



DISCLOSURE AND BARRING SERVICE (DBS) POLICY

1. Aim of this Policy and Procedure

This policy and procedure is to ensure that Blackburn with Darwen Borough Council ("the Council") complies with the requirements of the Rehabilitation of Offenders Act 1974 (and associated legislation), the Police Act 1997 and the Protection of Freedoms Act 2012 in connection with the use of information provided to registered persons ("Disclosure Information") and subsequent guidance issued by the Disclosure and Barring Service. This policy satisfies the requirement for Blackburn with Darwen Borough Council to obtain criminal record information and checking of the barred list on individuals seeking to work with children and adults deemed to be vulnerable, and other occupations involving positions of trust.

2. Scope of Policy and Procedure

This policy will apply to:-

- all posts which are included in Rehabilitation of Offenders Act (Exceptions) Order 1975
- all posts which are covered by the Police Act 1997
- all posts which involve regulated activity as defined by Safeguarding Vulnerable Groups Act 2006 / Safeguarding Vulnerable Groups Order 2007
- the procurement of services from contractors and commissioned services falling into the above categories.
- Multi agency activity which the Council is involved
- Student placements, work experience, casuals.

A disclosure is not a substitute for other pre-recruitment responsibilities. The Council should scrutinise previous employment history and references. If an applicant has worked with vulnerable groups previously, the most recent such employer (or employers, if there are several in a short time) should be contacted and asked whether they have made a referral of any misconduct to the Disclosure and Barring Service, for possible barring.

3. Matters dealt with under this policy and procedure

- Disclosure and Barring vetting for employees working with Children or Adults deemed to be vulnerable
- Advertising, recruitment and offers of posts within the Council relating to positions of trust, work with vulnerable people and regulated activity.

4. Principles

This policy will confirm the Council's approach to:

- Good practice in relation to the recruitment and retention of employees and potential employees.
- Ensure the protection of both children and adults.
- Ensure it meets the requirements of the Rehabilitation of Offenders Act 1974 and the ROA 1974 (Exceptions) Order 1975 (Amendment (England and Wales) Order 2013 (including filtering of 'Protected' offences)
- Protection of Freedoms Act 2012
- Update its processes following changes to 'Regulated Activity' with effect from 10 September 2012

The Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012 set out the activities and work that are 'regulated activity', which a person who has been barred must not do. The Government has amended the definition/scope of regulated activity to focus on work which involves close and unsupervised contact with vulnerable groups including children. The activities and work which are no longer included in/defined as 'regulated activity' post September 2012 will still be eligible for enhanced DBS checks (but they will no longer be eligible for barred list checks).

5. Standard Council Procedure

5.1 Advertising

Prior to advertising a post, the Recruiting Manager must define the level of DBS Disclosure by reference to the departmental list and / or the DBS Panel.

The level of disclosure to be undertaken should take account of both primary and secondary posts and should be carried out at the highest level (Refer to DBS Guidance Document)

When a post designated as exempt under the Rehabilitation of Offenders Act 1974, either internally or externally in the press, the advertisement must contain the following statement:

This post is exempt from the
Rehabilitation of Offenders Act 1974. Any
offer of employment will be subject to a

satisfactory check supplied by the Disclosure and Barring Service. The check will include any convictions, cautions, reprimands or final warnings which are not “protected” as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) Order 2013

Application forms will contain reference to the Council’s ability to request information relating to an individual’s convictions and should also confirm the position regarding the new filtering rules (i.e. “Convictions, cautions, reprimands and final warnings which are “protected” as defined by the Exceptions Order (as amended) will not be disclosed to the Council by the DBS. Full information about this is available at www.gov.uk/dbs”).

Because applicants are not always clear about whether they need to disclose convictions, where a post warrants a DBS check, applicants should be advised that all convictions, cautions, reprimands and final warnings, whether spent or unspent need to be disclosed, other than those which are “protected” under the 2013 Amendment to the ROA 1974 (Exceptions) Order 1975.

Application forms must carry a statement to the effect that a conviction will not necessarily be a bar to employment and that disclosure information will not be used unfairly. Applicants should receive a copy of the Council’s policy on the recruitment of ex-offenders (where a post will involve a DBS disclosure) and be advised that copies of the DBS Code of Practice are available on request.

5.2 Shortlisting

Full consideration will be given to candidates who declare previous convictions, against their suitability for the post, measured against the person specification.

Where a post is exempt for the Rehabilitation of Offenders Act 1974, applicants will be required to declare both spent and unspent convictions, cautions, reprimands and final warnings unless the offence falls within the ROA (Exceptions) Order 1975 (Amendment) Order 2013. Under this Amendment Order, from 29 May 2013, the DBS will filter certain specified old and minor offences from criminal record certificates issued from that date onwards. The filtering rules, together with the list of offences that will never be filtered, are available from www.gov.uk/dbs .

Not all applicants may be aware of these changes and some may have valid portable CRB certificates issued before 29 May 2013 which still contain information which would have been filtered/removed from the certificate if it had been issued after 29 May 2013. Should an applicant disclose any information which would now be filtered under the new rules, verbally, or in the application form, or on a DBS certificate issued prior to the 29 May 2013, this information **must** be disregarded and **must not** be included/ considered in any part of the recruitment process.

If the Panel consider the offence(s) disclosed on an application form (other than a “protected” offence as mentioned above) to be serious, but the applicant meets all other shortlisting criteria, then the Chairperson must discuss the situation with the named departmental Chief Officer or nominated officer. The named departmental Chief Officer or nominated officer will then make the decision as to whether or not the offence is compatible with employment to the post in question in discussion / liaison with the Director of HR, Legal & Corporate Services.

Factors taken into account should include:-

- The seriousness of the offence;
- Length of time since the conviction;
- Age of applicant at time of offence.
- The individual’s suitability for the post, against the person specification.
- Whether the offence carries an automatic ban from work in a regulated position
- N.B. - Should any applicant disclose any information about a “protected” conviction, caution, reprimand or final warning verbally, or in the application form, or on a DBS certificate issued prior to the 29 May 2013, this **must** be disregarded and **must not** included/considered in any part of the recruitment process.

5.3 Interview

It is the responsibility of the successful applicant to complete an on-line application through e-Bulk. Details will be provided to the successful candidate by the HR Service.

At interview, or in a separate discussion, an open and honest discussion must take place on the subject of any offences or other matter that might be relevant to the position. The applicant must be informed if the post is exempt from the protection of the Rehabilitation of Offenders Act 1974 and reminded that in such cases, all convictions etc should be disclosed other than those which are “protected” under the 2013 Amendment Order.

The Recruiting Panel must take into account:-

- The seriousness of the offence;
- Length of time since the conviction;
- Age of applicant at time of offence.
- The individual’s suitability for the post, against the person specification.
- Whether the offence carries an automatic ban from work in a regulated position

- N.B. - Should any applicant disclose any information about a “protected” conviction, caution, reprimand or final warning verbally, or in the application form, or on a DBS certificate issued prior to the 29 May 2013, this **must** be disregarded and **must not** included/considered in any part of the recruitment process.

Where posts entail working with vulnerable groups, a second interview should be prepared to explore with applicants their attitudes towards the care of children or adults and their perceptions about boundaries of acceptable behaviour towards them.

Failure to reveal disclosable information may lead to the withdrawal of an offer of employment or to an individual being subject to the Formal Disciplinary Procedure. The seriousness of the offence and any reason given by the applicant for their failure to reveal it should also be taken into account.

5.4 Making an Offer

Where the post is eligible for/requires a DBS check, offers of employment should be made subject to a satisfactory DBS check. Individuals should **not** commence in post until a satisfactory DBS clearance is received, unless both of the following criteria are satisfied:

- the individual is moving directly from a school or Council department within the Local Authority; and
- the individual has had a DBS check in the last three years (which is shared with the Council and is satisfactory).

In exceptional circumstances, an individual may take up their post prior to receipt of their satisfactory DBS Disclosure. However, this can only be authorised by the Director. Before this occurs, it must be stressed to the successful applicant that the offer is conditional, subject to receipt of a satisfactory DBS disclosure and that the offer may be withdrawn if the DBS disclosure is not satisfactory. This **must** also be confirmed in the written offer of appointment letter which will outline the conditions to which the offer of appointment is subject.

In these circumstances, the recruiting manager must also ensure that a full risk assessment is conducted (See DBS Managers Guidance) and that all appropriate safeguards are put in place to ensure that services users are not exposed to any potential risk. Managers **must** ensure that the DBS clearance is duly received for these employees.

Employees who have not received their DBS clearance should not be allowed to carry out unsupervised work with vulnerable people.

Directors of employees awaiting DBS clearance must review the situation on a weekly basis.

All DBS certificates will be sent to the applicant and not the employer. The offer will remain conditional, and normally the applicant should not be permitted to commence employment until the applicant produces their DBS certificate to the HR Service for verification.

6. Satisfactory DBS Disclosures

The HR Service will provide the DBS number and valid date via email to the hiring manager.

6.1 Adverse DBS Disclosures (New Applicants)

Where a DBS disclosure reveals adverse information (other than in relation to a relevant Barred List) the HR Service will pass this information to the named departmental Chief Officer or nominated officer. The departmental Chief Officer or nominated officer must make arrangements to discuss the details of the DBS certificate with the individual fully, prior to any employment decision being made. During this meeting the named departmental Chief Officer or nominated officer must complete the risk assessment form.

Based on the outcome of this discussion, the decision on whether to confirm the appointment or to withdraw the offer should be made by a named departmental Chief Officer or nominated officer. This decision should be based upon the details of the discussion with particular emphasis on the nature of the criminal record, taking into account whether or not the individual had previously disclosed convictions, cautions, reprimands and final warnings (save those which are 'protected').

Once a decision has been made by the named departmental Chief Officer or nominated officer they will inform the chair of the recruitment panel whether or not they can appoint the individual. The applicant must be informed of the outcome in writing within 5 working days. No other information will be provided to the panel. If the candidate requests additional feedback as to the reason then they should be directed to the named departmental Chief Officer or nominated officer.

Some offences carry an automatic ban from working in a regulated position and these are detailed in (see DBS guidance document). Where a candidate who is barred from working with children or adults applies for such a post, the nominated Chief Officer must relay that information to the appropriate authorities.

The Council must not discriminate unfairly against an applicant on the basis of a conviction or other information revealed in a DBS disclosure.

If the police use their common law powers to disclose additional information to the Council which is deemed to give rise to concerns about an employee's suitability for a post then a full investigation will take place and a Risk Assessment Form will be completed by the Nominated Officer. Depending on the severity of the allegations, this could lead to disciplinary action up to and including dismissal.

The Risk Assessment form shall be kept on file for 6 months.

6.2 Decision to Appoint

If a decision to appoint is made, confirmation should be forwarded to the HR Service. A record of the meeting held with the applicant regarding the disclosure should be made and maintained on the individual's personnel file. The named departmental Chief Officer or nominated officer must return the completed Risk Assessment form to the HR Service. Risk assessment information will be retained for a limited period of time (this is normally for a period of six months to allow for any queries or complaints to be resolved) in accordance with DBS protocols. This should be confirmed in writing to the individual within 5 working days.

6.3 Decision not to Appoint

If a decision is made not to appoint, confirmation should be forwarded to the HR Service for placement on the recruitment interview file (or personnel file if the applicant is a current employee), a record of the meeting held with the applicant regarding the disclosure should be made and maintained with the post recruitment documents and be stored securely. The named departmental Chief Officer or nominated officer must return the completed Risk Assessment form to the HR Service. Risk assessment information will be retained for a limited period of time, (this is normally for a period of six months to allow for any queries or complaints to be resolved) in accordance with DBS protocols.

Decisions will be made on the basis of an assessment of any possible risk to children or adults, rather than the simple fact of a conviction or other information disclosed. Where there is a significant doubt, however, the decision will always ensure the safety and welfare of children and adults. This should be confirmed in writing to the individual within 5 working days.

7. Adverse DBS Disclosure (Existing Employees)

Where an employee fails to disclose any convictions, cautions, reprimands and final warnings (save those which are "protected" under the (Amendment) Order 2013), or where an additional DBS disclosure reveals a conviction, caution, reprimand or final warning, the named departmental Chief Officer or nominated officer should meet with the individual to discuss the disclosure and complete a Risk Assessment Form. The Council must not discriminate unfairly against the individual. During the meeting, consideration should be given to the nature of the offence and the potential implications this has on an employee's suitability to perform in the role in which they are employed. In some instances, this could lead to disciplinary action being taken up to and including dismissal.

The named departmental Chief Officer or nominated officer must return the completed Risk Assessment form to the HR Service. Risk assessment information will be retained for a limited period of time, in accordance with DBS protocols

8. Regular DBS Disclosures

In order to ensure the continued suitability of employees, the Council will carry out regular DBS disclosures every three years, as agreed at LJNCC on 1st September 2004. Where an employee obtains an additional role that also requires a DBS, no further check will be required provided that:

- There has been no break in service
- The check has been carried out within the last three years
- The check is at an appropriate level or higher

If the check carried out on the existing role is at a lower level, a new check will be required at the appropriate level.

Any re-checks will be carried out 3 years following this disclosure issue date.

It is a condition of an employee's contract of employment that they submit to a DBS request when required to do so. Any unreasonable refusal to do so will be viewed as a breach of their contract which could potentially result in disciplinary action up to and including dismissal. Employees are also required to notify their line manager of any matters that could reasonably be perceived as affecting the performance of their duties including any conviction, caution, reprimand or final warning which would be disclosed on a DBS certificate.

9. The Update Service

As at 17th June 2013, individuals are able to apply to have their criminal record check kept up to date easing the administration of the regular re-checks as employers are able to go online to see if the information is still current and valid. This service requires an annual subscription fee of £13.00 per applicant which will be reimbursed by the Council for the duration the employee remains in a post with the Council subject to regular re-checks. This service is available to Council employees from 1st October 2013. Employees can submit their proof of payment for the update service for reimbursement. Once paid any requests from the organisation to re-check an employee's DBS status may not be declined.

10. Links to other Policies/Documents

- [DBS Guidance](#)
- [Recruitment and Selection Policy](#)
- [Rehabilitation of Offenders Act 1974 and other legislation.](#)
- [DBS Chief / Nominated Officer Guidance](#)

11. Further Guidance

If you require further advice regarding the application of this policy and guidance please contact the HR Service via the contact details for your Programme Area – [Click Here](#)

12. Policy Review

This policy will be reviewed in accordance with any changes to statutory legislation and in consultation with the recognised trade unions.

13. Approving Body & Date

LJNCC: 17 July 2013