

KIRKLEES Council

Disclosure & Barring Statement

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Purpose

This statement sets out Kirklees Council's ('the council') approach to using Disclosure & Barring Service ('DBS') checks.

Introduction

The DBS check searches personal details provided by applicants and employees or workers against criminal records and other sources. The DBS check will either confirm that the person named either doesn't have a criminal record, or it will list any relevant convictions, cautions, reprimands, warnings and, if applicable, whether they have been barred from working with vulnerable groups. The police can also include non-conviction information, that may be relevant.

A DBS check uses a range of different information sources, including the records of the Police National Computer ('PNC'), and other data sources appropriate to the level of check requested.

A person with a criminal record is not required to disclose any spent convictions unless the position they are applying for, or are currently undertaking, is listed as an exception under the act. Therefore, we have a legal responsibility to ensure we have a relevant exemption before requesting this from an applicant/employee/worker or risk withdrawal of our right to request DBS's in future, and potential prosecution. Also, under the Protection of Freedoms Act 2012 we have a legal responsibility to ensure we carry out checks on anyone engaged in Regulated Activity or Regulated Establishment but only carry out checks for those individuals of the appropriate barring list for the groups they are working with.

Background

This statement forms part of the council's overall safeguarding strategy and covers the use of Disclosure and Barring Service (DBS) Disclosures for eligible positions, as determined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, Police Act 1997, Safeguarding Vulnerable Groups Act (2006) and Protection of Freedoms Act (2012).

DBS checks are carried out on appointment for eligible roles.

Eligible Posts

Decisions on which roles to undertake a DBS check are for the council to make based on what the law allows, the council assess roles to be suitable under current legislation for all relevant positions.

Standard and Enhanced DBS checks can only be undertaken if the specific role, or the specific activities are included in the following.

To be eligible for a standard check:

- Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.

To be eligible for an Enhanced DBS check:

- Police Act 1997 or
- Police Act 1997 (Criminal Records)

To be eligible for an Enhanced DBS check (including the Barred list for Children's and/or Adults')

- the position must additionally meet the definition of Regulated Activity or Regulated Establishment with Children and/or Vulnerable Adults in the Safeguarding Vulnerable Groups Act 2006, and the Protection of Freedoms Act 2012 or be an otherwise specified position.

Employers or volunteer managers / commissioners are breaking the law if they knowingly employ someone who is in a regulated activity or regulated establishment from with group from which they are barred from working.

All staff in eligible positions will be subject to the appropriate level of check.

Individuals moving within the council to another identified position requiring a check of the same level and type will be asked by their new manager to produce their copy of their current disclosure and may be required to undergo a re-check in order to provide optimal assurance for the recruiting manager, or if required under Professional Body/ Association / Registration guidelines.

The council reserves the right to carry out further DBS checks at any time.

Scope

This statement covers anyone engaged in Kirklees Council work (paid or unpaid) in a position of trust, with vulnerable groups whether directly employed or not. For clarity, this includes:

- Employees
- Volunteers
- Apprentices
- Work placements (16+)
- Student placements (via a Letter of Assurance or within contract)
- Short- or long-term work experience (16+)
- Those who wish to foster, adopt, or act as Guardians, personal assistants, or adult placement scheme carers
- Agency staff
- Commissioned services and contracts

DBS Statements

All job descriptions, person specifications, advertisements and contracts (inc. procurement) of or for DBS eligible positions must declare the need for DBS disclosure at the appropriate level.

Existing Personnel

Where an offence is committed after a DBS disclosure has been completed the individual must advise their Line Manager immediately, in line with Section 7 of the Employee Handbook. The manager, with advice from People Services, will assess the impact on the individual's ongoing employment.

If a subsequent DBS check reveals information that has not been disclosed, disciplinary action up to and including dismissal may be taken.

Agency workers, Contractors and Commissioned services

Agencies, Contractors and Commissioned services provide individuals or who engage individuals to work paid or unpaid in positions of trust with vulnerable groups, who require DBS checks at the appropriate level.

However, it is the responsibility of the recruiting or commissioning manager to ensure these checks are valid and appropriate whilst working with vulnerable groups or in another eligible position.

The council defines a valid and current check as one of the appropriate type and level (including Barred List checks where required).

Volunteers

This statement applies the same standards and processes outlined above to all volunteers engaged by/or in partnership with the council.

Timescales

Individuals required to complete a DBS check must provide the information required for the disclosure application when asked and within the agreed time limits to avoid delay in the process. Applicants are required to complete their sections of the disclosure application within 5 working days of request.

Disclosure of Information

All current and new employees are covered by a specific clause in their employment contract to notify the authority of any charges or convictions brought against them (Section 7 of the Employee Handbook). Clearly where a role is subject to a satisfactory DBS check this clause becomes critical in determining what action should take place.

Depending on the nature of the offence we will determine whether:

- the charge or conviction is such as to affect, or be likely to affect, the suitability of the employee for the position in which he/she is employed,
- or the business or reputation of the Employer,
- or where the existence of the charge or conviction could, in the opinion of the Employer, otherwise seriously undermine the trust and confidence that the Employer has in the employee.

Criminal charges or convictions for offences committed outside working hours may result in disciplinary proceedings being taken against the employee up to and including summary dismissal.

A criminal record may not automatically bar the individual from working (paid or unpaid) in a position of trust with children or vulnerable adults. The council's Statement on the Recruitment of Ex-Offenders is available via www.Kirklees.gov.uk

The council reserves the right to judge each case on its merits within the following parameters:

- Nature of offence(s) listed and / or police information disclosed
- Relevance to the post applied for
- Length of time elapsed since incident
- Whether the matters disclosed form any pattern
- The circumstances under which the offence was committed
- Changes in the applicant's personal circumstance
- Openness of declaration during the recruitment process
- Country of conviction
- Decriminalisation
- Remorse

The council undertakes to discuss any matter revealed in a disclosure with the applicant, employee or volunteer before making a decision.

All disclosures with content will be risk assessed via the above framework approach, with the exception of those for individuals who wish to foster, adopt or act as Guardians, where the disclosure will be risk assessed by the Fostering / Adoption Manager and a final recruitment decision taken by the Head of Service.

Where offences involve harm to a third party with an increased element of risk to children and / or vulnerable adults the disclosure will be reported to the Children or Adults Safeguarding teams via telephone in the first instance and a decision made as to whether (if the applicant is already in post) they need to be suspended from their current duties whilst the disclosure content is under investigation. A formal risk assessment will need to be undertaken via the DBS – Positive Disclosure Risk Assessment Form.

The completed DBS Positive Disclosure Risk Assessment document where offences involve harm to a third party with an increased element of risk to children and / or vulnerable adults (which details the meeting held with the applicant and the recruitment decision taken, though makes no representation of disclosure content) will be securely held by the council and retained in line with Information Commissioners Office guidance and DBS retention schedule.

The council decisions on the content of a DBS and/or DBS disclosure within the recruitment process will be final.

Additional Disclosed or Relevant Information

Enhanced-level disclosures involve an additional check against local police records, and any additional relevant information may be disclosed at the discretion of a relevant Chief Police Officer, this is included in the disclosure sent to the applicant.

Overseas Applicants

The DBS cannot currently access overseas criminal records or other relevant information as part of its disclosure service, so a DBS check may not provide a complete picture of criminal records that may or may not exist.

Some countries have their own form of criminal record check, or provide certificates of good conduct, Managers should make themselves aware of the requirements for overseas checks prior to starting the recruitment process, advice can be accessed via People Services.

Retention of Documents

Once a recruitment (or other relevant) decision has been made, the council do not keep certificate information for any longer than necessary. This retention will allow for the consideration and resolution of any disputes or complaints or be for the purpose of conducting safeguarding audits.

Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

Storage and access

Certificate information will be kept securely, with access strictly controlled and limited to those who are entitled to see it as part of their duties.

Handling

In accordance with section 124 of the Police Act 1997, certificate information is only passed to those who are authorised to receive it in the course of their duties. It is a criminal offence to pass this information to anyone who is not entitled to receive it.

The council may require retention of certificates to demonstrate 'safer' practice for the purpose of safeguarding audits.

Usage

Certificate information is only used for the specific purpose for which it was requested and for which the applicant's consent has been given.

Disposal

The council will not keep any photocopy or other image of the certificate or any copy or representation of the contents of a certificate, unless required as part of a risk assessment. However, notwithstanding the above, the council will keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, the position for which the certificate was requested, the unique reference number of the certificates and the details of the recruitment decision taken.

Once the retention period has elapsed, the council will ensure that any DBS certificate information is immediately destroyed by secure means.

This council statement complies fully with its obligations under the General Data Protection Regulation (GDPR), Data Protection Act 2018 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information.