



DISCLOSURE AND BARRING SERVICE (DBS) EMPLOYMENT POLICY

DATE DOCUMENT PUBLISHED	May 2014
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APPROVAL DATE	May 2014
DOCUMENT OWNER	EMPLOYEE RELATIONS TEAM
DATE FOR REVIEW	May 2016

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SECTION 1 - INTRODUCTION, ROLES and RESPONSIBILITIES

INTRODUCTION

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

ROLES AND RESPONSIBILITIES

- 1.2 The safe recruitment of people to work with children or vulnerable adults is of the utmost importance and demands due diligence. It is important that everyone clearly understands their roles and responsibilities within this process. All those involved in the process are required to maintain confidentiality at all times.

1.3 **Managers/ Evidence Checkers Responsibilities:**

- a) With guidance from HR People Services to determine if a post involves regulated activity
- b) Notify HR People Services of the decision prior to advert
- c) Ensure that the outcome of the DBS check means there are no disclosures that would mean that the applicant is unsuitable for the role
- d) Ensure no new applicant commences employment prior to receipt of the DBS check result
- e) Check evidence of the individual's documents
- f) In the case of agency workers/ contractors ensure that each relevant worker supplied has had a satisfactory DBS check and checks against the Children's and/ or Adult's barred list.
- g) Ensuring that within their team DBS Certificates are renewed in accordance with statutory requirements and Council Policy (as per paragraph 3.74 renewal is only necessary for those who are required to be registered with Care Standards Inspectorate for Wales)
- h) Ensuring that the correct level of disclosure is requested
- i) Controlling the use, access and security of disclosure certificates (copies should not be taken)
- j) Satisfy themselves of the identity of the person applying for a disclosure

- k) Satisfying themselves that the evidence presented is genuine and in line with DBS requirements and complete the DBS Certification Pro-forma (4.C.158).

1.4 Lead Counter Signatory Responsibilities:

- a) Acting for the principal point of contact for the DBS
- b) Ensuring that the Council's practices and counter signatories comply with the requirements and guidance in line with the DBS Code of Practice.

1.5 Counter Signatory Responsibilities:

- a) Counter signing disclosure forms
- b) Ensure the mandatory fields on the application form are completed to the satisfaction of the DBS and that data supplied is accurate.

1.6 HR People Services Responsibilities:

- a) HR People Services are responsible for creation, development, improvement and refinement of this policy and ensuring policy undergoes regular reviews and updates in line with legislation and best practice.
- b) Ensuring all recruitment documentation reflect the requirement for a disclosure
- c) HR People Services will provide advice and guidance on the application of the Policy and where specific responsibilities are outlined within.
- d) Undertaking renewals for those employees who are not members of the update service and are required to have three year checks (as per paragraph 3.74 renewal is only necessary for those who are required to be registered with Care Standards Inspectorate for Wales).

1.7 Employees Responsibilities:

All employees are required to adhere to the terms and conditions of this policy, and to seek clarification where necessary from their line manager/ headteacher in the first instance.

1.8 Disclosure Applicants Responsibilities:

- a) Providing the necessary evidence for identity checks in a timely manner and in person.
- b) Disclosing all of the necessary information to enable a DBS certificate application to be made in a timely manner.
- c) Disclosing all information that could be relevant to the DBS throughout the duration of their employment/ work/ services for the Council.

- d) Informing the manager/ headteacher and HR People Services of any convictions, cautions arrests or other allegations of criminal behaviour that occur in the future or have occurred since obtaining their DBS certificate
- e) Allow the manager/ headteacher to have sight of their original DBS Certificate.
- f) Providing their consent to enable the Council to undertake checks using the DBS update service (if applicable). In cases where registration with statutory bodies is required permission at any time to check status will be required.
- g) Providing evidence of DBS to the headteacher on request if engaged, employed or working within a school.

1.9 Contractors/ Agencies Responsibilities:

It is the responsibility of agencies and contractors used by the Council to ensure that disclosures have been obtained for work involving access to children under the age of 18 and/or vulnerable groups as defined by the Safeguarding Vulnerable Groups Act.

SECTION 2 - POLICY

PURPOSE

- 2.1 The policy provides guidance to managers/ headteachers on how to manage the Disclosures and Barring Service (DBS) certificate process to positions that will typically have access to children or vulnerable groups. It compliments the Recruitment and Selection Policy which sets out the wider pre-employment checks.
- 2.2 This policy and procedure will ensure that the Council:
- a) Identifies and reviews, on a regular basis, posts that involve regular contact with children under the age of 18 and vulnerable groups
 - b) Ensure Service Area managers/ headteachers are aware of, and apply, this policy and procedure
 - c) Undertakes disclosures on both existing and prospective employees
 - d) Ensures that agency/ contract workers have an appropriate and up to date level of disclosure
 - e) Complies with relevant legislation
 - f) Makes safe and informed decisions
 - g) Repeats disclosures on existing employees who are not members of the update service and who require three year renewal checks (as per paragraph 3.74 renewal is only necessary for those who are required to be registered with Care Standards Inspectorate for Wales).
 - h) Deals appropriately with information provided in respect of convictions
 - i) Manages disclosure information accordingly.

WHO IS COVERED BY THIS POLICY?

- 2.3 This policy and procedure applies to:
- a) existing employees
 - b) all new appointments where a disclosure is required
 - c) employees promoted where the level of disclosure required for the new post is higher than their existing post
 - d) positions that may provide access to children or vulnerable groups and fall under the definition of regulated activity
 - e) certain types of seasonal work.

DBS Checks for School Based Employees

- 2.4 There is an expectation that this policy and procedure will be adopted in its entirety by all School Governing Bodies as it is essential to the safeguarding of children and young people in schools.

The following are NOT covered by this policy but details are provided for information.

DBS Checks for Contractors/ Agency Workers

2.5 The Council expects all contractors/ agency workers engaged in the provision of services which involve access to children under the age of 18 and/ or vulnerable groups to have an up to date and satisfactory disclosure where they meet the definition under the Safeguarding Vulnerable Groups Act. No agency or contract workers will be allowed to commence work without the appropriate disclosure.

DBS Checks for School Governors

2.6 As school Governors are no longer undertaking regulated activity, there is no requirement for them to be subject to vetting and barring checks. However, where governors are undertaking some form of regular contact (as defined by the Act; 'regular' means carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period (or in some cases, overnight) with pupils, they are subject to risk assessment and possible vetting and barring unless adequately supervised. These checks where they are required are dealt with by the Education and Lifelong Learning Services.

DBS Checks for Fostering and Adoptive Parents

2.7 Fostering and adoptive parents are required by statute to have an enhanced DBS check which will include a check against the Children's Barred List. The fostering checks are the responsibility of Children's Services.

DBS Checks for Licensing

2.8 Taxi drivers must have an enhanced DBS check, including a check against either the Children's or Adults Barred Lists or both depending on the role. These are processed through Licensing.

KEY PRINCIPLES

2.9 The aim of a disclosure certificate is to help prevent unsuitable people from having access to jobs and positions that provide opportunities to harm children under the age of 18 and/ or vulnerable groups and to assist the Council and schools in making safer recruitment decisions.

2.10 It is not always possible to issue precise guidance on eligibility. Therefore Directors/ Assistant Directors/ Chief Officers (or their nominated representative), in consultation with Managers and HR People Services, must consider each post individually when determining the need for disclosure and the level required by the post.

2.11 The current practice in the Council is that all School Posts require an enhanced disclosure which includes a check of the DBS Barred List(s).

- 2.12 Existing employees are required to advise the Council/ school, in writing, of any criminal convictions that occur whilst they are employed by the Council/ school. This does not include minor traffic offences which do not result in disqualification.
- 2.13 The Council/ school will **not** accept DBS disclosure checks which have been undertaken for the individual in other organisations unless the new starter is a member of the DBS Update Service. (With the exception of those undertaken on as newly qualified teachers by the General Teaching Council for Wales which are less than 12 months old at the time of appointment to the Council).
- 2.14 DBS disclosures are not a substitute for any of the full range of pre-employment checks, including checking previous employment history and taking up references. Disclosures are complementary to other pre-employment checks and will only be sought after a candidate has been offered a post with the Council/ school.
- 2.15 People who have been convicted will be treated fairly and given every opportunity to establish their suitability for posts with the Council/ school. A criminal record will not necessarily bar an individual from obtaining a post and the Council/ school will not discriminate unfairly against an individual on the basis of convictions or other details revealed on the disclosure (Guidance on Assessing the Relevance of Criminal Records - Appendix 4 for more information). The Council is also committed to preventing unfair discrimination against existing and prospective employees on the grounds of offending behaviour that does not, on the basis of a careful and objective assessment, pose unacceptable risks to the safety of children or vulnerable adults
- 2.16 Recruiting Officers/ headteachers will discuss any matters revealed in a disclosure with the person seeking appointment before any decision is made to withdraw an offer of appointment, following consultation with HR People Services.
- 2.17 The Council/ school will ensure that disclosures and the information that they contain are only made available to those who need to have access to them during the course of their duties.
- 2.18 This policy and procedure will be implemented in conjunction with the Policy Statement on the Recruitment of Ex-Offenders (Appendix 3). Any search for alternative employment, whether as an interim or longer term arrangement, should be considered in conjunction with the Guidance on Assessing the Relevance of Criminal Records (Appendix 4).
- 2.19 This policy and procedure will be reviewed in the light of legislative changes and operational experience.

SECTION 3– PROCEDURES

TYPES OF DBS DISCLOSURE

3.1 With the merging of the CRB and ISA to form the DBS there has been a change in terminology these are:

Previous term	New Term
Criminal Records Bureau (CRB) Independent Safeguarding Authority (ISA)	Disclosure and Barring Service (DBS)
Enhanced CRB check	Enhanced DBS check
Enhanced CRB with Barred List Check	Enhanced check for Regulated Activity
ISA Adult First	DBS Adult First
Vulnerable Adults	Vulnerable groups

3.2 The Protection of Freedoms Act 2012 has resulted in a differentiation between those posts which can legally have an enhanced DBS check and those posts which can also legally be checked against the Children or Adult Barred Lists (an Enhanced check for Regulated Activity)

3.3 Posts which fell under the definition of Regulated Activity pre 10th September 2012 are still entitled to an enhanced DBS check.

3.4 Posts which fall under the new definition of Regulated Activity (post 10th September 2012) and entitled to an Enhanced check for Regulated Activity which includes a check of the Barred List.

3.5 It is now a criminal offence for individuals on the Barred List to apply for posts in Regulated Activity (post 10th September 2012 definition) However individuals who are currently on the Barred List can apply for posts that fall under the old definition of Regulated Activity (i.e. Regulated Activity pre 10th September 2012) so long as those posts do not fall within the parameters of the new definition of Regulated Activity (post 10th September 2012)

3.6 The fact that someone is on the Barred List will not be stated on an Enhanced DBS check, but there will be details of criminal convictions that would indicate that someone might be on the Barred List and a manager must investigate thoroughly.

Standard Check

3.7 This will check for spent and unspent convictions, cautions, reprimands and final warnings.

Enhanced Check

3.8 This includes the same as the standard check plus any additional information held by local police that is reasonably considered relevant to the position being applied for (adult, child or 'other' workforce). 'Other' workforce means those who don't work with children or adults specifically, but potentially both.

Enhanced with barred list checks

3.9 This is like the enhanced check, but includes a check of the DBS Barred list(s). Checks can be made against the:

- a) Children's Barred List
- b) Adults' Barred List
- c) Children's and Adults Barred List

Cost of Disclosures

3.10 The cost of checks relating to appointments to Council posts is currently paid by the Council. The cost of checks undertaken by contractors/ agency workers must be met by contractors/ agencies.

3.11 Checks for volunteers are free. A volunteer is currently defined by the DBS as a person who performs an activity which involves spending time, unpaid, doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

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

Single Certificate

3.13 The DBS now only issues a certificate to the applicant. This will allow the applicant to dispute and make appropriate representations regarding information released on the certificate, without this information having already been seen by the Council/ school. As a Registered Body the Council will be able to track the progress of applications online.

3.14 The Council will request that applicants bring in their original DBS certificate, this is a condition of their contact of employment, which will be verified.

DBS Update Service

3.15 Individuals can now subscribe to the DBS' "Update Service" for an annual subscription. This allows the individual to take their DBS check from role to role, within the same workforce, where the same type and level of check is required.

- 3.16 The Update Service will allow the Council/ school to check new recruits or those who require a check whilst employed by the Council/ school without the need to submit an application. The Council/ school will need to seek the permission of the individual to use their current DBS Certificate to carry out a free, online check to see if any new information has come to light since its issue. The recruiting manager/ headteacher must see the original copy of the candidate's DBS certificate. The DBS Certification Pro forma (4.C.158) must be completed and returned to HR people services
- 3.17 The Update Service can only be used for those who have registered and are members of this service. If an individual has a "manual" DBS that has not been produced through the DBS update system, this will not link to the Update Service. Individuals will receive a letter with their DBS Certificate explaining whether they have a manual DBS Certificate and not a system generated one.
- 3.18 The Update Service will only show one of the following four results:
- a) **This DBS Certificate did not reveal any information and remains current as no further information has been identified since its issue.** This means that the DBS certificate when issued was blank, i.e. it did not reveal any information about the person and no new information has been found since its issue and can therefore be accepted as being still current and valid.
 - b) **The DBS Certificate remains current as no further information has been identified since its issue.** This means that the DBS certificate revealed information about the person and no new information has been found since its issue and can therefore be accepted as being still current and valid.
 - c) **This DBS Certificate is no longer current. Please apply for a new DBS check to get the most up to date information.** New information has come to light since the DBS Certificate was issued and you will need to apply for a new DBS check to see this new information.
 - d) **The details entered do not match those held on our system. Please check and try again.** This means either the individual has not subscribed to the Update Service or the DBS certificate has been removed from the Update Service; or you have not entered the correct information.

"Portability" of DBS Checks

- 3.19 Portability refers to the re-use of disclosure information which has been obtained for the same (or different) post in a different organisation. As a DBS disclosure check only contains information as at the date the check

was produced by the DBS, there are risks in relying on portability. For this reason the DBS recommends that organisations do not accept DBS disclosure checks from other organisations unless the individual is registered for the update service.

3.20 Individuals can register for the updating service as soon as they have received an application form reference number or they can use the DBS certificate number once the DBS certificate has been issued. Individuals can only apply for the update service within 14 days of the certificate being issued. Registration lasts for 1 year and costs £13 per year.

Please note teachers for whom the Council completes a DBS check and who are not already registered with the GTCW will need to register for the updating service within 14 days of receipt of the disclosure in order for the GTCW to accept the disclosure as portable

New Starters to the Council

3.21 A new DBS disclosure check **must** be undertaken for any new starter to the Council/ school (i.e. someone who is not already employed elsewhere in Cardiff Council or a Cardiff school) where their new post requires it. The Council/ school will **not** accept DBS disclosure checks which have been undertaken for the individual in other organisations unless the new starter is a member of the DBS Update Service (see “DBS Update Service” paragraphs 3.15 -3.18). This is with the exception of those undertaken on newly qualified teachers by the General Teaching Council for Wales which are less than 12 months old at the time of appointment to the Council.

Employers can accept a previously issued certificate but must:

- check the applicant’s identity matches the details on the certificate
- check the certificate is of the right level and type for the role applied for
- carry out a free-of-charge status check to see if new information has come to light since the certificate’s issue; (the applicant must have already joined the DBS update service)
- there has been no break in service

Newly Qualified Teachers

3.22 The Council/ Governing Body/ headteacher, will accept the DBS disclosure undertaken by the General Teaching Council for Wales (GTCW) for newly qualified teachers coming into Wales provided that the disclosure is less than 12 months old at the time of appointment to a post with the Council.

RECRUITMENT PROCESS

Advertisement of Posts

3.23 Where a post requires the appointed candidate to obtain a disclosure, the advertisement will clearly state this and the level of disclosure required. A statement on the application form and guidance notes to candidates will also reinforce this requirement.

Application Packs

3.24 Standard or enhanced or enhanced with barred list check disclosures can only be sought in respect of posts that are exempted from the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders (Exceptions Order) Act 1975.

3.25 Application packs for posts requiring disclosure will include a copy of the "Policy Statement on the Recruitment of Ex-Offenders" (Appendix 3)

3.26 Applicants will be encouraged to disclose information about all previous convictions/ offences including the sentences imposed whether these are spent or unspent.

3.27 They will also be made aware that if they have been charged with an offence in the period between applying for a post and being selected for interview, they must disclose this information in writing to the Council/ school immediately.

3.28 Applicants will also be made aware that withholding or falsifying information will lead to them not being considered for employment or any conditional offer of appointment being withdrawn.

Short Listing

3.29 Criminal records, whether spent or unspent, will not normally be considered when short listing is undertaken. However, if a candidate is short listed and has declared that they have a conviction, this will need to be addressed with the candidate at interview by the Chairperson of the interview panel.

Selection Interviews

3.30 The invitation to interview letter will confirm that disclosure will be required and the level of disclosure.

3.31 If a criminal record is declared prior to or during an interview then the selection panel will discuss this at the end of the interview in an open and measured way. Such discussion must be recorded as part of the interview notes as it forms part of the decision making process.

- 3.32 Guidance will be available to selection panels on the “Rehabilitation of Offenders Act” and Exceptions Order (Appendix 5) and on assessing the relevance of criminal records (Appendix 4).
- 3.33 If the recruiting manager/ headteacher specifically consider that the conviction renders the person unsuitable for appointment, they will be required to record their reasons and consult with HR People Services.
- 3.34 If the candidate is a member of the DBS Update Service, the recruiting manager/ headteacher can complete a **DBS Certification Proforma (4.C.158)** to collect details of the certificate. However, the recruiting manager/ headteacher must see the original copy of the candidate’s DBS certificate. A copy should not be taken.

During any interview process for recruitment to a post the recruiting manager/ headteacher should:

- a) Remind all applicants of the requirements for the DBS disclosure check.
 - b) Remind all applicants of the requirement on the application form for them to disclose any criminal convictions, bind-over orders or cautions, including those which would normally be regarded as spent (as defined by the DBS).
 - c) Ask each applicant to confirm the information they have supplied on their application form (including nil disclosures) is complete and accurate.
 - d) Advise applicants of the consequences of non-disclosure of a criminal record, i.e. it is likely that any offer of employment would be withdrawn.
- 3.35 At the interview a panel member will therefore need to ask all candidates the following question if the post requires a DBS disclosure certificate:

‘Do you have any convictions, cautions, reprimands or final warnings that are not ‘protected’ as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013).

A list of the convictions, cautions, reprimands or final warnings which are not protected is available via the following link
<https://www.gov.uk/government/news/disclosure-and-barring-service-filtering>

Successful Candidates

- 3.36 The successful candidate will be sent a conditional offer letter with the following documentation:
- a) Disclosure Application Form and Guidance Notes for Completion

- b) Details of relevant documentation required and where to present it.
- 3.37 The DBS will no longer automatically issue a copy of an applicant's DBS Certificate to a Registered Body (i.e. the Council) who countersigned the DBS application form. The Council/school will need to ask the applicant for sight of their original DBS Certificate.

Refusal to Undertake a Disclosure

- 3.38 If a candidate refuses to apply for a disclosure then the offer of appointment will be withdrawn immediately and this will be confirmed in writing.

APPOINTMENT PROCESS

New Appointments

- 3.39 These procedures apply to existing staff who apply for a new post within the Council/schools which requires disclosure and to all external applicants for posts within the Council/schools which require disclosures.
- 3.40 The Council/ schools will not employ someone to work in Regulated Activity (post 10th September 2012 definition) with children if they have been barred through the DBS Children's list, or someone to work with vulnerable groups who are barred through the DBS Adult Barred list. The Council would be breaking the law if it did so. Conversely if we receive an application from a person barred from working with children or adults they are breaking the law if they work/ volunteer or seek to work/ volunteer with these groups and the Council will report them to the relevant Authority.
- 3.41 It is the Council's policy that, where a post has been identified as requiring either a standard or an enhanced DBS disclosure, a prospective employee may **not** commence work until the disclosure check has been received from the DBS and assessed by the recruiting manager/ headteacher and the DBS Certification Pro forma (4.C.158) forwarded to HR People Services.
- 3.42 In **exceptional** circumstances a manager/ headteacher may request that an individual be allowed to commence employment prior to a DBS disclosure check having been received. HR People Services must be consulted and all requests will be subject to approval of the Directors/ Assistant Directors/ Chief Officers/ headteachers. HR People Services will provide a form for completion prior to the start date.

Satisfactory Disclosure

- 3.43 A satisfactory disclosure is one that matches the information provided by the candidate at any stage of the recruitment and selection procedure and upon which the decision to appoint has already been made.
- 3.44 The successful candidate can be confirmed in post provided that all other conditions of employment have been satisfied.

Dealing with Non Disclosure of Criminal Convictions in the Recruitment Process

- 3.45 There are various stages within the recruitment and selection process where candidates are informed of the requirement for, and provided with the opportunity of, disclosing information relating to any criminal convictions that they have, whether “spent” or “unspent”, including :
- a) Application form and supporting documentation.
 - b) During the interview.
 - c) Within the offer letter.
 - d) Upon completion of the DBS disclosure form.

Information Provided on the DBS Disclosure Check

Checks where information was disclosed

- 3.46 Where the DBS disclosure check is not “clear”, the recruiting manager/ headteacher will need to assess the information disclosed in conjunction with HR People Services:
- a) If the DBS disclosure check confirms information disclosed by the applicant on their application form and which was known by the recruiting manager/ headteacher at the time of the offer of appointment, then it is likely that there will be no further action to be taken, and the appointment will proceed. The Record of Disclosure Decision Form (Ref 4.C.155), should have been completed at the interview stage and included with the interview papers.
 - b) However, if the DBS disclosure check either:
 - i. provides different or additional information to that disclosed by the applicant on their application form OR
 - ii. discloses details of convictions where the applicant made a “nil” disclosure on their application form, HR People Services will discuss the implication of the information provided on the offer of employment with the recruiting manager/ Headteacher.
- 3.47 Each case must be reviewed on its own merit and consideration made of the date and nature of the offence, and whether or not the conviction is “live” or “spent”, and how these issues impact on the post the individual

has applied for. (See Policy Statement on Rehabilitation of Ex-Offenders - Appendix 3 for further information).

- 3.48 The recruiting manager/ headteacher should discuss the discrepancies between the DBS disclosure check and the information provided on the application form with the applicant prior to making a decision as to whether the offer of employment should proceed or be withdrawn. If it is decided to withdraw the offer then this must be in writing following consultation with HR People Services.
- 3.49 Following the discussion with the candidate, the Record of Disclosure Decision Form (Ref 4.C.155), must be completed and returned to HR People Services.

Checks where information was disclosed - Individual already commenced

- 3.50 As outlined in paragraph 3.42, in exceptional circumstances, a Director/ Assistant Director/ Chief Officer/ or headteacher may determine that the prospective employee may commence employment prior to the DBS check being returned to the Council. The same process regarding discussing discrepancies between the DBS disclosure check and the information provided on the application form should be applied. Prior to making any decision regarding what action is to be taken, the recruiting manager should discuss the matter with their Director/ Assistant Director/ Chief Officer, and a Headteacher with their Chair of Governors.

Checks where information was not disclosed

“Spent” Conviction/s

- 3.51 If the conviction/s disclosed is already “spent” and is not relevant to the post applied to, it should not normally be necessary to withdraw the offer of employment, although this option remains available. If the employee has already commenced employment then consideration should, however, be given to whether disciplinary action is required against the employee for non-disclosure of the conviction. If a decision is made not to take disciplinary action, the individual should be notified of this in writing to raise concern of the non-disclosure.
- 3.52 Following the discussion with the candidate, the Record of Disclosure Decision Form (Ref 4.C.155), must be completed and returned to HR People Services.

Live convictions and/ or Spent Convictions if Job requires

- 3.53 If the individual has a “live” conviction that has not been disclosed, then the process in paragraphs 3.47 - 3.49 apply and it may lead to the withdrawal of the offer of employment. Where the employee has already commenced employment, this will have been conditional on them having

a satisfactory DBS check and they will need to be informed that their employment cannot be confirmed and their employment will end.

- 3.54 If, because the “live” conviction/s is not relevant to the post applied for, a decision is made not to withdraw the offer of employment, where the employee has already commenced then consideration should, however, be given to whether disciplinary action is required against the employee for non-disclosure of the conviction. If a decision is made not to take disciplinary action, the individual should be notified of this in writing to raise concern of the non-disclosure.
- 3.55 Following the discussion with the candidate, the Record of Disclosure Decision Form (Ref 4.C.155), must be completed and returned to HR People Services.

Checking Overseas Applicants

- 3.56 The DBS is currently not able to conduct overseas criminal record checks. Some countries, including most in the EU, have arrangements allowing their citizens to obtain “Certificates of Good Conduct” or extracts from the criminal record to show to prospective employers.
- 3.57 The level of information provided varies from country to country. Guidance on specific countries can be obtained on DBS web site or further advice is available from HR People Services.
- 3.58 It is the responsibility of the appointed candidate to obtain a “Certificate of Good Conduct” and to provide this document to HR People Services.
- 3.59 The DBS advises employers seeking to make use of disclosure information to consider carefully before deciding whether to request a disclosure in respect of an applicant with a substantial record of overseas residence.
- 3.60 The Police National Computer contains a limited number of overseas convictions but this data is by no means comprehensive. Therefore, it may be of limited value to ask for a disclosure in respect of a person with very substantial gaps in their United Kingdom residence or of individuals with little or no previous residence in the United Kingdom.
- 3.61 However, if someone with a substantial record of overseas residence applies to work in the regulated childcare sector, then the DBS Children’s Barred List must be checked, even though there may be little, if any, criminal record information revealed. Likewise if someone seeks to work with vulnerable adults then the DBS Adults Barred List must be checked.
- 3.62 A substantial period of overseas residency should not preclude the Council from considering applicants with such backgrounds. Disclosure

is only part of the overall recruitment process. In these situations, as for all other appointments, the Council will engage in a full range of pre-appointment checks.

Further information on who can apply for a check, what information is needed and who to contact is available on the following link:

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

EXISTING CARDIFF COUNCIL EMPLOYEES

3.63 Transfer between post not requiring any DBS disclosure check to new post requiring a check:

If an employee transfers within the Council from a post which does not require a DBS disclosure check to a new post requiring either a standard or an enhanced check, the necessary check needs to be undertaken (unless the employee is a member of the Update Service). The employee will not be able to start their new post until the disclosure check is received from the DBS and has been assessed by the recruiting manager/ headteacher.

3.64 Transfer between post requiring standard check to new post requiring enhanced check:

If an employee transfers within the Council from a post requiring a standard check to a new post requiring an enhanced check, the enhanced DBS disclosure check needs to be undertaken. The employee will not be able to start their new post until the disclosure check is received from the DBS and has been assessed by the recruiting manager/ headteacher.

3.65 Transfer within Council:

If an employee transfers within the Council and has previously had a CRB/ DBS check at the appropriate level no further check will be required. Managers/ headteachers must verify this with HR People Services.

Please note sections 3.63 to 3.64 do not apply to schools as all employees in schools require an enhanced DBS check.

On Receipt of Disclosure of Existing Employee

3.66 In cases where a criminal record is disclosed, or the disclosure indicates that the employee may be unsuitable to continue in their employment, the Director/ Assistant Director/ Chief Officer/ Headteacher, in consultation with HR People Services, will make a preliminary

assessment to determine whether the employee should be suspended from work or removed temporarily to another post whilst this is under investigation.

- 3.67 Staff should be aware that information disclosed from the DBS could affect their continuing employment with the Council.

Suspension from Duty

- 3.68 Where it is determined that the employee should be removed from their post pending the outcome of the investigation, and that the nature of the information provided prevents them from being transferred temporarily to an alternative post, they will be suspended from duty. Suspension will be carried out in accordance with the Council's or School Disciplinary Policy and Procedures (1.CM.035/ 1.CM.035-Sch).

Inclusion on Barred List

- 3.69 If the disclosure reveals that the employee is on the Barred List(s), the Director/ Assistant Director/ Chief Officer/ headteacher, in consultation with HR People Services, shall decide whether the employee should be suspended from their duties or transferred temporarily to another post.
- 3.70 If the employee is suspended from duty, this will be carried out in accordance with Council's or School Disciplinary Policy and Procedure (Ref 1.CM.035/ 1.CM.035-Sch) and consideration given whether the matter should be referred to the Police in line with the Policy.
- 3.71 For posts that involve working with children the case should also be referred to the Child Protection Unit, in order that Child Protection Procedures may be instigated. For posts that involve working with vulnerable adults the case should also be referred to the POVA team in Adults Services.
- 3.72 All investigations/ disciplinaries will be conducted in accordance with the Council's or School Disciplinary Policy and Procedures (1.CM.035/ 1.CM.035-Sch).

Frequency of DBS Checks

- 3.73 There is no legal requirement to 'repeat' or 'renew' a DBS disclosure check for any employees, other than those who work within social service environments where specific statutory requirements apply. The Council's policy is that serving employees are asked to undergo a DBS check if they have not previously been eligible for a DBS disclosure check and move to a post that involves significantly greater responsibility for vulnerable groups including children and falls under the definition of regulated activity.

Employees who are required to be registered with the Care Standards Inspectorate for Wales

- 3.74 The Care Standards Inspectorate for Wales (CSIW) is a statutory regulatory body covering staff working within social services environments. It is a requirement that employees working for the Council in these environments are registered with the CSIW and part of the registration process requires that DBS disclosure checks are repeated on a 3 yearly basis except in the case of employees who are registered with the update service.
- 3.75 Employees will be notified in writing before the disclosure is required. A standard letter is provided at Appendix 6.

School Based Employees

- 3.76 There is no ESTYN requirement to “repeat” or “renew” DBS disclosure checks for school based employees.

MISCELLANEOUS INFORMATION

Handling DBS Checks/ Confidentiality

- 3.77 Disclosure information is only passed to those who are authorised to receive the information in the course of their duties. It is a **criminal offence** to pass information to anyone who is not entitled to receive it.
- 3.78 It must be clearly understood that disclosure information is sensitive and highly confidential; abuse of this information by any Council employee is unacceptable and may lead to disciplinary action.

Retention of Disclosure Information (See Appendix 2)

- 3.79 Once a recruitment (or other relevant) decision has been made, the Council do not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep the information for longer than six months, the Council will consult the DBS about this and will give full consideration to the Data Protection and Human Rights Acts before doing so. Throughout this time the usual conditions regarding safe storage and strictly controlled access will prevail.
- 3.80 The Council will retain a record of the following disclosure information:
- a) name of the subject and the DBS unique identifying number
 - b) date and type of disclosure
 - c) date of renewal (only where CSSIW registration is required for the

post)

3.81 Images or photocopies of the disclosures **must** not be retained.

Disclosure Disputes

3.82 Where an individual disputes the information provided in a DBS disclosure check, it is their responsibility to resolve the dispute with the DBS. The dispute must be raised with the DBS within three months of the date the disclosure was issued.

3.83 Where there is information contained on the DBS disclosure check which potentially affects the decision to employ/ appoint the individual to the post and the information is disputed, the Council/ school would need to postpone a decision to employ/ appoint until the dispute is resolved. However, depending on the timescales for resolution of the dispute, the Council/ school may need to consider whether or not to withdraw the offer of employment.

3.84 Where the information contained on the check does not affect the decision to employ/ appoint the individual to the post, the appointment may proceed – the dispute is a matter between the employee and the DBS. On conclusion of the dispute, the Council/ school will request (if applicable) to see a revised DBS disclosure check from the individual.

Referral to The Disclosure and Barring Service (DBS)

3.85 The Safeguarding Vulnerable Groups 2006 Act sets a legal duty for the Council to refer information to the DBS if we dismiss or remove a member of staff/ volunteer from working with children and/ or adults (in what is legally defined as Regulated Activity) where they meet the referral criteria. The Council has a duty to refer information to the DBS as both a Regulated Activity Provider and as a Local Authority.

Gender Recognition Certificates

3.86 The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for a gender recognition certificate. When a full gender recognition certificate has been issued, the person is legally considered to be the acquired gender.

3.87 If the person is required to undergo a DBS check as part of the recruitment process they must disclose any previous names and/ or gender to the DBS who have established a special application procedure/ dedicated contact officer to maintain confidentiality (email sensitive@dbs.gsi.gov.uk)

3.88 Gender confidentiality will be maintained where the individual has no criminal convictions and where there is no other information held by any

Police Authority, as a clear disclosure certificate is the ultimate result. However, if they did have convictions under their previous gender that were considered relevant to the post/position, then the individual's gender change would become evident through the provision of conviction information on the DBS disclosure certificate showing both gender names.

SECTION 4 – RELEVANT DOCUMENTS

Document Title	CIS Reference	CIS Reference Schools
Policy Statement on the Handling of Disclosure Information (was 1.CM.096)	Now included as Appendix 2	
Policy Statement on the Recruitment of Ex-Offenders (was 1.CM.097)	Now included as Appendix 3	
Guidance on Assessing the Relevance of Criminal Records (was 5.C.021)	Now included as Appendix 4	
Information on the Rehabilitation of Offenders Act 1974 (was 5.HR.006)	Now included as Appendix 5	
Discipline Policy and Procedure	<u>1.CM.035</u>	<u>1.CM.035</u> -Sch
Guidance for Safer Working Practice with Children, Young People and Vulnerable Adults	5.HR.026	
DBS Certification Proforma	4.C.158	
DBS Record of Discussion with Individual	4.C.155	
Authorisation to Work prior to Receipt of DBS Check	4.C.157	

FOR FURTHER INFORMATION ON DBS, VISIT

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

SECTION 5 – FREQUENTLY ASKED QUESTIONS

FAQ'S Disclosures and Barring Service

Q1 Where can I find up to date information on DBS checks?

The most up to date information on all aspects of DBS can be found at www.gov.uk/dbs

Q2 What is no longer a regulated activity when working with children?

- Activity supervised at reasonable level;
- Health care not by (or directed or supervised by) a health care professional;
- Legal advice;
- "treatment/ therapy" (instead "health care");
- Occasional or temporary services, (not teaching etc.) e.g. maintenance at a school; and
- Volunteers supervised at a reasonable level

Q3 Why do we no longer receive the DBS Certificates?

The Government changed the law which meant that the DBS can now only send DBS Certificates to the individual on whom the check was carried out.

Q4 As my organisation no longer receives a copy of the DBS Certificate how can we tell if the Certificate the applicant shows us is genuine?

You can use the information on the security features of a DBS Certificate on the DBS website at www.gov.uk/disclosure-barring-service-check/tracking-application-getting-certificate to determine whether the Certificate is genuine.

Q5 If the applicant disputes the content of their DBS Certificate will the DBS let me know?

Yes, the DBS will notify Registered Bodies if a dispute has been raised. However the outcome of the dispute will not be shared with the Registered Body.

Q6 What are the various stages of Stages of the DBS checking process?

- Stage 1 - application form received and validated - form is checked for errors or omissions. The form is either scanned onto the DBS

system or returned for correction to the countersignatory within 24 hours of receipt.

- Stage 2 - Police National Computer (PNC) searched
- Stage 3 - Children and adults barred lists searched (where applicable)
- Stage 4 - Records held by the police searched - enhanced checks are sent by secure, electronic means to the police for an additional check of local records before the information is sent back to the DBS.
- Stage 5 - DBS certificate printed

Q7 How long is a DBS check valid?

There is no official expiry date for a certificate issued by DBS. Any information revealed on a DBS certificate will be accurate at the time the certificate was issued. In certain employment sectors (chiefly social services) a new DBS check may be required periodically.

Q8 What types of positions are eligible for a DBS check?

Positions must come under the definition of regulated activity and the new definition of “regulated activity” focuses on work which involves close and unsupervised contact with children/ vulnerable groups. If you are unsure that the position you are recruiting to is eligible for a DBS check, you can contact HR People Services. HR People Services if necessary can ask the DBS to advise. You can also contact the DBS for further advice via email at customerservices@dbs.gsi.gov.uk. Please include the job specification and the roles and duties of the position.

Q9 What are the different types of DBS checks ?

Types of DBS check available are as follows:

- Standard checks – To be eligible for a standard level DBS check, the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This only includes a check of the information held on the Police National Computer (PNC).
- Enhanced checks – To be eligible for an enhanced level DBS check, the position must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) Regulations. This includes information held on the PNC, plus other police information held.
- Enhanced checks with children’s and/ or adult’s barred list check(s) – to be eligible to request a check of the children’s or adult’s barred lists, the position must be eligible for an enhanced level DBS check as above and be specifically listed in the Police Act 1997 (Criminal Records) Regulations as able to check the barred list(s). Includes the same information as above but includes a check of Children’s Barred List or Adults Barred List or both

Q10 What will be shown on a DBS certificate?

Standard

Standard certificates will include details of convictions and cautions (including youth cautions, reprimands and warnings) recorded on the Police National Computer (PNC).

Enhanced

In addition to information from the PNC, an Enhanced certificate may also include information taken from police records that a chief officer of a police force considers relevant to the application and/ or details of whether an individual is included on one or both of our two lists barring people from working with children and/ or vulnerable adults.

Some PNC information will now be filtered and will not appear on the certificate. Cautions and convictions filtered out are set out in legislation.

Q11 Who in a schools must have a DBS check?

DBS checks are required for all employees who have regular contact with children and who satisfy the definition of regulated activity which is as follows:

- 1) unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children; or
- 2) work for a limited range of establishments ('specified places') with opportunity for contact, e.g. schools, children's homes, premises.

Work under these criteria is only regulated if it is done 'regularly' and this is defined as: frequently (once a week or more often) or on 4 or more days in a 30 day period.

Q12 Should a school Governor have a DBS check?

The position relating to governors has changed under the **Protection of Freedoms Act 2012**. As school governors are no longer undertaking regulated activity, there is no requirement for them to be subject to vetting and barring checks. However, where governors are undertaking some form of regular contact (as defined by the Act; 'regular' means carried out by the same person frequently (once a week or more often), or on 3 or more days in a 30-day period (or in some cases, overnight)). with pupils, they are subject to risk assessment and possible vetting and barring unless adequately supervised.

Q13 What posts would have an enhanced DBS check without a barred list check?

Posts which falls outside of the new definition of *regulated activity* but are under the old definition or are recognised under the Police Act 1997.

Q14 A post was previously defined as controlled, will it still require a DBS disclosure?

There is no longer a requirement for a DBS check for positions which were previously recognised under the definition of controlled activity. This includes administration posts which have access to sensitive information.

Q15 We have contractors coming on a school site, do they need a DBS disclosure?

Enhanced DBS disclosure certificate or Update Service status check with barring check are only required to be carried out where contractors, sub contractors and/ or their employees meet the definition of regulated activity. Regulated activity is defined as unsupervised activity in a limited range of establishments with the opportunity for contact with children and in addition must be done regularly. Regularly means carried out by the same person frequently (once a week or more often), or on four or more days in a 30 day period (or in some cases overnight). The process of obtaining the checks are the responsibility of the contractors.

These definitions would not cover contractors who come in to school to carry out emergency repairs or who visit schools for less than the prescribed time and so we are not required have in place DBS checks for these contractors. The timescales refer to individual establishments and so if a contractor works regularly in Cardiff schools but no more than the defined timescale in an individual school then a DBS check would not be required, e.g. a contractor working for central education is contracted to visit every school in Cardiff over a 3 month period but would not be spending more than one day in each school.

A DBS check would be required for contractors who visit an individual school once a week on a regular basis or are going to be on site for more than 4 days in a 30 day period. However, there is an exception to this requirement if the workers are going to be supervised. The supervision needs to be:

- by someone in regulated activity i.e. someone who would have a DBS check;
- has to be regular and day to day; and
- be 'reasonable in all the circumstances'.

Q16 We have volunteers do they require a DBS check?

Volunteers can fall into 2 categories, those who work unsupervised and those who work under supervision. Volunteers who are not supervised

are regarded as working in Regulated Activity and therefore require a disclosure. If a volunteer is supervised then under the new DBS arrangements they are not regarded as working in Regulated Activity and therefore will not require a check.

Q17 I am going back to work in a school, I had a CRB/ DBS check previously for the same school must I have a new one?

Anyone working in a school with a break of 3 months or more must have a new DBS check

Q18 What should I consider in deciding the relevance of a conviction on a DBS disclosure?

In general the following should be considered:

- position applied for
- nature of the offence
- how long ago the offence took place
- age of person at the time of the offence
- frequency of the offences

Update Service

Q19 How does an employee join the update service?

If employees are provided with their application reference number they can subscribe to the Update Service when they apply for their DBS check. Or if they wait to subscribe with their DBS Certificate number they must use it within 14 days of the resulting DBS Certificate issue date. Only an individual can join the update service; employers cannot join on behalf of their workforce

Q20 Must an employee use the Update Service or can I just keep getting the person to apply for DBS checks?

This is an optional service. If an individual subscribes to the Update Service their employer can go online, with their consent, and carry out a free, instant check to find out if the information released on the DBS certificate is current and up-to-date. Therefore, employees may wish to consider the benefits of using this service as when they are changing jobs this will speed up the recruitment process. The benefits are:

- Instant online checks of DBS Certificates.
- You may never need to apply for another DBS check again.
- Less bureaucracy.
- Saves time and money.

Q21 How much is it to carry out a Status Check where someone is registered with the Update Service?

Status Checks are provided free-of-charge.

Q22 Do I need to see the actual DBS Certificate when I carry out a Status Check?

Yes. You will need to have seen the original DBS Certificate to ensure that it is for the right workforce and of the right type and level that you need and that you are legally entitled to, e.g. Enhanced with an Adults' Barred List check for the Adults' Workforce.

Q23 Do I need the person's permission to do a Status Check?

Yes. You will need their permission, verbal or written, to carry out a Status Check. You may want to get consent each time you check or you could consider asking for ongoing consent – that will be up to you and the individual. The individual will be able to see who has carried out a Status Check, and when they did so, from their online account.

Q24 Can an individual stop me carrying out a Status Check on their DBS Certificate?

Yes. If the individual leaves your organisation, moves to a position where there is no legal entitlement to the same DBS check, or withdraws their consent you must stop carrying out any further checks. If you continue to carry out Status Checks on their certificate you would be breaking the law by accessing data you were not entitled to see.

Q25 How many Status Checks can I carry out?

You can carry out as many as you want, and as many times as you want, as long as you have the individual's consent.

Q26 In order to be classified as Regulated Activity must the individual be working with the same children/vulnerable adults in the same establishment?

No the individual does not need to work with the same children to meet the frequency or period condition. Nor do they need to work in the same establishment.

RELEVANT DEFINITIONS**1 Exceptions Order**

The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 sets out those occupations and positions exempt from the provisions of the ROA. These are generally positions of trust, where there is a valid need to see a person's full criminal history in order to assess their suitability for a position. All posts working with children and adults are exempt from the Act. This information is intended as general guidance only. It must not be regarded as a definitive interpretation of the Act. Anyone requesting further guidance should seek legal advice.

2 Rehabilitation Period

A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a job or obtaining insurance, or when involved in criminal or civil proceedings.

3 Unspent Conviction

A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed.

3 Regulated activity relating to children

The new definition of regulated activity relating to children comprises:

- (i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children;
 - (ii) Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;
- Work under (i) or (ii) is regulated activity only if done regularly.***
- (iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
 - (iv) Registered childminding; and foster-carers.

4 Regulated activity relating to adults

The new definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people). A broad outline of these categories is set out below. For more information please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.

(i) Providing health care

Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for further details about what is meant by health care and health care professionals.

(ii) Providing personal care

Anyone who:

- provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability;
- prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision; or
- trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

(iii) Providing social work

The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

(iv) Assistance with cash, bills and/ or shopping

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

(v) Assistance in the conduct of a person's own affairs

Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here.

(vi) Conveying

A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.

POLICY STATEMENT ON THE HANDLING OF DISCLOSURE INFORMATION

(Previously – 1.CM.096)

1. General Principles

As an organisation using the Disclosure and Barring Service (DBS) Disclosure service to help assess the applicant's suitability for positions of trust, the Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of certificates and certificate information. It also complies fully with its obligations under the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information and has a written policy on these matters, which is available to those who wish to see it on request.

2. Storage and Access

Disclosure Information will not be kept on an applicant's personal file. Certificate information should be kept securely in a lockable, non-portable, storage container, with access strictly controlled and limited to those entitled to see it as part of their duties.

3. Handling

In accordance with section 124 of the Police Act 1997, certificate information is only passed to those who are authorised to receive it in the course of their duties. The Council maintain a record of all those to whom certificate or certificate information has been revealed and the Council recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

To note: those registered care homes which are inspected by the Care Quality Commission (CQC) and those establishments which are inspected by the Care and Social Services Inspectorate for Wales (CSSIW) may retain the certificate until the next inspection. Once the inspection has taken place the certificate should be destroyed in accordance with the Code of Practice.

4. Usage

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

5. Retention

Once a recruitment (or other relevant) decision has been made, the Council do not keep certificate information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep certificate information for longer than six months, the

Council will consult the DBS about this and will give full consideration to the Data Protection and Human Rights Acts of the individual before doing so. Throughout this time the usual conditions regarding safe storage and strictly controlled access will prevail.

6. Disposal

Once the retention period of six months has elapsed, the Council will ensure that any certificate information is immediately suitably destroyed by secure means i.e. by shredding, pulping or burning. While awaiting destruction, certificate information will not be kept in any insecure receptacle (e.g. a waste bin or confidential waste sack). The Council will not keep any photocopy or other image of the certificate or any copy or representation of the contents of the certificate. However, notwithstanding the above, the Council may keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, the position for which the certificate was requested, the unique reference number of the certificate and the details of the recruitment decision taken.

POLICY STATEMENT ON THE RECRUITMENT OF EX OFFENDERS

(Previously – 1.CM.097)

1. As an organisation registered with the Disclosure and Barring Service (DBS) the City of Cardiff Council must treat applicants who have a criminal record fairly and must not discriminate because of a conviction or other information revealed. This policy statement outlines the Council's commitment not to discriminate unfairly on the basis of criminal convictions.
2. It is important that everyone clearly understand their roles and responsibilities within this process.

2.1 Employee/ Applicant Responsibilities:

- a) Providing details of any criminal record at the earliest possible stage.
- b) Completing all forms honestly and accurately.

2.2 Management Responsibilities:

In addition to their responsibilities as employees, managers are also responsible for:

- a) Ensuring employees/ applicants are aware of all relevant policies and procedures by whatever means are most appropriate.
- b) Seeking advice from HR People Services on any disclosure information and in all cases where withdrawal of an offer of employment is being considered.
- c) Maintaining confidentiality at all times throughout the process.

2.3 HR People Services Responsibilities:

- a) Act as advisor to managers.
 - b) Provide all employees/ applicants with information and advice as necessary throughout the process.
 - c) Where relevant ensure that application forms and recruitment packs contain a statement relating to Disclosure.
 - d) Maintaining confidentiality at all times throughout the process.
 - e) Review the application of the policy in the light of operational experience.
3. A Disclosure and Barring Service check is part of the Council's pre-employment check for positions working with children or vulnerable adults or other occupations covered by legislation. Disclosures are an important tool in ensuring that the Council

makes safer recruitment decisions and to ensure the safety of people who receive services from the Council.

- 4 All posts that involve regular contact with children under the age of 18 and vulnerable adults will be subject to disclosure. The level of disclosure will be determined by the content of the job and the need for disclosure will be considered and reviewed as part of the recruitment process.
- 5 As an organisation using the Disclosure and Barring Service to assess the applicant's suitability for positions of trust, the Council complies fully with their Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a check on the basis of conviction or other information revealed.
- 6 The Council is committed to fair treatment of its staff, potential staff or users of its services, regardless of their offending background.
- 7 This policy on the recruitment of ex-offenders, will be made available to all Disclosure and Barring Service applicants at the outset of the recruitment process.
- 8 The Council actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. The Council selects all candidates for interview based on their skills, qualifications and experience.
- 9 A disclosure is only requested after a risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a check is required, all application forms and recruitment briefs will contain a statement that a Disclosure and Barring Service check will be requested in the event of an individual being offered the position.
- 10 Where a Disclosure and Barring Service check is to form part of the recruitment process, the Council encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process. The Council request that this information is sent under separate, confidential cover, to a designated person within the City of Cardiff Council and the Council guarantee that this information is only to be seen by those who need to see it as part of the recruitment process.
- 11 Unless the nature of the position allows the Council to ask questions about your entire criminal record, the Council only ask about "unspent" convictions as defined by the Rehabilitation of Offenders Act 1974.

- 12 The Council ensure that all those in the City of Cardiff Council involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. The Council also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
- 13 At interview, or a separate discussion, the Council will ensure that an open and measured discussion takes place on the subject of the offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
- 14 The Council make every subject of a Disclosure and Barring Service check aware of the existence of their Code of Practice and make a copy available on request.
- 15 The Council undertake to discuss any matter revealed in a Disclosure and Barring Service check with the person seeking the position before withdrawing a conditional offer of employment.
- 16 Having a criminal record will not necessarily bar anyone from working with the Council. This will depend on the nature of the position and the circumstances and background of the offences.

GUIDANCE ON ASSESSING THE RELEVANCE OF CRIMINAL RECORDS

(Previously – 5.C.021)

1. The suitability for employment of a person with a criminal record will vary, depending on the nature of the job and the details and circumstances of any convictions. Deciding on the relevance of convictions to specific posts is not an exact science.
2. To facilitate this process, an applicant's criminal record should be assessed in relation to the tasks they will be required to perform and the circumstances in which work is carried out. It is recommended that the following is taken into consideration when deciding on the relevance of offences to particular posts:-
 - Does the post involve one to one contact with children or other vulnerable groups as employees, customers and clients?
 - What level of supervision will the post holder receive?
 - Does the post involve direct responsibility for finance or items of value?
 - Does the post involve direct contact with the public?
 - Will the nature of the job present any opportunities for the post holder to re-offend in the place of work?
3. The answers to such questions should help determine the relevance of convictions to specific posts. For example paedophile, or child pornography offences would almost certainly disqualify any person required to work with children: some violent offences would be relevant to positions involving unsupervised contact with the public; fraud should be considered in relation to posts involving the handling of significant amounts of money; and theft in relation to posts involving the handling of stock.
4. It should also be remembered that no two offences are exactly alike. Whilst it will not be possible to carry out a thorough risk assessment on each individual, it is recommended that the following issues are taken into consideration as a minimum requirement:
 - The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property.
 - The length of time since the offence occurred.
 - Any relevant information offered by the applicant about the circumstances which lead to the offence being committed, for example the influence of domestic or financial difficulties.
 - Whether the offence was a one off, or part of a history of offending.
 - Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely.

- The country in which the crime was committed, some activities are offences in Scotland and not in England and Wales and vice versa.
 - Whether the offence has since been decriminalised by Parliament.
 - The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.
5. If any shortlisted candidates have disclosed information regarding criminal convictions, they shall be given the opportunity at the end of the interview to discuss the circumstances surrounding their conviction(s). Any notes taken regarding disclosed criminal convictions should be recorded separately.
6. A criminal conviction will not debar anyone from appointment unless the Chair of the selection panel specifically considers that the conviction renders the person unsuitable for appointment. If this is the case, the Chair of the panel will record their reasons and consult with the HR People Service, if necessary.

Appendix 5

INFORMATION ON REHABILITATION OF OFFENDERS ACT 1974

The Ministry of Justice has amended the above Act to reduce the periods during which someone convicted of an offence must disclose their conviction and these new periods are reflected below.

The rehabilitation periods no longer starts from the date of the conviction but is the period of the sentence plus a 'buffer' period starting from the end of the sentence. The 'buffer periods' are halved for those who are under 18 at date of conviction (save for custodial sentences of six months or less where the 'buffer period' is 18 months).

The rehabilitation periods for sentences with additional "buffer periods" are shown in the table below:

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the <u>end</u> date of the sentence (including the licence period).	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the <u>end</u> date of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order**	1 year	6 months

* Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

**In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

The following table sets out the rehabilitation period for sentences which do not have “buffer periods” and for which the rehabilitation period runs from the date of conviction:

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered).	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge,	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order*	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	Non

The jobs that are exceptions to the rehabilitation periods, where offenders will have to declare convictions regardless of whether they are spent or not will continue.

3 YEAR RENEWAL LETTER

My Ref:

Date

Name

Street Name and Number

Area

Town or City

Postcode

Dear

Disclosure and Barring Service (DBS) Renewal

The post you occupy is within an area of work that requires registration with the Care Standards Inspectorate Wales. As a result of this there is a statutory requirement for you to have your Disclosure and Barring Service (DBS) Certificate renewed every three years. Your DBS certificate is now due for renewal.

Please complete the enclosed Enhanced Disclosure Application Form in accordance with the Guidance Notes provided and ask your manager to check your identification as listed in the form. The Council no longer receives a copy of your DBS certificate therefore on receipt of your renewal certificate you are required to show the original to your line manager who will complete verification form and send this to HR People Services for noting.

You are now able to subscribe to the DBS' "Update Service". This allows you to take your DBS check from role to role (within the same type of workforce) where the same type and level of check is required and this would include moving to a role with another local authority or external organisation. The Update Service would, with your permission allow the Council to check your status in the future without the need for you to complete and submit any further application forms. An annual fee is required for the service which you would need to pay directly to the DBS and you are able to register as soon as you receive your up to date certificate. Further information can be obtained from the DBS website <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

The alternative to the update service is to repeat the process you are currently carrying out every three years, with the fee paid by the Council. However the DBS check as a result of this process is not transferable to other organizations or roles.

Yours sincerely,

HR People Services