

Harrow Council Disclosure of Criminal Records Policy and Procedure

Subject: Disclosure of Criminal Records Policy and Procedure

Source and Date: Agreed by CJC September 2014

Applicable to: All employees, other workers and volunteers

This Policy and Procedure complies with legal requirements in force at the time of drafting and may be reviewed and updated at any time in response to changes in the law.

POLICY

1. Policy Statement

Harrow Council is committed to safeguarding the welfare of those accessing its services through the effective use of the Disclosure and Barring Service (DBS) disclosure vetting process for all relevant groups of employees.

As an organisation using the DBS to assess applicants' suitability for positions of trust, the 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 Harrow Council. 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 safeguarding 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 Council has a separate Policy Statement on the Recruitment of Ex-Offenders.

2. Scope

This policy and procedure applies to the recruitment and engagement of employees, agency workers, self employed interims and consultants, and volunteers across the Council. It should be followed when recruiting, both internally and externally, to all posts which have been identified as providing access to children (persons under the age of 18) as users of Council services, or which provide specific services to adults which may make these adults vulnerable, or to other defined posts of trust, within the Council.

In addition, fostering and adoption arrangements, certain types of student placements, school governors, elected members and preferred contractors will also come under this Policy and Procedure in specified circumstances, particularly where their role involves unsupervised contact with children.

This Policy is strongly recommended for adoption by School Governing Bodies.

PROCEDURE

3. Purpose

The purpose of this procedure is to ensure that Harrow Council complies fully with its duties and powers under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012, in using the disclosure and barring systems to make safer recruitment decisions by identifying those who may be unsuitable for certain work – particularly work involving vulnerable groups, including children.

4. Posts Which Require a Criminal Records and Barred List Checks

The Council will ensure that it has a relevant and up-to-date criminal records checks, and barred list checks if applicable, for all staff undertaking regulated activity.

The flow chart set out at Appendix 1 and the Eligibility Guidance at Appendix 2, which should be read together, will enable managers to establish, which, if any, level of check is required.

The Council is working to ensure that the level of DBS check required is recorded against each post across the Council on SAP.

There are 5 types of DBS check available:

- Enhanced Check for Regulated Activity (Children) – used when post involves undertaking regulated activity relating to children (see appendix 1). This check involves a check of the police national computer, police information, and the childrens barred list.
- Enhanced Check for Regulated Activity (Adults) – used when post involves undertaking regulated activity relating to adults (see appendix 1). This check involves a check of the police national computer, police information, and the adults barred list.
- Enhanced Check for Regulated Activity (Children and Adults) – used when post involves undertaking regulated activity relating to both children and adults (see appendix 1). This check involves a check of the police national computer, police information, and the childrens and adults barred lists.
- Enhanced DBS Check – used where a post meets the pre September 2012 definition of regulated activity (see Appendix 1). This level of check involves a check of the police national computer and police information.
- Standard DBS Check – used primarily for people entering certain professions such as legal and accountancy. Standard checks involve a check of the national police computer only

In addition, the Council requires a Basic Disclosure to be undertaken for particular defined posts:

- those involving frequent access to very highly sensitive, confidential, client information.

- those which require accessing private homes on a regular basis in the course of normal duties
- lawyers and legal practice employees (except social care lawyers and legal practice posts – enhanced DBS check)
- accountants
- Housing Caretakers

A Basic Disclosure is obtained via Disclosure Scotland. This check includes unspent convictions only: <http://www.disclosurescotland.co.uk/basicdisclosureonline/index.htm>

A basic disclosure via Disclosure Scotland is also required for posts which fall within the requirements of the Baseline Personnel Security Standard (BPSS), as having access to the Public Sector Network (PSN). **Link to: [BPSS Guidance Notes](#)**

Heads of Service will determine whether a DBS check is required, and the appropriate level of check, using the eligibility criteria set out in Appendix 1. Further guidance is set out in 'Eligibility Guidance For Enhanced and Barred List Check' LINK. Checks should not be requested where the post does not meet the requirements, as submitting ineligible checks may jeopardise the Council's registration to undertake all checks with the DBS.

In circumstances where the Head of Service is unsure of the level of check required, further advice should be obtained from HRD and Shared Services, or by contacting the DBS directly at: customerservices@dbs.gsi.gov.uk

Whether or not a criminal records check and a barred list check is required, it is essential that thorough employment checks and safeguards are followed for all recruitment. Vigilant ongoing day-to-day management is then crucial, in order that unusual or concerning behaviour is picked up at the earliest opportunity.

5. Recruitment

Note: This procedure applies to both internal and external applicants.

All recruitment will be in line with the Council's Recruitment and Selection Policy and Procedure.

Prior to advertising, the Head of Service should identify the level of DBS check, if any, required for the post on the online Recruitment System. The job advertisement and selection criteria will highlight the checks as an essential requirement of the job role.

All applicants for any post are required to complete an application form, including details of unspent convictions. Applicants for posts subject to a DBS check will also be required to provide details of spent convictions, cautions, reprimands or final warnings that are not 'protected'. Any gaps in employment histories will be explored prior to and at the interview, by the recruiting manager.

Shortlisted candidates will be asked to bring original identity documents, including those required by the DBS, to their interview.

The recruiting manager will reiterate the need for a criminal records check (and barred list check if relevant) to each candidate at the interview, and may clarify any details regarding the

information provided by a candidate on their application form at this stage. However, any conviction information disclosed must be treated confidentially within the interview process and no decisions will be taken at this stage.

The recruiting manager is responsible for ensuring the required DBS check is undertaken.

6. Procedure for Applying for a CRB Disclosure

Within Harrow Council, all DBS criminal records checks for directly employed staff are undertaken online via the Security Watchdog System (formally Capita Recruitment Vetting Service). 'Applicant Managers' have been identified and authorised within each relevant department to apply for DBS checks. [Link to 'CRB Online Disclosure Guide: Applicant Manager's Guidance Notes'](#).

Once a conditional offer is made, the 'Applicant Manager' should check whether the applicant is registered with the DBS Update Service.

For new applicants who already have a DBS check for the relevant workforce and who have registered with the online update service, the manager will accept this disclosure, and carry out an online status check to ensure that their disclosure is still valid.

<https://www.gov.uk/government/publications/dbs-update-service-employer-guide>

In addition, the applicant will be required to bring in their original certificate for the manager to see. If the online status check reveals a change in the disclosure status then a new check will be required.

If applicants are applying for a position within a different workforce (moving from adults to children or vice versa), then a new DBS check will be required.

For applicants who have not registered, the manager will advise the preferred candidate on the process to complete the disclosure application. [Link to 'CRB Online Disclosure Guide: Applicants Guidance Notes'](#). In addition, the candidate will be required to register their DBS check with the Update Service.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269386/Update_Service_Applicant_guide_v3.8.pdf

The Applicant Manager is responsible for checking and verifying the ID required by the DBS from the applicant.

Applicant Managers can track the progress of DBS applications using the applicant's DBS reference number¹ via the Security Watchdog System.

Applicant Managers will receive notification online via the Security Watchdog System as soon as a criminal records check (and barred list check if relevant) has been completed, together with the certificate disclosure number and date of issue.

The manager must ask the applicant to bring in their original certificate, and should record they have seen the certificate and record the disclosure number and the date of disclosure on the online Recruitment System.

¹ Please note the DBS applicant reference number (E_____) used for tracking purposes is NOT the unique CRB disclosure number which must be recorded on SAP for each individual check.

The Council will **not** receive a copy of the disclosure certificate directly.

The process for applying for a DBS check for new applicants is set out at Appendix 2.

Individuals conditionally appointed to posts subject to a DBS check, will not be set up as a new employee or allowed to commence their employment until a valid/current criminal records check (and barred list check if relevant) has been seen,

In exceptional circumstances, the requirement for a satisfactory criminal records check prior to commencement may be waived by the relevant Corporate Director or designated Divisional Director, verifying that a written supervision plan is in place, by completing a proforma as part of the Appointment Form [Link to Form CR2](#). In Children's Services, no individual, in a post subject to a DBS check, will be allowed to start without a valid DBS disclosure unless a current waiver of DBS clearance has been authorised by either the Corporate Director or Targeted Services Divisional Director. No individual will be allowed to engage in any regulated activity, in any circumstances, until a barred list check has been completed.

During the recruitment process, Applicant Managers are responsible for recording details of the disclosure on the Recruitment System. For rechecks, Applicant Managers should notify Shared Services promptly via email of any checks completed including the Department, team, employee's full name, DBS disclosure number and issue date, to enable the detail to be recorded on the individual's personal file on SAP.

7. Dealing with Positive Criminal Records Disclosures

If the disclosure certificate shows cautions, warnings and convictions, spent and unspent, the Applicant Manager should discuss the case with their Corporate Director or designated Divisional Director, as agreed locally, immediately, and before taking any action. Advice should also be sought from the HRD Business Partner. The Corporate Director or designated Divisional Director is responsible for making the overall decision about whether or not to employ the individual, or to withdraw the conditional offer, applying discretion based on the nature of the disclosure. Within schools, the Headteacher and/ or Chair of Governors (as agreed locally) is responsible for taking all decisions on whether or not to employ. A record of all discussions, rationale for reaching a decision and the final decision should be kept on Form CR3. [Link to CR3 Form](#).

Before a decision is reached on whether to withdraw a conditional offer, the individual will be offered the opportunity to discuss the content of the disclosure with the Applicant Manager, or the Corporate Director or designated Divisional Director. Notes of any discussions with the individual will be made and retained confidentially on file.

The decision on whether to or not to confirm the appointment will take into account a range of factors, including:

- Whether they are barred from appointment under the DBS lists (and therefore it is unlawful to employ them in specific roles involving regulated activity)
- Whether the conviction is relevant to the position
- The circumstances surrounding the offence, and any explanations given by the applicant
- The seriousness of the offence
- The length of time since the offence occurred

- Whether there is a pattern of behaviour, or whether it was a one off
- Whether the applicant's circumstances have changed
- Whether the applicant disclosed the information on convictions, cautions, warnings or bindovers at the application/ interview stage.

Decisions will be made on the basis of an assessment of any possible risk to children or vulnerable groups, rather than the simple fact that a conviction or other information is disclosed, and managers must apply discretion based on the full circumstances of each case. However, where there is doubt, the decision will always favour the welfare and safeguarding of children and vulnerable groups.

Any positive disclosures on criminal records checks must be signed off by the relevant Corporate Director or designated Divisional Director, before any employment can commence. For example, for posts within Children's Services (except schools), criminal records checks containing any information must be signed off by the Corporate Director of Children's Services before any employment can commence.

Where a candidate has not declared a criminal record on their application form and the disclosure check reveals the existence of a criminal record, the Applicant Manager or Corporate Director or designated Divisional Director will discuss the matter with the applicant, but it will normally result in the offer of employment being withdrawn. If the applicant is already an employee of the Council, the matter will be investigated under the Council's Conduct Procedure before any decision or action is taken.

If the post does not involve access to children or vulnerable groups and the candidate has declared a conviction on their application form, the Chair of the Panel will discuss the issue with their HR Business Partner, if they feel the conviction is relevant to the post being applied for. The relevant Corporate Director or designated Divisional Director will decide whether to proceed with the offer of appointment, or investigate the matter under the Council's Conduct Procedure in the case of internal applicants.

8. Handling and Storage

The information provided by the DBS is highly confidential and will only be used to assess the suitability or otherwise of the applicant for the job in question.

The Applicant Manager will store any information, including the applicant's application form, the completed CR3 Form if applicable, notes of any discussions with the candidate and rationale for the decision making process, securely, electronically on the Council's system or in lockable storage.

Shared Services will record that a check has been carried out, including unique disclosure number and date, on the successful applicant's personal file on SAP.

9. Portability of DBS Disclosure Certificates/ Update Service

For all appointments to posts subject to a DBS disclosure, the Council will require applicants to apply for a new disclosure unless they have registered with the the DBS Online Update Service for the relevant workforce. In these circumstances, the Council will undertake a status check.

Harrow Council will not accept any previously issued CRB/DBS records from applicants who are not registered with the Update Service. All new applicants, who have not already done so, will be required to register with the Update Service, as a condition of their appointment.

10. Existing Employees and Rechecks

All existing staff in posts which are subject to a DBS check will also be required to register with the Online Update Service, if they have not already done so, at the time their recheck is due. The cost of registration will be funded by the Council.

In addition, as a disclosure is a snapshot in time and has no ongoing validity, rechecks will be undertaken every three years for existing employees and volunteers.

The process for undertaking rechecks for Existing Employees is set out at Appendix 2.

Shared Services are responsible for maintaining records of checks undertaken and dates, and will provide information to the appropriate Applicant Managers when rechecks are due.

A new criminal records disclosure will be required where an existing employee moves to a new position within the Council if they do not have an up-to-date check (i.e. undertaken within the last 3 years) for the relevant workforce.

11. Overseas Applicants or Applicants who have Lived Abroad

The DBS can only check applicants from the date they arrive in the UK, or the time the applicant has lived in the UK. The DBS cannot currently access overseas criminal records or other relevant information held overseas as part of its Disclosure service. Therefore a DBS check will not, in most cases, reveal if an individual has a criminal record held in another country. If a recruiting manager wishes to appoint an individual from overseas, or an individual who has lived abroad in recent years prior to the appointment, and the post requires a CRB disclosure, the Council will need to contact the relevant Foreign Embassy. Managers should seek further advice and guidance from HRD and Shared Services.

The Council is committed to doing all it can to ensure that every individual appointed to relevant posts is suitable to work with vulnerable people, including children.

12. Other Workers

Agency workers, contractors, sub-contractors and volunteers must be assessed against the same criteria as those employed directly for Harrow Council in determining whether a DBS check is required.

Agency Workers

Agency workers in roles which would require a Council employee to have a criminal records check must also have an up-to-date DBS check. The Agency (Pertemps) is required to carry out the DBS check, as part of the pre-engagement checking and provide evidence on the Pertemps Agency Workers System (PAWS) to the Council that the checks have been completed and are satisfactory, with dates.

The Agency is required to inform the Council of any issues which arise from the checks. It is the Council who takes the final decision about whether an agency worker is suitable for engagement.

Adopting robust recruitment and vetting procedures is essential to minimise the risks of engaging individuals who may prove a risk to vulnerable groups, including children. Therefore, in addition to ensuring that the checks undertaken by the Agency are satisfactory, the Council also requires the agency worker to bring their up-to-date DBS check (original copy) with them on their first day, to be checked and verified by the line manager of the post which the agency worker is covering.

Workers engaged via an agency must be rechecked annually.

Volunteers, Students and Work Placements

Where volunteers, those on work placement, or students are working with children or vulnerable people in specified establishments but are under the day to day supervision of another person engaging in regulated activity they will be exempt from the DBS checks. In any circumstances where volunteers or work placement students are undertaking regulated activity unsupervised, the same stringent checks must be applied as for employees, including a DBS disclosure check before commencement.

Contractors

A standard clause relating to DBS disclosure requirements has been developed and should be included into any contract which involves work with children or adults or providing services for, or in, establishments where children and/or vulnerable adults may be present.

It is the responsibility of the relevant Department to put appropriate measures in place to validate and ensure contract compliance.

13. Reporting to the DBS

The Council will forward information to the DBS in all cases where an individual is dismissed or removed from regulated activity (or would have been removed had they not already left) because they harmed or posed a risk of harm to vulnerable groups including children. In cases where the Council believes the person has committed a criminal offence, information will also be forwarded to the police at the earliest opportunity.