

*Recruitment and Vetting Checks*

# **Sheffield City Council Disclosure and Barring Policy**

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## **Introduction**

This document outlines the Council's policy on safer recruitment and Disclosure and Barring Service (DBS) checks. It sets out how the Council is to act fairly and without discrimination in the recruitment and employment of ex-offenders.

This policy then identifies how managers, head teachers and leaders (listed as managers from here onwards) must be aware of and act upon in the appointment and on-going employment of all individuals, who are eligible for a Disclosure and Barring Service check within the Council.

In this policy, the Council describes how it complies fully with the law and the Disclosure and Barring Service Code of Practice. To help understand the legal terms, there is a glossary at the end of this document.

It should be noted that Disclosure and Barring Service checks are only a small part of the recruitment and vetting process. The Council has robust recruitment processes in place to ensure someone is suitable for a position in the organisation. The Council also promotes a safer culture, so that abusive behaviour can be identified at the earliest opportunity. The Council has policies and procedures on verification of identity, right to work, registration and qualifications, employment history, references, occupational health checks and safer culture at work.

Julie Toner  
Director, Human Resources

## **1. Safer Recruitment Policy**

1. Sheffield City Council is committed to safeguarding and promoting the welfare of children and vulnerable adults and expects all staff and volunteers to share this commitment.
2. It is vital that all managers recruiting individuals to posts, which are eligible for Disclosure and Barring Service checks, apply the recruitment and selection procedures that endeavour to identify people who are suitable and want to work with vulnerable groups including children.
3. Where a post includes a requirement to work with sensitive records, managers/head teachers are to recruit employees, who understand how to maintain confidentiality of personal data
4. Sheffield City Council recognises that safer recruitment requires a robust, systematic but sensitive approach. It therefore requires that all those involved in the process of recruitment and selection to posts, eligible for a Disclosure and Barring Service check, strictly adhere to this Policy Statement.
5. Safer Recruitment is only part of the Council's approach to safeguarding children and vulnerable adults. Recruitment and Selection in combination with; safe working practices, effective training in recognising signs of abuse and effective procedures for responding to concerns will all contribute to ensuring the safety of children and vulnerable adults in the City.

### **Safer Recruitment Policy Aims**

- To help deter, reject or identify people who might abuse children or vulnerable people or are otherwise unsuited to working with them by having appropriate procedures for appointing staff.
- To operate such procedures consistently and thoroughly while obtaining, collating, analysing and evaluating information from and about applicants.
- To contribute to the Council's commitment to provide an on-going safe and secure environment for children and vulnerable adults.

## **2. Recruitment and Employment of Ex-Offenders Policy**

The Council recognizes its social responsibilities and position within the local community. We appreciate the important role that continuity of employment can play in the rehabilitation process of ex-offenders when matched with appropriate posts.

A criminal record will not be an automatic bar to employment at the Council. The specific details of each ex-offender's case will be considered on an individual basis. In each instance we will review the individual's ability to meet the skills and experience requirements of the post and assess the impact of their criminal record upon the needs of the post.

As an organisation using the Disclosure and Barring Service to assess applicants' suitability for positions of trust, Sheffield City Council complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. This policy is available to all individuals, who are required to complete a Disclosure and Barring Service Application

1. The Council undertakes to treat all applicants fairly and without discrimination. It undertakes not to discriminate unfairly against any Applicant, on the basis of criminal records disclosure and barring information provided or revealed.
2. Sheffield City Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender identity, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
3. The Council actively promotes equality of opportunity for all to achieve the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience.
4. A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. The Council's Disclosure and Barring Eligible Post List, known as the 'DBS Eligible Post List' contains an indicative list of posts subject to disclosure. This list is not exhaustive and may be amended from time to time.
5. For those positions where a Disclosure is required, all application forms, job adverts and recruitment information will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
6. Where a Disclosure is to form part of the recruitment process, we ask applicants to self-disclose all unprotected spent and unspent convictions at the application stage. Applicants are applying for a Post, which is subject to an order under Section 4(4) of the Rehabilitation of Offenders Act 1974, as

amended. Applicants are therefore not entitled to withhold information about convictions which, for other purposes are spent under the provisions of the Act.

7. Applicants must disclose all unspent and unprotected spent convictions, cautions, warnings, reprimands, binding over or other orders, pending prosecutions or criminal investigations. Failure to disclose this information could result in the withdrawal of a job offer, dismissal or disciplinary action. Any information given will be completely confidential and will be considered only in relation to an application for positions to which an order applies.
8. If an applicant has convictions to declare, the Council requests that the details are set out on a separate sheet and place in a sealed envelope marked "private and confidential". This should be sent by post to designated HR Advisor, including contact details for confidentiality purposes. For schools, this should be addressed to the Head teacher. This information must not be sent by e-mail. We guarantee that this information is only seen after short-listing by those who need to see it as part of the recruitment process.
9. The Council will ensure that managers involved in the recruitment process will be suitably informed as to how to identify and assess the relevance and circumstances of Disclosure information.
10. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position, could lead to withdrawal of an offer of employment or termination of employment for existing employees or volunteers.
11. Where there is a conditional offer of employment or check renewal, it is the individual who applies for a disclosure certificate via a registered body, currently Capita or Sheffield City Council. However, all disclosure applications must be countersigned by a person trained in the procedures for the registered body
12. The Council is to make individuals, requiring a check, aware of the existence of the DBS Code of Practice and make a copy available on request.
13. The manager/head teacher must discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment or reviewing employment.

### 3. Disclosure and Barring Policy

#### a. Spent Convictions – no requirement to reveal this information

The Rehabilitation of Offenders Act (ROA) 1974, as amended, enables some criminal convictions to become 'spent', or ignored, after a 'rehabilitation period'. A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a job.

A person convicted of all but the most serious criminal offences and who receives a sentence less than 2.5 years in prison, benefits from the Rehabilitation of Offenders Act if they are not convicted again during a specified period. In general terms, the more severe a penalty is, the longer the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'.

In most circumstances, the Council cannot refuse to employ someone, or dismiss them, on the basis of a spent conviction. Generally, spent convictions do not have to be declared, unless the individual is applying for a position of trust, which is called an 'Exempt Position' (see below).

#### b. Unspent convictions – requirements to reveal information

The Council requires all applicants to reveal whether they have any **unspent** criminal convictions, cautions, warnings, reprimands, binding over or other orders, pending prosecutions or criminal investigations. We will ask for full details of any unspent convictions and cautions at the job offer stage.

Those working for the Council are also required to tell their manager if they have any criminal proceedings pending against them or are convicted of a criminal offence, which is relevant to their post.

#### c. Exempt Positions - requirement to reveal all unspent and unprotected spent convictions and cautions

If you applied for a role, which involves working with children and vulnerable adults, your job is covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended by the 2013 Amendment Order. You are in a position of trust with children and/or vulnerable adults.

We must ask you to tell us about **all unspent and unprotected spent convictions** and **cautions**, in order for us to assess your suitability for the post:-

- All unspent convictions as listed in b. above
- Cautions relating to [specified offences](#) as listed by Government
- Cautions given less than 6 years ago (where individual over 18 at the time of caution)
- Cautions given less than 2 years ago (where individual under 18 at the time of caution)

- Convictions relating to [specified offences](#) as listed by Government
- Where you have more than one conviction offence, you must list them all
- Convictions that resulted in a custodial sentence (regardless of whether served)
- Convictions given less than 11 years ago (where individual over 18 at the time of conviction)
- Convictions given less than 5.5 years ago (where individual under 18 at the time of conviction)
- Similar offences committed overseas and in other legal jurisdictions
- For further guidance see [DBS filtering collection](#)

When you are completing an application form for a job with the council:

- You must tell us if you have any unspent convictions and cautions.
- If you are applying for an exempt post and work with children and vulnerable adults you must complete Appendix A, Criminal Records Declaration Form and tell us about all unspent and unprotected spent convictions and cautions in writing.

You must also tell us about these convictions and cautions, if requested at interview.

If you are in an exempt post, once you receive a conditional offer of employment or when renewing your DBS check, you will be asked to complete a DBS Application Form or give written permission for us to check your status on-line. You will hold the only copy of your Disclosure and Barring Service Certificate, which lists the results of your check.

You must bring your DBS Certificate to work to show and discuss with your manager or head teacher, when requested.

Failure to do any of the above, may result in your elimination from the recruitment and selection process or, if appointed, your dismissal.

It is against the law for us to employ you or allow you to volunteer for work with children and vulnerable adults, if you are listed as barred for this type of work.

#### **4. Eligibility for Checks**

The Council is legally responsible for ensuring that we are entitled to ask that person to reveal their conviction history. Individuals can only be asked to complete a Disclosure and Barring Service check, when managers have identified that the post duties meet the eligibility criteria for exempt positions.

In the event of a new post being created, Managers are to assess the duties of the posts against DBS eligibility criteria and entitlement to carry out a check. Managers must carry out this assessment, by completing a DBS Eligible Post Form. The Council has a list of DBS Eligible Posts. This list is published to the Council's internet and intranet every 6 months. This is an indicative list and can change, based on changes to post duties, the creation of new posts and post deletions.

It should be noted that **all** School Posts are eligible for an enhanced check with children's barred list and are automatically added to the DBS Eligible Post List.

We have a responsibility to ensure that only suitable people work with children and vulnerable adults. Where a check is not permitted but the Council feels a risk to children or vulnerable adults remains, this risk should be managed in other ways.

During recruitment and vetting, when a post has been identified as requiring a DBS check, the successful candidate/individual is required to complete a Criminal Records Disclosure form in line with the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the Police Act Regulations.

### **Types of Checks**

The Government is scaling back criminal records and barring systems to more proportionate levels, whilst ensuring to continue to provide effective protection for vulnerable groups including children. The Protection of Freedom Act 2012 and associated government guidance provides new definitions for different levels of checks including:-

- Redefining the scope of Regulated Activity and Eligible Positions
- Children under 16 are not eligible for any check

The Council has implemented the Protection of Freedoms Act 2012 legislation, carrying out enhanced checks. To be eligible for an enhanced check, the focus is on:-

- what activity the post holder is carrying out,
- where this is happening - children's establishments only
- how frequent is the contact with children
- how regular is the contact with vulnerable groups including children

There are 2 types of enhanced checks:-

1. **Enhanced Check for Regulated Activity (with Barred Lists)** –Any work which is defined as regulated activity (Safeguarding Vulnerable Groups Act 2007, as amended by the Protection of Freedoms Act 2012). This work covers activity provided to adults, activities and establishments in relation to children, which result in the adult or child being considered vulnerable. This is a compulsory check. This is work a barred person must not do.
2. **Enhanced DBS Check (without barred list)** –Any work defined as “ work with children” or “work with adults”, as in regulation 5 of the Police Act 1997 (Criminal Records) Regulations 2002. There are a number of official positions, some professions and activities, which are eligible for an Enhanced Check without the Barred List. This is a discretionary check.

### **1. Enhanced Check for Regulated Activity with children’s and or adults’ barred list check**

The new definition of regulated activity focuses on work which involves close and unsupervised contact with adults and children, where activities result in the adult or child being considered vulnerable. A summary of the eligibility criteria for an enhanced check for regulated activity is listed below:-

#### **Children**

1. Unsupervised activities – teach, train, instruct, care or supervision of children, advice/guidance on well-being, drive vehicle only for children – must be done regularly by the same person 1 day a week or on 4 days in 30 days, overnight
2. Work limited range of establishments – specified places – with opportunity for contact e.g. schools, children’s homes, child care premises - must be done regularly by the same person 1 day per week or on 4 days in 30 days
3. Relevant personal care e.g. washing, dressing or healthcare even if carried out once
4. Registered childminding and foster carers even if carried out once

#### **Adults**

The focus is on the activities required by the adult and not on the setting in which the activity is received, or the personal characteristics of that adult.

Those who provide

5. Healthcare – Regulated health care professionals
6. Personal care: assistance with washing, dressing, eating, drinking, toileting or teaching to do these tasks
7. Social work
8. Assistance with cash, bills, shopping
9. Assistance with conduct of persons own affairs – enduring power of attorney
10. Conveying adults to-from health care – Taxis included via other powers

## **Barred Lists**

A barred person is an individual, who has harmed or poses a risk of harm to children or vulnerable groups. Based on information received, the Disclosure and Barring Service, make decisions about whether a person is to be barred and whether they are to be placed on the Children's and / or Adult barred list(s) and prevented by law from working with children and/or or vulnerable groups.

Managers must act if they receive information, which confirms that the individual wishes to carry out Children's / Adults Regulated Activity and is on the relevant Barred List. The Protection of Freedom Act (2012) makes it an offence for a barred person to work, apply to work or offer to work in Regulated Activity with a group – i.e. Children or Adults – they are barred from.

The Council must not employ a person in regulated activity, who is known to be barred by the Disclosure and Barring Service. Managers must check that a person is not barred prior to engaging them in regulated activity.

The Council has a duty to notify the police, if an applicant has applied for a Post in regulated activity and is barred from working with that group and in this event, managers must seek advice from HR and Legal Services.

Managers with support from HR/Legal are to interpret any other disclosure information, hold a conversation with the individual and make a decision about whether the person is suitable.

## **2. Enhanced DBS Check**

There are a number of official positions, some professions and activities, which are eligible for an Enhanced Check without the Barred List. This is a discretionary check. It is the Council's responsibility to determine when an enhanced DBS check is required and to be able to explain the reasons why the Council has decided to ask for a check of a particular role.

Managers and Head teachers make decisions locally about the level of checks. They are guided by Council policy as set out below and are supported by HR and Legal Services.

**Table 1: Key Posts: Requirements to carry out enhanced checks**

<b>Key Posts</b>	<b>Legal Requirement – check must be undertaken</b> <i>Enhanced Check for Regulated Activity</i>	<b>Discretionary check - should be carried out</b> <i>Enhanced DBS check</i>
School Governors	<ul style="list-style-type: none"> <li>• Frequent, unsupervised activity with children</li> <li>• Carrying out personal care working with children overnight even if once</li> </ul>	<ul style="list-style-type: none"> <li>• School Governor duties</li> </ul>
Contractors/ self-employed contractors at specified Children's Establishment e.g. School, Children's Centre	Same person working in one children's establishment, with frequent opportunity for contact with children	
Volunteers - Children	<ul style="list-style-type: none"> <li>• Frequent, unsupervised activity with children</li> <li>• Carrying out personal care</li> <li>• working with children overnight even if once</li> </ul>	<ul style="list-style-type: none"> <li>• Unsupervised, regularly caring, teaching, solely in charge of children</li> <li>• Supervised and regularly caring for children</li> <li>• New supervised volunteers</li> </ul>
Director of Children's Services		<ul style="list-style-type: none"> <li>• Discharges any educational functions or social services functions of a local authority</li> </ul>
Chief Executive, Director of Adult Services		<ul style="list-style-type: none"> <li>• Discharges any social services functions of a local authority which relate wholly or mainly to adults</li> </ul>
Elected Member	<ul style="list-style-type: none"> <li>• Specific, frequent*, unsupervised activities with children – care, supervision or wholly in charge of children e.g. mentoring scheme with young people,</li> </ul> <p><i>*1 per week or 4 days in a 30 day period, or overnight – even if once</i></p>	<ul style="list-style-type: none"> <li>• Elected Members discharging any educational, children's social services functions, Adult Social Services functions which relate to vulnerable adults, vulnerable adults charity trustee as executive member, as scrutiny member, on area committee or any other committee which discharges these function</li> <li>• Member of Fostering, Adoption Panel</li> <li>• Member of Licensing Committee to assess the suitability to obtain or hold a taxi driver licence</li> <li>• Councillor activity, which requires regularly* caring for or being wholly in charge of children or vulnerable adults</li> </ul> <p><i>*3 days in a 30 day period</i></p>

<b>Key Posts</b>	<b>Legal Requirement check must be undertaken Enhanced Check for Regulated Activity</b>	<b>Discretionary check should be carried out Enhanced DBS check</b>
Fostering and Adoption Service Officers		Officers reporting on applications for adoption and special guardianship  Officers, who are placing children with foster parents and obtaining information about foster carers and their household members
Charity Trustee		<ul style="list-style-type: none"> <li>Children's/ vulnerable adults charity, whose workers carries out Regulated Activity</li> </ul>
Specific Children's Board Members		<ul style="list-style-type: none"> <li>Safeguarding Children's Board</li> <li>Youth Justice Board</li> </ul>
Employees working with sensitive records	Located in Specified Places - Children's Establishment	<ul style="list-style-type: none"> <li>Duties involve supervising, solely in charge of children or vulnerable adults</li> <li>Work in further education institution, regular contact with children</li> <li>Regularly provide first aid to children</li> <li>Fostering and Adoption duties</li> </ul>
Lifelong Learning Posts in Training Centres	Teaching children under 18 - frequent	<ul style="list-style-type: none"> <li>Work in OFSTED inspected training centres, where normal duties of that post involve regular contact with children</li> <li>Training, supervising, being solely in charge of Vulnerable Adults</li> </ul>
Professions in non regulated activity		<ul style="list-style-type: none"> <li>Managers consider the level of risk, prior to applying for a check</li> </ul>

Managers, with support from HR/Legal, interpret disclosure information on a Disclosure Certificate of an Enhanced DBS Check, hold a conversation with the individual and make a decision about whether the person.

### **Individuals recruited from overseas**

Where an applicant has been living in the UK for the past 2 years, it will be acceptable to obtain a DBS check to cover this period only.

In all other cases, the Council is to request a certificate of good conduct or overseas criminal records check when recruiting individuals from abroad. Currently

the DBS cannot access criminal records held overseas. However, in a small number of cases, overseas criminal records are also held on the Police National Computer and these would be revealed as part of a DBS check. Where the position meets the criteria for a DBS check, even if the applicant claims they have never lived in the UK before, a check should still be obtained in addition to the individual's overseas criminal records.

The Home Office provide initial guidance and the Foreign Office has links to all other countries. <http://www.fco.gov.uk/en/>, telephone 020 7008 1500,

## **Re-Checking**

It is Council policy to recheck all eligible posts every 3 years. Employees will be automatically notified of the need to renew their Disclosure Information. Schools maintain their own single central record, monitor and inform school staff when rechecks are required. Customers of umbrella services will be advised by their own organisation of when a re-check is required<sup>1</sup>.

The Council has the discretion to request a recheck, where there is a concern about an individual.

A refusal to renew a Criminal Records Disclosure, when already in employment with the Council may result in dismissal.

## **Starting work prior to receipt of a criminal record check**

The Council may issue a provisional offer of employment before receiving the result of a criminal record check. In exceptional circumstances, the Council may make a risk-based decision to appoint applicants while they are awaiting the outcome of a criminal record check. In such cases, the Council is to ensure:-

- An appropriate criminal record check has been applied for Where the person is working in regulated activity, the correct barred lists check is carried out, prior to starting work.
- 
- Safeguards are put in place to manage that individual i.e. supervision or restricted duties until the disclosure has been obtained

## **5. Disclosure Information**

The Council uses information obtained from recruitment and vetting checks to prevent unsuitable people from gaining access to vulnerable groups, whilst at the same time respecting human rights and privacy issues and complying with the requirements of the Data Protection Act.

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<sup>1</sup> This policy is currently under review and will be updated as part of the second phase of implementation of the Protection of Freedom Act (2012) in Spring 2013  
Sheffield City Council, HR Service

The Council requires applicants and those working for the council to self-disclose criminal conviction information, where this is justified in terms of the duties of the post and where it meets the criteria for a DBS check.

The Council makes sure that applicants and individuals working for the council are fully aware, where the post is exempt - a position of trust with vulnerable groups – and requires disclosure of unspent (current) and spent (old) convictions.

This disclosure relies on the honesty of the individual to provide complete and accurate information. The Council makes it clear, that when the applicant signs the application form and an individual signs the code of conduct, they are giving their consent for information provided to be verified by obtaining a DBS check.

The Council handles, stores and destroys self-disclosed information in the same way as DBS check information (see below).

### **Use of Disclosure Information – Informed Decision Making**

An applicant's criminal offences and history will be printed on the disclosure certificate. The Police may also choose to provide information directly to the Council, in cases where this is necessary, for example to prevent crime or harm to others. All this information is treated as confidential and handled in line with the DBS Code of Practice.

It is illegal for a person on the children's and/or adults barred list to apply for a post, where there is regulated activity with children and/or adults - that they are barred from.

Managers with support from HR/Legal are to interpret any other disclosure information, hold a conversation with the individual and make a decision about whether the person is suitable. The manager is to exercise independent judgement, taking into account the following factors:-

- Any legal or regulatory requirements – is the person barred
- Whether the conviction (or other matter revealed) is relevant to the position in question.
- The seriousness of the offence – the length and type of sentence issued
- At what age the individual committed the offence
- The length of time since the offence occurred
- Whether there is a pattern of offending or other relevant matter
- Whether the applicant's circumstances have changed since the offending behaviour
- The circumstances surrounding the offence and the explanation offered by the individual involved.

Nacro also recommends that employers do not have a blanket ban on employing ex-offenders but instead carry out a risk assessment which is relevant to the sector, position and situation. This is also where the issue of supervision plays a

crucial part in the risk assessment process.

If it is decided to decline the conditional offer of appointment or review employment, the Council is to inform the individual of that decision.

## **6. Security Policy**

The government has introduced Applicant Only Certificates on 17 June 2013, as part of the Protection of Freedoms Act 2012. The applicant/employee now has an opportunity to consider, review or assess the information on a certificate, before it is shown to us.

Managers, head teachers and HRConnect are now responsible for checking Certificate validity and workforce level. They also may hold a discussion with the applicant/employee on any Disclosure Information.

Where Head Teachers, Managers and HRConnect are shown a DBS Certificate by an employee/applicant, they are to use the new verification form and guidance to check validity and determine the decision outcome.

There is no requirement to photocopy or scan the Certificate.

It is only in exceptional circumstances, that we will need to obtain, photocopy and store a Disclosure and Barring Service Certificate. In these cases we will manage the disclosure information as follows:-

- Store securely in lockable, non-portable storage containers with access strictly controlled and limited to persons, known as 'designated officers', who need to have access to this information in the course of their duties.
- Only use the contents for the specific purpose it was requested for and with the individual's full consent.
- Retain no longer than necessary. Once a decision has been made as whether to appoint or not/whether there is no change to employment or to review employment, it should be kept no longer than 6 months after any relevant decision has been made, or any dispute about the accuracy of the disclosure information has been resolved.
- If it is considered necessary to keep disclosure information for longer than 6 months, we will make a request to the DBS Data Protection Manager via [dataprotection@crb.gsi.gov.uk](mailto:dataprotection@crb.gsi.gov.uk) to ensure that this does not contravene with the data protection or human rights of that individual. Once the agreed period has elapsed, information must be destroyed by secure means.

Designated officers must be thoroughly familiar with this policy and the current Code of Practice issued by the Disclosure and Barring Service relating to recipients of disclosure information. Designated officers are responsible for the City Council's handling of disclosure Information from receipt to destruction.

The Police Act 1997 makes it an offence to pass Disclosure Information to "unauthorised" people. The offence itself is complex, but "unauthorised" people are usually those who have no need or right to the Disclosure Information

Any security incident must be reported to the line manager of the designated officer (or the appropriate Head of Service or the Chief Executive) and investigated. Any investigation into a security incident may result in disciplinary outcomes or criminal proceedings.

## Disclosure Information Security Terms and Meaning

Term	Meaning
Disclosure Information	Self Disclosure or information issued by the Disclosure and Barring Service in response to a request from an individual
Designated officer	An officer of the Sheffield City Council designated in writing by it to have special responsibility for the correct handling and safe-keeping of Disclosure Information
destruction of Disclosure Information	The destruction by shredding or confidential waste disposal procedures of Disclosure Information and any material generated from Disclosure Information.
material generated from Disclosure Information	Detailed extracts from or copies of Disclosure Information. <b>NOTE:</b> this does NOT include (for example) the fact that Disclosure Information has been seen or destroyed or that it disclosed convictions, etc.
security incident	Evidence of any unauthorised access to Disclosure Information
unauthorised access to Disclosure Information	Any copying, holding, viewing, or otherwise accessing Disclosure Information without the prior consent of a Designated officer. Also any breach of the terms of a consent

## **7. Administration and Costs of a DBS Check**

There are currently 2 'Registered Bodies', Capita and Sheffield City Council, who are responsible for managing the Council's DBS applications. For eligible posts, the Council requires individuals working for the Council in a paid and unpaid capacity to complete a DBS check. These posts include all relevant Sheffield City Council posts on the establishments and unpaid posts including volunteer readers in schools, friends of school groups and Council event volunteers.

### **Fees and Administration Charges**

The following individuals and organisations are to pay for any associated fees and administration charges:-

- Contracted individuals and services
- Volunteers not recruited by the Council
- Umbrella body organisations.

### **Disclosure and Barring Service Application Fee**

The Disclosure and Barring Service (DBS) charges a fee for all enhanced checks of paid posts. This is currently £44.

Criminal records disclosures for volunteers, as defined by the Police Act 1997 (Criminal Records) Regulations do not attract an application fee from the DBS. The Volunteer definition is:-

'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'

For criminal records disclosure and barring purposes, it is deemed that 'unpaid' means not in receipt of any payment in relation to the activity. The applicant must not therefore:-

- receive payment for activities (except travel/out of pocket expenses)
- be on a placement/work experience
- be on a course that requires them to do this job role
- be in a trainee position that will lead to a full time role/qualification
- working for family members/relatives

DBS Audit Volunteer applications regularly.

### **Administration Charges**

The 2 Registered Bodies also charge an administration fee for processing and countersigning the application. This applies to all eligible posts, whether paid or voluntary. The Registered Bodies inform the Umbrella organisations using the

service of the fee level and how to pay. The amount being charged will be clearly explained before the check is completed. Once the organisation has agreed to these costs and fees, a disclosure check can be completed.

Failure to pay fees within the required timescales or to comply with customer responsibilities as specified in any customer agreements will lead to the withdrawal of the service.

## 8. Portability

Portability refers to the re-use of a Criminal Records Disclosure; obtained for a post in another organisation or different post within the Council.

The risks of Portability are that the Disclosure:-

- Has no formal period of validity. It is for use immediately after issue and reflects the record available at that date. That record might change subsequently. A further Disclosure would reveal that change.
- Might not be at the correct level – may not have included a Barred List Check
- Might have been checked against the wrong workforce sector

### **DBS Update Service**

If you receive a DBS Certificate, you can sign up to the DBS Update Service. You can then take your DBS Certificate with you from role to role within the same workforce, where the same type and level of check is required. The DBS Update Service provide monthly information updates to all subscribers.

We can accept Status Checks, as this service enhances our safeguarding procedures and helps reduce portability risk. A status check provides up-to-date status information on an individual's DBS Certificate. When carrying out a Status Check, we will ensure that:-

- You have provided written authority for us to receive your status check information
- You have provided us with the original DBS Certificate, so we can check it is the right workforce and level of check

### **Internal Portability**

Internal portability may be permitted if the check has been done within the last 12 months and the level of check is correct. In these circumstances, a new DBS check is not required where an existing individual working for the Council moves jobs or has a second job within the Council and their roles and responsibilities have not changed. The trigger for a new check is where the individual:-

- has a check, which is more than 12 months old or/and there is a service break of 3 months or longer.
- role has changed and they require a higher level of check or a check against a different or both barred lists.
- is moving sectors – from children's to adults or vice versa.

- there is concern about that individual's suitability for the post.

## **External Portability**

The Council may choose to accept a previously issued certificate, if it has carried out a proper risk assessment and considered the DBS's Portability framework. Due to risks involved in portability without a Status Check, the Council currently does not accept the re-use of Disclosures for employees, originally obtained by an external organisation. Volunteers/contractors, who are employed by an external company and are working for the Council, can use their own company's DBS Disclosure.

## **9. Legal Duty to Refer**

If a barred individual applies for a position of trust, which is in regulated activity, this individual will be breaking the law and the employer has a duty to inform the police.

The Council has a legal duty to refer information to the Disclosure and Barring Service in the following circumstances<sup>2</sup>:-

### **1. Condition 1:**

The Council has withdrawn permission for an individual to work in regulated activity with children and or adults, either through:-

- a. Dismissal
- b. by moving the person to another area of work that is not regulated activity

Or, the Council may have withdrawn permission, however before this happened the person has either: resigned, retired, been made redundant, or been redeployed.

### **2. Condition 2:** The Council has evidence that the individual has:-

- been cautioned or convicted of a relevant (automatic barring) offence
- engaged in 'relevant conduct' in relation to children and/or adults, that is has undertaken an action or an inaction (neglect) that has harmed a child or vulnerable adult or put them at risk or harm
- Or has satisfied the 'harm test' in relation to children and/or vulnerable adults. Harm is defined in its widest context and includes physical,sexual, financial harm, neglect, emotional, verbal psychological harm.

The Council only makes a referral after an investigation and evidence has been gathered to establish that the allegation has foundation. This is carried out in accordance with the Children's [Safeguarding Board management of allegations](#)

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<sup>2</sup> Referral to the Teaching Agency, General Social Care Council or Health Professional Council may be subject to differing referral criteria.

[procedures](#) and the [Adult Safeguarding Board's management of allegations procedures](#). Employees may then be required to participate in dismissal proceedings.

If at the end of the dismissal hearing, the case against the employee is proven, the HR provider for the Council or School will refer the individual to the Disclosure and Barring Service.

The employee must be made aware of their referral to the DBS by including a paragraph in their dismissal letter.

If the employee resigns, retires or is made redundant prior to the dismissal hearing or is terminated by mutual consent for matters that meet the reporting criteria, the HR Provider must inform the DBS as soon as a date of leaving is known.

The employee must be made aware of the referral to the DBS by including a paragraph in their termination letter. If they have signed a Compromise Agreement or COT3 an additional letter must be sent confirming they have been referred.

When writing to the DBS the importance of informing Sheffield City Council of the DBS barring decision should be stressed in a covering letter as the standard referral form does not have the facility to request notification of the barring decision. The Council will not be able to allow an individual access to children or vulnerable adults, if they are successful on appeal until confirmation of the DBS decision has been received.

When writing to the DBS, the Council will redact service user and names of other persons, replacing these redactions with Service User A, Service User B, Child A, Child B etc, so that the document is anonymous and can still be interpreted by the DBS.

### **Consultants, Volunteers, Agency or Freelance Worker Referrals**

If a consultant, volunteer or freelance worker, whose engagement involves children or vulnerable adults is removed from engaging in 'relevant activity,' has satisfied the 'harm test' or received a conviction or caution for a 'relevant offence' they should be referred by the HR Provider to the DBS. It is the responsibility of the agency to refer an agency worker to the DBS, however HR will be expected to provide sufficient information and support to ensure the referral is appropriately processed.

## **10. Umbrella Body Status - Protocol**

Sheffield City Council will act as a counter-signatory for organisations who require DBS checks to be undertaken in accordance with the following provisions:-

- The service provided by Sheffield City Council will be efficient, timely and confidential.
- An officer will be nominated to act on an organisation's behalf. This Officer will be an authorised counter-signatory for processing Disclosure and Barring

Service (DBS) applications. Details of organisations receiving this service will be held corporately by the Lead Signatory. Schools hold their own list.

- It will be the recipient's responsibility to observe the DBS Code of Practice and abide by the Council's policy on the correct handling and safe keeping of DBS Disclosure information. Information will only be provided once the above criteria have been satisfied. An up to date list of recipients will be kept corporately by the Lead Counter-signatory.
- Non-compliance with the DBS Code of Practice and Council Policy on will automatically lead to withdrawal of the umbrella service.
- It will be the organisation's responsibility to identify and verify that the roles for which they are requesting checks to be carried out, are legitimate to be subject to disclosure. Only those posts where individuals are to be asked exempted questions under the Rehabilitation of Offenders Act 1974, as amended, will be processed.
- It will be the organisation's responsibility to verify the identity of an applicant prior to forwarding the form to the nominated counter-signatory.
- Correspondence between Sheffield City Council and the organisation will be transferred in an envelope marked "Strictly Private and Confidential for the addressee's attention only".
- Information will only be provided in accordance with the attached criteria as laid down by the DBS.
- An agreement on the payment of accounts will be in place prior to the check being completed.
- Complaints regarding the service should be directed in the first instance to the counter- signatory. If unresolved a written complaint should be forwarded to the Lead Signatory for Sheffield City Council who will respond within 5 working days. A list of counter-signatories and Lead-signatory is enclosed below.

### **Handling of Disclosure Information**

A member, officer or employee of a registered body that is acting at the request of an unregistered body, or at the request of an individual, may only share Disclosure information

- in the course of his/her duties; **and only**
- to another member, officer or employee within the Umbrella Body; **or**
- to a member, officer or employee of the body at whose request the Umbrella Body countersigned the application; **or**
- to the individual at whose request the Umbrella Body countersigned the application.

A member, officer or employee of an unregistered body at whose request an application is countersigned by another body which is registered (an Umbrella Body) may only share Disclosure information

- in the course of his/her duties, **and only**
- to another member, officer or employee of the unregistered body. Involved in the recruitment process.

## Sheffield City Council, DBS Customer Contact Points

<b>Service Area</b>	<b>Counter Signatory Contacts</b>
For Council Services Contact our HR Provider, HR Connect	Karen Bannister Floor 2, Derwent House 150 Arundel Gate Sheffield S1 2JY <a href="mailto:hrconnectops@capita.co.uk">hrconnectops@capita.co.uk</a>
For Schools Services	Sharon Lilley Floor 2, Derwent House 150 Arundel Gate Sheffield S1 2JY <a href="mailto:hrconnectops@capita.co.uk">hrconnectops@capita.co.uk</a>
Taxis and Licensing	Clive Stephenson Principal Licensing Officer Block C, Staniforth Road Depot, Staniforth Road, Sheffield S9 3HD <a href="mailto:Clive.stephenson@sheffield.gov.uk">Clive.stephenson@sheffield.gov.uk</a>

# **APPENDIX 1: Glossary of Legal Definitions**

## **Code of Practice**

The Council is registered with the Disclosure and Barring Service (DBS) and must observe the Code of Practice. The code is designed to ensure that any criminal record information released, including information provided by the DBS, is used fairly and is handled and stored appropriately.

## **Disclosure and Barring Service (DBS)**

The DBS provides access to information about criminal convictions and other police records to help employers make an informed decision when recruiting staff across England/Wales.

## **Enhanced CRB Check**

These are for posts that involve a far greater degree of contact with children or vulnerable adults. An enhanced check includes any non-conviction information held by local police, where they consider it to be of relevance to the position being applied for. Where indicated, the enhanced disclosure will also include any information held on the Disclosure and Barring Service barred lists.

## **Exceptions Order**

The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 sets out those occupations and positions exempt from the provisions of the ROA. These are generally positions of trust; where there is a valid need to see a person's full criminal history in order to assess their suitability for a position. This information is intended as general guidance only. It must not be regarded as a definitive interpretation of the Act.

## **Regulated Activity**

Regulated activity is work that a barred person must not do. The new definition came into force on 10 September and covers working with children and vulnerable adults. See Appendix 2 for a description of the scope.

## **Rehabilitation of Offenders Act (ROA) 1974**

The Rehabilitation of Offenders Act (ROA) 1974 enables some criminal convictions to become 'spent', or ignored, after a 'rehabilitation period' (see below).

## **Rehabilitation Period**

A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a job or when involved in criminal or civil proceedings

## **Spent conviction**

A person convicted of all but the most serious criminal offences and who receives a sentence less than 2.5 years in prison, benefits from the Rehabilitation of Offenders Act if they are not convicted again during a specified period. This is called the rehabilitation period (*as described above*). In general terms, the more severe a penalty is, the longer the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'.

In most circumstances an employer cannot refuse to employ someone, or dismiss them, on the basis of a spent conviction. Generally, spent convictions do not have to be declared, unless the individual is applying for a position of trust. In such circumstances, an employer is entitled to ask a candidate to reveal details of all convictions, whether spent or not. This is, in part, to ensure that children and other vulnerable groups are adequately protected from those in positions of authority over them.