

# **DISCLOSURE AND BARRING SERVICE (DBS) POLICY**

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## 1 Introduction

- 1.1 The council is committed to safeguarding the welfare of those accessing our services through the effective use of the Disclosure and Barring Service (DBS) and exercising its statutory duty of care towards vulnerable members of society. This duty, however, must be carried out with due regard to the rights of individuals.
- 1.2 Criminal record checks are undertaken with other pre – employment checks, to assess the suitability of an individual to ensure robust recruitment practices. Other checks include: identity confirmation; eligibility to work in the UK; verification of relevant qualifications; taking up references; medical clearance and establishing full employment histories.
- 1.3 This policy includes policy statements on the Employment of Ex-Offenders at Appendix 1 and the Handling of Disclosure and Barring Information at Appendix 2.

## 2. Scope

- 2.1 This policy will apply to employees, those who volunteer or undertake work experience or student placements and elected members who have provided their consent for a check to be undertaken. In addition, fostering and adoption arrangements, licencing and school transport arrangements and any other regulated positions will also come under the provisions of the policy. It will also apply to those directly employed by governing bodies.
- 2.2 The requirement for a Disclosure and Barring Service (DBS) check relates to the nature of the duties being undertaken irrespective of the status of the contract.

## 3. Types of Disclosures and Barred List Checks

- 3.1 The Protection of Freedoms Act 2012 has resulted in a differentiation between positions which can legally have an Enhanced DBS check and those which can also legally be checked against the Children or Adult Barred Lists. The full list of checks available are as follows:
  - **Enhanced Check for Regulated Activity (Children)** - used when an individual is undertaking [regulated activity relating to children](#). This check involves a check of the police national computer, police information and the children’s barred list.
  - **Enhanced Check for Regulated Activity (Adults)** - used when an individual is undertaking [regulated activity relating to adults](#). This check involves a check of the police national computer, police information and the adults barred list.
  - **Enhanced Check for Regulated Activity (Children and Adults)** - used when an individual is undertaking regulated activity relating to both children and adults. This check involves a check of the police national computer, police information and the children’s and adults barred list.
  - **Enhanced DBS Check** - used where an individual meets the [pre September 2012 definition of regulated activity](#). This level of check involves a check of the police national computer and police information.
  - **Basic & Standard DBS Check** - used where an individual meets the [Safeguarding Vulnerable Groups Act 2006](#) or for roles requiring the check under the Baseline Personnel Security

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Standard (BPSS). These level of checks involve a check of the police national computer and does not include a check of police information or the children’s or adults barred lists.

- 3.2 The minimum age at which someone can be asked to apply for a criminal record check is 16 years old.
- 3.3 The eligibility criteria to be followed to determine the level of check required is set out in Appendix 3. Further advice can be sought from the Human Resources (HR) Lifecycle Team.
- 3.4 All DBS applications include an identity checking process, which is undertaken by the nominated verification officer.

#### **4. E-bulk – Electronic application system**

- 4.1 The council has a service level agreement with Powys County Council relating to the provision of services for online DBS checks.
- 4.2 This enables the online submission of electronic application forms to the DBS and receipt of results.

#### **5. Fees**

- 5.1 The fees applicable for DBS checks are set by the DBS service. The cost of DBS checks for employees is met by the service/school.
- 5.2 Employees who choose to join the update service will meet the annual subscription cost themselves.
- 5.3 Checks for volunteers are free of charge.

#### **6. Recruitment**

- 6.1 All recruitment responsibilities are set out in the council’s Recruitment and Selection Protocol and Managers’ Guidelines.
- 6.2 Where a post requires a criminal records check, this will be identified on the advert and job pack.
- 6.3 Where a DBS check is part of the recruitment process, applicants are requested to disclose details of their criminal record at the application stage. The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are “protected” and are not subject to disclosure and cannot be taken into account. Guidance and criteria on the filtering of these cautions and convictions can be found on the [DBS website](#).
- 6.4 Failure to reveal relevant information may lead to the withdrawal of an offer of employment.
- 6.5 Details of disclosed criminal records will only be seen by those that need to as part of the recruitment process. Recruiting managers and Head teachers shortlisting applicants with a disclosed criminal record should take account of all relevant circumstances prior to the applicant’s inclusion on the shortlist. Advice can be sought from a HR Business Partner.
- 6.6 It is an offence for the council or a Governing Body to employ someone to work in regulated activity if they have been barred by the DBS. Equally, if a barred person made an application they would be breaking the law. If the checks reveal that a candidate is on the barred list for regulated activity Human Resources will make a referral to DBS to notify them of the individual’s attempt to apply for barred work.

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## 7. Validity and Portability of DBS Disclosures

- 7.1 There is no period of validity for a DBS Disclosure. Whilst accurate at the time of issue, it is technically out of date following the date issued as a new conviction; caution etc. may be recorded against the individual at any time after the issue date.
- 7.2 All employees are required under their contract of employment to advise their manager if they are convicted or cautioned etc. Failure to do so will lead to disciplinary procedures being invoked.
- 7.3 Portability refers to the re-use of DBS Disclosures obtained for a position in one organisation and subsequently used for a position in another organisation. The council does not accept portable Disclosures for any position.
- 7.4 Where an individual has undertaken a DBS Disclosure for a position and they move to another position within the council, the DBS Disclosure will be acceptable in the following instances:
- the type of DBS Disclosure (i.e. Enhanced / Enhanced and relevant barred list check) is the same for the old and new post and
  - the individual has not had a break in service of more than three months and
  - the new work does not represent a significant increase in responsibility for, and contact with, children and/or adults.

## 8. Commencing employment prior to receipt of DBS Disclosure

- 8.1 In all circumstances every effort must be made to ensure a DBS Disclosure is obtained prior to an individual commencing employment. Only in exceptional circumstances can an employee take up employment without the full results of the DBS Disclosure being known.
- 8.2 Approval for this must be provided by the relevant Corporate Director or Headteacher, via a risk assessment form to confirm that sufficient safeguards are in place to ensure the individual has no unsupervised access to children or adults. This should also provide confirmation that: the correct recruitment and selection procedure has been followed; other pre-employment checks are satisfactory; whether a completed DBS Disclosure application form has been submitted.
- 8.3 The risk assessment form must remain in place until a satisfactory disclosure is received.

## 9. Recruiting from Overseas and UK Applicants who lived abroad

- 9.1 DBS Disclosures do not record convictions that were committed abroad. When recruiting candidates who have spent some time living or working abroad, a DBS Disclosure must be obtained in the normal way and a criminal records check or 'Certificates of Good Character' should be requested in accordance with home office guidance. Further guidance is available on the [DBS website](#).

## 10. The Update Service and Applicant Only Checks

- 10.1 If a DBS applicant has joined the DBS update service, the council can check a DBS certificate online, providing it has a legal entitlement to carry out the check and the applicant's permission.
- 10.2 The DBS update service enables applicants to keep their DBS certificates up to date online and allows employers to check a certificate on line. Registration lasts for one year.

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10.3 The DBS operates an “Applicant Only Certificates” policy. The e-bulk system that council uses identifies whether the check is clear or “adverse”.

## 11. Adverse Disclosures

11.1 When the council is notified of an adverse disclosure, the applicant must provide a copy of the full disclosure to the HR Lifecycle Team.

11.2 In cases where a DBS check reveals details of a criminal record or details of concern, the line manager or Head teacher will be informed and provided with advice on the next steps. Consideration will need to be given to all relevant circumstances including: the nature of the conviction; the nature of the appointment; date of the offence; frequency of the offence; and the outcomes.

11.3 In accordance with the Rehabilitation of Offenders Act, a criminal conviction may not automatically bar an individual from employment.

11.4 In relation to recruitment processes, the final decision on the appointment will be made by the relevant Head of Service or Head teacher

## 12. Rechecks for Employees

12.1 There is a statutory requirement to undertake rechecks every three years for employees governed by the Care Standards Act 2000.

12.2 Compliance with the rechecking policy is monitored regularly and referrals are made to the nominated Officer for resolution. Monthly updates are also provided to the Corporate Safeguarding Board for review.

12.3 Failure to engage with the rechecking policy by completing the DBS application form and providing appropriate evidence will have implications on continued employment. In such cases, employees will no longer be able to fulfil their duties and continue in their role and disciplinary procedures will be invoked.

12.4 Where an existing employee’s DBS Disclosure reveals details of a criminal record the procedure as outlined in paragraph 11 will apply.

## 13. Data Protection

13.1 All sensitive personal information is held securely, and only accessed by those entitled to see it in the course of their duties. All information will only be stored for as long as necessary, and then confidentially destroyed in accordance with the policy statement on Handling of Disclosure and Barring Information (Appendix 2).

13.2 The council’s HR fair processing statement includes reference to DBS checks.

13.3 Powys County Council’s fair processing statement in relation to electronic DBS applications can be found on the [‘Ebulk’ website](#). When completing the online application form, applicants are required to consent to the secure, confidential transfer of personal data to the DBS for the purposes of processing the application.

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## 14. Schools

- 14.1 All school based employees fall within the regulated activity definition and therefore an enhanced DBS and children's barred list check is required.
- 14.2 There is no requirement for routine DBS checks for governors unless they undertake additional duties that include regular work in the presence of children, or care for, train, supervise or are in sole charge of children.

## 15. Elected Members

- 15.1 Elected members are subject to a Basic Disclosure to demonstrate to the public that they can have trust and confidence in their elected representatives. This will also apply to the Mayor's consort.
- 15.2 In addition, Cabinet Members and Scrutiny Chairs, in line with their responsibilities to "discharge functions" relating to the social care of vulnerable people and children, are subject to an Enhanced DBS check to reflect the important role they play in scrutinising services that are delivered in relation to safeguarding and education functions.
- 15.3 All Members and the Mayor's Consort will need to individually consent to a DBS check being undertaken.

## 16. Agency Workers

- 16.1 The agency is legally the employer of agency workers and the responsibility to obtain a relevant DBS check is theirs. The manager or Head teacher requesting the agency worker should indicate the level of DBS required.
- 16.2 When using an agency worker, the line manager or Head teacher should have written confirmation from the agency that each worker supplied to them has had a satisfactory DBS check and checks against the Children's and/or Adult's barred list as required for that area of service.

## 17. Contractors

- 17.1 Where contractors require a DBS check, the manager or Head teacher should include this in the procurement documentation.
- 17.2 The organisation providing the contractor is legally the employer of any contractors and the responsibility to obtain a relevant DBS check is theirs.
- 17.3 The line manager or Head teacher should have written confirmation from the employer that each worker has had a satisfactory DBS check and checks against the Children's and/or Adult's barred list as required for that area of service.

## 18. Volunteers

- 18.1 Volunteers who are undertaking activity which meets the criteria for a DBS check are required to undertake a relevant DBS check.
- 18.2 With regard to volunteers, when determining whether a check is required, consideration needs to be given to whether or not they are "supervised" (to a reasonable level) by someone who has been barred list and enhanced DBS checked.

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18.3 The Department for Education has produced [statutory guidance](#) on the definition of supervision in relation to regulated activity with children. This guidance sets out what constitutes a reasonable level of supervision – that is, it describes the level of supervision that, if in place, means that an activity with children is not regulated with regard to volunteers in schools.

18.4 Head teachers will need to determine, on the basis of this guidance, whether volunteers are undertaking regulated activity and are therefore required to undertake a DBS check.

## **19. Referral to the Disclosure and Barring Service**

19.1 Under the Safeguarding Vulnerable Groups 2006 Act there is a legal duty to refer information to the DBS if an individual is dismissed or removed from working with children and/or adults (in what is legally defined as Regulated Activity) because they meet the referral criteria. The council has a duty to refer information to the DBS as both a regulated activity provider and as a local authority with safeguarding responsibilities.

## **20. Review**

20.1 This policy will be subject to review to ensure that it takes account of updated regulation and guidance. The practical implementation of this policy will also be reviewed in accordance with new guidance and procedures adopted by the DBS.

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**Policy Statement on the Recruitment of Ex-offenders**

1. As an organisation using the Disclosure and Barring Service (DBS) checking service to assess applicants' suitability for positions of trust, Bridgend County Borough Council (the council) complies fully with the Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a DBS check on the basis of a conviction or other information revealed.
2. The council is committed to the fair treatment of its employees, potential employees or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
3. This policy is available to all DBS applicants at the outset of the recruitment process.
4. 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. Selection is based on skills, qualifications and experience.
5. For those positions where a DBS check is required, all application forms, job packs will contain a statement that a DBS check is required.
6. Where a DBS check is required, all applicants should provide details of their criminal record with their application form, except for certain spent convictions and cautions which are 'protected' so not subject to disclosure to employers and that cannot be taken into account. Any information not subject to this filtering can be sent under separate, confidential cover, to a designated person within the council and this information will only be seen by those who need to see it as part of the recruitment process.
7. Unless the nature of the position allows the council to ask questions about an entire criminal record, except for certain spent convictions and cautions which are 'protected', the Council will only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act 1974.
8. At interview, or in a separate discussion, arrangements will be made to ensure that an open and measured discussion takes place on the subject of any offences or other matters 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
9. Every subject of a DBS check will be made aware of the existence of [the Code of Practice](#) which will be made available on request.
10. In all cases where information is revealed in a DBS check that this will be discussed with the person seeking the position before withdrawing an offer of employment.

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## Handling of DBS Certificate Information

### 1. General principles

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust, Bridgend County Borough Council (the council) complies fully with the code of practice regarding the correct handling, use, storage, retention and disposal of certificates and certificate information. It also complies fully with its obligations under the UK General Data Protection Regulation (GDPR), Data Protection Act 2018 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information and has a written policy on these matters, which is available to those who wish to see it on request.

### 2. Storage and access

Certificate information should be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

### 3. Handling

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

To note: those registered care homes which are inspected by the Care Quality Commission (CQC), those organisations which are inspected by Ofsted and those establishments which are inspected by the Care and Social Services Inspectorate for Wales (CSSIW ) and Estyn certificates may be retained until the next inspection..

### 4. Usage

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

### 5. Retention

Once a recruitment (or other relevant) decision has been made, we do not keep certificate information for any longer than is necessary. This retention will allow for the consideration and resolution of any disputes or complaints, or be for the purpose of completing safeguarding audits. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

### 6. Disposal

Once the retention period has elapsed, we will ensure that any DBS certificate information is immediately destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, certificate information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopy or other image of the certificate or any

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copy or representation of the contents of a certificate. However, notwithstanding the above, we may keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, and the position for which the certificate was requested, the unique reference number of the certificates and the details of the recruitment decision taken.

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## Eligibility for a DBS Check

### Enhanced Check for Regulated Activity (Children)

HM Government has produced a factual note on [regulated activity relating to children](#)

In summary, the post September 2012 definition of regulated activity relating to children comprises only:

- (i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- (ii) Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly. There is [statutory guidance](#) about supervision of activity which would be regulated activity if unsupervised.

- (iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
- (iv) Registered childminding; and foster-carers.

### Enhanced Check for Regulated Activity (Adults)

The Department Of Health has produced a factual note on [regulated activity relating to adults](#). In summary there are six categories of people who will fall within the new definition of regulated activity:

- (i) Providing health care
- (ii) Providing personal care
- (iii) Providing social work
- (iv) Assisting with general household matters, assistance with a person's cash, bills and/or shopping.
- (v) Assistance in the conduct of a person's own affairs
- (vi) Conveying

### Enhanced Check for Regulated Activity (Children and Adults)

The criteria, as outlined above, for both regulated activity for children and adults must be met to apply this level of check

### Enhanced DBS Check

Positions within the pre-September definition of regulated activity will remain eligible for enhanced DBS checks, whether or not they fall within the post-September definition of regulated activity. The [pre September 2012 definition of regulated activity](#) is contained within extracts of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012)

The types of work with adults are work that fits all of the following three factors referring to the Safeguarding Vulnerable Groups Act 2006 (SVGA) before it was amended by the Protection of Freedoms Act 2012:

- (vii) adults with whom the person works are within the definition of vulnerable adults previously in section 59 of the SVGA; and

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- (viii) the person provides any of the activities relating to adults previously in Part 2 of Schedule 4 to the SVGA; and
  - (1) the person undertakes the work regularly (as defined previously in Part 3 of Schedule 4 to the SVGA).

If the person fits all factors, an organisation can require an enhanced check

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