

CRIMINAL BACKGROUND CHECKS POLICY



DERBYSHIRE
County Council
Improving life for local people

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1. Purpose

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

2. Scope and Key Principles

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

After a certain length of time some sentences are considered spent and must be disregarded. Unless the nature of the work means that a role is exempt, applicants are not asked to disclose convictions which are spent under the Rehabilitation of Offenders Act 1974.

Having an unspent conviction will not necessarily bar applicants from employment. Criminal records should be taken into account for recruitment purposes only when a conviction is relevant.

For applicants who are offered employment in certain posts, including those where regulated activity is undertaken, a criminal record check from the DBS will be undertaken.

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

3. DBS Checks and Levels of disclosure

For those roles which require the performance of regulated activity an enhanced DBS check must be undertaken and this must include a check to ensure that the successful candidate is not barred from working with children or adults in vulnerable circumstances.

Regulated activity is defined by the Safeguarding Vulnerable Groups Act 2006 as amended, principally by the Protection of Freedoms Act 2012 and includes roles where individuals are required to work unsupervised with children or in a limited range of establishments with opportunity for contact with children; or working with adults providing healthcare, personal care, social work, assistance with cash, bills and/or shopping, assistance in the conduct of a person's own affairs or conveying children or adults for particular reasons. The definition of regulated activity with regard to children is detailed at Appendix A and definition of regulated activity with regard to adults is detailed at Appendix B.

Other roles have been identified by legislation as being eligible for a DBS check, together with the level of DBS check which can be undertaken. This means that it is at the employer's discretion as to whether a DBS check should be undertaken. Derbyshire County Council will not usually undertake

DBS checks in respect of roles which do not involve regulated activity, although a small number of other roles may be identified by Senior Management Teams as requiring a DBS check.

4.Roles and responsibilities

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

The Recruiting Manager must be satisfied from the outcome of any DBS check that there are no disclosures which mean that the applicant is unsuitable for the role for which they have applied before the appointment can be confirmed. If there are any issues, these should be discussed with a senior manager who will make the final decision regarding appointment.

All employees involved in the disclosure process and in making employment related decisions should be provided with appropriate guidance.

6. Cost of disclosure

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

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

Checks for volunteers are free. A volunteer is currently defined by the DBS as a person who performs an activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

7. Use of disclosure information

A disclosure is only requested for the successful candidate following the selection process. Rechecks for existing employees who are subject to a DBS clearance should currently be done every three years.

If a disclosure reveals information about spent or unspent convictions, a decision must then be made by a senior manager as to whether it is appropriate for the person to be appointed or continue in post or not.

Further information is outlined within the Guidance for Managers on Criminal Background Checks.

8. Security and Confidentiality

Disclosure information should be treated with the utmost confidentiality and kept in a secure place, such that access to disclosure information is restricted to only those individuals who have a requirement to see it in the course of their duties. Information should only be disclosed to third parties in exceptional circumstances and with the consent of the DBS.

9. Retention

Disclosures should be retained by the Council for a maximum of 6 months after a recruitment decision has been made, with the exception of those for posts for which ongoing evidence is required by a regulatory body, e.g. CQC, OFSTED. Disclosures must be destroyed by secure means e.g. shredding.

10. Portability of Disclosures

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

11. Pre-authorisation

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

All cases of pre-authorisation must have senior management approval before the appointment starts.

12. Contractors

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

13. Disputes

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

14. Legal Position

Under the Rehabilitation of Offenders Act 1974, it is unlawful to discriminate

against an ex-offender on the grounds of a spent conviction with the exception of those posts exempt from the Act.

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

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

15. Recent and Future changes

The Protection of Freedoms Act received Royal Assent in May 2012. The work of the CRB and Independent Safeguarding Authority merged in December 2012 into the Disclosure and Barring Service (DBS), responsible for barring individuals and completing criminal record checks.

In 2013 a new Update service is proposed which will allow individuals, if they choose to subscribe to it and pay a small annual fee, to apply for a criminal record check once and then if they need a similar sort of check again, to reuse their existing certificate with the employer checking online to see if it is still up to date.

This policy will be updated once the new proposals are finalised.

Appendix A – Regulated Activity relating to Children

General exceptions:

Regulated activity relating to children does not include:

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

Regulated activity relating to children is:

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

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

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

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

3. **Advice or guidance:**

- a. Provided wholly or mainly for children;
- b. Relating to their physical, emotional or educational well-being;
- c. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period **or** at any time overnight (between 2am-6am *and* with an opportunity for face-to-face contact with children);

- d. NOT legal advice; and
 - e. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose.
4. **Moderating a public electronic interactive communication service** which is likely to be used wholly or mainly by children
- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period; and
 - b. NOT activity by a person who does not have access to the content of the matter or contact with users.
5. **Driving a vehicle** being used only for conveying children and their carers/supervisors
- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period; and
 - b. Done under an agreement, either with the driver or with a person with whom the driver works, for gain or not.
6. **Relevant personal care**
- a. Either:
 - i. Physical help with eating or drinking necessary due to illness or disability;
 - ii. Physical help with toileting, washing, bathing or dressing necessary due to age, illness or disability;
 - iii. Prompting, with supervision, in relation to i or ii where the child is otherwise unable to decide; or
 - iv. Any form of training, instruction, advice or guidance given to the child in relation to i or ii.
 - b. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
 - c. NOT activity merely incidental to activity with adults.
7. **Health care** provided for children
- a. By, or under the direction or supervision of, a health care professional;
 - b. NOT activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
 - c. NOT activity merely incidental to activity with adults.
8. **Childminding**
- a. On domestic premises, for reward; and

- b. With a requirement to register, or voluntary registration, under Childcare Act 2006.

9. **Fostering** a child

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

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

11. Activity carried out at **certain establishments**:

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

Appendix B – Regulated Activity relating to Adults

General exception:

Regulated activity relating to adults does not include:

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

Regulated activity relating to adults is:

1 Health care provided for adults:

- g. By, or under the direction or supervision of, a health care professional.
- h. Includes first aid provided by a person acting on behalf of an organisation established for the purpose of providing first aid.

2 Relevant personal care:

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

3 Relevant social work:

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

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

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

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

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

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

6 Conveying:

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

[Note: The above definition of conveying is currently only in Home Office guidance, the relevant Regulations are yet to be produced.]

7 Certain inspection functions

8 Day-to-day management or supervision on a regular basis of a person carrying out regulated activity as described by points 1-6.

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