

Disclosure of Criminal Convictions Code of Practice **- Using On-line Checking Provider**

1. Scope

This code of practice is recommended for adoption by the governing bodies of community, voluntary controlled, voluntary aided and foundation trust schools. Academies can also consider using this code as good practice as some of the guidance is underpinned by statutory requirement, whilst the rest is strongly recommended as safer recruitment practice.

2. Purpose

The purpose of this code of practice is to give details of the disclosure and barring checks that need to be made for all people who wish to work in a school setting, as well as for volunteers. In the case of applicants for paid employment, it includes guidance on how these checks relate to the recruitment process. It will help schools adopt robust vetting procedures that minimise the risk of employing people who pose a risk of harm to children.

3. Legal Considerations

- This code of practice reflects the School Staffing (England) Regulations which require Governing Bodies to undertake all relevant employment checks for all new appointments to the school workforce.
- Provisions on the scope of 'Regulated Activity' as defined by the Safeguarding Vulnerable Groups (SVG) Act 2006, as amended by the Protection of Freedoms Act 2012.
- All paid employment posts in schools are exempt from the Rehabilitation of Offenders Act 1974.
- Requirements for additional checks on those providing or responsible for the management of 'relevant childcare' under Disqualification under the Childcare Act 2006 statutory guidance.

4. General Policy on Disclosures

- Person specifications for all schools posts must refer to the requirement for disclosures at the enhanced level including the barred list check for children.
- Possession of a conviction or indication of any other matter on a certificate of disclosure will not necessarily prevent the person being employed. The head teacher or, where appropriate, governing body will consider relevant factors before reaching a decision.

- Schools pay for Certificates of Disclosure directly. The process is administered by Employee Services through their Service Level Agreements with schools.
- Checks for volunteers are free however it must be noted that volunteers are NOT generally checked against the barred list for working with children as it is assumed that they will not meet the definition of 'regulated activity' as defined in legislation ie they will be supervised. Where volunteers will be unsupervised, an enhanced disclosure and barred list check must be undertaken as for paid staff in school.
- Before an offer of appointment is confirmed the Head teacher or governing body must confirm from GBG (the Local Authority's online DBS checking provider) whether the candidate's record is clear or shows a trace ie convictions are on record. This requirement applies in all cases, except where the candidate already has a certificate of disclosure at the appropriate level for working with children obtained by the City Council and the portability policy described below applies; also if the candidate is registered with the online update service and gives permission for their certificate to be verified online.
- Where a trace is identified the original certificate of disclosure must be seen and be considered by the head teacher, or where appropriate governing body, before an offer of appointment is confirmed.
- A request for a disclosure may be made at any time if the school or authority has grounds for concern about the person's suitability to work with children.
- If the candidate disputes the information provided on the certificate of disclosure, it is his/her responsibility to contact the DBS direct and arrange for further checks to be made.
- The certificate of disclosure will be sent direct to the individual, the information held by GBG online will generally provide all relevant information to allow the schools to maintain and update their own single central record unless a trace is identified.
- Employee Services will maintain on behalf of schools a record of the date of the disclosure, the name of the subject, the type of disclosure, the position in question, the unique number issued by the DBS and the recruitment decision taken.

5. Individuals who require a DBS check including a 'Barred from working with children' check

5.1 Enhanced disclosures and barred list check for all employees

Enhanced DBS disclosures, including the barred from working with children check, are mandatory for **all new** appointments to the school workforce. All school employees are considered to be in 'regulated activity' - working in unsupervised activity in a specified place ie a school.

A new appointment is defined as anyone who:

- has not previously worked in a school within Newcastle Local Authority;
- has been out of the workforce for more than three months; or,
- moves to work that involves greater contact with children, and where their previous work did not require an enhanced DBS check and/or barred list check for children.

Where existing staff change jobs within their current school a further disclosure is not necessary if a relevant check has been obtained via the City Council.

It is not necessary to ask existing staff in post, who were not previously eligible for criminal background check (including those recruited before the establishment of the CRB) to apply for a DBS Disclosure unless:

- there are concerns about the person's suitability to work with children; or
- an individual moves to work with children and their previous work did not require an Enhanced Disclosure and barred list check.

5.2 Portability Policy

5.2.1 Portability describes the process of using a DBS Disclosure which has been gained in one job and applying it to another job. This will apply to employees changing jobs within the Local Authority and will not apply to external people who are applying for employment in a school, and who have a DBS Disclosure from another organisation. The LA will not accept a DBS Disclosure from any other organisation unless the individual is registered with the online update service.

If an individual is registered with the on-line update service, has a certificate at the right level (enhanced) and for the right workforce group (children); an on line status check can be undertaken with their permission. If this is clear then the certificate can be accepted; if there have been updates/changes

since the certificate was issued then a new check would need to be undertaken in the normal way.

In order for portability to apply the following criteria must be met:

- the original DBS disclosure has been undertaken by the LA;
- it is at the enhanced level including a barred list check;
- it is for the right client group that is children;
- no issues relevant to the post have been identified on the DBS Disclosure; and
- other checks such as identity, qualification, prohibition, disqualification, right to work in the UK and references have been checked.

5.2.2 Portability brings a number of risks with it that must be managed:

- the disclosure may not be at the right level;
- a disclosure is only accurate at the time it is done. The person's criminal record or other relevant information may have changed since the disclosure was issued;
- information (other than level, date and disclosure reference number) on disclosures can only be held for 6 months.

5.2.3 Head teachers, or where appropriate governing bodies, must undertake an assessment using the DBS Disclosure portability assessment form to record the use of the portability policy and decision process. This must be sent to Employee Services.

5.3 Volunteers

To qualify for a free disclosure a volunteer must be a person engaged in an activity which involves spending time, unpaid (except for travel and other approved out of pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative.

It is assumed that in most cases, volunteers will be supervised and therefore schools are not permitted to undertake a barred list check. An enhanced DBS check can still be undertaken and this is recommended safer recruitment practice.

Head teachers/Governing Bodies should consider obtaining enhanced DBS disclosures where the volunteering is regular and involves contact with children as follows:-

- the duration, frequency and nature of contact with children; and then,

- what the school knows about the volunteer, including formal or informal information offered by staff, parents and other volunteers;
- whether the volunteer is well known to others in the school community who are likely to be aware of behaviour that could give cause for concern;
- whether the volunteer has other employment, or undertakes voluntary activities where referees would advise on suitability; and,
- any other relevant information about the volunteer or the work they are likely to do.

If a volunteer will be undertaking unsupervised work then they will be in regulated activity and therefore must have an enhanced DBS disclosure and barred list check undertaken as for paid employees.

5.4 Third parties on school premises

Requirements placed upon schools relating to existing staff and volunteers at the school extend to incorporate those involved in the provision of extended services.

Where the governing body provides services or activities directly under the supervision or management of school staff, the school's arrangements for criminal record checks and record keeping will apply.

Where a third party is responsible for running the services there should be clear lines of accountability and written agreements setting out responsibility for carrying out the checks on staff. This also applies in the case of Sure Start Children's Centres.

Where services or activities are provided separately by another body, the governing body should be satisfied that the provider concerned has appropriate policies and procedures in place regarding safeguarding children and child protection including those for staff appointments. There should also be arrangements to liaise with the school on those matters as appropriate.

Children should not be allowed in areas where builders are working for health and safety reasons, so these workers should have no contact with children. However schools should ensure that arrangements are in place with contractors, via the contract where possible, to make sure that any of the contractors' staff that come into contact with children have appropriate checks in place.

PFI contract staff must be checked by the contractor in the same way as school employees

6. Individuals who do not require a DBS check

It is not necessary to check visitors who will only have contact with children on an ad hoc or irregular basis for short periods of time, or secondary pupils undertaking voluntary work or work experience in other schools. Examples of people who do not require a DBS disclosure include:

- visitors who have business with the head teacher or other staff or who have brief contact with children with a member of staff present;
- visitors or contractors who come on site only to carry out emergency repairs or service equipment and who would not be expected to have unsupervised access to children;
- volunteers or parents who only accompany staff and children on one off outings or trips that do not involve overnight stays, or who only help at specific events e.g. a sports day or a school fete;
- secondary pupils on KS4 work experience, in other schools or nursery classes; secondary pupils undertaking work in another school as part of voluntary service, citizenship or vocational studies; or KS5 or 6th Form pupils in connection with a short career or subject placement. (In these cases the school placing the pupil should ensure that he/she is suitable for the placement in question);
- people who are on site before or after school hours when children are not present: e.g. local groups who hire premises for community or leisure activities.

7. Appointments to posts subject to an enhanced disclosure

7.1 Procedure for obtaining a declaration of criminal convictions and DBS certificate of disclosure

All posts in schools are subject to declaration of criminal convictions and require an enhanced certificate of disclosure and barred list check to be obtained.

All applicants for posts in schools are asked to complete a safe recruitment form. The returned form should be discussed with all candidates at interview, even where no convictions have been disclosed.

After the final selection stage a conditional offer of appointment can be made to the chosen candidate subject to the receipt of a satisfactory certificate of disclosure (in addition to the other necessary pre-employment checks).

Under no circumstances should an unconditional offer of employment be made.

Only the candidate who has been offered the job conditionally is required to apply for a certificate of disclosure. The head teacher must provide the candidate with a Disclosure Registration Form. The form provides the candidate with guidance and information to enable them to register direct with GBG Online Disclosures and to complete their DBS application on line.

The school must request sight of the candidate's original supporting documents used for the registration process. The school must take photocopies for the file and verify sight of these via GBG Online once the candidate has registered their details. When the applicants identity has been verified the school will authorise GBG to carry out all necessary DBS checks. We anticipate that the majority of criminal record checks undertaken through the GBG on line process should be completed within 5 days.

It is the Head teacher's responsibility to ensure that all staff obtain DBS Disclosures within a reasonable timescale.

The head teacher has discretion to allow an employee to start work pending receipt of a DBS certificate of disclosure. S/he should consider carefully the circumstances of the situation before doing so. **If the person is going to be working in relevant childcare provision the head teacher should undertake the disqualification check to ensure that the person is not 'disqualified' from working with children before allowing them to start work in that area.**

When the DBS disclosure has been processed, a certificate of disclosure is sent to the applicant ONLY. The school will receive an email from GBG Online to indicate that the check is complete. The school must log into GBG Online to view the actual outcome of the check which will confirm whether or not the check was clear.

If the check is clear individual can start work and the school can proceed with the appointment process and update their single central record. Employee services will print off the confirmation for the individuals file.

If the check is **not clear** the school must ask the candidate to provide them sight of the original certificate containing the conviction information within five working days to determine whether or not to proceed with the appointment.

Schools are responsible for obtaining sight of the original certificate where GBG Online confirm that the check is not clear and must verify its authenticity:-

- ID check
- Check certificate is for the named applicant
- a 'crown seal' watermark repeated down the right hand side, visible both on the surface and when holding it up to the light

- a background design featuring the word 'Disclosure', which appears in a wave-like pattern across both sides of the certificate; the pattern's colour alternates between blue and green on the reverse of the certificate
- ink and paper that change colour when wet.

A photocopy of both sides should be taken which is signed and dated to verify the original has been seen; this should be retained by the school for a maximum period of 6 months.

When a decision is reached to continue with the appointment the Head Teacher must complete and authorise a DBS trace form giving their approval to appoint and send it to Employee Services who will hold it on the individual's file.

7.2 Dealing with a declared criminal record before or at interview

The existence of a criminal record or other relevant matters is not necessarily a bar to an individual obtaining a position. Obviously some convictions are of such a nature as to render a person unfit to work with children or vulnerable adults; however, it is impossible to compile an extensive list of offences which automatically prevent someone from working with children.

In deciding whether a declared conviction or other relevant matters affects an applicant's suitability, the information supplied to the employer must be discussed with the candidate before or at interview. This includes seeking more information about the detail of the conviction where necessary.

The following factors must be considered before making a decision on whether the candidate is suitable to appoint:

- whether the conviction or other matters is relevant to the position in question;
- the seriousness of any offence revealed;
- the length of time since the offence or other matter occurred;
- whether the applicant has a pattern of offending behaviour or other relevant matters; and,
- whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters.
- Whether the person is to work in relevant childcare provision and therefore whether the disqualification regulations are applicable ie is the person disqualified including 'by association'.

The school's decision is final.

If an individual's criminal record makes him/her unsuitable for employment in the post he/she has applied for, he/she should be informed of this as soon as the relevant information is received and has been considered. If their record means that they are disqualified the

person could not work in 'relevant childcare' until a waiver is applied for and granted by Ofsted.

7.3 DBS certificate of disclosure - undisclosed convictions revealed

Where the information provided by the DBS differs from that provided by the applicant, the head teacher, or where appropriate governing body, must discuss the discrepancy with the applicant. A decision on whether he/she believes the disclosure information means the applicant does not meet the requirement on the person specification to have no adverse convictions must be made.

In making this decision the criteria set out in 'Dealing with a declared criminal record before or at interview' above will be considered, as well as the fact that the candidate did not disclose the information when invited to do so on the safe recruitment form.

Where a candidate admits to a previously undisclosed conviction but claims the failure to disclose was an oversight it will be for the head teacher, or where appropriate governing body, to decide whether the explanation is credible.

If the applicant disputes the information provided on the certificate, then he/she should be advised to contact the DBS who will look into the matter. In such circumstances the head teacher or governing body should seek advice from HR Services.

If, following the discovery of convictions and consideration of their implication by the head teacher or governing body, it is decided that the individual is unsuitable for employment:

- a conditional offer of employment is withdrawn. A note must be made on the safe recruitment form and candidate assessment form that an unsatisfactory certificate of disclosure has been received. These documents should then be returned to the person co-ordinating the recruitment exercise for inclusion in the recruitment documents file;
- an employee who has already started work pending receipt of the DBS disclosure at the discretion of the head teacher may be subject to disciplinary and/or dismissal procedures, as set out in 'Starting work pending a DBS disclosure' below.

7.4 Starting work pending a DBS disclosure

Ideally a DBS check should be obtained before an individual begins work. However, head teachers have discretion to allow an individual to begin work pending receipt of the disclosure unless the individual is going to work in relevant childcare and is found to be 'disqualified'. Where it is necessary to engage a member of staff where the DBS check remains outstanding, head teachers must ensure that the employee is appropriately supervised at all times and the request for a

DBS disclosure has been submitted in advance of the individual starting work.

Head teachers must sign a declaration to this effect before the member of staff can be placed on payroll.

Appropriate supervision needs to reflect what is known about the person concerned, their experience, nature of their duties and the level of responsibility of the post.

For all staff without completed checks it should be made clear that they are subject to this additional supervision. The nature of the supervision should be specified and the roles of staff in undertaking the supervision spelt out. The arrangements should be reviewed regularly, at least every two weeks until the DBS check is received.

Where a disclosure indicates cause for concern, the member of staff must immediately be withdrawn from the school pending further enquiries.

If, following these initial enquiries, the head teacher considers that the employee has not declared his/her criminal convictions but that these convictions do not in themselves jeopardise continued employment, further investigation and appropriate action under the school's disciplinary procedure may be taken.

If the head teacher considers that the employee cannot continue in employment then the 'Procedure for Dismissal for Contravention of a Statutory Enactment or Some Other Substantial Reason' should normally be followed depending on the circumstances of the case. Further advice and guidance can be obtained from HR Services.

7.5 Supply staff with employee status

Supply teachers need to apply for a new disclosure when they are re-engaged if they have a break in service of more than three months.

7.6 Staff appointed from overseas

DBS Disclosures will not generally show offences committed by individuals whilst living abroad. Therefore in addition to an enhanced DBS Disclosure, additional checks such as obtaining certificates of good conduct from relevant embassies or police forces are necessary.

If it is not possible to get this information within a reasonable time scale, the delegated person(s) must take extra care in taking up references and carrying out other background checks. For example, additional references should be sought and references followed up by telephone as well as letter.

8. Considerations for agency staff, volunteers and governors

- Where staff are engaged through an external agency a satisfactory certificate of disclosure, barred list check, prohibition (for teachers) and disqualification (relevant childcare) must be a pre-requisite to the individual commencing work at the school. It is important that head teachers ask supply agencies to verify that the relevant checks have been made in writing.
- Head teachers must check that the person who comes to them from an Employment Agency is the person referred to by carrying out an identity check.
- Where appropriate, volunteers should be asked to complete the safe recruitment form and apply for an enhanced certificate of disclosure. A barred list check will not automatically be undertaken as volunteers do not generally meet the definition of working within regulated activity. As with employing staff, any convictions declared or revealed for volunteers should be considered by the head teacher in accordance with 'Dealing with a declared criminal record before or at interview' above. As with employees, volunteers may be engaged pending receipt of the disclosure certificate but the head teacher must ensure that a risk assessment and supervision are in place first.
- School governors in maintained schools are now required to have an enhanced DBS certificate excluding barred list check. The school should process these for any newly appointed governors as they would for staff/volunteers. If a criminal conviction is declared or stated on the DBS form, the considerations noted above in Section 8 will be followed.

9. Policy on security of disclosure information

Schools will need to comply with all requirements of the Disclosure and Barring Service on the security of information provided on Certificates of Disclosure. This policy covers the security of Disclosure documentation whilst in the possession of the School, and the confidential destruction of the documentation as appropriate.

9.1 Retention of Disclosure Documents

Certificates of disclosure and associated correspondence will be retained for a maximum of 6 months. This is a requirement imposed by the DBS and is to allow for any disputes about the accuracy of information on a certificate of disclosure to be resolved.

At the end of the 6 month period all documentation supplied by the DBS must be destroyed.

Schools must retain their own record of the checks which have been carried out on staff via their single central record.

9.2 Security of disclosure documents

Schools are responsible for ensuring that certificates of disclosure are stored in secure conditions.

Documents should be kept in lockable, non-portable filing cabinets and accessed only by those staff engaged in recruitment.

9.3 Disposing of disclosure documents

Disclosure documentation should be destroyed by shredding. Whilst awaiting destruction the documentation should be kept in a secure container.

9.4 Lost disclosures

If a disclosure is lost/misplaced, it must be reported to the DBS immediately.

Full details of the circumstances should be reported so that the DBS can consider whether it is appropriate to issue a replacement.

9.5 Retention of disclosure information

The only information from a certificate of disclosure which will be retained by the Council for more than the 6 month maximum is as follows:

- the date the certificate of disclosure was issued;
- the name of the subject;
- the type/level of disclosure;
- the position in question;
- the unique number issued by the DBS;
- the recruitment decision taken.

No further information will be retained.

9.6 Breaches of security

Breaches of this policy may be subject to action under the City Council's or school's disciplinary procedure, as appropriate.

10. Monitoring and review

Feedback is encouraged from governing bodies and head teachers on the effectiveness of this code of practice. It will be reviewed on a regular basis to ensure it is appropriate in light of recommended best practice and complies with statutory regulations. In the event of any conflict with statutory regulations, the legal provisions will have precedence over this procedure in all cases.

Revision Record of Published Versions			
Author	Creation Date	Version	Status
HR Services	30 March 2007	1.0	Approved by Executive Director of Children's Services
Changed by	Revision Date		
HR Services-JJ	16 April 2007	2.0	Clarification in para 6.1 re existing staff.
HR Services -JJ	31 December 2007	3.0	Approved by Executive Director of Children's Services - portability policy added
HR Services – AC	May 2013	4.0	Update/refresh re DBS changes
HR Services	Sept 2013	5.0	Update/refresh re DBS changes
HR Services	October 2014	6.0	Update re changes to Council policy
HR Services	April 2015	7.0	Update re Disqualification Regs
HR Services	Spring 2016	8.0	Update re online DBS checks; Governor checks