

CRIMINAL BACKGROUND CHECKS POLICY

Version History			
Version	Date	Detail	Author
1.00	August 2015	Original draft	Nicky Keep
1.01	February 2016	Improvements and updates	Nicky Keep
1.02	August 2018	Removal of Disqualification by Association for schools and update re GDPR	Nicky Keep
1.03	January 2019	Clarification of procedures with regard to recording trace decisions and storage of data	Nicky Keep

Links and Dependencies
DCC Criminal Background Checks Managers' Guidance

1. Purpose

This policy sets out the approach to criminal background checks within the Council. Managers' guidance on the issues raised is available in a separate document.

2. Scope and Key Principles

The Council promotes equality of opportunity for all and recognises the importance of employment in the rehabilitation of ex-offenders. As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for position of trust, the Council complies fully with the DBS Code of Practice.

Under the Rehabilitation of Offenders Act 1974 (as amended in 2013), it is unlawful to discriminate against an ex-offender on the grounds of a spent conviction and applicants are not asked to disclose convictions which are spent with the exception of those posts exempt from the Act.

Having an unspent conviction will not necessarily bar applicants from employment. Criminal records should be taken into account for recruitment purposes only when a conviction is relevant to the job in question. The Council's policy on the recruitment of ex-offenders is detailed at Appendix A.

The Safeguarding Vulnerable Groups Act 2006, as amended principally by the Protection of Freedoms Act 2012, identifies a number of offences which prevent barred people from working in regulated activities. Derbyshire County Council, as an employer and regulated activity provider, and individuals can be convicted of a criminal offence if a person who is barred from engaging in a particular activity does actually engage in that activity. A regulated activity provider also commits an offence if it permits a person to engage in a regulated activity while knowing or having reason to believe that the individual is barred.

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

Information contained in a DBS disclosure will include details of criminal convictions and offences and also possibly other special category data as defined in the General Data Protection Regulation (GDPR). Unauthorised disclosure of such information by a member, officer or employee of a registered body is a criminal offence, punishable on summary conviction (before a Magistrates' court) by up to six months' imprisonment or a fine of up to Level 3 on the standard scale, or both (*section 124 Police act 1997*)

The principles in this policy apply to both paid and volunteer positions.

3. DBS Checks and Levels of disclosure

For those roles where an employee undertakes regulated activity an enhanced DBS check must be undertaken and this must include a check to ensure that the successful candidate is not barred from working with children or adults who are in vulnerable circumstances.

Regulated activity is defined by the Safeguarding Vulnerable Groups Act 2006 as amended, and includes roles where individuals are required to work unsupervised with children or in a limited range of establishments with opportunity for contact with children; or working with adults providing healthcare, personal care, social work, assistance with cash, bills and/or shopping, assistance in the conduct of a person's own affairs or conveying children or adults for particular reasons. The definition of regulated activity with regard to children is detailed at Appendix B and a definition of regulated activity with regard to adults is detailed at Appendix C.

Other roles are identified by legislation as being eligible for an enhanced level DBS check without a check against the children or adults barred list. This means that it is at the employer's discretion as to whether a DBS check should be undertaken. Other roles are categorised by the Police Act as prescribed, which means enhanced checks either with or without barred list checks must be done. Derbyshire County Council will not usually undertake DBS checks in respect of roles which do not involve regulated activity, although a small number of other roles may be identified as requiring a DBS check.

Users of the Public Services Network (PSN) are required to comply with the Baseline Personnel Security Standard; this is the minimum recruitment check required for all persons with access to Government assets. The PSN is a Government communication network which is essential to the Council's work. It links many public sector organisations and enables Councils to communicate with external organisations via the secure GCSX network. Within this compliance a basic disclosure must be undertaken for those employees with administrative privileges across the Council's IT applications, and that check must have satisfactory results.

4. Roles and responsibilities

It is the responsibility of the recruiting manager to determine if a post meets the definition of regulated activity and, therefore, requires a DBS check to be undertaken and to notify the Shared Services Centre accordingly on requesting that the role be advertised.

The recruiting manager must be satisfied from the outcome of any DBS check that there are no offences which mean that the applicant is unsuitable for the role for which they have applied before the appointment can be confirmed. If there are any issues, these should be discussed with an Assistant/Service

Director who will make the final decision regarding appointment. In the event that the appointment does not proceed, there is no appeal.

Everyone involved in the disclosure process and in making employment related decisions should be provided with the associated managers' guidance.

All employees who are required to have a basic criminal record check or an enhanced DBS check as part of their role must tell their manager immediately if they acquire any convictions, cautions, reprimands or final warnings other than those protected under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). Failure to do so will represent a breach for which the agreed disciplinary procedures may be invoked.

The Council uses e-bulk, an electronic DBS checking solution, which means that DBS applications are completed and processed on line. Where this is not possible, paper applications may still be used.

In certain exceptional circumstances when the pressure to fill a vacancy is acute e.g. in order to maintain legal staffing levels in a regulated establishment, it may be appropriate to appoint an individual prior to DBS clearance being received (known as pre-authorisation). More detail is given in the Guidance for Managers on Criminal Background Checks.

All cases of pre-authorisation must have approval at Assistant/Service Director level before the appointment starts.

5. Cost of disclosure

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

The cost of checks undertaken by the Council on behalf of contractors and those from whom the Council commissions a service should be met by the contractor depending on the particular circumstances and terms of the contract.

Checks for volunteers are currently free. A volunteer is currently defined by the DBS as a person who performs an activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives. Volunteers who are supervised at the appropriate level do not need a DBS check.

6. Use of disclosure information

A disclosure is only requested for the successful candidate following the recruitment and selection process. Routine rechecks for existing employees who are subject to a DBS clearance should not take place. The council retains the right to instigate rechecks where circumstances dictate that it

would be prudent to do so and approval at Assistant/Service Director level has been obtained.

If a disclosure reveals information about spent or unspent convictions, a decision must then be made by a senior manager as to whether it is appropriate for the person to be appointed or not. Further information is outlined within the Guidance for Managers on Criminal Background Checks.

The DBS service only covers criminal records held in the UK. If the successful candidate has worked or lived overseas in any one country for six months or more after the age of 18, they will be asked to provide a certificate of good conduct as part of the appointment process along with other pre-employment checks.

7.The Update service

The DBS Update Service allows those individuals who register for it to have a DBS certificate issued and their DBS status kept up to date. It will then be available online subject to the payment by the individual of an annual fee. If the individual grants access to an employer, the employer may view the DBS status on line free of charge.

The Council uses the update service if any applicants are registered with it, to check their DBS status. If employees wish to register with the update service, the council will not reimburse their fees.

8. Security, Confidentiality, Storage and Retention

Disclosure information should be treated with the utmost confidentiality and kept in a secure place (e.g.lockable, non-portable storage containers if in physical form), such that access to disclosure information is strictly controlled and restricted to only those individuals who have a requirement to see it in the course of their duties. Information should only be disclosed to third parties in exceptional circumstances and with the consent of the DBS. All disclosure information including any additional information e.g. police intelligence, received as part of this process should be retained for a maximum of six months after a recruitment decision has been made. This is to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep disclosure 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 of the individual before doing so. Once the retention period has elapsed, all such information must be destroyed by secure means e.g. shredding. The Council will not keep any photocopy or other image of the disclosure or any copy or representation of the contents of a disclosure.

However, notwithstanding the above, we will keep on an individual's Personal File a record of the name of the employee, the position for which the disclosure was requested, the unique reference number and date of the

disclosure and a record of the details of the recruitment decision made as a result.

E-Results will be kept online for a maximum of 6 months and will be handled in accordance of the DBS Code of Practice. A skeleton record of the check will still be able to be accessed electronically. The details that will be held are

- Applicant's name and system ID
- ID verifier's system ID
- Type of check
- Disclosure number and date of issue
- Position the person was to undertake or if they were a volunteer
- If a certificate of good conduct was required and if it was received
- Recruitment decision.

When online applications are either not completed in full, are no longer required, or have been successfully completed with the DBS, they will be archived on the system by the Council's DBS Team. The employment check system will automatically remove and purge the application to remove personal data six months after the application has been archived. A shell record will be retained with basic information including disclosure number and issue date.

A record is kept of all those to whom certificate information has been revealed as it is a criminal offence to pass this information to anyone who is not entitled to receive it.

All information will be processed lawfully, fairly and in a transparent manner, and in accordance with the provisions of the General Data Protection Regulation.

9. Portability of Disclosures

Portability (accepting as valid a DBS disclosure received previously for a different appointment within the Council) is acceptable in certain circumstances. More detail is given in the Guidance for Managers on Criminal Background Checks.

10. Contractors

Departments who employ contractors or commission a service for roles where a DBS check or a DBS with barred list check is required, should make sure safeguards are in place for the relevant checking of contracted staff and see documentary evidence of DBS clearance when contractors are recruited.

11. Disputes

If an employee believes that the information provided in a DBS check is inaccurate or incorrect, then it is the responsibility of the individual to raise this with the DBS. The Council should base any decision on the information provided by the DBS and this decision will be final.

Appendix A – Recruitment of Ex-Offenders Policy

As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), the Council will treat all applicants for positions fairly. The Council will not discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.

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

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

The Council actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records. The Council selects all candidates for interview based on their skills, qualifications and experience.

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

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

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

The Council complies fully with the DBS Code of Practice and makes a copy available on request. The Council will discuss any matter revealed on a DBS

certificate with the individual seeking the position before withdrawing a conditional offer of employment.

There may be sectors where having a certain criminal record history will effectively preclude an applicant from being appointed to the role in question. For example, it would not be appropriate to employ teachers and social workers if their names appeared on a barred list, section 9 of the *Safeguarding Vulnerable Groups Act 2006* would makes it unlawful to appoint in these circumstances.

If a position falls within the *Exceptions Order*, the Council will exercise independent judgment when having regard to the person's criminal record history. If the role does not fall within the *Exceptions Order*, the Council will not take spent convictions into account but may take unspent convictions into account.

In cases where the Council is exercising its independent judgment it will have regard to the following factors:

- Whether the conviction (or other matter revealed) is relevant to the position in question.
- The seriousness of the offence.
- The length of time since the offence was committed.
- Whether there is a pattern of offending or other relevant matters.
- Whether the applicant's circumstances have changed since the offending behaviour.
- The circumstances surrounding the offence and the explanation offered by the individual involved.

Appendix B – Regulated Activity relating to Children

General exceptions:

Regulated activity relating to children does not include:

- Family arrangements; and personal, non-commercial arrangements.
- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children.

Regulated activity relating to children is:

1. **Teaching, training or instruction of children:**

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period **or** at any time overnight (between 2am-6am *and* with an opportunity for face-to-face contact with children);
- b. NOT supervised – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity;
- c. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- d. NOT activity merely incidental to activity with adults

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

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period **or** at any time overnight (between 2am-6am *and* with an opportunity for face-to-face contact with children);
- b. NOT supervised – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity (unless providing relevant personal care or health care by or under a professional – see point 6 and 7 below);
- c. NOT health care provided by or directed or supervised by a health care professional;
- d. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- e. NOT activity merely incidental to activity with adults.

3. **Advice or guidance:**

- a. Provided wholly or mainly for children; relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30 day period **or** at any time overnight (between 2am and

6am *and* with an opportunity for face-to-face contact with children)

- b. NOT legal advice; and
- c. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose.

4. Moderating a public electronic interactive communication service

which is likely to be used wholly or mainly by children

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period; and
- b. NOT activity by a person who does not have access to the content of the matter or contact with users.

5. Driving a vehicle being used only for conveying children and their carers/supervisors

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period; and
- b. Done under an agreement, either with the driver or with a person with whom the driver works, for gain or not.

6. Relevant personal care

- a. Either:
 - i. Physical help with eating or drinking necessary due to illness or disability;
 - ii. Physical help with toileting, washing, bathing or dressing necessary due to age, illness or disability;
 - iii. Prompting, with supervision, in relation to i or ii where the child is otherwise unable to decide; or
 - iv. Any form of training, instruction, advice or guidance given to the child in relation to i or ii.
- b. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- c. NOT activity merely incidental to activity with adults.

7. Health care provided for children

- a. By, or under the direction or supervision of, a health care professional;
- b. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- c. NOT activity merely incidental to activity with adults.

8. Childminding

- a. On domestic premises, for reward; and
- b. With a requirement to register, or voluntary registration, under Childcare Act 2006.

9. Fostering a child

- a. NOT care arranged by family members, not for reward; and
- b. NOT LA fostering a child with a barred person who is, or lives with, a relative of the child.

10. Day-to-day management or supervision on a regular basis of a person providing regulated activity as described by points 1-7 and 11 (or in relation to points 1, 2 and 11, activity which would be regulated activity if it was unsupervised).**11. Activity carried out at certain establishments:**

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period;
- b. Carried out for in connection with the purposes of the establishment;
- c. Gives the person the opportunity, in carrying out their work, to have contact with children;
- d. NOT activity by a person contracted or volunteering to provide temporary or occasional services (and not mentioned in points 1-7 above);
- e. NOT supervised volunteering – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity; and
- f. Carried out at one of the following establishments:
 - i. A school;
 - ii. A pupil referral unit;
 - iii. A nursery school;
 - iv. An institution for the detention of children;
 - v. A children's home;
 - vi. A children's centre; or
 - vii. Any childcare premises, including nurseries (but not including the home of a parent of at least one child to whom the childcare is provided).

Appendix C– Regulated Activity relating to Adults

General exception:

Regulated activity relating to adults does not include:

- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity relating to adults.

Regulated activity relating to adults is:

1 Health care provided for adults:

- g. By, or under the direction or supervision of, a health care professional.
- h. Includes first aid provided by a person acting on behalf of an organisation established for the purpose of providing first aid such as St John Ambulance but not first aid in the workplace.

2 Relevant personal care:

- a. Either:
 - i. Physical help with eating, drinking, toileting, washing, bathing, dressing, oral care or care of skin, hair or nails, necessary due to age, illness or disability;
 - ii. Prompting, with supervision, in relation to i where the person is otherwise unable to decide; or
 - iii. Any form of training, instruction, advice or guidance given to the person in relation to i.

3 Relevant social work:

- a. Provided by a social care worker to an adult who is a client or potential client; and
- b. Required in connection with any health, education or social services provided.

4 Day to day assistance in relation to general household matters:

- a. Either:
 - i. Managing the person's cash;
 - ii. Paying the person's bills; or
 - iii. Shopping on their behalf.
- b. Necessary by reason of age, illness or disability.

5 Relevant assistance in the conduct of an adult's own affairs:

- a. Anything done on behalf of a person by virtue of:
 - i. A lasting power of attorney;
 - ii. An enduring power of attorney;
 - iii. A court order appointing a deputy or making decisions on the person's behalf;

- iv. The appointment of an independent mental health/capacity advocate;
- v. The provision of independent advocacy services; or
- vi. The appointment of an appointee to receive the person's benefit payments.

6 Conveying:

- a. Necessary by reason of age, illness or disability;
- b. Transporting to, from or between places where the person receives health care, personal care or social work; and
- c. NOT by family, friends or taxi drivers or licensed private hire drivers.

7 Certain inspection functions

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

Note: There is *no* requirement for the above activities to be done a certain number of times before they become regulated activity.

Appendices B and C provide a summary of the main provisions and are intended as a general aid. They do not cover all aspects of regulated activity and all exceptions. In the event of any doubt as to the application of these provisions, further advice should be obtained. Contact the DBS Team at the Shared Services Centre in the first instance.