

NORTH LINCOLNSHIRE COUNCIL

RECRUITMENT OF EX OFFENDERS AND DBS CHECK PROCEDURE FOR THE WINTERTON FEDERATION

INTRODUCTION

1. In this Federation we are committed to the fair treatment of existing and prospective employees, and subject to our responsibilities to protect children, undertake to treat all applicants fairly and not discriminate unfairly on the basis of offending background.
2. The council as a registered body of the Disclosure and Barring Service (DBS) uses the Disclosure service to assess an individual's suitability for positions in the Federation. As a registered body, the council complies fully with the DBS Code of Practice and applies this to all recruitment by the Federation.
3. This procedure should be used when recruiting to all posts in the Federation. This applies to work of any kind, whether paid or unpaid. This includes all employees, supply staff and casual workers, volunteers, students, and apprentices.

LEGISLATIVE FRAMEWORK

4. The Rehabilitation of Offenders Act 1974 enables criminal convictions to become 'spent' or ignored after a rehabilitation period. This means that once the rehabilitation period has expired an ex-offender is not obliged to mention their conviction when applying for a job. However, the Exceptions Order 1975 and 2000 and the Protection of Freedoms Act 2012 set out occupations and positions where there is a valid need to see a person's full criminal record (including 'spent' convictions) to assess their suitability for a position. These are called 'exempted' posts. This includes:
 - Any work defined as '[regulated activity](#)' relating to children or adults within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Protection of Freedoms Act 2012;
 - Any work in a further education institution or 16 to 19 academy where the normal duties of that work involve regular contact with children.
5. In the context of the Federation environment this includes a position whose normal duties include work in an education establishment.
6. The School Staffing (England) (Amendment) Regulations 2006 places a statutory requirement on employers to obtain Enhanced DBS checks for all new appointments to the workforce. This includes anyone employed to work within the Federation, including those employed to

deliver extended services, administrative workers, caretakers and ancillary posts.

7. Volunteers require an enhanced DBS check. A children's barred list check is also required where volunteers are unsupervised and therefore fall within the definition of regulated activity. It is for the Federation to determine if the volunteer is considered to be supervised in line with Annex F of the [Keeping Children Safe in Education](#) statutory guidance.
8. Governors in maintained schools are required to have an enhanced DBS check and a Section 128 check. Where governors also volunteer, paragraph 7 above applies. Section 128 checks are also required for management positions within academies.
9. It is an offence for an individual who is disqualified from working with children to knowingly apply for, offer to do, accept, or undertake work with children.

SAFEGUARDING CHILDREN – THE WIDER CONTEXT

10. The Federation is committed to providing a safe environment for children and young people to live and learn. To achieve this, it is important that there are processes in place to prevent unsuitable people from working with children and young people.
11. This document focuses specifically on the use of DBS checks. However, this is only one part of the process which helps to identify, deter, and reject those who might be unsuitable or unsafe working with children. Although it is an essential safeguard, it cannot be relied on solely. A DBS check forms part of vetting procedures that should also include checks to confirm:
 - Proof of identity – this should always come first;
 - Qualifications required for the post;
 - Professional status (See note 1);
 - Appropriate level of physical and mental fitness to carry out work responsibilities;
 - UK residency or right to work in the UK;
 - Overseas checks where an individual has lived outside the UK (See note 2);
 - Disqualification under the Childcare Act 2006 (See note 3);
 - Previous employment history including explanations for gaps;
 - References (See note 4).

Note 1: Teacher Services is an online check service which should be used before appointing a teacher to check for: Award of QTS, completion of teacher induction and also whether there are any prohibitions, sanctions or restrictions that might prevent the individual from taking part in certain activities or working in specific positions.

Note 2: Further checks with embassies or police in the country where the applicant has lived must be carried out before the individual starts work. Where further checks cannot be

made for child protection purposes, or the person is a refugee with leave to remain in the UK and has no means of obtaining relevant information, extra care must be taken in taking up references and carrying out other background checks.

Note 3: Individuals who work/are engaged by schools in roles are required to declare spent and unspent convictions/cautions, other than those offences which are protected. This includes volunteers but not governors unless they also volunteer.

Note 4: References should be obtained for all jobs undertaken in the preceding five years, in line with Safer Recruitment guidance.

12. Safer recruitment relies on a range of checks that enable the Federation to make recruitment decisions in full knowledge of the facts of whether or not a potential employee is suitable to work in a post involving contact with children. It also requires robust recruitment advertising, assessment and selection processes.

APPLICATION

13. The DBS provides access to criminal record information and 'barred list' information, through its checking service. It enables organisations that are entitled to ask exempted questions under the Exceptions Order to make safer recruitment decisions by identifying candidates who may be unsuitable for work involving children. All checks are made via the DBS.
14. The following levels of DBS checks are available:
 - Standard;
 - Enhanced;
 - Enhanced with children's barred list;
 - Enhanced with adults barred list;
 - Enhanced with both lists.
15. All employees of the Federation will require an 'enhanced' DBS check as a minimum.
16. The enhanced level of DBS check includes details of any 'spent' and 'unspent' convictions as well as cautions, reprimands and warnings held at a national level. It will also indicate whether information is held on government department lists of those who are banned from working with children or vulnerable adults. It may also contain non-conviction information from local police records, which is considered relevant in connection to the position sought.
17. Where work involves [regulated activity](#), the enhanced DBS check will also include a children's barred list check. This will contain details of whether an individual is included on the DBS children's barred list (formerly known as List 99 and/or the Protection of Children Act (PoCA) list). The purpose of the list is to enable the Federation to safeguard against employing a person who has been barred or restricted from working with children.

18. The DBS filter certain old and minor cautions and convictions, reprimands and warnings from criminal record certificates issued from 29 May 2013 onwards. This means certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers. Guidance and criteria on the filtering of these cautions and convictions can be found [here](#).
19. The DBS does not conduct overseas criminal record checks for either standard or enhanced level DBS checks. Where an individual has resided overseas for any period of time, the council using the appropriate overseas agency will carry out additional criminal record checks as necessary. (See note 2).

PROCEDURE

20. All job adverts and recruitment material for Federation posts will state that a DBS check will be requested in the event of an individual being offered employment.
21. If a candidate is successful in their application for a post in the Federation, they will be required to authorise the council to apply for a DBS check.
22. All offers of employment must be made subject to confirmation of satisfactory DBS check.
23. Failure by an applicant to reveal information that is directly relevant to the post sought could lead to withdrawal of an offer of employment.
24. Having a criminal record will not necessarily debar an individual from being employed by the Federation unless it is considered that the conviction renders that person unsuitable for appointment to the post applied for. This will depend upon the nature of the position and the circumstances and background of the offences.
25. In the event of offences being disclosed, a senior Human Resources (HR) representative will write to the applicant to obtain more detailed information and the circumstances surrounding the offence/s. The response will enable a senior HR representative to carry out a risk assessment to inform a judgement as to the suitability of the individual for the post, giving due consideration to our responsibility to protect children at all times.
26. Where the applicant's response gives considerable cause for concern the risk assessment will be conducted in consultation with the Executive Headteacher.
27. In determining an applicant's suitability for a post, the following factors will be taken into consideration when assessing risk:

Relevance

- Is the type of offence relevant to the post?

Seriousness

- How serious is the offence?

Circumstances

- What were the circumstances surrounding the offence?
- What explanation does the individual give?
- Have the individual's circumstances changed?
- What is the person's attitude to the offence(s)?
- Does the individual take responsibility?

Age of Offences

- How long is it since the offence occurred?
- Is it an old or recent offence?
- Is it a juvenile or adult offence?

Pattern

- Does the individual have a pattern of offending?
- Is the caution or conviction a one off or are there several occurrences?

- 28.** Responsibility for the decision to appoint or not will lie with the Executive Headteacher in conjunction with a senior HR representative. Any such matters will be discussed with the applicant before a decision is made.
- 29.** Where information received from the DBS contradicts that provided by the applicant, a senior HR representative will discuss any matter revealed in the Disclosure with the person seeking the position before a decision is made regarding the withdrawal of a conditional offer of employment.
- 30.** If an applicant believes the information provided by the DBS is incorrect, they are entitled to appeal to the DBS. Where this occurs, the conditional offer of employment will remain, pending a response from the DBS. A final decision as to the applicant's suitability for employment will be made on the basis of this information.
- 31.** A written record of the decision and reasons for the decision will be retained with the original DBS check information. This will enable the council to provide clear reasons for its decision in the event that this is challenged. This information will be stored and retained in accordance with this procedure.
- 32.** An individual will not ordinarily be permitted to commence employment in the Federation prior to confirmation of a satisfactory DBS check.

Where this does occur, and the individual's work involves regulated activity, the individual should be appropriately supervised and all other checks, including a separate children's barred list check should have been completed.

DURABILITY OF DBS CHECKS FOR EXISTING EMPLOYEES

33. At present, there is no requirement for existing employees to be rechecked.
34. A DBS check will be considered valid where an existing employee moves from a post with the council or another North Lincolnshire maintained school, to a post within a school requiring the same level of DBS check and with similar responsibilities. DBS checks are not transferable either from or to an academy.
35. A new DBS check will be required for existing employees prior to commencement of employment where:
 - The post requires a DBS check at a higher level than currently held;
 - An existing employee transfers from a care position working with vulnerable adults to a post working with children, and vice versa. This is to ensure that the required checks are made against the relevant barred lists.

PORTABILITY OF DBS CHECKS FOR NEW EMPLOYEES

36. The Federation does not accept certificates of DBS checks undertaken by previous employers due to the risks involved with portability. Portability is the reuse of a DBS check obtained for one position in one organisation and later used for another position in another organisation. Using DBS checks from previous employers presents significant risks:
 - They carry no formal period of validity and information is only certain to be accurate on the day of issue;
 - Previous organisations may not have accurately and fully validated a person's identity;
 - It is not possible to know if any additional police information was provided to the previous organisation as part of an Enhanced DBS check;
 - It may not meet the legal requirements to carry out fresh checks of the DBS children's barred list.
37. The DBS now provides an 'online update' service. Individuals pay an annual subscription which provides portability as DBS checks are kept up to date. Schools do not need to register or pay a fee to use the service but do require the individual's permission to check their record. Check results can be viewed straight away. Further information can be found [here](#).

DISCLOSURE OF CRIMINAL RECORDS BY EXISTING EMPLOYEES

38. Existing employees should inform the Executive Headteacher if, during their employment or between checks, they obtain a new criminal conviction. Any matters disclosed by the employee or revealed through a DBS check, will be discussed with the employee to determine their suitability to continue working in the post.
39. Depending upon the nature of the conviction, the matter may be dealt with in accordance with the Federation's agreed Disciplinary procedure. Failure to reveal such information may also lead to disciplinary action being taken.
40. Where a conviction by its nature suggests there may be child protection concerns, contact will be made with the council designated officer (LADO) for child protection issues. Discussions will take place which determine whether there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, and appropriately refer the matter to children's social care and ask for a 'joint evaluation meeting' to be convened straightaway.
41. The joint evaluation meeting will include as appropriate, children's social care and/or the police. The strategy discussion will also normally include the LADO, a senior member of HR, a representative of the Federation and any other agencies involved.
42. The purpose of the joint evaluation meeting will be to evaluate the conviction and decide how it should be dealt with.
43. Where initial evaluation or the joint evaluation meeting indicates a conviction does not appear to warrant enquiries by children's social care, but professional misconduct may still have occurred the initial joint evaluation will also consider whether the conviction is more appropriately dealt with through the formal disciplinary procedure.

STORAGE AND HANDLING OF DISCLOSURE INFORMATION

44. The Federation recognises the sensitive nature of personal data held on DBS checks. As the registered body the council complies fully with the DBS Code of Practice regarding the correct handling, use, and storage of disclosure information. Before a check can be submitted all applicants will be required to complete a 'Privacy Policy Declaration' which confirms that they have read the DBS's specific privacy policies which explain to applicants how their personal data will be used and outline their rights under the General Data Protection Regulations (GDPR).
45. Individuals will receive their DBS certificate back in the post and are required to show the certificate to the Federation. Copies must not be

taken but the Federation should provide a summary of the following information to HR:

- Level of check;
- Date of check;
- DBS reference number;
- Authoriser of the check;
- Satisfactory Y/N.

46. This information must then be included on the Federation's Single Central Record.
47. The information will also be held securely on the computerised HR records system in accordance with the principles of the GDPR. Access to this information is restricted to those entitled to see it as part of their duties.

ADDITIONAL

48. A copy of the DBS Code of Practice is available [here](#).
49. The council will conduct regular audits to ensure compliance with the procedure and the DBS Code of Practice. The council is also required to co-operate with requests from the DBS to undertake assurance checks to ensure proper use and safekeeping of Disclosure information.