

Disclosure & Barring Service Checks Policy



2021-2024

Document Control

Overview

POLICY	DBS Policy
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REVIEWED BY	Employment Services Manager / HR Policy & Reward Advisor
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RELATED DOCUMENTS	Recruitment and Selection Policy

Revision History

Version	Issue Date	Author	Summary of Changes
5.3	May 2018	HR Policy & Reward Advisor	Changes to DBS recharging for schools supply teachers and schools based relief staff
6	October 2021	HR Policy & Reward Advisor	Cyclical Review. Updates on schools, supply staff & update service, referrals to DBS
7	May 2022	HR Policy & Reward Advisor	New section 16.1 relating to employing Ukrainian refugees. New accompanying risk assessment

Consultation

Version	Who	Date
5	HR, Operational Managers, Employment Services, Trade Unions	May - August 2016
6	HR, Managers, Trade Unions	April – October 2021

Approval

Version	Who/Where	Date
4	COT	2016
5	FJTUC	2019
6	FJTUC	3 rd November 2021

1.0 Introduction

The Council through its managers and employees have a duty of care to protect the wellbeing of those groups of people or individuals who are vulnerable or at risk.

The law requires checks be carried out to ensure that people who may pose a threat to those at risk are not given positions of trust where they could exploit the children or adults entrusted to their care. This document sets out the Council's approach to criminal background checks.

This policy also applies to staff employed by external bodies contracted by the Council. The non-statutory elements of this policy will not apply to staff employed by School Governing Bodies, but will be commended to the Governing Body as good practice. The policy also sets out a procedure to ensure that all information is considered when assessing people with a criminal record and that all decisions are both safe and fair.

A Disclosure & Barring Service disclosure does not in any way eliminate the need for sound recruitment practices, such as a thorough selection process appropriate to the level of the post and the necessary pre-employment checks.

This policy complies with the DBS Code of Practice. This is available at www.homeoffice.gov.uk/dbs

2.0 Scope

This policy applies to every employee, relief worker, member (councillor), and volunteer for Flintshire County Council who is engaged in **regulated activity**, working with children and/or adults. Definitions for regulated activity, effective from 1st September 2012, are set out in **Sections 5 & 6** below.

3.0 Principles

DBS checks on people employed to work with children and vulnerable adults are allowed as an exemption to the Rehabilitation of Offenders Act 1974. Under the Act individuals are not required to disclose any 'spent' convictions, unless the exemption applies. The Protection of

Freedom Act 2012 (PoFA) introduced limits on the eligibility of certain types of employment for DBS checks.

Flintshire County Council complies fully with the DBS Code of Practice and undertakes to treat all applicants fairly and not to discriminate unfairly against anyone on the basis of conviction or other information revealed. Having a criminal record will not necessarily prevent an individual from being employed by FCC. This will depend on the nature of the role, professional suitability and the circumstances, nature and background of the offences.

The Council recognises that access to criminal record information has to strike a balance between the rights of children and the vulnerable in society, an individual's right to privacy, and the rights of ex-offenders to become rehabilitated into society. It is essential that confidential and sensitive information about an individual's criminal record is handled fairly and properly.

The Disclosure and Barring Service website contains links to relevant legislation and guidance published by other government departments and relevant organisations:

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

4.0 Levels of Disclosure

The level of check is dependent on the nature of the role; there are two levels of Disclosure:

4.1 Standard Disclosure

Available for any position listed in the Rehabilitation of Offenders Act 1974, (Exceptions) Order 1975. Standard DBS checks show details of both spent (old) and unspent (current) convictions including cautions, reprimands and warnings held on the Police National Computer.

4.2 Enhanced Disclosure

An Enhanced Disclosure Certificate is issued to cover those positions involving work with vulnerable groups including children and adults.

These Disclosures contain information that would be revealed in a Standard Disclosure and in addition, other information held by local police forces on the Police National Computer and is considered to be relevant to the application e.g. details of impending prosecutions.

An Enhanced Disclosure will also contain the following information:

1. Information from the list held under section 142 of the Education Act 2002;
2. DBS Childrens Barred List information;
3. DBS Adults Barred List information.

5.0 Regulated Activity relating to Children

Regulated activity relating to children is paid and volunteer work that involves certain interaction with a person who is under the age of 18 or, in specified places, the opportunity for “regular” unsupervised contact with children. Regular basis can be defined as one or more times a week or on 4 or more days in a 30 day period.

Activities which fall within the definition of those carrying out a regulated activity with children are:

- teaching, training or instruction, care or supervision of children
- Moderating a web service wholly or mainly for children
- Advice or guidance wholly or mainly to children
- Driving a vehicle for children
- Health care or personal care
- Registering to be a foster carer or private foster carer
- Registering to be a childminder or childcare provider

A DBS check is not required in respect of the activities above if the person is undertaking the following activities:

1. Is supervised at a reasonable level (refer to guidance on supervision);
2. Is providing treatment or therapy (instead of ‘health care’);
3. Is a supervised volunteer – supervised at a reasonable level;
4. Is carrying out occasional or temporary services e.g. window cleaners;
5. Is an office holder e.g. governor.

General exceptions:

Regulated activity relating to children does not include:

1. Family arrangements and personal, non-commercial arrangements;
2. Activity by a person in a group assisting or acting on behalf of, or under the direction of, another person engaging in regulated activity in relation to children;
3. Working with 16 and 17 year olds in a workplace.

6.0 Regulated Activity relating to Adults

The focus is on the type of care that the person who is aged 18 or over requires, rather than the setting within which the adult receives that help.

Regulated activity with vulnerable adults are

- Providing health care;
- Providing personal care;
- Providing social work;
- Assistance with general household matters;
- Assistance in the conduct of a person's own affairs;
- Conveying
- Day to day management or supervision of anyone carrying out the above activities
- Inspection functions
- The Commissioner for older people in Wales

A person only needs to carry out a regulated activity with a vulnerable adult on one occasion for it to be a regulated activity, there is no requirement for an activity to be carried out a certain number of times before it is categorised as a regulated activity; this includes volunteers engaging in regulated activity with vulnerable adults.

However, neighbours, family members and friends who are providing health and social care to vulnerable adults do not need to be checked because they are classed as providing that support under private arrangements.

7.0 Re-checking

If an individual works for a service which is registered with the Care Inspectorate Wales (CIW), the post-holder will be re-checked every 3 years, otherwise a recheck will be undertaken every 4 years. (Rechecks every 3 years is commended to schools (All employees, volunteers, Governors and anyone else that works in the School) as good practice).

Where an individual has had a break in service greater than 3 months, a re-check will be required. For a break in service less than 3 months, the Council will accept the current DBS disclosure certificate as long as the check was made within the last 3 years at the date of appointment.

If information is disclosed upon re-checking the Councils Disciplinary Policy will be initiated. The procedure that will be followed in such circumstances is outlined in **Appendix E**, entitled 'Actions on Disclosure (Existing)'.

8.0 DBS Update Service

For an annual subscription of £13, applicants can have their DBS Certificate kept up-to-date (the service is free for volunteers) and take it with them from role to role, where the same type of level and check is required.

If applicants have subscribed to the Update Service, with their permission, the Council can use their current DBS Certificate and carry out a free, instant online check to see if any new information has come to light since its first issue.

Managers should recommend new and existing employees register with the DBS update service. It's important to note that registration to the update service needs to take place within 19 days of a certificate being issued.

9.0 Operational Procedure

A Recruiting Manager must determine if the post requires a DBS Disclosure by referring to the Disclosure Risk Assessment procedure. (Details of the procedure are available on the Infonet). If a post has not required a Disclosure in the past do not presume this is still the case. The Job Description must clearly state the requirement for a disclosure if identified. Where a post has been confirmed as requiring a check, the Recruiting Manager must ensure that the advertisement clearly states that the successful applicant will be subject to a DBS Disclosure.

9.1 Spent Convictions

Any person applying for a post where Disclosure applies is required to disclose the detail of all convictions on record (including 'spent' convictions - i.e. those that happened some time ago and normally no longer need to be revealed as specified in the Rehabilitation of Offenders Act 1974), Applicants must also disclose details of any cautions, reprimands or warnings in accordance with changes in legislation which has led to the removal of certain specified old and minor offences from DBS certificates.

The DBS filtering guidance contains full details of the DBS filtering rules and a list of offences which will never be filtered, guidance is available at www.gov.uk/government/publications/dbs-filtering-guidance.

9.2 Commencing employment

Applicants cannot be appointed until receipt of a satisfactory disclosure, there should be no exceptions to this rule. Flintshire County Council does not receive a copy of the disclosure from the DBS, the disclosure is provided directly to the employee or applicant who will then be asked to present their disclosure certificate to the Employment Services/Recruiting Manager, it is essential to allow a minimum of 4 weeks for the provision of a disclosure from the DBS.

9.3 Positive Traces

If the Disclosure shows details of Police Records of Convictions, Cautions, Reprimands and Final Warnings; information from the list held under Section 142 of the Education Act 2002; DBS Children's Barred List information; DBS Adults' Barred List information and other relevant information disclosed at the Chief Police Officers discretion, Employment Services must inform the nominated Service Manager/Head Teacher and enclose a paper or scanned copy of the original Disclosure together with Form Rehab 1.

The nominated Service Manager/Head Teacher must consider the details of the positive trace revealed on the Disclosure and if necessary, they may refer to the factors highlighted within the Checklist to Review Information Disclosed as contained within Appendix D. The Service Manager/Head Teacher should consider the following factors before reaching any decision:-

1. whether the positive trace is relevant to the position applied for;

2. the seriousness of any offence or other matter revealed;
3. the length of time since offence or other matter occurred;
4. whether the applicant has a pattern of offending behaviour or other relevant matters;
5. whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters;
6. the circumstances surrounding the offence and the explanation(s) offered by the person concerned.

Service Managers/Head Teacher will take into account the Rehabilitation of Offenders Act 1974, the Protection of Children Act 1999, the Criminal Justice and Court Services Act 2000 and the Care Standards Act 2000 when making the decision.

If the nominated Service Manager/Head Teacher decides to approve the applicant for the post in question, he/she will be required to complete the appropriate section within Form Rehab 1 and return this form together with the original Disclosure Report for the attention of the Employment Services.

In more difficult cases, the Service Manager/Head Teacher may request that the applicant be interviewed by the Recruiting Manager or nominated representative in order to ascertain the facts and circumstances surrounding details of the positive trace.

Following this meeting, the Recruiting Manager or nominated officer should return the report advising of their recommendations to Employment Services who in turn, will forward this information to the Service Manager/Head Teacher. The Service Manager/Head Teacher's decision should be recorded on the Rehab 1 form and returned to the Employment Services.

For employees if information is disclosed upon re-checking or the employee informs their manager of an offence, the Councils Disciplinary Policy will be initiated. The procedure that will be followed in such circumstances is outlined in **Appendix E**, entitled 'Actions on Disclosure (Existing)' and **appendix D** 'Positive Disclosure Checklist'.

In exceptional cases, the nominated Service Manager/Head Teacher may take professional and legal advice before reaching a decision.

10.0 Agency Workers

Agency workers employment relationship is with the agency and therefore it is the responsibility of the agency to obtain a disclosure.

All managers need to ensure they specify the appropriate level of DBS and necessary accreditations e.g. DBS Children's or Adults' Barred List Information for each position being added to the Matrix system/Approved Schools Supplier List. This is done by selecting the appropriate requirements card on Matrix HR. It is the responsibility of the supplying agency to conduct the appropriate level of DBS check. Supplying agencies compliance to our DBS and other accreditations requirements will be audited quarterly by MatrixSCM.

If managers need further confirmation of DBS or other accreditations e.g., under CIW requirements then this should be requested via MatrixHR when arranging an interview or before the first day of assignment. It is the responsibility of the recruiting manager to see visibility of the DBS Disclosure Certificate of the agency worker on the first day of assignment.

11.0 Volunteers

DBS criminal record checks are free of charge for volunteers. The DBS defines a volunteer as "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".

A volunteer must not: receive payment (except for travel or other approved out of pocket expenses), be on a work placement, be on a course that requires them to do this job role or be in a trainee post that will lead to a full-time role/qualification.

Any volunteer who has regular unsupervised contact with vulnerable groups including children and adults must be in receipt of a satisfactory Enhanced Disclosure prior to their engagement.

There is currently no charge from the DBS for volunteers or the update service for volunteers provided that the post meets the DBS definition of a free of charge volunteer application.

12.0 Members of Flintshire County Council

It will be made clear when the initial notification of elections is posted and in the information packs that individuals who are elected to serve on Flintshire County Council will be subject to a DBS check.

The Chief Officer Governance will hold all Disclosure information relating to Members and may intervene and influence Members involvement on all committees and the responsibilities that they discharge. If Disclosure or other information reveals the need to adjust a member's involvement or responsibilities, the Chief Officer will agree the adjustments with the Member concerned and will notify the relevant employees of the council accordingly

13.0 School Governors

Welsh Government guidance confirms that current legislation does not require pre-appointment/election checks on School Governors. However a Governing Body may adopt a policy which requires Disclosure's for Governors and this is commended as good practice.

14.0 Supply Teachers/Workers & Relief Workers

Where supply workers, supply teachers or relief workers have not been engaged for 3 months or more, a re-check will be required, otherwise a DBS disclosure certificate will be accepted as long as it has been issued within the last 3 years.

Where supply workers, supply teachers or relief workers have not been engaged for 3 months or more, a re-check will be required. For a break in engagement of less than 3 months, the Council will accept the current DBS disclosure certificate providing the check was made within the last 3 years at the date of appointment.

If a supply worker, supply teacher or relief worker works for a service which is registered with the Care Inspectorate Wales (CIW), the worker should be re-checked every 3 years, otherwise a recheck will be undertaken every 4 years. (Rechecks every 3 years is commended to workers engaged in schools as good practice).

The Council will accept an Enhanced DBS disclosure certificate issued within 3 months (of the intended job offer being made) for checks carried out by Denbighshire County Council or Wrexham County Borough Council.

For Supply Teachers and School Based Relief Workers who have no other FCC employment that requires a DBS check e.g. a contracted teacher who also does supply. New starters and those with a DBS due for renewal are required to register with New Directions (the County's preferred supplier for agency staff to schools). New Directions will register them and provide their first

DBS free of charge. Following which, the worker would be required (by New Directions) to register with the DBS Update Service. If they do not wish to register with New Directions, FCC would undertake the check on their behalf, however, the worker would be required to pay for the check themselves and the cost of which would be deducted from the next available pay, this charge to the worker would cover the price of the DBS check plus administration costs (the online checking fee). Following registration with the DBS Update Service, the worker should advise of their DBS Update Service reference number prior to undertaking any work.

It is the responsibility of managers and schools to ensure that all workers have a current valid DBS certificate prior to workers being engaged.

15.0 Transgender process

The DBS offers a confidential checking process for transgender applicants.

This process is for transgender applicants who do not wish to reveal details of their previous identity to the person who asked them to complete an application form for a DBS certificate.

For further information contact the DBS by sending an email to the [DBS sensitive applications team](#) or telephoning 0151 676 1452

16.0 Foreign Workers or UK Residents overseas in the past Five Years

The DBS can only access criminal records held on the Police National Computer and this does not hold details of convictions, cautions, reprimands or warnings from outside the United Kingdom. A DBS check will not provide details of an overseas criminal record that may, or may not exist. However, all persons who are appointed to a post requiring a DBS check must however still undergo a DBS check regardless of their length of stay in the UK or, even if they have never been resident. All new arrivals to the UK must provide, in addition to all documentation in relation to the Immigration requirements, and DBS requirements, a Statement of Good Conduct (SOGC). **Further details can be found within Appendix C.**

16.1 Employing Ukrainian Refugees with the right to work in the UK

Ukrainian refugees with the right to work in the UK will only have a DBS from the point that they entered into the UK. Recruiting Managers must complete **Appendix F – Safer Recruitment Risk Assessment and Checklist for employing Ukrainian refugees**. For posts that involve regulated activity with children or vulnerable adults, the risk assessment must be signed off by the Councils Safeguarding Leads (Chief Officer for Social Services and Chief Officer for Education and Youth).

17.0 Private Contractors – including ‘Occasional Contractors’

Where the contractor will be providing workers / volunteers to work, or provide services for establishments where vulnerable adults and children are present, the Manager responsible for engaging the contractor(s) must receive and retain written confirmation from the contractor that the workers / volunteers they supply have had a satisfactory DBS check. The written confirmation must be received in advance of the individual(s) starting work and include the name(s) of the individual(s) that will be working on the contract.

(For those employed to provide care through contract to Social Services see section - Agency Workers.)

In order to protect children and vulnerable adults, contractors who are required specifically to work with children and vulnerable adults will require a DBS check. Examples of such contracts include provision of transport to children and vulnerable adults or trade instructors working with children and vulnerable adults.

Where the contractor is to work in a school during term time the first principle is to arrange for the work to be carried out without regular contact with children. If this is not possible and the workers employed through the contract are likely to come into unsupervised contact with children, the contract officer must require the contractor to provide the names and details of their employees and sub-contractors so that Information from the list held under Section 142 of the Education Act 2002 and DBS Children’s Barred List information can be checked to exclude anyone barred from working with children.

Where there is to be prolonged unsupervised work in the person’s home or a Day Centre e.g. More than one month, the contract officer must require the contractor to provide names and details of workers and sub-contractors so that the DBS Adults’ Barred list can be checked to exclude anyone who is a potential risk to adults.

18.0 Disputes

If an employee/applicant 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 DBS notifies Registered Bodies if a dispute has been raised. The Council should base any decision on the information provided by the outcome of the dispute and this decision will be final.

19.0 Portability of Criminal Record Disclosures

Portability refers to the re-use of a DBS Disclosure, obtained for a position in one organisation and later used for another position in another organisation.

In conjunction with a satisfactory pre-employment reference from the previous employer, the Council will accept a cleared Enhanced DBS disclosure certificate which was carried out within 3 months (of the job offer being made) for checks carried out by Denbighshire County Council or Wrexham County Borough Council, which is currently valid and appropriate to the post applied for, the original certificate should be checked by Employment Services as part of the pre-employment checks.

If the applicant is not a current Flintshire County Council employee or do not have a current disclosure or it is not of the right type, they are required as a condition of employment to complete a DBS Disclosure application.

20.0 Storage & Destruction of Records

As an organisation using the Disclosure and Barring Service to help assess the suitability of applicants for positions of trust, the Council complies fully with the DBS Code of Practice regarding the secure handling, use, retention and disposal of disclosures and disclosure information. It complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, retention and disposal of disclosure information. See guidance at **Appendix B**.

21.0 Making a referral to the DBS

There is a legal requirement for employers, including Governing Bodies, to make a referral to the DBS where they think that an individual has engaged in conduct that harmed or is likely to harm, a child or if a person otherwise poses a risk of harm to child. The duty to refer remains where the individual has been removed from relevant work with children or the person has chosen to cease relevant work in circumstances where they would have been removed had they not done so. This applies even when a referral has also been made to a local authority safeguarding team or the Education Workforce Council.

A referral must be made when both of the following conditions have been met:

Condition 1

The school withdraws permission for a person to engage in regulated activity with children and/or vulnerable adults. Or you move the person to another area of work that isn't regulated activity.

Condition 2

The employee has allegedly carried out one of the following:

- Engaged in relevant conduct in relation to children and/or adults. An action or inaction has harmed a child or vulnerable adult or put them at risk or harm or;
- Satisfied the hard test in relation to children and/or vulnerable adults e.g. there has been no relevant conduct but a risk of harm to a child or vulnerable adult still exists or;
- Been cautioned or convicted of a relevant offence (automatic barring either with or without the right to make representations).

Further information on relevant conduct and the harm test available at

<https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs#who-has-a-legal-duty-to-refer>

The Authority can assist the governors with the referral in the event of these circumstances applying.

21.1 Reporting cases to the Education Workforce Council

Under the terms of the Education (Wales) Act 2014, the employer has a duty, to make a report to the Education Workforce Council (EWC) when a person is dismissed from relevant employment on grounds of misconduct or resigns in circumstances which might have led to their dismissal, or consideration of their dismissal had they not resigned.

The Education Workforce Council has responsibility for investigating and hearing cases against a registered individual where it is alleged that the individual is guilty of unacceptable professional conduct, serious professional incompetence or where a registered individual has been convicted (at any time) of a relevant offence.

All such cases are referred to the Council via different routes depending on the nature of a particular case.

The Authority will carry this referral on behalf of the Governors in the event of these circumstances applying.

22.0 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.

23.0 Equalities and Diversity

The Council's commitment to equality of opportunity extends to candidates with criminal records. The Council's recruitment processes are based upon an objective and systematic assessment of candidates against job related factors. Through the use of fair employment practices and the use of this guidance the Council is keen to ensure that information relating to criminal records is dealt within context and with discretion. Candidates will not be rejected automatically for having declared "unspent" convictions unless those offences are relevant to the job for which they are applying.

24.0 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 which prevents barred people from working in regulated activities. Flintshire County Council, as an

employer and regulated activity provider 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.

School information can be obtained from the Safeguarding Children and Safer Recruitment in Education (January 2007). This is available at the link below.

<https://www.education.gov.uk/publications/eOrderingDownload/Final%206836-Safeguard.Chd%20bkmk.pdf>

Further information about DBS checks is available on the DBS website

<https://www.gov.uk/disclosure-and-barring-service-criminal-record-checks-referrals-and-complaints>

Single Central Record information can be found in the Safeguarding Children and Safer Recruitment in Education (January 2007), Chapter 4.

<https://www.education.gov.uk/publications/eOrderingDownload/Final%206836-Safeguard.Chd%20bkmk.pdf>

Code of Practice for DBS can be found at the following link

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

Information on eligibility posts can be found on the following link

<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

25.0 Monitoring and Evaluation

The policy will be reviewed to ensure compliance with the Disclosure and Barring Service, Employment Legislation and Safeguarding practices or recommended best practice. Any future amendments to the policy may be authorised by the Chief Officer – People and Resources.

26.0 Training and Development

Appropriate training will be provided and coaching where required to managers on undertaking checks and rechecks.

27.0 Appendices

A – Policy Statement on the recruitment of ex-offenders

B – Policy Statement on secure storage, handling etc

C – Policy Statement on Foreign Nations and UK Residents

D – Positive Disclosure Interview Checklist

E – Actions on Disclosure (Existing)

F – Risk Assessment – Safer Recruitment Risk Assessment & Checklist for employing Ukrainian Refugee's with the right to work in the UK