

DISCLOSURE AND BARRING SERVICE

(DBS) POLICY

Our Approach

At Warwickshire we are committed to providing a safe environment for our customers, high standards in our regulated activities and ensuring the processes we have for safeguarding those in the community are reliable and effective, as well as adhering to Legislative requirements. One aspect of this commitment is the effective use of the criminal record checking process for all relevant employees, agency/self-employed/casual workers, and volunteers.

In England criminal record checks are completed via the Disclosure and Barring Service (DBS). The DBS helps employers make safer recruitment and employment decisions and prevent unsuitable people from working with vulnerable individuals and groups, by carrying out criminal record checks for specific positions, professions and employment included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and, in certain circumstances, the Police Act 1997 (Criminal Records) Regulations 2002. The DBS is also responsible for placing or removing people from the DBS children's barred list and adults' barred list for England, Wales and Northern Ireland.

We are legally required to ensure that an Enhanced DBS check plus a relevant barred list check is processed for all employees, casual workers, self-employed contingent workers, volunteers and agency workers before they begin working in regulated activity. What is covered is set out by Government in the useful links at the end of this document.

In summary we work to the following principles:

- All employees, agency/self-employed/casual workers and volunteers currently working in centrally managed Warwickshire County Council (WCC) services undertaking "regulated activity" must have an enhanced DBS check plus a relevant barred list check.
- Having a criminal record will not necessarily bar someone from applying or continuing to work at the Council.
- It is Warwickshire County Council Policy for individuals working in centrally managed services that Enhanced DBS checks will be repeated as follows:

- for volunteers and agency workers on an annual basis
 - for employees will be completed on a 3 year recheck basis
 - for casual workers or other interim staff, following a break of 3 months or more
- Service Managers and HR are responsible for ensuring that processes and systems are established and maintained to undertake DBS checks; and for ensuring the policy is updated in response to any changes in government policy and DBS rules and legislation.
- Directors must ensure that:
 - appropriate consideration is given to which roles should have DBS checks
 - for all employees in their workforce, DBS checks consistent with the activities they are undertaking and with this Policy have been completed
 - the appropriate process is followed where the DBS check discloses information which requires action
 - When fulfilling responsibilities set out in this document, all employees, agency workers, volunteers and Managers must comply with the Government's DBS Code of Practice

A separate Safer Recruitment and Employment Policy is in place which applies to those working in Warwickshire County Council maintained schools.

Our Commitment to Safeguarding

Disclosure and Barring Service checks are only one aspect of the Council's commitment to procedures for ensuring those working with children and vulnerable adults are suitable to do so. We want to ensure we create a safe environment for our customers but also one in which colleagues who witness behaviour they feel is inappropriate can challenge it.

Sir Michael Bichard (who led a public enquiry into child protection measures, record keeping, vetting and information sharing in Humberside Police and Cambridgeshire Constabulary following the murders of Holly Wells and Jessica Chapman) has previously indicated -

"...for those agencies whose job it is to protect children and vulnerable people, the harsh reality are that for a sufficiently devious person determined to seek out opportunities to work their evil, no-one can guarantee they will be stopped. Our task is to make it as difficult as possible for them to succeed..."

A recruitment process cannot definitely identify an individual as permanently suitable to undertake work with vulnerable children or adults. This means that Council and its workforce need a continuing culture of vigilance. If there are concerns about behaviour then it is important to raise those with a Line Manager or using our Whistleblowing Policy. Creating a culture of awareness can help:

- Deter those with inappropriate motivations because they do not see the likelihood of opportunities to abuse
- Prevent opportunities for abuse in the work context by managing the environment and assessing risk
- Detect inappropriate behaviour at the earliest opportunity by challenging the person concerned

Types of Criminal Record Checks and Eligibility

There are different types of check that can be completed. These and their uses are described below.

Enhanced DBS with Barred List Check for Regulated Activity (Children and / or Adults)

Used when someone is undertaking regulated activity relating to children, adults or both. This check is a legal requirement and involves a check of the police national computer, police information and the children's and / or adults' barred list.

Enhanced DBS Check

To be eligible for an Enhanced DBS check, the role must be included in both the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and in the Police Act 1997 (Criminal Records) regulations. This may be appropriate, for example, for roles which would be regulated activity but are not because they do not work unsupervised with vulnerable people or do not do so on a regular basis. This level of check involves a check of the police national computer and police information. Recruitment can advise as to the appropriateness of this for roles as necessary.

If a manager is uncertain whether a post undertakes "regulated activity" or believes a different level of DBS check may be appropriate (for posts which have access to vulnerable children or adults or are in a position requiring an extraordinary level of trust) they should seek advice from Recruitment. Recruitment will confirm their advice based on all the information available and having sought guidance from the DBS where appropriate.

Checks that cannot be justified within legislation and DBS rules will not be processed by Recruitment; Warwickshire can be fined for mis-use of the DBS Process.

Enhanced DBS Check – Protected Offences

Protected offences subject to filtering rules (see below), including protected convictions, cautions, reprimands and warnings, will not automatically be included in DBS and police responses to Enhanced DBS checks. However, the police may include information about protected offences if they deem it relevant to the workforce or position that the individual intends to work in.

There are offences that will never be filtered and will always be disclosed on an Enhanced DBS check where it resulted in a conviction or an adult caution. These offences are known as 'specified offences'. Convictions that resulted in a custodial sentence will also never be filtered.

An explanation of the filtering rules and the list of specified offences can be accessed in the useful links below.

Standard DBS Check

To be eligible for a Standard DBS check the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This would include people entering professions such as law and accountancy. The Standard DBS check contains details of non-protected offences. From 28 November 2020 Standard DBS checks will not contain any unspent or spent convictions and adult cautions which have been filtered in line with the filtering rules. These include:

- any adult caution for a non-specified offence once 6 years have elapsed since date of the caution,
- any adult conviction for a non-specified offence once 11 years have elapsed since the date of the conviction, and
- any youth conviction for a non-specified offence once 5.5 years have elapsed since the date of the conviction.
- Any youth cautions/reprimands or warnings received when an individual was under 18 years of age will not automatically appear.

In addition, from 28 November 2020 the previous 'blanket' approach to disclosing all offences, if there are more than one, has been removed, and each offence will be assessed and filtered individually.

Standard DBS checks will always include any convictions for specified offences (whether as an adult or youth) and cautions received as an adult for specified offences. They will also include all convictions that resulted in a custodial sentence.

Basic DBS Check

Warwickshire does not carry out Basic DBS checks, however as a rule for a fee, anyone can apply for a Basic DBS check in their own name. The Basic DBS check is not job-specific or job-related and may be used more than once. Basic DBS checks contain only convictions and cautions considered unspent under the Rehabilitation of Offenders Act (1974). This could be used for roles who have access to sensitive data for vulnerable groups; this is called a 'controlled activity'.

Pre-employment Checks in Recruitment

DBS checks are one of a range of measures for assessing prospective employees, agency, self-employed, casual workers, and volunteers during the recruitment process. These checks include verifying an individual's identity, checking gaps in employment history, references, work health checks, eligibility to work in the UK and professional registration and qualification checks. Only where managers take this holistic approach can they ensure effective and safe recruitment practices.

At the start of the recruitment process the hiring manager must decide if there is the need for a DBS check. Full details on what constitutes regulated activity in working with children and adults are in the Useful Links at the end of this document or Recruitment can advise. If a DBS check is necessary, this must be clearly stated on the advert and job description.

Whilst a DBS check is a check of a criminal record in the UK, this cannot currently assess criminal records held overseas; if an applicant lives or has lived outside of the UK for a continuous period of more than 6 months in the past 5 years a criminal record check should be sought from the country or countries in which the applicant has been resident. This is referred to as a Certificate of Good Conduct, and Recruitment will advise on how to obtain it. A DBS check should also be completed.

DBS checks must be carried out on appointment before candidates start work. There may be occasions where it is necessary for an individual to start their employment before a DBS check has been received but these occasions should be exceptional and only where it is clear that there is no alternative action which can be taken to avoid this. When such exceptional occasions occur, the following steps must be taken:

- Recruitment must confirm that they are in receipt of all other pre-employment checks and are able to confirm that these are satisfactory.
- The DBS check application has been correctly completed and sent to the DBS;
- Recruitment have checked the individual against the relevant barred list(s);
- The relevant Director has approved a risk assessment of the situation, is satisfied that sufficient safeguards are in place and that the individual will not have unsupervised access to vulnerable service users
- The risk assessment has been endorsed by an Director

DBS Re-Checks

A DBS Check is only valid on the day on which it is issued, so it is Warwickshire's policy that all those who require a DBS for their roles complete a re-check. This includes employees, volunteers, agency workers, and any other types of interim worker currently working with children, adults or in a regulated activity which must have had a DBS check with a relevant barred list check.

Enhanced DBS checks will be repeated as follows:

- **Employees** - will be completed on a 3 year recheck basis
- **Volunteers and agency workers** - on an annual basis
- **Casual workers or other interim workers** – re-check following a break of 3 months or more

If an individual does not complete the DBS re-check process relevant to their role, they cannot continue to undertake the work that requires the DBS re-check until the DBS re-check is complete. Completion means either:

- the DBS check has not disclosed any information that requires further action or
- following receipt of a trace, the Director has endorsed a risk assessment which enables the individual to continue in employment.

In addition to periodic re-checking to ensure that individuals in relevant roles are continuously assessed for their suitability, it is a requirement that employees and other types of workers inform their manager of any cautions, charges or

convictions at the earliest opportunity. Failure to do so may result in disciplinary action.

This requirement is also in the WCC Employer and Employee Responsibilities Code which states:

'You are required to inform your line manager if you are ever cautioned, charged with, or convicted of a criminal offence. Please note this includes motoring offences other than those dealt with by fixed penalty notices'.

'Your line manager will be required to carry out an assessment in conjunction with an HR Advisor to see whether any action, including formal disciplinary action, should be considered in the light of the changed circumstances'.

If there are concerns about an individual's suitability to continue working with children, vulnerable adults or in a regulated role then there is the discretion to undertake a further DBS check. Due to the requirements of the DBS check process the individual concerned must give their consent for the DBS check to be obtained. The HR Advisory Service should be contacted in this situation.

If as a result of a re-check, self disclosure or other information such as a caution, charge or conviction comes to light that impacts on an individual's capacity to carry out their role, in the first instance the Risk Assessment Process should be followed. If the outcome of that Process is that further action is required, then formal disciplinary action may be taken. Ultimately this could result in dismissal.

Applicants who have a criminal record

We actively promote 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. Having a criminal record alone should not automatically bar an individual from a role. The disclosed information should be fully risk assessed by Managers to identify and consider any potential risks of hiring or continuing the employment of an individual. For more detailed information we have a Policy for the Recruitment of ex-offenders.

There are a number of factors that should be considered when undertaking the risk assessment and before a final decision can be made. These include:

- The seriousness of the offence raised and the subsequent impact for those who use WCC services
- The relevance of the offence to the individual's role
- Statutory requirements, for example, complying with the Barred Lists
- When the offence was committed and time elapsed since
- Any further explanation regarding the offence provided by the individual
- Whether the individual declared the offence on their self-declaration

A Manager's Guide - Criminal Disclosure & Barring Information Investigatory Interview Guidance is available and provides a detailed process to be followed.

Managers must send the Risk Assessment to their Director who will decide on whether an appointment can continue.

DBS checks carry no absolute guarantee of accuracy. Where an individual disputes the information provided in a DBS check, that dispute will need to be resolved before we can reach a recruitment decision or conduct a final risk assessment for existing workers. In the final analysis, if it should prove impossible to resolve matters by other means, a fingerprint check may be sought, via the DBS, to determine whether the record in question relates to the applicant.

DBS Update Service

The DBS Update Service allows individuals to keep their DBS check certificates up to date, and employers to make DBS checks on a worker's DBS certificate. It is for standard and enhanced DBS checks only. Any individual who has a standard or enhanced DBS certificate can now apply to join the Update Service. Criminal convictions are immediately added to a DBS record. "Soft information" (any information which does not relate to formal police or court action that a police force holds on a person) from police intelligence is updated every 9 months. If an external applicant is registered with the DBS Update Service and if the level of check is appropriate to the role and their current certificate remains valid, it will be accepted as a portable DBS check which Recruitment can access.

Volunteers requiring an enhanced check are strongly encouraged to register to join the DBS Update Service as it is free of charge for those volunteering and can make it easier for their Line Manager to check their status. For employees or agency workers there is an annual charge for membership of this service, which is payable by the individual applicant, worker, or employee.

Individuals can register online (<https://secure.crbonline.gov.uk/crsc/subscriber>) as soon as they have an application form reference number when submitting a DBS online application, or alternatively they can wait and register within 19 days of their DBS certificate being issued.

Employees must inform Recruitment that they have joined the Update Service if they are notified that a DBS check is required, in order to speed the DBS check process up. However, if responsibilities have changed and a higher level of check is required, the full DBS checking process will need to be followed.

Useful Links

Criminal Records Checks for Overseas applicants

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

DBS Code of Practice

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

DBS Eligibility Guidance - A collection of documents that you can use to decide whether a role is eligible for a basic, standard or enhanced DBS check and which roles are covered

<https://www.gov.uk/government/collections/dbs-eligibility-guidance>

Regulated Activity – working with Children

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739154/Regulated Activity with Children in England.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739154/Regulated_Activity_with_Children_in_England.pdf)

Regulated Activity – working with Adults

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739152/Regulated Activity with Adults in England.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739152/Regulated_Activity_with_Adults_in_England.pdf)

New Filtering Rules for DBS Certificates

<https://www.gov.uk/government/publications/filtering-rules-for-criminal-record-check-certificates/new-filtering-rules-for-dbs-certificates-from-28-november-2020-onwards>

Rehabilitation of Ex-Offenders (to follow)

Warwickshire County Council's Interview Guidance for Managers

[Criminal Disclosure & Barring Information Investigatory Interview Guidance for Managers \(DOC, 1.13 MB\)](#)

Roles and Responsibilities

Everyone has a part to play in ensuring the safety of our customers. Set out below are the roles and responsibilities of all those involved in processing DBS criminal record checks and safeguarding employees and customers.

Responsibilities of Directors

- Ensure that the processes required in this policy are undertaken by their Services (including for locally recruited employees and volunteers); initiating remedial action as necessary to ensure compliance.
- Where there is a DBS check information that requires further action, self-disclosure, or other relevant information arises, to ensure an appropriate risk assessment is undertaken, and to take responsibility for an appropriate decision, for example, determining whether that individual can start carrying out activities or duties. If the application is approved, to upload information to HR-ER and inform Recruitment of the outcome.

The requirement for Directors to make such a decision would be in exceptional circumstances, where they consider it is appropriate for new recruits whose post will be undertaking regulated activity to commence work before a DBS check has been completed or when an existing employee, agency, self-employed, casual worker or volunteer has DBS check information which requires further action.

Responsibilities of Managers

- Ensure that new employees, agency, casual, contingent workers, and volunteers have appropriate pre-employment vetting checks.

- That volunteers, interim employees and agency staff have had appropriate vetting checks and records confirming these checks are securely maintained.
- Ensure that re-checks for employees/agency/casual/contingent workers and volunteers are carried out in line with this Policy.
- Ensure that when a DBS check results in information that requires further action, the risk assessment process is undertaken and recorded, taking advice from HR Advisory Service where necessary'
- Ensure employees do not continue to work in regulated activity if, after three months, their DBS re-check process remains incomplete.
- Ensure the ongoing re-assessment of posts as work changes, i.e. through restructures, to determine whether a role, and the individual that is or would carry it out require a DBS check and if it does contact Recruitment to carry out the check.
- Not to discriminate unfairly anyone as a result of information on a DBS check.

Responsibilities of Recruitment

Warwickshire County Council is a Registered Umbrella Body with the Disclosure & Barring Service and as such is responsible for:

- Controlling access to the information on the DBS Disclosure
- Ensuring the security of that information, storing and destroying the information, and ensuring that the necessary identification checks of the applicant have been made.
- Ensuring DBS Checks are received, handled and interpreted in compliance with the Revised Code of Practice for Check and Barring Service Registered Persons (and following any guidance issued by the DBS).

In addition, Recruitment will:

- Advise managers on the eligibility of posts for criminal record checks.
- Ensure that recruitment campaigns for posts requiring DBS checks include notification of this on the job advert and Person Specification.
- Manage the online DBS processing system and DBS application process, countersigning eligible applications and ensuring Legislative compliance.
- Manage DBS Update Service checks.
- Within the limitations of the Rehabilitation of Offenders Act 1974, require all applicants to provide details of their criminal record at an early stage and ensure that this information is only seen by those that need to see it as part of the recruitment process.
- Notify managers about individuals with DBS certificates that contain information which requires further action, and provide guidance, including on template forms, about the risk assessment process.
- Follow up outstanding DBS re-checks and risk assessments at one and two weeks after notification that a check is required, and if action has not been completed, issue a reminder to managers and employees.
- Provide monthly reports to Directors of outstanding applications and risk assessments that have not been completed.
- Provide an annual report to Corporate Board with the outcome of the Annual DBS recheck process.
- Ensure that new contracts with third party providers of agency workers include the requirement to DBS check as set out in this policy.
- Ensure all DBS information on the intranet and in documents is maintained.

- If there is suspicion that that a DBS check has been tampered with or that the DBS certificate may not be genuine then Recruitment will contact the DBS who will confirm whether or not it is valid.

Responsibilities of the HR Advisory Service

To provide managers and Directors with advice on this policy including:

- Assessing potential risk to vulnerable people or regulated activity if hiring or continuing to employ an individual whose DBS check results in information which requires further action.
- Managing situations where relevant allegations or disclosures of recent convictions have been made.
- Action which may be appropriate if the requirements of the policy have not been met.

Responsibilities of all those in roles for which a DBS Check is required

- To complete the annual re-check accurately and within the timescales required.
- Inform their manager of any police caution, criminal charge or conviction of a criminal offence which occurs during their employment. This includes all motoring offences other than those dealt with by fixed penalty notices.
- Comply with the Risk Assessment process by providing any information requested.

Data Protection and Storing Information Securely

Sensitivity of Disclosure Information

All information disclosed by the DBS or DBS applicants ('DBS Disclosure Information') is sensitive personal information and those who receive it must ensure all such information is treated with care and responsibility and in line with the obligations under the Data Protection Act 2018.

In accordance with section 124 of the Police Act 1997, DBS Disclosure Information is only passed to those who are authorised to receive it in the course of their duties. It is a criminal offence to pass this information to anyone who is not entitled to receive it.

Security and Storage

All DBS Disclosure Information will be kept securely online using the DBS E-Bulk system or HR-ER, and only those entitled to see it in the course of their duties will have access.

Hard copy documents must be kept in locked, non-portable storage containers. Keys or combinations for such storage units will not be freely available and access will be restricted to named individuals.

Retention of Disclosure Information

Notification of clear DBS Disclosures will be received online via E-Bulk. A record of this will be stored securely on HR-ER.

Hard copy DBS Disclosure Information will be destroyed by suitably secure means, i.e. shredding, pulping or burning. It will not be kept in any insecure receptacle whilst awaiting destruction.

Warwickshire County Council also complies fully with its obligations under the Data Protection Act 2018 and other legislation pertaining to the safe handling, use, storage, retention and disposal of DBS Disclosure Information.

All DBS Disclosure certificates will be retained securely on the individual's electronic file with the express written consent of the applicant. The certificate and any related risk assessment notes will be stored and processed in accordance with the Data Protection Act 2018. Personal information will be treated confidentially and will not be disclosed to any third party except; (i) with the prior agreement of the applicant, or (ii) as required by law.

Assurance

Warwickshire County Council will co-operate with requests from the DBS to undertake assurance checks as to the proper use and safekeeping of DBS Disclosure Information and will report to the DBS any suspected malpractice in relation to the DBS Code of Practice or any suspected offences in relation to the misuse of DBS Disclosure Information.

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