

CRIMINAL RECORDS CHECK POLICY

**(Formerly the Disclosure and Barring Service
(DBS) Policy)**

This document applies to all Council employees

This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.

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CRIMINAL RECORDS CHECK POLICY

This policy will apply to those seeking paid work or volunteering opportunities with the Council. In addition, voluntary or seasonal work, fostering and adoption arrangements, student placements, permitted drivers, elected members, school governors, preferred contractors and other regulated positions will also come under the provisions of the policy.

1. TYPES OF DISCLOSURE AND BARRED LIST CHECKS

1.1. All posts across the Council will have a record on Agresso identifying which checks they require. The different levels of criminal records check that the Council carries out are:

- Basic Disclosure through Disclosure Scotland (DS)
- Enhanced DBS check through the Disclosure & Barring Service
- Enhanced DBS check with Children's Barred list check
- Enhanced DBS check with Adult Barred list check
- Enhanced DBS check with Children's and Adult Barred list check

1.2. Disclosure types and definitions/criteria

Disclosure type	Term used in the Policy	Criteria	Barred List check
Enhanced DBS with Barred List	Enhanced check for Regulated Activity	Meets current regulated activity definition as set out in Appendix A	Includes appropriate Barred List check (Children/Adults/Both)
Enhanced DBS through the Disclosure & Barring Service	Enhanced DBS	Does NOT meet the criteria set out in Appendix A for Regulated Activity, but DOES meet Appendix B (previous Regulated Activity) criteria	Does NOT include a Barred List check
Basic Disclosure through Disclosure Scotland	Basic Disclosure	Does NOT meet the criteria set out in either Appendix A or B	Does NOT include a Barred List check

2. REFERRAL TO THE DISCLOSURE AND BARRING SERVICE (DBS)

2.1. The Safeguarding Vulnerable Groups 2006 Act sets a legal duty for the Council to refer information to the DBS if a member of staff/volunteer/contractor 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. See the [Policy on Referral to the DBS](#).

3. ENHANCED DBS AND BARRED LIST RE-CHECKS FOR EMPLOYEES

3.1. If a post requires an Enhanced DBS check or an Enhanced check for Regulated Activity the Council can legally re-check their staff as regularly as they wish to. This will be done through the online update service. If the online status check reveals a change in the disclosure status then a re-check will be required.

- 3.2. The Council will only recheck those employees that work in Children's Regulated Services with an annual check via the online update service. The Council will reimburse the Online Update Service subscription fee for this group of employees.
- 3.3. Where there are reasonable grounds the Council may require existing employees to re-apply for an up to date Enhanced DBS check or Enhanced check for Regulated Activity. It reserves the right to ask existing members of staff in relevant positions to apply for a new DBS check if their actions or activities give 'cause for concern'. The grounds for 'cause for concern' could include allegations of suspicious or inappropriate behaviour made by a child or other person or a colleague, parent, carer or member of the public. In such instances, a full investigation of any such allegations will be conducted in accordance with the [Council's Disciplinary Policy](#). As part of the investigation process, the employee may be required to undergo an Enhanced DBS check or Enhanced check for Regulated Activity with consideration and legal advice taken in respect of human rights and employment legislation.
- 3.4. Where, due to changes in legislation, occupational groups become subject to regulation for the first time, the Council will write to existing employees in those groups informing them of the requirement to obtain an Enhanced DBS check or Enhanced check for Regulated Activity. All employees will be expected to comply. Any existing employee refusing to comply with the request for an enhanced DBS check or Enhanced check for Regulated Activity will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager and/or to comply with a contractual agreement will lead to the employee being subject to a disciplinary investigation.

4. ESTABLISHING CRIMINAL RECORDS DISCLOSURE REQUIREMENTS FOR A NEW POST

- 4.1. As a manager you need to begin by looking at [Appendix A](#) to establish if a position comes under the current definition of Regulated Activity and is therefore entitled to an Enhanced check for Regulated Activity. If the position does not come under this definition then turn to [Appendix B](#) to establish if the position comes under the previous definition and is therefore entitled to an enhanced DBS check. If a post does not come under either definition then it is not entitled to a DBS check.
- 4.2. If a manager has a new post which they believe requires an enhanced DBS check/an Enhanced check for Regulated Activity they should check this with the Serco DBS administration team who will confirm whether the post is eligible for a DBS check. If the Serco DBS administration team believes it would be illegal to request a DBS check they will ask for the manager's rationale behind their request and clarify the parameters for which the Exceptions Order can be applied. The Serco DBS administration team can be contacted at disclosures@lincolnshire.gov.uk.

5. POSTS REQUIRING BPSS CHECKS

- 5.1. There are a limited number of posts in the Council that are required to adhere to the Baseline Personnel Security Standard (BPSS). Part of the BPSS requirement is a criminal record check, those employees that do not have a DBS will be required to have a Basic Disclosure check.

6. RECRUITMENT

- 6.1. All recruitment will be in line with the [Council Recruitment and Selection Policy](#).
- 6.2. The minimum age that someone can have a criminal record check is 16 years old.
- 6.3. The fact that someone is on the Barred List will not be stated on an Enhanced DBS check, but there will be details of criminal convictions that would indicate that someone might be on the Barred List and a manager must investigate thoroughly and complete [Appendix D: Cause for Concern Risk Assessment Proforma](#), if any such disclosures are received.
- 6.4. For those applicants that have worked or been resident overseas, including UK citizens who have worked or lived overseas, may require the Statement of Good Conduct, The qualifying periods are:
 - DBS – Three months in the previous 5 years
 - Disclosure Scotland – 3 months in the previous 3 years

This does not apply to members of the UK armed forces and their families that were stationed overseas. See [Appendix F: Statement of Good Conduct](#) for further information.

7. AFTER RECRUITMENT

- 7.1. As part of an employee's induction new employees should be made aware of their commitment to safeguarding children and adults. If their role is as a practitioner they should complete the relevant LSCB Safeguarding E-learning programme for children.
- 7.2. If, for operational reasons, someone starts prior to a criminal record check being returned, the manager must complete:
 - [Appendix C: DBS Risk Assessment Template](#)

Once a disclosure is received the Risk Assessment will need updating.

- 7.3. The risk assessment asks for confirmation that:
 - A correctly completed criminal records check application has been submitted.
 - An adult or children Barred List check, if applicable, through the Serco DBS Administration team has been undertaken. The manager must provide the name of the individual, any previous surnames they have been known as and their date of birth. They can then be checked against the relevant Barred List held by the DBS (Children or Adult list).
 - All of the pre-employment checks as outlined in the [Recruitment and Selection Policy](#) have been completed. For example, the identity of the job applicant is confirmed, references have been taken and verified.
 - The manager has introduced sufficient safeguards for the individual not to have unsupervised access to children or adults.

8. APPLICANTS WITH ADVERSE DISCLOSURES

- 8.1. If a Criminal Records check reveals details of convictions which may render the applicant unsuitable for the applied post – termed 'Cause for Concern' - the appointing manager will discuss the situation with the applicant in line with the

relevant Code of Practice and through the use and completion of [Appendix D: Cause for Concern Risk Assessment Proforma](#). The applicant will be asked to sign the completed risk assessment to verify the information provided and give permission for the risk assessment to be stored securely and later destroyed in accordance with [Appendix G: Policy on the secure storage, handling, use, retention and disposal of disclosures and disclosure information](#).

- 8.2. When assessing any disclosure or declared conviction information received, consideration will be given to a range of issues and the risk assessment will support a manager's decision enabling them to assess the suitability of the applicant for their proposed position in light of matter(s) disclosed on their DBS/Disclosure Scotland certificate. In some cases a manager may wish to discuss the information with an HR Adviser prior to discussing it with the applicant for guidance.
- 8.3. Having a conviction will not necessarily bar someone from employment with the Council who will only take a criminal record into account when the conviction is relevant. Protection of the applicant's rights and interests must be weighed against the rights and interests of clients, employees and the public, including the Council's duties and responsibilities towards these or other groups.
- 8.4. Managers will not allow personal prejudices to 'cloud' their judgement and good practice. They will consider the relevance of offences and be aware that no two offences are exactly alike e.g. a premeditated burglary that involves extensive damage to property and the physical intimidation of the occupants is different from the opportunist convicted of reaching in through an open window and stealing a purse.
- 8.5. If the candidate has made a false declaration on their application form then the Council will not be able to confirm the appointment. If the disclosure certificate contains information that was not revealed by the candidate or additional information from the Police is received it will be necessary to hold a further discussion with the candidate and undertake a further review against any risk assessment before deciding to confirm or withdraw the offer of employment. HR and legal advice should be sought at this point.
- 8.6. It is an offence for a barred person to work, apply to work or offer to work in Regulated Activity with a group they are barred from working with. Candidates on the Barred List will not be employed in Regulated Activity by the Council. If the checks reveal that a candidate is on the Barred List for Regulated Activity the Council will make a referral to DBS to notify them of the individuals attempt to apply for barred work.

9. EMPLOYEES WITH ADVERSE DISCLOSURES

- 9.1. Where existing employees, who have not been previously checked, or their post requires a re-check and subsequently have an adverse disclosure result, the manager should follow the guidance in [section 8 Applicants with Adverse Disclosures](#) and complete [Appendix D: Cause for Concern Risk Assessment Proforma](#) and discuss the contents with an HR Adviser. It may be appropriate to move the employee to an alternative post with no access to children and/or vulnerable groups, property/information/resources etc. depending on the nature of

the disclosures and pending the outcome of a full investigation. It may be that there are no suitable duties the employee could undertake during this period which do not bring them into contact with children/adults. If this is the case, the manager must give consideration to suspending the employee on full pay pending the outcome of the disciplinary investigation.

- 9.2. The employee may confirm or refute the information provided by the DBS/Disclosure Scotland, where this is the case the HR adviser in conjunction with the employee's line manager may pursue a range of options and this may include further checking with the DBS/Disclosure Scotland.
- 9.3. When completing [Appendix D: The Cause for Concern Risk Assessment Proforma](#) it should be considered whether the conviction is relevant to the post and evidence of previous convictions should not be used to dismiss a person for poor job performance. The track record of the individual should be carefully assessed and if it is satisfactory, this should be considered positively. If the disclosure results are considered to be of a serious nature and prove to be correct the manager may consider various options. Options include:
 - Termination of employment.
 - Redeployment pending the availability of a suitable vacancy.
 - The introduction of safeguards.
- 9.4. Only after a full appraisal of the situation including the risks involved and other alternative employment options investigated should dismissal be considered and then only after advice from HR. If the manager decides to consider termination of employment, then the employee must be informed in writing and a hearing held in line with the Council's [Disciplinary Procedure](#).
- 9.5. If the disclosure results are considered not to be serious and do not impinge on an employee's ability to work in their existing role the line manager should inform the employee accordingly in writing.

10. EMPLOYEES SUPERVISING YOUNG PEOPLE DURING WORK EXPERIENCE

- 10.1. If, as part of an employee's duties they are asked to supervise young people (under 16's) on work experience this is regulated activity and an enhanced DBS check with Children's Barred List is required.

11. DISQUALIFICATION FROM CARING BY ASSOCIATION

- 11.1. If, as part of an employee's duties they are asked to supervise young people (under 16's) on work experience this is regulated activity and an enhanced DBS check with Children's Barred List is required.
- 11.2. Under the 2018 Regulations disqualification by association is only relevant where childcare is provided in domestic settings (e.g. childminding is provided in the home, home learning etc). Meaning when the person providing the care 'lives or works in the same household' as someone who is barred from working with children or young people, even if they would not otherwise be disqualified themselves under the [Disqualification Under the Childcare Act 2006](#) and [Childcare \(Disqualification\) Regulations 2009](#)

11.3. Who is covered by 'Disqualification under the Childcare Act 2006'?

11.4. Staff

Staff are covered by the Act if they are employed and/or provide childcare in either the early years or later years in a domestic setting.

Early Years means from birth until 1st September following a child's fifth birthday i.e. up to and including reception age.

Later Years means children under the age of 8.

Managers

Staff who are directly concerned in the management of early or later years provision are covered by the legislation. Managers will need to use their judgment to determine who is covered, but this will include posts such as headteacher, and may also include other members of the leadership team and any manager, supervisor, leader or volunteer responsible for the day-to-day management of the provision.

11.5. Who is not covered?

Anybody involved in any form of health care provision for a child, including school nurses, and local authority staff, such as speech and language therapists and education psychologists are not covered by the legislation.

School governors and proprietors are not covered by the legislation, unless they directly manage, work or volunteer in a relevant provision.

11.6. Identifying staff who may be 'disqualified by association'

In order to identify cases where a staff member working in relevant childcare settings may be disqualified 'by association', the Council must ask only relevant staff to provide, to the best of their knowledge, information about someone who lives or is employed in their household.

11.7. Who is disqualified?

A person is disqualified if any of the following apply:

- they have been cautioned for, or convicted of certain violent or sexual criminal offences against adults and any offences against children;
- they are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children'
- that have had registration refused or cancelled in relation to childcare of children's homes or have been disqualified from private fostering;
- they live in the same household where another person who is disqualified lives or works (disqualification 'by association'). This means that the householder has an order, restriction, conviction, caution etc. set out in the Legislation. It is accepted that staff may not necessarily know this information – the declaration requires them to answer "to the best of their knowledge"

Full details of which offences and Orders are covered are listed in Tables A and B in the guidance from the DfE which can be found in the [Disqualification under the Childcare Act 2006 Statutory Guidance](#).

11.8. All appointments to the Council in relevant settings will be required to complete the declaration (Appendix H) prior to commencing work and Managers should check DBS certificates with reference to list of relevant offences in the attached Guidance (Table A).

11.9. Managers should contact the LADO and their HR Advisor immediately if they

- I. know now of anyone in their employment who is or may be disqualified
- II. receive a positive declaration from any relevant member of staff

You should seek advice from the LADO and your HR Advisor in dealing with cases where a disqualified person is identified. A disqualified person can apply to OFSTED for a waiver.

<http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers>

OFSTED may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting. Whilst a waiver application is under consideration the individual must not continue to work in these settings unless redeployment to a role which is not covered by this statutory guidance is possible.

Where a waiver is not granted, the employee will need to be dismissed unless redeployment options are available.

12. PROHIBITION ORDER CHECKS

12.1. Anyone who is appointed as a centrally employed teacher will require an additional check to ensure they are not prohibited from teaching.

12.2. The Teachers' Disciplinary (England) Regulations 2012 define each of the following activities as 'teaching work': planning and preparing lessons and courses for pupils; delivering lessons to pupils; and assessing the development, progress and attainment of pupils; reporting on the development, progress and attainment of pupils. The regulations provide that these activities do not constitute 'teaching work' if they are carried out under the direction or supervision of a qualified teacher or other person nominated by the headteacher. This means that, generally, when appointing into teaching assistant (TA) positions, prohibition checks will not be required.

12.3. Teacher prohibition orders are made by the Secretary of State following consideration by a professional conduct panel convened by NCTL. This check will be undertaken by the resourcing team as part of the pre-employment checks.

13. ELECTED MEMBER CHECKS

13.1. Certain members are required to undertake an Enhanced DBS check. These are members who sit on the following committees, panels or forums.

- Children and Young Peoples Scrutiny Committee.
- Lincolnshire School Forum.
- Lincolnshire Safeguarding Children Scrutiny Committee.
- Corporate Parenting Panel.
- Adult Scrutiny Committee.
- Lincolnshire Safeguarding Adult Scrutiny Sub group.

13.2. Visiting members to these committees, panels or forums also require an Enhanced DBS check.

13.3. Elected Members in these roles are not eligible for a Barred List check.

14. AGENCY WORKERS

14.1. The agency is legally the employer of any agency workers and the responsibility to obtain a relevant Basic Disclosure, DBS check, or an Enhanced check for Regulated Activity is theirs. This check can then be used within any organisation that the agency provides workers to work within provided that it is for the same workforce and relevant barred list check. The Council's agency worker provider undertakes annual audits of the agencies to ensure they are compliant with the Council's safeguarding requirements.

15. AGENCY WORKERS

15.1. The agency is legally the employer of their agency workers and the responsibility to obtain relevant criminal record checks as outlined in this policy. These checks are then relevant for them to assess their employee's suitability to work for the Council.

15.2. The Council's agency worker providers undertake annual audits to ensure they are compliant with the Council's safeguarding requirements.

15.3. When using an agency worker, a manager should ask to see written confirmation from the Agency that the relevant checks for the role have been undertaken by the Agency.

15.4. It will be the Council's responsibility to check that the person the agency sends is the person who arrives for work, (e.g. Photo ID), to ensure the agency worker's qualification to undertake the particular role.

16. CONTRACTORS

16.1. The organisation providing the contractor is legally the employer of any contractors and the responsibility to obtain a relevant DBS check or Enhanced check for Regulated Activity is theirs. This check can then be used within any organisation that contractors are provided to. If contractors are procured, Procurement Lincolnshire will ensure that all Safeguarding requirements are included within the procurement documentation. An audit of the contractor's organisation will be undertaken on an annual basis to ensure compliance with these requirements.

16.2. The Council Passenger Transport Unit coordinates DBS and Barred List checks for its contractors.

17. VOLUNTEERS

- 17.1. A volunteer is described as a person who performs an activity which involves spending time unpaid (except for travelling and approved out of pocket expenses) doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.
- 17.2. Volunteers who assist on a regular basis in a role which meets the parameters for requiring a DBS check are required to undertake a DBS check, and if the role is also classed as Regulated Activity they will be eligible for an Enhanced check for Regulated Activity. See [Appendices A and B](#).
- 17.3. The disclosure is provided free but there is an internal administrative charge. Some people can be referred to as volunteers but do not actually meet the DBS' criteria to get a free disclosure check. To qualify for a free of charge disclosure, the applicant must not benefit directly from the position the DBS application is being submitted for. The applicant must not:
- receive any payment (except for travel and other approved out of pocket expenses);
 - be on a placement/work experience;
 - be on a course that requires them to do this job role; and/or
 - be in a trainee position that will lead to a full-time role post qualification.
- 17.4. Volunteer roles should be properly described under 'role of applicant' on the DBS disclosure form e.g. "volunteer classroom helper".
- 17.5. The Council's Fostering and Adoption Service co-ordinates DBS and Barred List checks for its Fosterers and Adopters.

18. GENDER RECOGNITION CERTIFICATES

- 18.1. The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for a gender recognition certificate. When a full gender recognition certificate has been issued, the person is legally considered to be of the acquired gender.
- 18.2. If the person is required to undergo a DBS/Basic Disclosure check as part of the recruitment process they must disclose any previous names and/or gender to the DBS/DS who have established a special application procedure/dedicated contact officer to maintain confidentiality:
- DBS - email: sensitive@db.s.gsi.gov.uk
 - Disclosure Scotland - [Disclosure Scotland transgender guidance](#)
- 18.3. Gender confidentiality will be maintained where the individual has no criminal convictions and where there is no other information held by any Police Authority, as a clear disclosure certificate is the ultimate result. However, if they did have convictions under their previous gender that were considered relevant to the post/position, then the individual's gender change would become evident through the provision of conviction information on the DBS disclosure certificate showing both gender names.

19. DATA PROTECTION

- 19.1. The Council will ensure that sensitive personal information is held securely, and only seen by those entitled to see it in the course of their duties. See [Appendix G: Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information](#).
- 19.2. Under section 124 of The Police Act 1997 it is a criminal offence to pass disclosure information about a spent conviction to anyone who is not entitled to receive it. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.

20. COMPLAINTS

- 20.1. Applicants unhappy with any aspect of the DBS/Disclosure Scotland process, including the application of this policy, should initially raise their concerns through the appointing officer or the Serco DBS administration team leader. Where this fails to produce a satisfactory resolution, applicants have the right to complain to the Director of Children's Services or, where it is a school appointment, to the chair of governors.
- 20.2. Separate complaints procedures shall apply for those seeking to foster/adopt children, permitted drivers, contractors and other volunteers. More information is available from the director area providing the service.
- 20.3. The above complaints procedures are intended to deal with the Council's own internal processes. Complaints relating to mistaken identity or the nature of the information given in a criminal record disclosure can only be dealt with by the Disclosure and Barring Service/Disclosure Scotland.

21. USEFUL CONTACTS

- Serco DBS Administration 01522 555441 disclosures@lincolnshire.gov.uk.
- Local Authority Designated Officer (LADO for DBS Referral) - 01522 554675.

22. FURTHER INFORMATION

- Further relevant Policies
- [Rehabilitation of Offenders and Self Disclosure Policy](#)
- [Disclosure and Barring Service \(DBS\): Policy on the Referral to the DBS](#)
- [Recruitment and Selection Policy \(Including Safer Recruitment\)](#)
- [Recruitment and Selection Toolkit \(Including Safer Recruitment\)](#)
- [Disciplinary Policy](#)