

DISCLOSURE AND BARRING SERVICE (DBS) POLICY

1. INTRODUCTION

The Council is committed to ensuring the wellbeing and safety of all service users. This includes developing, implementing and maintaining effective recruitment policies and procedures to promote the safeguarding of children, young people and vulnerable adults.

The Personnel Service undertakes pre-employment checks on all applicants who have been offered a job with the Council. Before commencing employment all applicants must have the right to live and work in the UK, medical clearance from Occupational Health as well as two satisfactory references. (see the Council's Recruitment and Selection Policy, Procedure and Guidance for further information).

The purpose of this policy is to describe how the Council will undertake DBS checks as part of recruitment checks and thereafter during the course of each person's employment in order to protect the safety of all its service users.

The Disclosure and Barring Service (DBS) is an Executive Agency of the Home Office. It acts as a central access point for criminal records and lists people barred from working in schools (List 99), and the Department of Health's lists of people considered unsuitable for work with children or adults on the PoCA (Protection of Children's Act) and POVA (Protection of Vulnerable Adults) lists.

The DBS provides the information that TMBC needs to help assess the suitability of applicants for certain positions. This service is known as 'Disclosure'. There are two barred lists administered by the Independent Safeguarding Authority (ISA) (the Children's List and the Adults List). Checks against these lists apply to any regulated activity (as defined in Section 3) that involves the individual working or volunteering with children or adults. The lists are administered by the Disclosure and Barring Service (DBS).

As well as assessing candidates suitability for a specific post the Council must ensure that candidates who may have offended in the past are not discriminated against. (see the Council's Policy on the employment of Ex-Offenders for further information).

The Council is a Registered Body with the Disclosure and Barring Service and information gained during the recruitment or rechecking process will be treated in accordance with the Disclosure and Barring Service Code of Practice. The Licensing Service carry out the administration of the checks on behalf of the Council.

2. SCOPE

This policy applies to:

- Candidates applying for various roles within the Council where the role requires a DBS check
- Candidates who have been made an offer of employment with the Council to a role which requires a DBS check.

- Current TMBC employees who are subject to a recheck (currently every 3 years).

New staff

All offers of appointment to the Council will be subject to appropriate disclosure of criminal records where it is required for the post.

Existing employees

All staff whose posts require a disclosure will be required to renew their application every three years. In cases where a criminal record is disclosed or a DBS check indicates that the person may be unsuitable to continue in employment, the relevant Director in discussion with the Personnel & Development Manager will decide whether the employee should be suspended from work or transferred temporarily to another post whilst this is under investigation. This may affect the employee's continuing employment with the Council.

Transfers, promotions and employees with a second job with another local authority

Internal transfers, promotions, or staff who have a second job with other local authorities where a current suitable DBS check exists in like for like work will not need a new DBS check if the check was undertaken within the last three years. All other internal appointments are subject to the procedures outlined above.

Agency staff

Agency staff who are taken on in a role which requires a DBS check may not begin work without an original disclosure and this will be overseen by the recruiting line manager. The line manager must see an original, satisfactory disclosure for all agency staff engaged in their service and must not rely on an agency's confirmation of having undertaken this check. If a manager is unclear what to look out for on a disclosure then advice from the Personnel Service should be sought.

The disclosure must be the correct level for that post obtained by the agency within the last year. If a criminal record is disclosed, the relevant Director and Personnel & Development Manager should be notified prior to commencement of work. If, whilst the worker remains in post, the disclosure expires (i.e. becomes over 3 years old) the line manager must ensure that the agency renew the disclosure or the agency worker ceases work.

Contractors

The Council will ensure that contractors have robust systems in place for ensuring that all contracted staff who require a DBS check have been checked before they are engaged to carry out work on behalf of the Council. This should be set out in tender and SLA documentation. Managers of contractors should be aware of the responsibility for the contractors to obtain appropriate checks.

Volunteers

Managers should inform the Personnel Service that checks will be required prior to someone undertaking any voluntary work on behalf of the Council with unsupervised access to children and adults. The DBS will issue a disclosure free of charge to volunteers.

3. TYPES OF DISCLOSURES & REGULATED ACTIVITY

There are three types of Disclosure available:

1. Standard Disclosure: This sets out all convictions held on the Police National Computer, including 'spent' convictions, together with cautions, reprimands or final warnings. For work with children, it includes checks on the Department of Health and Department for Education lists of people who should not work with children. A standard disclosure is applied in relation to a specific job or role only. It is required for jobs with regular contact with children or vulnerable adults.

2. Enhanced Disclosure: This contains all information provided by a standard disclosure, but also includes information held on local police records, and which the police consider relevant to the post to be held. Like standard disclosures, they relate to a specific job or role only. An enhanced disclosure is required for jobs that involve regularly caring for, training, supervising, or being in sole charge of children or adults. If the person is to carry out regulated activity (see below) the enhanced disclosure will include any information held on the relevant barred lists.

Eligibility for standard and enhanced checks is prescribed in legislation.

3. Basic Disclosure: These are the lowest level of disclosure and only contain details of unspent (current) convictions. Basic disclosures verify information from applicants for posts that are not exempt under the Rehabilitation of Offender Act (Exemptions) Order. Basic disclosures can currently only be obtained through Disclosure Scotland.

Baseline Personnel Security Standard (BPSS)

In addition to the three types of disclosure the Council has a number of posts (Annex 1) where the post holders have to access sensitive information via Central Government IT systems, it is a requirement for these post holders to undertake a Baseline Personnel Security Standard (BPSS) check which as part of a wider background check includes a Basic Disclosure check. These checks are coordinated by the Personnel Service and are carried out on our behalf by Kent County Council.

Further information about BPSS checks can be found here:

<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

Regulated activity

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012. No distinction is made between paid and voluntary work.

Regulated activity relating to children

The definition of regulated activity relating to children (from 10 September 2012) comprises of:

- 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 and ii is regulated only if done regularly.

iii. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;

iv. Registered child-minding and foster carers.

Regulated activity relating to adults

The definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the definition of regulated activity (and so will anyone who provides day to day management or supervision of those people):

i: Providing health care

- Any health care professional providing health care to an adult, or anyone who provides health care under the direction or supervision of a health care professional.

ii. Providing personal care

- Provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability;

- Prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without prompting or supervision; or

- Trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

iii. Providing social work

The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

iv. Assistance with cash, bills and/or shopping

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

v. Assistance in the conduct of a person's affairs

Anyone who provides various forms of assistance in the conduct of an adult's own affairs for example by virtue of an enduring power of attorney.

vi. Conveying

A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers

4. Appointment of staff - offers of appointment and contracts of employment

The Personnel Service will maintain a list of posts requiring DBS checks (Annex 1) which have been agreed by Management Team. The Personnel Service will be responsible for ensuring the DBS checks are undertaken for relevant posts as part of the existing pre-employment check process. This includes ensuring the DBS forms are completed correctly and that original proof of identity documents are seen.

The Council will use the Disclosure and Barring Service as part of the pre-employment checks during the recruitment process. The information provided by the DBS will help those involved with recruitment to make informed decisions about the suitability of candidates for certain types of work.

Where the post requires a DBS check, the job advert will include a reference to the post being subject to a satisfactory DBS and if so at what level (standard, enhanced or basic). Posts which require a BPSS check will state the requirement for a Basic DBS check. The requirement for a DBS for all posts will also be stated in the Person Specification for the role.

All offers of appointment to posts which require a DBS check will be made conditional on the receipt of a satisfactory DBS check in addition to references, verification of right to live and work, verification of qualifications and medical clearance. Where a DBS check is required, all applicants, regardless of their status, will be expected to apply for a new DBS check. Portability is not acceptable regardless of status. Subject to those exceptions set out in this procedure, employment cannot commence without the original disclosure being sighted.

The Personnel Service will be responsible for ensuring that the original disclosure is seen. If there are no disclosures then the hiring manager will be informed. If there are disclosures then the process set out in section 5 below will be followed.

The employee's contract will contain a clause stating that the offer of employment is subject to receipt of a satisfactory disclosure (renewable every three years) from the Disclosure and Barring Service. If an unsatisfactory disclosure is received, the offer may be withdrawn. This will be explained to the individual as part of the conditional offer of the job.

When a new post requiring a DBS disclosure is created, the manager should use the online eligibility checker to check whether the new role falls within the scope of requiring a DBS check. The Personnel Service should be notified that the post should be added to the existing list of posts that require DBS disclosure.

A Disclosure undertaken by another organisation will not be accepted. If an applicant refuses to give their signed consent to a disclosure application being undertaken, they will not be appointed to the post.

If an applicant believes the information provided by DBS is not correct, the applicant can contact the DBS to dispute the result.

Rechecking of existing employees

DBS disclosures are only valid at the date the application is submitted.

Based on current national guidance and best practise it is the Council's policy that 3 yearly renewal DBS checks must be undertaken for all relevant employees.

The Personnel Service will notify the individual employee and their line manager of the need to submit a new disclosure application. If the individual has subscribed to the DBS Update Service their existing DBS certificate can be used and a Status Check run, If new information is disclosed a new DBS application will need to be made.

Post which require a BPSS check are not subject to a recheck.

5. Making Decisions using Disclosure Information

If a disclosure reveals convictions, reprimands or cautions, the Personnel Service will check with the recruiting manager whether the individual has previously disclosed details of any convictions or cautions. The recruiting manager should discuss the case with their Director and the Personnel & Development Manager before a final decision on future employment is made.

If the individual has not disclosed the convictions, either on an application form (or to their manager if already employed by the Council) when the offence took place, they should be asked why they had not done so. Non-disclosure of relevant information or the disclosure of false information by candidates/employees will normally lead to a withdrawal of an offer of employment, or the instigation of the Council's disciplinary procedures respectively.

If an individual denies that the convictions relate to them, a further check must take place. This can be done by the individual contacting the DBS and advising that there is a dispute on the evidence submitted. The DBS should then undertake an investigation.

Factors to consider when making a decision:

Once it is established that the convictions/cautions relate to the individual, the recruiting manager and their Director in consultation with the Personnel & Development Manager should explore with the applicant the circumstances surrounding the convictions/cautions and when they took place. An applicant's criminal record should be assessed in relation to the tasks they will be required to perform and the circumstances in which the work is to be carried out.

Factors to consider include:

- An examination of the circumstances leading up to the offence, e.g. the influence of financial or domestic circumstances.
- The seriousness of the offence
- Whether the individual's circumstances have changed since the offence was committed, making re-offending less likely.
- The degree of intent on behalf of the offender
- Any relevant information offered by the applicant about the circumstances which led to the offence being committed
- The nature of the job, i.e. does the nature of the job present any opportunity for the post-holder to re-offend in the course of their work?
- The degree of risk that the offence suggests that the individual represents
- The length of time since the offence took place

- The extent of job supervision i.e. does the job involve one-to-one contact with children or other vulnerable groups and what level of supervision will the post-holder receive.

The fact that someone has a conviction or a caution would not necessarily prevent them from taking up or continuing in employment with the Council, although serious consideration must be given to the information that has been received before a decision is made.

The decision on whether to confirm or withdraw the offer of employment will be documented on the employee's personnel file if they are appointed. If the decision is not to appoint this will be kept on the recruitment file for a period of 6 months.

6. Starting employment without a current DBS disclosure

As a general rule, no applicant should be allowed to start work for the Council in a post requiring a disclosure until all pre-employment checks have been received.

In very exceptional circumstances, the relevant Director may decide, in consultation with the Personnel & Development Manager that an applicant may start work before the clearances and checks have been received. This must only be in situations where there is an urgent need to maintain service delivery and all reasonable steps have been taken to protect the safety of service users. The arrangement will remain the responsibility of the employing directorate/service. The individual will be made aware that if they start work with the Council and subsequently receive a disclosure which makes them unsuitable to continue that it will likely result in dismissal under the Council's disciplinary procedure. (see the Council's Disciplinary Procedure for further information).

In any event, every possible step must be taken to protect service users, this will include not allowing the applicant to work in regulated activity to children or adults, allowing the applicant to start work in an alternative or office based post, or being fully supervised at all times when undertaking regulated activity until a satisfactory check has been undertaken.

7. Personnel Service

If managers are uncertain whether any roles within their service should be made subject to a DBS check or unclear about the process to follow then contact the Personnel Service for further advice.

Contact –

Mathew Brooks, HR Advisor, Mathew.Brooks@tmbc.gov.uk or Personnel.Services@tmbc.gov.uk