



Hawkswood Group

# Disclosure and Barring Policy and Guidance

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# CONTENTS

## PAGE

### SECTION 1: DISCLOSURE AND BARRING POLICY

<a href="#">Background</a>	2
<a href="#">The Definition of Regulated Activity</a>	2
<a href="#">Disclosure and Barring Checking Process</a>	9
<a href="#">Barred Lists</a>	9
<a href="#">DBS Disclosures</a>	10
<a href="#">DBS Procedure</a>	10
<a href="#">Information provided on a Disclosure</a>	10
<a href="#">DBS Update Service</a>	11
<a href="#">The Rehabilitation of Offenders Act</a>	11
<a href="#">Responsibilities</a>	11
<a href="#">Recruitment to posts that require a disclosure</a>	13
<a href="#">Making decisions following receipt of disclosure containing criminal activity</a>	14
<a href="#">Gaining relevant information and next steps</a>	14
<a href="#">Factors to consider when making a decision</a>	16
<a href="#">Information that will lead to an individual automatically being unsuitable</a>	16
<a href="#">Additional Non-conviction information</a>	17
<a href="#">Overseas Applicants</a>	17
<a href="#">Certificate of Good Conduct</a>	18
<a href="#">Agency and other workers</a>	18
<a href="#">Volunteers for the School</a>	18
<a href="#">Handling and storage of Disclosure information</a>	18
<a href="#">DBS (Portability)</a>	19

### SECTION 2: APPENDICES

<a href="#">Appendix A</a>	Disclosure Review Form	20
<a href="#">Appendix B</a>	Risk assessment Form without DBS	22
<a href="#">Appendix C</a>	Flowchart for Dealing with Disclosures	25
<a href="#">Appendix D</a>	DBS Process for Checking the Identity of Applicants	26
<a href="#">Appendix E</a>	Unlawful DBS Checks 3.3 The legal framework designed to prevent illegal DBS checks	26
<a href="#">Appendix F</a>	LA's Statement on Ex-Offenders	30

# DISCLOSURE AND BARRING Service Policy

Schools need to ensure particular rigour and vigilance when recruiting and employing people to work with children (aged under 18) and adults considered vulnerable. This policy is applicable to School job applicants and employees only.

## Disclosure and Barring Scheme

### Background

1. The Disclosure and Barring Service (DBS) was established in December 2012 under Part V of the Protection of Freedoms Act (POFA) to undertake disclosure and barring functions. There are specific legal requirements around these checks. Disclosure functions are set out in Part V of the Police Act 1997, which requires Registered Bodies to adhere to this Code of Practice.
2. The Disclosure and Barring Service (DBS) was established in 2012 and carries out the functions previously undertaken by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA).
  - It is a criminal offence for a barred person to work, or volunteer, in Regulated Activity.
  - It is a criminal offence for an employer to knowingly employ (either on a paid or voluntary basis) a barred person in Regulated Activity.
  - It is a criminal offence to allow someone to work in Regulated Activity without carrying out the required checks.

Where a person is removed from Regulated Activity by an employer because the person has caused harm to a child or adult considered vulnerable, the DBS must be notified.

### The Definition of Regulated Activity

3. From September 2012 the definition of Regulated Activity is as follows:

#### Regulated Activity for Children

A person can be in Regulated Activity because of what they do (activities), where they work (establishments) or who they are (specified position):-

(a) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on wellbeing, moderate a public electronic interactive service or drive a vehicle only for children carried out on a frequent, intensive or overnight basis. **An individual carrying out activities as above, under reasonable day-to-day supervision by another person who is also engaging in Regulated Activity is not undertaking Regulated Activity.**

(b) Work for a limited range of establishments (schools, nursery schools, childcare premises, children's homes, children's centres) with the opportunity for contact with children carried out on a frequent, intensive or overnight basis. A volunteer carrying out supervised activities under reasonable day-to-day supervision by another person who is also engaging in Regulated Activity is not undertaking Regulated Activity. However, a supervised paid employee working for a specified establishment does come under Regulated Activity.

Supervision means day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.

The Department for Education has produced [statutory guidance on supervision](#) to describe the considerations an organisation should make when determining whether or not an individual is supervised to a reasonable level for the role.

Work under (a) or (b) above is Regulated Activity only if done “regularly” i.e. carried out by the same person

- Frequently (once a week or more often) or
- On 3 or more days in a 30-day period or
- Overnight ( anytime between 2am -6am)

(c) Activities by a person contracted (or volunteering) to provide occasional or temporary services (which are not teaching, training or supervision of children) is not Regulated Activity (e.g. maintenance contractors) but, as stated above, supervised paid employees in specified establishments are in Regulated Activity.

(d) Providing healthcare – provision by a healthcare professional or under the direction or supervision of one. This may include psychotherapy and counselling, first aid administered on behalf of an organisation established for the purposes of providing first aid. This does not include workplace first aiders, members of peer support groups or life coaching.

(e) Providing personal care – physical assistance (or prompting with supervision or training or providing advice or guidance) with eating or drinking because of illness or disability, physical assistance (or prompting with supervision or training or providing advice or guidance, with going to the toilet, washing or bathing or dressing because of age, illness or disability.

(f) Registered child-minders and foster carers

(g) Day to day management or supervision of individuals carrying out Regulated Activity relating to children.

Further guidance can be found <https://www.gov.uk/government/organisations/disclosure-and-barring-service> Please see below a table of the full description of Regulated Activity for Children – Activities and Establishments.

**Part 1: Regulated Activity for children – Activities****Part 2: Regulated Activity for children – Establishments<sup>1</sup>**

<b>Part 1: Regulated Activity in relation to children - Activities</b>	
<p>The activities in the left-hand column are 'regulated activity' in relation to children, subject to: exceptions in the right-hand column;</p> <p>Different provisions for "establishments" (specified places) in Part 2 below.</p> <p>Do not read the left-hand column in isolation from the right-hand column or from Part 2.</p> <p>In the right-hand column:  "new" exceptions are those in the 2012 Act;  "existing" exceptions are already in the 2006 Act as amended before the 2012 Act, or in secondary legislation under it.</p>	
<b>Activity</b>	<b>Exceptions – not Regulated Activity</b>
All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the "peer exemption".
In paragraph 2(1) of Schedule 4:	
<p>(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised. Para (15)<sup>2</sup></p> <p><i>*Sources:</i>  - <i>once a week: guidance, March 2010, Annex B, page 70 para B.12;</i>  - <i>four or more days/ overnight: Schedule 4, para 10(1) as amended.</i></p>	<p>New:  Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3A)</i></p> <p>Existing:  Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</p> <p>Activity merely incidental to activity with adults.</p>
<p>(b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.  See rows (i) to (iii) below re types of care.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	

<sup>1</sup> References to 'Schedule 4' should be read as 'Schedule 2' in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2997 (SVG Order). <sup>2</sup> Para 1(13) in the SVG Order.

Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.	
(i) Relevant personal care. <i>Para 1(1B)</i> : (a) physical help in connection with eating or drinking, for reasons of illness or disability; (b) physical help for reasons of age, illness, or disability, in connection with: (i) toileting (including re menstruation); (ii-iii) washing, bathing, or dressing; (c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide; (e)-(f) other training or advice in relation to (a)-(b).	
(ii) Health care. <i>Para 1(1C)</i> : All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.	New: Health care not by, or directed or supervised by, a health care professional*. <i>Para 2(3B)(a)</i> .  *Defined by reference to regulatory bodies. <i>Para 1(1C)</i> .
(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.	New: Legal advice. <i>Para 2(3C)</i> ;  Existing: Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.
(a), (b) & (c): Definition of “overnight”: In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. <i>Schedule 4, Para 10(2)</i> .	
Former category (d), treatment or therapy, is now replaced by “health care” provisions.	
(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.	Existing: Activity by a person who does not have access to the content of the matter, or contact with users.
(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period. *Prescribed by SI 2009-1548.	
In paragraph 1 of schedule 4:	

<p>(3) Early years or later years child minding* with a requirement to register, or voluntary registration, under Childcare Act 2006.</p> <p>*That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.</p>	
<p>(5) Fostering** a child. *Defined at section 53.</p>	<p>Existing: Care arranged by family members and not for reward is not regulated activity. <i>Section 53(8)</i>.</p> <p>Local Authority can foster child with barred person who is, or lives with, a relative of the child. <i>SI 2009-1797, Art 3(2)</i>.</p>
<p>(6) &amp; (9) to (13): Wales only:</p> <ul style="list-style-type: none"> <li>• child minding with requirement to register under Children Act 1989 including activities that require registration if child under eight;</li> <li>• functions of Children’s Commissioner for Wales and deputy;</li> <li>• inspection functions in relation to education, training, childcare and children’s health or social care.</li> </ul>	
<p>(14) Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity:</p> <ul style="list-style-type: none"> <li>- at (a) to (f) above;</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>-in establishments in part 2 below;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>-(9C) or (11) in Wales only.</li> </ul>	

**Part 2: Regulated Activity in relation to Children - Establishments**

An activity is regulated activity in relation to children if carried out (subject to the exceptions below):

- in one of the following establishments;
- frequently (once a week or more often), or on 4 or more days in a 30-day period;
- by the same person engaging in work for or in connection with the purposes of the establishment; and
- it gives the person the opportunity, in carrying out their work, to have contact with children.

Day to management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

Establishment	Exceptions – not Regulated Activity
Schedule 4, para 3(1):	
<p>(a) schools (all or mainly full-time, for children);</p> <p>(a) pupil referral units (also known as Short Stay Schools) not falling within the above;</p> <p>(b) nursery schools;</p> <p>(c) Children’s Hospital</p> <p>(d) institutions for the detention of children;</p> <p>(e) &amp; (f) children’s homes;</p> <p>(f) children’s centres in England;</p> <p>(g) child care premises (including nurseries).</p> <p>Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i></p>	<p>New:</p> <ul style="list-style-type: none"> <li>• Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a);</i></li> <li>• Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b).</i></li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;</li> <li>• childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>• for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</li> </ul>

Note:

Categories for office holders (“Positions” - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed.

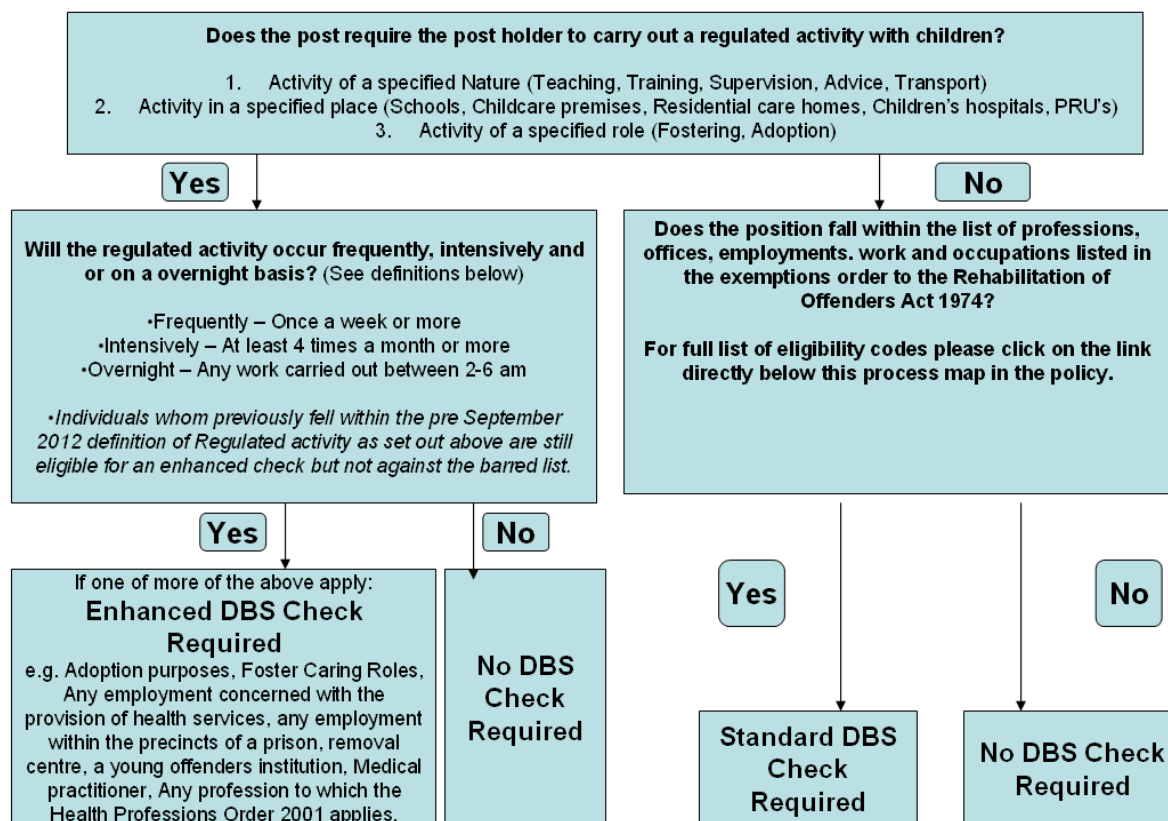
*Department for Education, June 2012*



## Disclosure and Barring Checking Process

4. The DBS provides a system of background checks on employees and volunteers known as ‘Disclosures’ (see below). **If the LA/School considers that an individual will be engaged in a Regulated Activity a check against the relevant barred list and an enhanced Disclosure will be required.**

### DBS CHECK ELIGIBILITY CHILDREN'S – PROCESS MAP



Further guidance to eligibility can be found

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

Please note under the Police Act 1997, it is unlawful to conduct a DBS check for an employee, where there is no jurisdiction under the eligibility guide to do so. Please see Appendix E for the legal framework.

### Barred Lists

5. Barred individuals are placed on one of two ISA barred lists: the Children's' Barred List and the Adults' Barred List. The only individuals who are eligible for checks against the relevant barred list are:

- Those in Regulated Activity with children or adults
- Actual or prospective foster parents
- Persons aged 16 and over living in the same household as a foster or prospective foster parent
- Persons aged 16 and over living in the same household as a foster or prospective private foster parent
- People who provide or wish to provide child-minding or day care

- Persons aged 16 and over who have regular contact with children because they either live on the premises where day care or child-minding is, or will be provided, or because they work or will work on those premises at times when day care or child-minding is or will be provided
- Persons aged 16 and over who have regular contact with children and who are members of a household of a person who is being or has been assessed for the purposes of engaging in Regulated Activity relating to children, where both individuals live on the premises where the Regulated Activity would normally take place, e.g. spouse of a boarding school manager where the manager and the spouse live on site at the school
- Prospective adopters
- Persons aged 18 and over living in the same household as a prospective adopter
- Applicants for a taxi or PHV licence.

### **DBS Disclosures**

6. An enhanced DBS Disclosure contains details of both spent and unspent convictions as well as cautions, reprimands and final warnings held on the Police National Computer (PNC) together with non-conviction information from local police records if thought to be relevant to the post applied for.
7. A standard DBS disclosure contains only information held on the PNC and should be carried out for certain professions, offices, employments and occupations listed in the exemptions order to the Rehabilitation of Offenders Act 1974 e.g. solicitors, chartered/certified accountants, legal executives.

Adverse information contained in a Disclosure will not necessarily act as an automatic bar to employment with the LA.

### **DBS Procedure**

8. Schools will undertake disclosure and barring checks, where appropriate through their traded service provider.
9. The responsibility to ensure that individuals are appropriately checked lies with Head Teachers and Governing body.
10. Disclosure requirements and arrangements for agency workers and other temporary workers, such as self-employed consultants, are detailed in paragraph 62.
11. Disclosure requirements for volunteers are detailed in paragraph 63.
12. Disclosures must be obtained before an individual commences working for, or with, the LA School in any capacity which falls under the definition of Regulated Activity. The LA's policy is to recheck those individuals who require a Disclosure every three years. Where an employee has subscribed to the update service (see below) the re-check can be undertaken by the school's traded provider using the status check service.
13. The DBS has a Code of Practice which all individuals and organisations using the procedure are required to follow. Further information is available on the following website:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/143662/co\\_p.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/143662/co_p.pdf)

## **Information provided on a Disclosure**

14. The information provided on a Disclosure certificate is limited to basic facts, for example, the date, offence and sentence. It does not set the offence in context. If the information on the Disclosure certificate gives cause for concern the applicant/employee must be given the opportunity to discuss this information. Only then should a final decision on the individual's appointment or employment be made.
15. Disclosure certificates requested by other employers should not be accepted because a Disclosure will only contain relevant information on offences up to the date it was issued and will not indicate whether there was any additional information provided with the employer's copy. However, where an individual subscribes to the DBS update service (see para 18 below) the original DBS certificate can be accepted, subject to the school's traded provider running a status check on the certificate to determine whether the certificate is still current.

## **DBS Update Service**

16. For an annual subscription fee (currently £13) individuals can subscribe to the DBS update service. This allows the DBS certificate to be kept up to date and be taken from role to role within the same workforce i.e. children, adults or children and adults. Registered Bodies are able to access a status check service, on line and at no cost, to check the status of the DBS certificate where an individual has joined the update service and consented to the employer accessing their DBS certificate in this way. The School will need to ask all applicants for posts where a DBS certificate, including re-checks, is required whether they belong to the update service, and check that the original disclosure is relevant for the same workforce.

There is no registration process or fee for employers to check a certificate online, but employers must be legally entitled to carry out a check and have the employee's permission. The LA will endorse the use of DBS portability providing the individual has registered with the DBS online updating service and gives the school authorisation to access their details and carry out a status check at specified periods. For both new appointments and at the 3 year renewal check schools can use the DBS updating service to confirm safeguarding compliance and then update the Single Central Record. If an employee refuses to grant access or has not kept their subscription up to date then the school will be required to carry out a full DBS check.

## **The Rehabilitation of Offenders Act**

17. The Act provides some protection to individuals who have been convicted of offences in the past by providing that a criminal conviction can become spent after a set period, on condition that there has not been a reconviction and the sentence was not of a category excluded by the Act. Once a conviction is spent the rehabilitated person is to be treated as if the conviction had not occurred.
18. Some jobs are exempt from the provisions of the Act. In these cases an individual must disclose spent convictions if asked about their criminal record. Jobs that are exempt include those whose normal duties involve caring for, training, supervising or being in sole charge of children and/or adults considered vulnerable and 'the great and the good' – such as a local authority member who discharges the education or social services functions of a local authority, a chief education officer, or director of social services. The normal duties of these posts will involve regularly working with, being in sole charge of, or providing opportunity for the post holder to have access to children (people under the age of 18 years), or adults considered vulnerable. In these cases individuals with

convictions are required to provide details of previous convictions. Disclosures will include details of previous convictions for those applying for these posts and managers will need to consider these convictions when assessing an individual's suitability for a post. For more information please refer to the LA's Statement on Ex-Offenders (Appendix F).

### **Responsibilities**

19. It is an offence under the Police Act 1997 to pass Disclosure information to unauthorized persons. This means that the Disclosures and the information they contain are only passed to staff that need to have access to it in the course of their duties. Members of staff who have responsibilities in respect of Disclosures must hold that information in strictest confidence.
20. The responsibilities of those involved in ensuring that the LA/school complies with the DBS Code of Conduct are set out below.

### **Head teacher/Governing Body**

21. The responsibilities of Headteacher/Governing Body are as follows:

- Making decisions on Disclosure information received on existing school employees in their service and on any job applicant to posts in their service
- Ensuring responsibilities around disclosure and barring seriously and that outstanding or forthcoming action required following notification by the schools traded provider where information is shown on a DBS certificate is actioned in a timely manner.
- Head teachers/Governors can make decisions around Disclosure information; the LA must be made aware of any recommendation and decisions made by the Headteacher/Governors and confirm any decisions
- Ensuring that their staff hold current, acceptable Disclosures where required and that forthcoming renewals are applied for in good time
- As part of the recruitment process, drawing the attention of new employees to the update service and encouraging them to subscribe to this
- Ensuring that any Disclosure that contains convictions for either an existing employee or job applicant is discussed with the LA so that a decision regarding their suitability can be made in a timely and consistent manner- See DBS Disclosure Review Form, Appendix A. They must return this form to the LA with the final decision so that accurate records can be maintained
- Ensuring that they are aware of any posts in their school that are subject to a Disclosure and ensure that single central record is maintained
- Ensuring that job descriptions and person specifications for posts within their service indicate whether they are subject to a Disclosure
- Taking reasonable steps to ensure that any individual who is not an employee, but is covering a post or undertaking work within the school holds a Disclosure where necessary, before they perform duties on the school's behalf
- Ensuring that new/existing workers do not commence/continue without a satisfactory Disclosure or an appropriate risk assessment on whether service needs justify an individual commencing/continue pending the receipt of a Disclosure, Completing a Risk Assessment without DBS form Appendix B, pending the return of a Disclosure
- Information Verifiers: are responsible for ensuring that the identity of the individual concerned is verified beyond doubt and that during this process both

internal policies and the DBS Code of practice with regard to Disclosures are adhered to at all times

### **Recruiting to posts that require a disclosure**

22. When recruiting to posts that require a Disclosure, recruitment advertisements will reflect this requirement.
23. Candidates who are successful following assessment and interviews will be informed that the offer of employment with the School is subject to receipt of a satisfactory Disclosure where applicable.
24. As a general rule, no applicant will be allowed to commence employment in a post requiring a Disclosure until a satisfactory Disclosure has been received. This includes temporary employees, secondees and existing staff moving from one school to another. In the case of agency workers, Head teachers should take steps to satisfy themselves that a Disclosure has been carried out at the appropriate level
25. However, in exceptional circumstances, the Headteacher may decide, with the agreement of the Governing Body, that an applicant can start work before the Disclosure is received. This will only be in situations where there is an urgent need to maintain service delivery and all reasonable steps have been taken to protect the safety of children. Reasonable steps to protect children include not allowing the applicant to undertake Regulated Activity, or allowing the applicant to start work in an alternative post or shadowing other employees. The decision must be communicated by completing a Risk Assessment without DBS – Appendix B.
26. A Disclosure is relevant to the workforce for which the Disclosure was carried out. Where an existing employee moves from one role to another within the School and a Disclosure is also a requirement for the new role, it should be ensured that the current disclosure is at the correct level and for the same workforce. If it is not then the individual should have a new Disclosure undertaken so that the information is relevant to the new role. If the individual subscribes to the update service it will not be necessary to apply for a new disclosure.

### **Making decisions following receipt of a disclosure containing criminal activity**

27. This section provides guidance on making decisions where a Disclosure contains information and applies to the following groups of individuals. Any variations in guidance between existing employees and new recruits are detailed within the section.
  - New recruits
  - Employees in posts that require a Disclosure to be obtained once every 3 years
  - Employees in posts that did not previously require a Disclosure for which obtaining a Disclosure becomes a requirement following statutory guidance or local arrangements
28. A Disclosure containing criminal activity is considered to be one that contains details of:
  - A police record of convictions, cautions, reprimands and final warnings
  - Children's Barred List/ Adults Barred list; or,
  - Other relevant information disclosed by the Police
29. When the Head teacher views a Disclosure certificate that includes any of the above information for an individual, they will be responsible for completing the form which can be found in Appendix A.

## **Gaining relevant information and next steps**

30. If a Disclosure contains any of the details described in paragraph 31, the Headteacher will first check whether the individual has previously disclosed details of any convictions or cautions on a Disclosure Review Form, or any other form of record, e.g. application form, on an existing employee's personal file then arrange a meeting.
31. Where appropriate for new recruits, and in all cases involving existing employees, the Headteacher should discuss the contents immediately with the Governing Body/LA and agree a course of action. Usually this would involve meeting with the individual to discuss the content and to confirm that the convictions/cautions are theirs. Existing employees have the right to be accompanied to this and subsequent meetings by their trade union representative or a work colleague. It may be appropriate for an HR representative from the school's traded HR provider to be present at meetings involving existing employees.
32. The LA must be informed if any Disclosure reveals details of any serious convictions, for example, violent or sexual offences.
33. The exception to paragraph 34 above is where the Headteacher was already aware of an existing employee's previous Disclosure, and had discussed this with the Governing Body who had agreed with the LADO that the appointment should be made, or employment should continue.
34. If a meeting cannot be held immediately with an existing employee and depending on the information contained in the Disclosure and the employee's job, the Headteacher may need to consider whether it is necessary, in the interest of the School, to undertake one of the following options until a meeting can be held:
  - have closer supervision of the employee in their job
  - be temporarily transferred to other duties
  - suspended on full pay
  - inform the Governing Body
35. The School's traded HR provider should be contacted for advice on any of the above.
36. If the individual has not disclosed the convictions, either on the application form or at interview if employed by the School when the offence took place, they should be asked why they had not done so. Similarly an employee convicted of an offence exposed by a re-check of DBS clearances should be asked why they failed to disclose this. Head teachers should be concerned about any applicant or employee who has failed to provide this information when they were required to do so or has provided false information. The school's traded HR provider can provide further advice surrounding employees in this situation.
37. If an individual denies that the contents relate to them, the DBS must be contacted by the individual to advise them of a dispute on the contents. The DBS will then undertake an investigation. All job offers will be 'pending' whilst the investigation continues. For existing employees, please see paragraph 42 below. Advice should always be sought from the School's traded HR provider as to the most appropriate working arrangement whilst the dispute is being addressed.
38. Once it is established that the convictions/cautions relate to the individual, the Headteacher should explore with them the circumstances surrounding the convictions/cautions and when they took place.

39. For existing employees and depending on the information contained in the Disclosure and the employee's job, the Headteacher may need to consider whether it is necessary in the interest of the School to undertake one of the following options until a meeting can be held:

- have closer supervision of the employee in their job
- be temporarily transferred to other duties
- suspended on full pay

40. The school's traded HR provider should be contacted for advice on any of the above. Following a meeting with an existing employee, and after considering the factors detailed in paragraph 42, the Headteacher should decide whether the employee:

- can continue working in their current post
- will be transferred to another post in their service
- will be dealt with under the Disciplinary Procedure

41. Advice should be sought from the school's traded HR provider before making any decision. See Appendix C for a flow chart of the process.

#### **Factors to consider when making a decision**

42. An applicant's criminal record should be assessed in relation to the tasks they will be required to perform and the circumstances in which the work is to be carried out. Factors to consider include:

- The nature of the job i.e. does it present any opportunities for the post holder to re-offend in the course of their work
- The degree of risk involved in undertaking the job i.e. the extent to which they are working with children/ adults considered vulnerable/finances or items of value
- The nature of the offence
- The seriousness of the offence and the damage caused. For example, drugs offences cover everything from possession of a small amount of cannabis for personal use to possession of class a drugs with intent to supply
- The length of time since the offence took place
- Repeat offences i.e. was the offence a one-off or part of a history of offending
- Does the job involve one-to-one contact with children or other vulnerable groups?
- What level of supervision will the post holder require?
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change

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

44. In reaching that decision, Headteacher should consider all of the items detailed in paragraph 46 together with the possible implications, if any, for the School/LA employing, or continuing to employ, this person. The ultimate decision rests with the schools upon receipt of advice from the LA. The DBS Disclosure Review Form Appendix A will provide a guide when making decisions and copies of the completed forms should be passed to the LA.

45. In the event that a decision is taken to recruit, or continue to employ, someone with a criminal history that may be relevant to the work load that is allocated to them, a note

should be placed on the personal file together with any recommendation regarding work allocation.

46. Applicants/employees have the right under the Data Protection Act to see what information we handle about them. This right is known as the right of Subject Access and applicants/employees can submit a Subject Access Request to obtain a copy of their personal information. Upon receipt of a request the information should be provided promptly and in any event no later than 40 calendar days. It is therefore essential that when recording comments on the DBS Disclosure Review Form at Appendix A that they are kept relevant, accurate and professional as the information may be requested by an applicant/employee.

### **Information that will lead to an individual automatically being unsuitable**

47. Enhanced Disclosures provide details of whether the individual is included on a list of people named as barred from working with children or adults considered vulnerable.
- Children's Barred list (Formerly List 99 and POCA - Protection of Children's Act list)
  - Adults Barred List (Formerly POVA – Protection of Vulnerable Adults)
48. Candidates/employees who are named on the lists are considered unsuitable to work with children/adults and must not be employed in Regulated Activity. There is no discretion. It is a criminal offence to allow someone to engage in Regulated Activity when barred.
49. It is a criminal offence for a person on either list to apply to work with children or adults considered vulnerable. If a Disclosure reveals that a job applicant on these lists has applied to work with children, or a Disclosure reveals that an existing employee is registered on one of the lists, the School and the LA has a legal duty to inform the police.

### **Additional Non-conviction information**

50. The police may choose to use common law powers to provide information directly to employers in cases where this is necessary, for example to prevent crime or harm to others.
51. If a decision is made not to confirm an offer of employment to a job applicant because of non-conviction information, the individual should be informed that the offer of employment has been withdrawn.
52. If the individual queries the decision no further justification can be given. Non-conviction information is exempt from the Data Protection and Freedom of Information Acts. In the event of the School and the LA being taken to an employment tribunal as a result of a decision based on non-conviction information, the details will be given to the Chair of the tribunal.
53. Head teachers should give careful consideration to non-conviction information received on an existing employee to ensure that a reasonable decision is made. This means analysing the risks to the school whilst ensuring that the employee is treated fairly. Records must be kept of decisions.

### **Overseas Applicants**

54. A job applicant from overseas must be checked in line with all applicants for those positions which require a Disclosure. Although the DBS cannot access police records from overseas, a check is required to ensure the person has disclosed any criminal



background whilst spending time in this country – at present or any other time they may have visited.

55. A Disclosure is not always sufficient for those who have lived abroad. As the DBS cannot access criminal records held overseas (except in the case of service personnel) a DBS check may not provide a complete picture of an individual's criminal record. In addition to a Disclosure additional checks by the recruiting manager are necessary. A Certificate of Good Conduct (see below) from relevant embassies or police forces as appropriate should also be obtained by the applicant together with a certified translation of the certificate where necessary.
56. Where an applicant is from, or has lived in a country where criminal record checks cannot be made for child protection purposes, or is a refugee with leave to remain in the UK, and has no means of obtaining relevant information, schools must take extra care in taking up references and carrying out other background checks. For example, additional references should be sought and references followed up by telephone as well as letter.

### **Certificate of Good Conduct**

57. A job applicant who has lived outside the UK for a continuous period of six months or more within the past five years should provide the school with a Certificate of Good Conduct from the country they have resided in. This is evidence that an individual has no criminal record in the country where they have lived. Such evidence should ideally have been issued within 6 months prior to departure from the overseas country.
58. If the job applicant does not already have a certificate they must contact the relevant Embassy or High Commission of that country for advice. Contact details for Embassies and High Commissions in the UK are available on the Foreign and Commonwealth Office (FCO) website <http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/legal-services/local-document-search/010-certificate-of-good-conduct/>. Applicants can consult the DBS website for information on how to apply for a certificate of good conduct.
59. In some circumstances it may also be possible to arrange an International Criminal Record Check via the UK Central Authority for the Exchange of Criminal Records (UKCA), Home Office. For further details on requesting a UKCA check, please contact your relevant HR representative. Further details can be found <https://www.gov.uk/mutual-legal-assistance-mla-requests>.

### **Agency and other workers**

60. When agency cover is booked and, where the duties require a Disclosure, Head teachers are required to make it clear on placing an order that a DBS check is required, and against which barred lists, children, adults or both. The agencies will then only submit CVs of individuals holding an appropriate Disclosure. Head teachers should view the individual's Disclosure upon commencement, as an additional safeguard.

### **Volunteers for the School**

61. Volunteers should be encouraged to join the DBS update service, which is free for volunteers.

## **Handling and storage of Disclosure information**

### **Storage and handling**

62. Counter-signatories (which are your traded providers) will ensure that all Disclosure certificates/copies of disclosures are securely stored in locked non-portable storage containers and that access is strictly controlled and limited to those entitled to see it as part of their duties.

### **Retention**

63. Disclosure certificates are only to be retained, by the School, as long as is necessary to support the recruitment and employment decision making processes. It is never kept for more than 6 months other than in circumstances agreed on a case by case basis with the DBS.

64. Schools must ensure that the following information is retained for monitoring and record purposes only:

- The name of the Disclosure subject (the applicant)
- The post applied for
- The date Disclosure was issued
- The type of Disclosure check sought (standard or enhanced)
- The unique Disclosure reference number
- The details of the recruitment decision taken. This will include the reason why the applicant was considered unsuitable for appointment but will not include details of any conviction disclosed
- The DBS Disclosure Review Form to assess the relevance of convictions will be held on a separate file, rather than on the personal file

### **Disposal**

65. Disclosure certificates/copies must be destroyed by secure means such as shredding, once the retention period is over.

### **DBS (PORTABILITY)**

68 The DBS check service does not endorse the use of portability, i.e. the re-use of a DBS disclosure obtained for a position in one organisation and later used for another position in another organisation. A disclosure carries no formal period of validity and only reflects information that was available at the time of its issue. As a responsible employer, we will therefore exercise caution in the portability of disclosures. Portability carries a risk and should only be considered as part of an overall risk assessment process, and reserved for exceptional circumstances. Further information on the limitations and risks of portability can be obtained from the DBS. (See section 16 for further information relating to portability)

LBWF recommendation: all new employees are required to complete a new DBS. As part of the risk assessment process (see paragraph 23 above), the following guidelines are given:

- In relation to permanent appointments, or those expected to last in excess of six months, an employee may commence employment with relevant risk-control measures, upon sight of an enhanced disclosure that is less than two years' old.

A new disclosure must be applied for, and the contract will remain subject to this requirement

- For short-term appointments, such as the use of agency staff, the enhanced disclosure should not be accepted if it is more than one year old. If the use of the individual is expected to recur, a new disclosure should be applied for.

**Appendix A:**

**Disclosure Review Form**

**LONDON BOROUGH OF WALTHAM FOREST**

And  
(Hawkswood Group)

**DISCLOSURE AND BARRING SCHEME**

**Disclosure Review Form**

**Applicant's Personal Details**

**Surname:**

**Forename:**

**Disclosure Certificate No:**

**Position applied for:**

**Level of Disclosure:**

**Evidence checked by:**

**New Recruit/Existing Employee** (delete as appropriate)

**DBS certificate seen by the Headteacher, as a result of information disclosed:**

I hereby confirm that I have seen the DBS certificate held for the above candidate/employee and will discuss this with the school's traded HR provider, Governing Body and/or the LA as appropriate.

Head teacher's Signature:

Print Name:

Date:

## Risk Assessment of Convictions/Cautions/Warnings

<b>Date of DBS Risk Assessment Meeting with applicant:</b>	
Date: _____ Applicant Name: _____	
<b>Points to consider</b> <ol style="list-style-type: none"><li>1. Is the conviction relevant to the position?</li><li>2. What is the sanction?</li><li>3. How long is it since the offence?</li><li>4. Does the individual have a pattern of offending behaviour, which suggests that they are a continuing risk?</li></ol>	
<b>DBS risk assessment undertaken &amp; rationale for the decision to recruit/employment to continue or not:</b>	
Headteacher's Signature:	
Print Name:	
Date:	
<b>Recommendation by Governing Body/LA Comments:</b>	
<b>Governing Body/LA Signature:</b>	
<b>Print Name:</b>	
<b>Date:</b>	
<b>Decision</b>	
I agree / I disagree with the recommendations ( <i>Please delete as appropriate</i> )	
Continue with appointment/employment?	<b>YES / NO</b>
<b>LA's Signature:</b>	
<b>Print Name:</b>	
<b>Date:</b>	

## Appendix B

### Disclosure and Barring Scheme (DBS) Risk Assessment Form

This form should be used in the following circumstances:

1. If an employee / volunteer starts without a DBS Clearance
2. When an employee who is already in post does not have an up to date DBS (e.g. the DBS has not been renewed by the third year anniversary)

Risk Assessment	
<b>Name of person who is subject of the Risk Assessment:</b>	
<b>Position:</b>	
<b>Grade: (if applicable)/Volunteer</b>	
<b>School:</b>	
<b>Outline of main duties:</b>	
<b>Date of DBS Risk Assessment interview</b>	
<b>Reason for the DBS Risk Assessment</b>	<p><b>Reason 1 or 2</b> above (delete as appropriate)</p> <p><b>If option 1</b>, please state below reasons for considering commencement of employment prior to receiving clearance.</p> <p><b>If option 2</b>, Why has it run out?</p>
<b>Previous DBS:</b>	<p>Is a previous disclosure available?      Y / N</p> <p>Has it been seen by you?                      Y / N</p> <p>What is the date?                      _____</p>

	Has a Children's Barred list check been completed <span style="float: right;">Y / N</span> (if employee / volunteer starts without a clearance) Date completed? _____
<b>DBS Risk Assessment undertaken &amp; outcome</b>	
<b>Measure(s) to be put in place while waiting for DBS clearance:</b>	
<b>DBS Risk Assessment undertaken by:</b>	
<b>Date of DBS Risk Assessment:</b>	
<b>Headteacher's declaration:</b>  1. I accept responsibility for the appointment / continued employment of the above named while awaiting the outcome of the DBS disclosure  I can confirm that until the DBS check on the above person is completed that the above named will be constantly supervised and will not deal with children and / or vulnerable adults or; have access to databases containing information on children and / or vulnerable adults without direct supervision  2. Whilst waiting for confirmation from the DBS, I agree to: <ul style="list-style-type: none"> <li>• Explain to the applicant that the offer of employment is only temporary depending upon the DBS Clearance.</li> <li>• Advise the applicant that if the clearance is not received within 12 weeks then the offer of employment / volunteering may be reviewed.</li> <li>• Supervise the employee</li> <li>• Monitor the situation until the DBS disclosure is completed.</li> </ul>	
<b>Name of Headteacher:</b> _____ <b>Signature:</b> _____	
<b>School:</b> _____	
<b>Date:</b> _____	

**Local Authority**

I agree / I disagree to the above

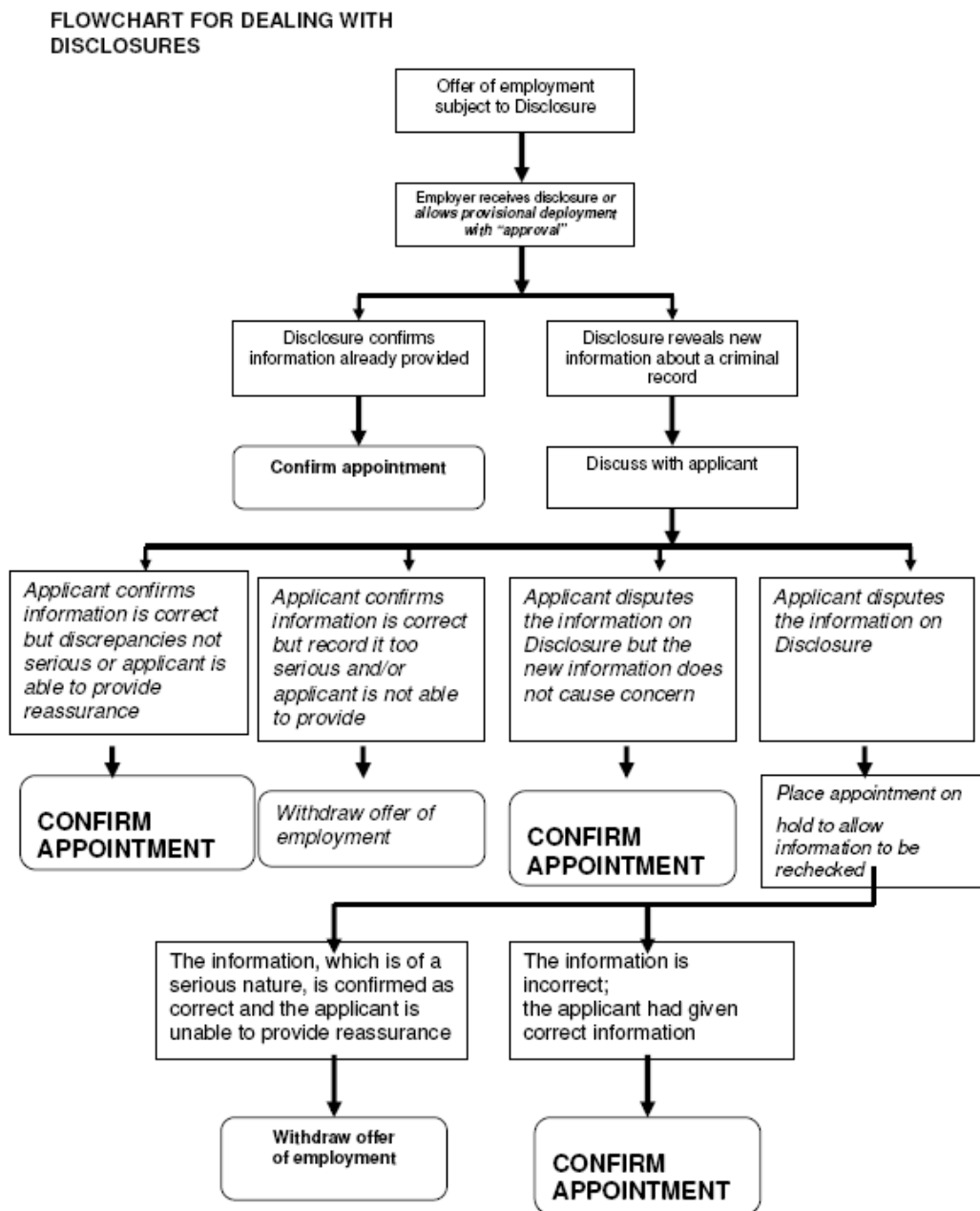
**Print Name:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*Please return completed form to: Schools HR Team, Room 11, Town Hall Walthamstow E17 4JF*



## Appendix C: Flowchart for Dealing with Disclosures



## Appendix D – DBS Process for Checking the Identity of Applicants

### What process should I follow to check an applicant's ID?

#### **Route One**

Can the applicant produce a Group 1 document? If yes, then the applicant must produce 3 documents:

- 1 document from Group 1 (refer to list of Valid Identity Documents); and
- 2 further documents from Group 1 or 2; one of which must verify their current address.

NOTE - Non-UK/Non-EEA Nationals:

**All Non-UK/Non-EEA Nationals should be validated via Route One by supplying the following combination of documents:**

- Current Passport; and
- Biometric Residence Permit *OR* Work Permit/Visa (UK); and
- 1 further document from Group 2a or 2b (refer to list of Valid Identity Documents), which verifies their current address.

If the applicant has satisfied this route, then the document check is complete. If the applicant cannot produce a Group 1 document then go to Route Two.

#### **Route Two**

The applicant must produce:

- 3 documents from Group 2 comprising of;
  - 1 document from Group 2a; and
  - 2 further documents from Group 2a or 2b; one of which must verify their current address.

And

- The organisation conducting the ID check will then need to ensure an external ID validation service is used to check the applicant against their records to establish the applicant's name and living history footprint.

If the applicant fails the external validation check, they will need to go for fingerprinting. This may add delay into the overall application process. Please refer to Question 9 in the FAQ's for more information.

PLEASE NOTE: Details of the external ID validation check are currently being developed and as soon as we know more we will let you know via a further letter, DBS News and the website.

#### **Route Three**

ALL registered bodies must have exhausted Route One and should have endeavoured to have accessed an external validation check (Route Two) before they consider processing them via Route Three.

If the applicant cannot meet the requirements of Route One or Two, you should have a discussion with them to establish why they could not meet these requirements and whether there has been a recent or previous change of name that has not been declared.

For Route Three, the applicant must produce:

A certified copy of a UK birth certificate; and

4 further documents from Group 2 comprising of:

- 1 document from Group 2a; and

- 3 further documents from Group 2a or 2b; one of which must verify their current address.

If the applicant fails to produce the required document set at Route Three, they will need to go for fingerprinting. This may add delay into the overall application process. Please refer to Question 9 in the FAQ's for more information.

All copies of UK birth certificates state 'certified copy' when issued by the General Records Office.

## **List of Valid Identity Documents**

### **Group 1 – Primary Trusted Identity Credentials**

- Current valid Passport – UK or EEA (or Non-EEA in combination with a Biometric Residence Permit or current Work Permit/Visa)
- Biometric Residence Permit (UK)
- Current Driving Licence (UK) (Full or provisional) Isle of Man /Channel Islands; Photo card only (a photo card is only valid if the individual presents it with the associated counterpart licence; except Jersey)
- Birth Certificate (UK & Channel Islands) - issued within 12 months of date of birth; Full or short form acceptable including those issued by UK authorities overseas, such as Embassies, High Commissions and HM Forces

### **Group 2a – Trusted Government/State Issued Documents**

- Current valid Passport (UK, EEA or Non-EEA)
- Current UK Driving licence (Photo card or old style paper version)
- Biometric Residence Permit (UK)
- Birth Certificate (UK & Channel Islands) - issued within 12 months of date of birth
- Certified copy of Birth Certificate (UK and Channel Islands) – issued after 12 months of date of birth
- Marriage/Civil Partnership Certificate (UK)
- Adoption Certificate (UK)
- HM Forces ID Card (UK)
- Fire Arms Licence (UK)

### **Group 2b – Financial/Social History Documents ID checking process guidance May 2012 - 5 –**

- Mortgage Statement (UK)\*\*
- Bank/Building Society Statement (UK)\*
- Credit Card Statement (UK)\*
- Financial Statement \*\* - e.g. pension, endowment, ISA (UK)
- P45/P60 Statement \*\*(UK & Channel Islands)
- Council Tax Statement (UK & Channel Islands) \*\*
- Work Permit/Visa (UK) (UK Residence Permit) \*\*
- Utility Bill (UK)\* – Not Mobile Telephone
- Benefit Statement\* - e.g. Child Allowance, Pension
- A document from Central/ Local Government/ Government Agency/ Local Authority giving entitlement (UK & Channel Islands)\*- e.g. from the Department for Work and Pensions, the Employment Service , Customs & Revenue, Job Centre, Job Centre Plus, Social Security
- EU National ID Card
- Cards carrying the PASS accreditation logo (UK)

**Please Note:**

If a document in the list of Valid Identity Documents is:

- Denoted with \* - it should be less than 3 months old
- Denoted with \*\* - it should be issued within the past 12 months
- Not denoted – it can be more than 12 months old.

## Appendix E –

### Unlawful DBS Checks – 3.3 The legal framework designed to prevent illegal DBS checks.

#### 3.3.1 The Police Act 1997

*s. 122 – the legislative basis for the DBS to prevent an illegal DBS check from being undertaken*

(3) The Secretary of State may refuse to issue a certificate under section 113 or 115 if he believes that the registered person who countersigned the application-

- (a) Has failed to comply with the code of practice under this section, or
- (b) Counter-signed at the request of a body which, or individual who, has failed to comply with the code of practice.

*s. 123 – the criminal sanction applicable to those who undertake an illegal DBS check*

(2) A person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this part.

(3) A person who is guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

## **Appendix F: LA's Statement on Ex-Offenders**

### **POLICY ON THE RECRUITMENT OF EX-OFFENDERS**

LBWF and (name of school) aims to promote equality of opportunity for all with the right mix of talent, skills and potential. We welcome applications from a diverse range of candidates.

Criminal records will be taken into account for recruitment purposes only when the conviction is relevant. Unless the nature of the work demands it, applicants will not be asked to disclose convictions which are 'spent' under the Rehabilitation of Offenders Act 1974. Having an 'unspent' conviction will not necessarily bar someone from employment. This will depend on the circumstances and background to the offence(s). However, any 'unspent' convictions, which are not declared and subsequently revealed, may result in dismissal.

Under the Rehabilitation of Offenders Act 1974, a conviction will become 'spent' (i.e. treated as if it had not occurred) where the individual has not, after a specified period of time, committed another serious offence.

Rehabilitation periods vary depending on the type and length of conviction originally incurred.

LBWF and (name of school) has a legal obligation to protect children, vulnerable customers and client groups from people who have committed serious offences, and as such meets the requirements in respect of exempted questions under the Rehabilitation of Offenders Act 1974. All applicants who are offered employment in a post that falls into this category will be subject to a DBS check, before the appointment is confirmed. This will include details of cautions, reprimands, final warnings and convictions, including 'spent' convictions. Where the post is subject to Enhanced Disclosure, other relevant non-conviction information, such as police enquiries and pending prosecutions will be included.

LBWF and (name of school) is committed to compliance with DBS Code of Practice for Registered Persons and other recipients of disclosure information (copy available on request).

### **RECRUITING EX-OFFENDERS – A CHECKLIST**

Assessing the relevance of convictions to specific posts is not an exact science. An assessment of an applicant's skills, experience and conviction circumstances should be weighed against the risk assessment criteria for the job. Head teachers/Managers responsible for recruitment need to identify what risks might be involved and what precautions are required in order to provide satisfactory safeguards. Some of the key questions to consider when a conviction is discovered are:

- Does (or could) the post involve one-to-one contact with children or other vulnerable groups?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct contact with the public?
- Will the nature of the job present any opportunities for the post holder to re-offend in the workplace?

The answers to these questions should help you to determine the relevance of convictions to specific posts. In some cases, the relationship between the offence and the post will be clear enough for you to decide easily on the suitability of the applicant for the job. In other cases, the decision may not be so clear-cut.

When your preferred applicant discloses a criminal record that is not related directly to the post, you should discuss the relevance of each offence with the applicant. Whilst it may not

be possible to carry out a thorough risk assessment on each individual, it is recommended that the following issues be taken into account as a minimum requirement:

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property
- The length of time since the offence occurred
- Any relevant information offered by the applicant about the circumstances which led to the offence being committed
- Whether the offence was a one-off or part of a history of offending
- Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change