CHANGES

February 2009: Policy introduced
April 2010: Styling revised in line with corporate guidelines
September 2011: Reviewed and updated
August 2012: Rechecking employees updated to incorporate self-declaration
April 2013: Amended to reflect legislative and policy change

Contacts

If you have any questions regarding this policy please contact the policy team at hrpolicyteam@plymouth.gov.uk

Policies are available in large print, Braille or other languages.

If you would like help understanding the contents of this policy, please speak to your line manager or contact the HR Policy Team for assistance.
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INTRODUCTION

The policy provides guidance to managers on how to manage the Disclosure & Barring Service (DBS) certificate process (to include employees and volunteers) to positions where they will typically have access to vulnerable groups, including children.

Plymouth City Council has a duty of care to protect the well-being of the people of Plymouth and, in particular, those groups or individuals in its care who are considered to be especially vulnerable or at risk, such as children, the elderly and those with disabilities.

The Council will take every step to ensure that those of its employees, volunteers and contractors who work with or otherwise come into contact with these vulnerable groups are suitable to undertake the work.

This document should be read and applied in conjunction with the recruitment and selection and equal opportunities policies.

This policy will apply equally to internal candidates (ie those currently employed by the Council) and external candidates being considered for employment or volunteer positions. It will also apply where external agencies recruit and employ staff to carry out contract work on behalf of the Council or where external agencies supply staff to work within the Council. As a responsible employer, the Council will ask successful candidates to undertake a DBS application when applying for positions which are included in the Exceptions Order 1975 to the Rehabilitation of Offenders Act 1974.

The Council will only apply for checks in respect of posts that are included in the Exceptions Order to the Rehabilitation of Offenders Act 1974. It may be an offence under section 123 (2) of the Police Act 1997 to apply for a check in respect of a post not covered by the Exceptions Order 1975.

2 LEGISLATION

This policy has been written with regard to the following legislation:
- Human Rights Act 1998
- Data Protection Act 1998
- The Police Act 1997
- The Safeguarding Vulnerable Groups Act 2006
- The DBS Code of Practice
- The Rehabilitation of Offenders Act (ROA) 1974
- The Criminal Justice and Court Services Act 2000
3  SECURE HANDLING OF INFORMATION

The Council has a policy statement regarding the storage, handling, use, retention and disposal of DBS applications and certificate information available on the document library.

4  RECRUITMENT

Whenever a vacancy arises for a position that will be subject to a DBS certificate, the following will always be observed:

- The Chair of the panel will be responsible for ensuring the process is consistent, equitable and fair for all candidates.
- The job advertisement and any supporting information sent to prospective candidates will clearly state that the post is subject to a DBS check.
- Only the successful candidate will be required to apply for a DBS check.
- An offer of employment can be made subject to a DBS check.
- If the DBS certificate contains a trace, or additional information is received from the police, the disclosure of offences procedure must be followed. This procedure is available in the document library.

5  RECRUITMENT OF EX-OFFENDERS

As an organisation using the Disclosure & Barring Service (DBS) to assess candidates’ suitability for positions of trust, the Council complies fully with the DBS Code of Practice and undertakes to treat all candidates for positions fairly. It undertakes not to discriminate unfairly against any subject of a DBS certificate on the basis of conviction or other information revealed.

The Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation or offending background.

We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome 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.

A certificate is only requested for posts that are eligible as per the Exceptions Order of the Rehabilitation of Offenders Act 1974. For those positions where a certificate is required, all application forms, job adverts and recruitment briefs will contain a statement that a check will be requested in the event of the individual being offered the position.

Where a DBS certificate is to form part of the recruitment process, we encourage all candidates called for interview to provide details of their criminal record at an early stage in the application process. The appointing officer will pose this question to candidates during the interview process.
Unless the nature of the position allows the Council to ask questions about a candidate’s entire criminal record we only ask about unspent convictions as defined in the Rehabilitation of Offenders Act 1974.

All appointing officers as part of the Council recruitment process have access to guidance and expertise from suitably trained officers to identify and assess the relevance and circumstances of offences. As part of the Council’s disclosure of offences procedure, the interview panel seek approval from a senior manager regarding the final decision on suitability.

Specialist officers within relevant departments undertake to discuss any matter revealed in a certificate with the person seeking the position before withdrawing a conditional offer of employment.

The disclosure of offences procedure is available in the document library.

Having a criminal record is not necessarily a bar to working with the Council. This will depend on the nature of the position and the circumstances and background of the offences.

6 Disclosure & Barring Service (DBS)

The Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) merged on 1st December 2012 to become a single organisation called the Disclosure and Barring Service (DBS).

The DBS is responsible for processing requests for criminal records checks as well as checking the DBS children’s barred list and adults’ barred list for eligible roles. The DBS also has responsibility for deciding if a person should be placed on or removed from a barred list for England, Wales and Northern Island.

The DBS children’s barred contains details of those individuals barred from working with children and replaces List 99, the POCA list and disqualification orders. The DBS adult’s barred list contains details of those individuals barred from working with vulnerable adults (replacing the POVA list). When recruiting to posts which undertake “regulated activities” with one or both vulnerable groups, the Council will request checks to be made against the relevant barred list(s) as part of the DBS check. It is a criminal offence for individuals barred by the ISA to work or apply to work with children or vulnerable adults in a wide range of posts including most social care posts, those in education, childcare, NHS and posts in the Prison Service. Employers also commit a criminal offence if they knowingly employ a barred individual in such posts. Further information about regulated activities and levels of DBS checks can be found in the CRB & DBS Guidance.

7 RE-CHECKING EXISTING EMPLOYEES

Any existing employee who is offered a new position within the Council will be required to undertake a new DBS application if the post involves greater access to or responsibility for DBS Disclosure Policy.
vulnerable groups, including children or working with a different client group regardless if they have been subject to a previous DBS application.

The Council’s Corporate Management Team has confirmed that existing Plymouth City Council employees, who have previously undertaken a DBS application relevant to their current post, will be required to undertake a self-declaration on a three-yearly basis. The self-declaration will prompt the disclosure of any convictions, cautions, warnings or reprimands that may have arisen post appointment. Although the requirement to disclose such information is highlighted in employees’ principal statements, the requirement to complete a self-declaration provides a clear reminder of the importance of disclosure.

Existing employees who have not previously been subject to a DBS application may, as a result of changes in legislation, regulations or working practices, be required to undertake an application during the course of their employment with the Council. All employees will be expected to comply and any employee refusing to comply with the request for an application will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued and/or to comply with a contractual agreement, will lead to the employee being subject to a disciplinary investigation.

In addition to the requirement to complete a self-declaration, PCC reserves the right to ask existing employees in relevant positions to apply for a certificate if their actions or activities give cause for concern. The grounds for this could include failure to complete a self-declaration, allegations of suspicious or inappropriate behaviour made to an individual in a vulnerable group or a colleague, parent, carer or member of the public. In such instances a full investigation will be conducted and the Council may ask for a new application to be carried out in accordance with legal advice.

If as part of the re-checking process, a DBS certificate is deemed unsatisfactory, a full investigation will be undertaken which may result in a member of staff being dismissed or re-deployed.

8 EMPLOYING PEOPLE WITH CRIMINAL RECORDS

Possessing a criminal record is not necessarily a bar to working for the Council, but it may preclude working in certain positions. This will depend on the nature of the position and the circumstances and background of the offences committed.

An application to the DBS will be requested only where this is considered relevant to the post and is permitted under the Exceptions Order to the Rehabilitation of Offenders Act 1974.

It must be established that the post to be filled is exempt under the Exceptions Order of the Rehabilitation of Offenders Act 1974. This makes it possible for questions about the candidate’s criminal background to be asked and for an application to be made. Not all positions are subject to DBS checking and, in some cases, it can be an offence under Section 123 (2) of the Police Act 1997 to apply for a check in respect of a post which is not included in the Exceptions Order of the Rehabilitation of Offenders Act 1974.
For all members of staff or individuals with an offer of employment, in the event of a certificate returned from the DBS highlighting either a disclosed or undisclosed conviction or other causes for concern the Assistant Director for Human Resources and Organisational Development (AD for HR & OD) must be informed as lead signatory. The AD for HR & OD will have responsibility for ensuring that the manager is notified of the conviction or concerns, and will determine the employment status of the individual to ensure consistency across the Council. Where the manager disagrees with the determination, they should appeal to the Director for Corporate Services who will have the final say, in consultation with the Council’s safeguarding manager.

For all councillors, in the event of a certificate returned from the DBS highlighting either a disclosed or undisclosed conviction, or other causes for concern, the Assistant Director for Democracy and Governance (monitoring officer) must be informed. The monitoring officer will determine against the Council’s code of practice for councillors any action required.

For all potential fostering and adoption applicants the service manager will receive the check.

As a registered body offering an umbrella service for DBS checks, all will be forwarded to the relevant employing organisation.

**9 RISK MANAGEMENT**

Assessing and managing the risk of employing a person with a criminal record, or about whom positive information has been revealed following a check, means comparing the candidate’s skills, experience and conviction circumstances against the risk criteria identified for the job and deciding on the relevance of the conviction or other information.

Having a criminal record will not necessarily bar someone from employment with the Council, this will depend on the background to the offence(s) and the nature of the position being sought.

**9.1 Considerations**

Addressing issues relating to criminal offences needs an objective common sense approach which takes account of the following:

- The employer’s duties in law
- The nature of the crime
- When it happened
- The circumstances involved
- The sentence
- Patterns of offending
- Efforts to avoid re-offending
- Job requirements
- Safeguards against offending at work
- Possible reactions of employees, customers etc, objectively assessed.
9.2 Candidate awareness

Applicants should be forewarned that enhanced checks might include non-conviction information such as details of cautions, reprimands, warnings and may include police intelligence relating to on-going investigations and relationships with any known or suspected criminals.

As highlighted above the fact that someone has a criminal record will not necessarily lead to a bar in employment with the Council (see recruitment of ex-offenders above), and an interview will be arranged to discuss the nature of the criminal record with the applicant who has disclosed they have a criminal record.

During the interview, the applicant should be able to give a full account of the circumstances of the offence(s), any extenuating circumstances and of their efforts to avoid re-offending.

Where assessment against the risk criteria indicates that the applicant could be employed on a conditional basis provided that extra safeguards are put into place, the appointing officer should discuss these with the applicant and explain the reasons for them.

Failure to reveal criminal history could lead to withdrawal of the conditional offer of employment.

9.3 Further guidance

Further support and guidance around employing someone with a criminal record can be found by telephoning the Recruitment Team on 01752 307793.

10 OVERSEAS CANDIDATES

All persons appointed to a post, or seeking to volunteer with children and/or vulnerable adults who have lived outside the United Kingdom must undergo a DBS check regardless of their length of stay in the UK. They will also be required to provide a Certificate of Good Conduct (see Recruitment & Selection Guidance Notes for Managers).

Although it may be of limited value to ask a person who has little or no previous residence in the UK to apply for a certificate, if that person seeks to work in the regulated childcare sector, the employer is required to check the DBS Children's Barred List through the application process and similarly, if a person seeks to work with vulnerable adults, the employer is required to check the DBS Adults Barred List.

11 VOLUNTEERS AND STUDENTS

11.1 Volunteers
The Council will ensure DBS checks are applied for where volunteers work in positions that are eligible for a DBS check. This DBS check will normally be free, however, not all people who work free of charge are classed as a volunteer with the DBS.

To qualify for a free DBS check, the role must meet the DBS’s definition of a volunteer which is ‘a person who is engaged in any activity which involves spending time, unpaid (except for travelling 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’.

Therefore students gaining credits towards qualifications, people on work experience, foster parents/carers etc must pay for their checks.

11.2 Student Placements

The Council requires new DBS applications to be undertaken for all students prior to the student starting placement.

12 ACCEPTING AN EXISTING DBS CERTIFICATE

The Council has guidance on the portability of DBS certificates. This guidance can be found in the DBS Certificate Portability Procedure.

13 AGENCY AND CONTRACTORS

Those responsible for hiring agency or contract workers on behalf of the Council must ensure that the requirement for such individuals to have completed appropriate levels of DBS checks (and that such certificates are satisfactory) forms part of any contractual agreement.

14 MONITORING AND REVIEWING

The Council will monitor and review this policy on a regular basis in order to ensure ongoing compliance with legislation and effective operational practice.

The Council reserves the right to alter and amend this policy in accordance with any recommendations, changes in law or other related legislation following consultation with relevant parties.
15 ANNUAL AUDIT

The Devon Audit Partnership will maintain an annual audit of DBS policies and procedures and any follow up audits required.

Responsibility: Devon Audit Partnership (through the Assistant Director of Human Resources and Organisational Development).