be taken, eg close supervision;
  - 9.2.5 The outcome must be confirmed in writing to the applicant and a copy placed on their personal file, together with the completed Risk Assessment form.

### **Existing Employees**

- 10 In all cases, consideration must be given to the employee's duty to disclose any criminal offence(s), as outlined in Section 10.4.
- 11 Where the offence(s) is/are of a minor nature, and have not been disclosed previously by the employee or were not detailed on a previous criminal record Disclosure seen by the Council or School, the Head of Service or Head Teacher, will arrange to meet with the employee in the first instance, accompanied by a member of the Operational HR team, to discuss the information contained in the criminal record Disclosure. The employee may be accompanied at

this meeting by a representative who is a current recognised trade union representative, trade union official or fellow worker.

This discussion is necessary in order to obtain the full facts of the circumstances and to check the accuracy of the information received and that it relates to the applicant.

If the applicant has a dispute regarding the accuracy of the information, they should be advised to contact the DBS/Disclosure Scotland direct.

Following this discussion, it may be decided to allow the individual to continue to work as normal. This must be confirmed in writing and a copy placed on the employee's personal file, together with the completed Risk Assessment form.

- 12 Where the offence(s) have not been disclosed previously by the employee or were not detailed on a previous criminal record Disclosure seen by the Council or School, and is/are of a more serious nature, which may impact on the suitability of the employee to continue in their current employment, this should be handled in accordance with the appropriate Council / School Disciplinary procedure.
- 13 Where the information reveals that the employee is named on the DBS Barred List(s) (children and/or adults) and is working in a post within the definition of Regulated Activity, this is likely to result in dismissal. Advice will be sought from the Legal Team.
- 14 The normal disciplinary appeals process will apply in cases where the employee wishes to appeal the outcome of a disciplinary hearing.

**Risk Assessment Form –  
Receipt of Unclear Criminal Record Disclosure  
New Appointments**

***NB: This form should also be used where a criminal record check was not previously required for the employee in that post***

This form should be completed in consultation with a member of the Operational HR team. In exceptional circumstances, advice should be sought from the Safeguarding Board. Please also refer to the Guidance Note in the Disclosure and Barring Policy and to the Home Office Guidance on the Rehabilitation of Offenders Act 1974 at the following link:-

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299916/rehabilitation-of-offenders-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299916/rehabilitation-of-offenders-guidance.pdf)

**Specific details of the offences must not be detailed on the form.**

<b>Applicant Name:</b>	<b>Date of Birth:</b>
<b>Position applied for:</b>	
<b>Level of check (Enhanced plus barred list(s), Enhanced, Standard, Basic, BPSS-Basic)</b>	<b>Type of Workforce (children, adults, children and adults, other)</b>
<b>Disclosure Certificate No:</b>	<b>Date of Issue:</b>
<b>Date Disclosure Certificate seen by the Line/Appointing Manager / Head of Service / Head Teacher / Delegated Officer:</b>	
<i>Please obtain individual's consent to attach a copy.</i>	
<b>I consent to this document being retained on my personal file. I also consent to a copy of my Disclosure Certificate (attached) being retained until completion of this process on the understanding that it will be destroyed securely:</b>	
<b>Signed:</b>	
<b>Date:</b>	
<b>SECTION A</b>	
<b>Is the applicant barred from working with children and/or adults:</b>	<b>Yes</b> <i>Please complete Section C, and refer to the Guidance Note (Appendix 1) – Referral to the DBS.</i>  <b>No</b> <i>Please complete Sections B and C.</i>

**SECTION B**

**Did the applicant disclose all of the offence(s) at application and/or interview stage of the recruitment process; or for existing employees, prior to or at the time of the request for them to complete an application for a criminal record check:**

**Yes / No**

**Notes:**

**Applicant's explanation about the circumstances of the offence(s):**

**Notes:**

Has there been any significant change in circumstances and lifestyle since the offending behaviour:

**Yes / No**

Has the applicant attended any relevant programmes to address the behaviour: **Yes / No**

What learning or change in behaviour(s) has there been from attendance on relevant programme(s).

**Assessment:**

Consider and comment on the:

Relevance to the post;

Relevance to the safety of vulnerable groups including children, employees, customers, service users and property;

Seriousness of the offence(s), ie nature of offence(s) - violence, sexual, drugs, fraud, theft, driving; and the outcome(s);

Age of the offence(s);

Whether the offence(s) are still regarded as a criminal offence(s);

Pattern of the offending behaviour, eg whether persistent, repeated etc;

Personal qualities of the applicant;

Reparation/formal apology given;

Other information obtained during the recruitment process, including references, consultation with other relevant agencies, eg Police, Probation Service, Youth Offending Service, Local Safeguarding Board, Health etc.

Notes:

**SECTION C**

**Line/Appointing Manager / Head of Service / Head Teacher / Delegated Officer:**

**Name:**

**Signed:**

**Date:**

**Recommendation:**

*Please delete as appropriate.*

- a) **Offence(s) are deemed to be of a minor nature; appointment to be confirmed.**
- b) **Offence(s) are deemed serious enough to withdraw the offer of employment.**
- c) **Applicant barred from working with children and/or adults.**

**Notes:**

<b>Member of Operational HR Team:</b> <i>(please indicate Job Title)</i>
<b>Name:</b>
<b>Signed:</b>
<b>Date:</b>
<b>Recommendation:</b> <i>Please delete as appropriate.</i> <ul style="list-style-type: none"> <li>a) Offence(s) are deemed to be of a minor nature; appointment to be confirmed.</li> <li>b) Offence(s) are deemed serious enough to withdraw the offer of employment.</li> <li>c) Applicant barred from working with children and/or adults.</li> </ul>
<b>Notes:</b>
<b>Chief Officer / Head Teacher / Delegated Senior Manager:</b>
<b>Name:</b>
<b>Signed:</b>
<b>Date:</b>
<b>Decision:</b> <i>Please delete as appropriate.</i> <ul style="list-style-type: none"> <li>a) Appointment to be confirmed.</li> <li>b) Withdraw the offer of employment.</li> <li>c) Applicant barred from working with children and/or adults.</li> </ul>
<b>Notes:</b>

**Risk Assessment Form –  
Receipt of Unclear Criminal Record Disclosure  
Re-check for an existing employee or worker**

This form should be completed in consultation with a member of the Operational HR team. In exceptional circumstances, advice should be sought from the Safeguarding Board. Please also refer to the Guidance Note in the Disclosure and Barring Policy, and to the Home Office Guidance on the Rehabilitation of Offenders Act 1974 at the following link:-

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299916/rehabilitation-of-offenders-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/299916/rehabilitation-of-offenders-guidance.pdf)

**Specific details of the offences must not be detailed on the form.**

<b>Name of employee/worker:</b>	<b>Date of Birth:</b>
<b>Employee ID Number:</b>	
<b>Date of Issue of previous Disclosure Certificate:</b>	<b>Position appointed to:</b>
<b>Level of check (Enhanced plus barred list(s), Enhanced, Standard, Basic)</b>	<b>Type of Workforce (children, adults, children and adults, other)</b>
<b>New Disclosure Certificate No:</b>	<b>Date of Issue:</b>
<b>Date Disclosure Certificate seen by the Head of Service / Head Teacher / Delegated Officer:</b>	
<i>Please obtain employee's/worker's consent to attach a copy.</i>	
<b>I consent to this document being retained on my personal file. I also consent to a copy of my Disclosure Certificate (attached) being retained until completion of this process on the understanding that it will be destroyed securely:</b>	
<b>Signed:</b>	
<b>Date:</b>	
<b>Does the Disclosure Certificate contain new information:</b>	<b>Yes:</b> <i>Please complete Sections B, C and D.</i> <b>No:</b> <i>Please complete Section A.</i>
<b>SECTION A</b>	
<b>Is there a completed Risk Assessment Form on file, or sufficient supporting information to evidence the original decision to appoint:</b>	<b>Yes / No</b>
<b>If Yes, State details of any actions or arrangements put in place at the time of appointment, and consider whether any subsequent safeguarding concerns have been identified.</b>	
<b>Notes:</b>	

**If No,**

Comment on:

Relevance to the current post;

Relevance to the safety of vulnerable groups including children, employees, customers, service users and property;

Seriousness of the offence(s), ie nature of offence(s) – violence, sexual, drugs, fraud, theft, driving; and the outcome(s);

Age of the offence(s);

Whether the offence(s) are still regarded as a criminal offence(s);

Pattern of the offending behaviour, eg whether persistent, repeated etc;

Personal qualities of the employee/worker;

Reparation/formal apology given;

Other information obtained during the recruitment process, which is recorded on the personal file, including references, consultation with other relevant agencies, eg Police, Probation Service, Youth Offending Service, Local Safeguarding Board, Health etc.

**Notes:**

**State details of any actions or arrangements put in place at the time of appointment, and consider whether any subsequent safeguarding concerns have been identified.**

**Head of Service / Head Teacher / Delegated Officer:**

**Name:**

**Signed:**

**Date:**

**Member of Operational HR Team: *(please indicate Job Title)***

**Name:**

**Signed:**

**Date:**



**Assessment:**

Consider and comment on the:

Relevance to the current post;

Relevance to the safety of vulnerable groups including children, other employees, customers, service users and property;

Seriousness of the offence(s), ie nature of offence(s) – violence, sexual, drugs, fraud, theft, driving; and the outcome(s);

Age of the offence(s);

Whether the offence(s) are still regarded as a criminal offence(s);

Pattern of the offending behaviour; eg whether persistent, repeated etc;

Any offence(s) contained on the previous Disclosure Certificate;

Personal qualities of the employee/worker;

Reparation/formal apology given;

Other information obtained, including references at recruitment stage, consultation with other relevant agencies, eg Police, Probation Service, Youth Offending Service, Local Safeguarding Board, Health etc.

**Notes:**

**Also state details of any actions or arrangements put in place at the time of appointment, and consider whether any subsequent safeguarding concerns have been identified.**

**SECTION D**

**Head of Service / Head Teacher / Delegated Officer:**

**Name:**

**Signed:**

**Date:**

**Recommendation:**

*Please delete as appropriate.*

- a) **Employee/worker to continue to work as normal.**
- b) **To be handled in accordance with the appropriate Disciplinary Procedure.**
- c) **Employee/worker barred from working with children and/or adults.**

**Notes:**

**Member of Operational HR Team:** *(please indicate Job Title)*

**Name:**

**Signed:**

**Date:**

**Recommendation:**

*Please delete as appropriate.*

- a) **Offence(s) are deemed to be of a minor nature; employee/worker to continue to work as normal.**
- b) **To be handled in accordance with the appropriate Disciplinary Procedure.**
- c) **Employee/worker barred from working with children and/or adults.**

**Notes:**

**Chief Officer / Head Teacher / Delegated Senior Manager:**

**Name:**

**Signed:**

**Date:**

**Decision:**

*Please delete as appropriate.*

- d) **Offence(s) are deemed to be of a minor nature; employee/worker to continue to work as normal.**
- e) **To be handled in accordance with the appropriate Disciplinary Procedure.**
- f) **Employee/worker barred from working with children and/or adults.**

**Notes:**

## **Policy Statement On The Recruitment Of Ex-Offenders**

### **1 Introduction**

- 1.1 This policy complies with our obligation under the Disclosure & Barring (DBS) Code of Practice and the Disclosure Scotland Code of Practice, whereby we use the DBS/Disclosure Scotland checking service to help assess the suitability of applicants who will be working or volunteering with vulnerable groups including children, and for positions of trust.
- 1.2 This written policy on the recruitment of ex-offenders, is made available to all applicants at the outset of the recruitment process on the Dudley MBC website:-  
<http://www.dudley.gov.uk/jobs-and-careers/council-and-schools-jobs/recruitment-pack/>
- 1.3 The DBS/Disclosure Scotland Codes of Practice is available on request.

### **2 Policy Statement**

- 2.1 Dudley MBC complies fully with the DBS/Disclosure Codes of Practice and undertakes to treat all applicants for positions fairly. Dudley MBC undertakes not to discriminate unfairly against any subject of a criminal record Disclosure on the basis of a conviction or other information revealed.
- 2.2 The overall objective of the Council's Equality and Diversity Policy is to:
  - eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity; and
  - foster good relations between people from different backgrounds.

The objective applies to all groups protected under the Equality Act 2010. The Council will also make sure that it does not treat less favourably on any grounds that cannot be shown to be justified people protected by other legislation, such as that covering trade union or political activities, social class, where a person lives or spent convictions.

- 2.3 Dudley MBC actively promotes equality of opportunity for all, and welcomes applications from a wide range of candidates (including those with spent convictions) based on their skills, qualifications and experience. Applicants are selected for interview and appointment on the basis of the skills, qualifications and experience required for the post.

- 2.4 A criminal record check is only requested where it is deemed to be both proportionate and relevant to the position concerned. For those positions where a criminal record check is required, this will be stated on the job description/person specification. This would be requested in the event of the individual being offered the post.
- 2.5 Unless the nature of the position allows or specifically requires Dudley MBC to ask questions about an applicant's entire criminal record, it will only ask about 'unspent' convictions, as defined in the Rehabilitation of Offenders Act 1974 and the (Exceptions) Order 1975 (as amended in 2013).
- 2.6 Where a criminal record check forms part of the recruitment process, Dudley MBC encourages all applicants called for an interview to provide details of any criminal record they have at an early stage in the application process. Applicants should discuss these with the Chair of the selection panel at interview stage. This information will be treated in confidence and Dudley MBC guarantees that this information is only seen by those who need to see it as part of the recruitment process.
- 2.7 At interview, or in a separate discussion, Dudley MBC will ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position, including convictions, cautions and reprimands.
- 2.8 Dudley MBC will undertake to discuss any conviction, caution, reprimand or other relevant information which is revealed in a criminal record Disclosure, with the person seeking the position, before withdrawing a conditional offer of employment.
- 2.9 Having a criminal conviction, caution or reprimand will not necessarily bar an applicant from working for Dudley MBC. This will depend on the nature of the position and the circumstances and background of the offence(s).
- 2.10 Failure to reveal any information that is directly relevant to the position sought could lead to withdrawal of an offer of employment or termination of employment.
- 2.11 Dudley MBC will ensure that all those who are involved in the recruitment process have received suitable guidance to identify and assess the relevance and circumstances of offences, and are aware of the legislation relating to the employment of ex-offenders, ie the Rehabilitation of Offenders Act 1974 and the (Exceptions) Order 1975 (as amended in 2013).
- 2.12 If existing employees fail to disclose information on any criminal offences and a subsequent criminal record Disclosure reveals such information, they may be subject to the relevant Disciplinary Procedure, as outlined in the Disclosure & Barring Policy.

## Policy Statement on the Management and Use of Criminal Record Disclosure Information

### 1 General Principles

Dudley MBC complies fully with the DBS and Disclosure Scotland Codes of Practice regarding the correct handling, use, access, storage, retention and disposal of criminal record Disclosure information. This includes all forms of media, electronic or otherwise. It complies fully with its obligations under the Data Protection Act and has a written policy on this which can be provided in hard copy on request and is available at:-

<http://idudley/idudley/ict-services/support/information-governance/data-protection/information-library/>

Dudley MBC has a Statement of Fair Processing in relation to the online processing of criminal record checks. This is available at:-

<http://insidedudley/lawproperty/info&res/hrc /transactionalhr /dbs /statementoffair/statementoffair.doc>

### 2 Storage, Access and Retention

The employer does not receive a copy of an individual's Disclosure Certificate from the DBS. Only the applicant receives a copy. For 'Basic' checks, the original Disclosure Certificate is sent to Dudley MBC and is forwarded to the employee; a copy is not retained.

Where offences are disclosed, consent is requested from the applicant/employee to retain a copy until completion of the risk assessment process, on the understanding that it will be destroyed securely. If, in exceptional circumstances, it is necessary to keep criminal record Disclosure information for longer, full consideration will be given to legislative requirements before doing so. Throughout this time, the usual conditions regarding secure storage and strictly controlled access will apply.

The Risk Assessment will be carried out and consent obtained from the applicant/employee to keep the completed Risk Assessment Form on their personal file

Basic information is held in the PSE system (HR information management system) and the Ebulk system, with access strictly controlled and limited to those who are entitled to see it as part of their duties. A record will be kept of the date of issue of the DBS Disclosure, the name of the subject, the type of DBS Disclosure, the position for which the DBS Disclosure was requested, the unique reference number, whether it was 'clear' or 'contains information', and details of any decision taken.

### 3 Handling

In accordance with the Police Act 1997 Part V, criminal record Disclosure information is only passed to those who are authorised to receive it in the course of their duties. A record is maintained of those to whom criminal record Disclosure information has been revealed, and it is recognised that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

#### **4 Usage**

Criminal record Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

#### **5 Disposal**

Criminal record Disclosure information will be suitably destroyed by a secure means (shredding, pulping or burning). While awaiting destruction, criminal record Disclosure material will be kept secure. All completed criminal record applications on Ebulk over 180 days old are automatically archived. This is entirely controlled by Ebulk and cannot be overridden by any user.

#### **6 Acting as an Umbrella Body**

Dudley MBC is an Umbrella Body, ie it countersigns criminal record applications and receives notification of a completed criminal record Disclosure on behalf of other employers or recruiting organisations. Any organisation wishing to use this service must sign the standard Agreement with the Council, prior to any checks being processed. This Agreement incorporates the requirement for the external organisation to comply with this Policy Statement.