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POLICY: Disclosure and Barring Service (DBS) Checks For Staff and Volunteers

This policy has been written in consultation with the College's recognised Trade Union representatives.

PURPOSE: This policy provides guidance and information to managers, staff and volunteers on initiating DBS checks for staff (including any casual workers) and volunteers, the application process, the management of DBS checks and the information contained within them.

Managers can obtain further guidance from the Human Resources Department.


SCOPE: Applicable to all newly appointed employees and workers (paid and unpaid), and volunteers including bank staff and work experience placements and others not covered by the terms 'employee or worker' of both Stoke On Trent College and Education Business Services (Stoke) Ltd. ("EBS") for who the College is entitled to and required to obtain a Disclosure.

For guidance relating to DBS Disclosures for students please refer to the Student Services Department.

1. Background

- 1.1 The Disclosure and Barring Service (DBS) helps organisations identify candidates who may be unsuitable for certain work, particularly work involving contact with children or vulnerable adults, by providing access to criminal record information.
- 1.2 The DBS helps to prevent unsuitable people from undertaking certain paid or volunteer work with children or vulnerable adult by maintaining two barred lists where information shows individuals pose a risk of harm to children or vulnerable adults. The DBS is also responsible for managing the criminal record checking ('Disclosure') service.
- 1.3 A DBS check is an impartial and confidential document that details an individual's criminal record, including cautions, convictions and other relevant police information (subject to filtering), and where appropriate, details of those who are barred from working with children and/or vulnerable adults (known as 'barred lists').
- 1.4 There are various levels of DBS check available depending on the type of work which will be undertaken. A summary of disclosure levels, guidance regarding regulated activity and the types of roles which may be checked can be found in Annexes A-C. All DBS checks undertaken by the College will be at Enhanced level.
- 1.5 DBS checks are primarily used in the recruitment and selection process and therefore mainly affect job applicants. There may also be occasions where existing staff move in to different roles or an individual's role may change, necessitating a further DBS check.

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2. Principles and Compliance

- 2.1 The College complies fully with its obligations under the DBS Code of Practice, the General Data Protection Regulation 2016, the Data Protection Act 2018, the Equality Act 2010 (and subsequent Amendments), the Rehabilitation of Offenders Act 1974, and other relevant legislation.
- 2.2 The College is committed to the fair treatment of job applicants, employees, workers and volunteers regardless of age, disability (including mental health), gender identity, marital status & civil partnership, maternity & pregnancy, race, religious belief, sex or sexual orientation.
- 2.3 In line with the DBS Code of Practice, the College undertakes to treat all applicants who have a criminal record fairly and to not discriminate automatically because of a conviction or other information revealed.
- 2.4 The DBS offers a confidential checking process for transgender applicants who do not wish to reveal details of their previous identity to the organisation.

3. Responsibilities and Process

3.1 Lead Counter Signatory

Currently, the processing and countersigning of all of the College's DBS checks for both Stoke On Trent College and EBS employees, workers and volunteers, is currently outsourced to our Payroll & Pensions Provider, Stoke On Trent City Council. Stoke On Trent City Council will have an appointed, approved Lead Countersignatory, who will usually be a senior manager in a relevant position such as the Director of Human Resources. This person will be:


- Accountable for compliance with their own DBS policy, this policy and the DBS Code of Practice;
- Responsible for the approval of counter signatories;
- Responsible for the accurate processing on the College's behalf, of personal and sensitive categories of data supplied by applicants to the DBS for barring consideration in relevant circumstances and to provide information to the DBS upon request.

3.2 Counter Signatories

Members of the Human Resources Department at Stoke On Trent City Council (as above) are approved by the DBS as counter signatories, and are responsible for the operation of the Disclosure process on the College's behalf, including:

- Checking and validating the information provided by the applicant on the DBS application form;
- Countersigning Disclosure application forms to confirm that the position is covered by the Exceptions Order to the Rehabilitation of Offenders Act 1974 and that the organisation therefore has an entitlement to access criminal record(s) information and that any Disclosures requested are at the appropriate level.

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- Receiving Disclosures and managing the retention, storage, use and disposal of Disclosures, including use of the portal for viewing by College Human Resources staff;
- Providing advice on DBS related issues when required, and referring queries from College Human Resources staff to the DBS;
- Complying with this policy and with the DBS Code of Practice.

3.3 Recruiting Managers

- 3.3.1 Recruiting managers are responsible for ensuring that they assess each new or revised role with regard to working with children and/or vulnerable adults and complete the DBS section of the Recruitment Planning Form.
- 3.3.2 Recruiting managers must take into account when planning new and replacement appointments, that DBS checks may sometimes be returned quite quickly, however, it is not unusual for disclosure notices to take around 6 to 8 weeks to be returned to the applicant, and a notification to be received by the College Human Resources Department, depending on the volume of applications being processed by the DBS, and the speed of agencies such as the Police in supplying their information as part of the process. Managers must factor this time period in when planning new employees' start dates.


3.4 Human Resources Department

- 3.4.1 As part of the new starter and onboarding process, Human Resources Officers will send the DBS application information to the new starter, with information and guidance on applying for their DBS. The cost of the Disclosure is borne by the applicant, and is deducted from the new starter's first payment from the College, and the Human Resources Officers will instruct the Payroll Department to make this deduction.
- 3.4.2 Human Resources Officers are responsible for checking, verifying and recording the documentary evidence provided by Disclosure applicants to establish their identity and eligibility to work in the UK.
- 3.4.3 Human Resources Officers/Business Partners will also liaise with, advise and support Disclosure applicants who receive a Disclosure containing trace information to be taken into consideration for their appointment, and will meet with the applicant/employee/worker to discuss their Disclosure certificate in further detail.
- 3.4.4 Human Resources Officers will also notify recruiting managers of the completion of the applicant's DBS and the outcome.

3.5 Individuals applying for a DBS check

- 3.5.1 Individuals applying for a DBS check are responsible for completing the DBS application form accurately and in a timely manner and for providing a copy of the DBS disclosure certificate to the HR Department.
- 3.5.2 As in 3.4 above, individuals are also responsible for bearing the cost of the DBS application and disclosure, and this amount will be deducted from their first salary or payment instalment

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from the College. Any individuals who are registered with the DBS's online update service, will not incur further cost, but will be required to provide evidence of their up to date disclosure information to the Human Resources Department.

- 3.5.3 Individuals must also comply with requests made by Human Resources staff and/or their line manager, to produce their original DBS disclosure certificate if required to do so, and to provide accurate and truthful details pertaining to information contained on the disclosure.

4. Disclosure of Criminal Records Information (all job roles)

- 4.1 All job applicants are required to declare any unspent convictions or cautions on the College's job application form.
- 4.2 Once a caution or conviction becomes spent, an individual is treated as rehabilitated with regards to that offence, and they don't have to declare it when applying for employment that is not subject to a DBS check.

Further guidance and an online calculator which helps people to calculate when their convictions become spent is available from Unlock, a charitable organisation offering guidance and support for people with convictions.

4.3 Job Roles eligible for a DBS Check

- 4.3.1 Roles which are Exempt from the Rehabilitation of Offenders Act (i.e. roles which require a DBS check) will be clearly identified throughout the recruitment process from the initial advert stage. The College is entitled to ask a candidate to reveal details of all convictions, even a spent conviction (subject to the DBS filtering process).
- 4.3.2 The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are 'protected' and such information will not be included in DBS checks. Therefore, such information need not be disclosed to the College, and cannot be taken into account when making employment decision (this is known as 'filtering').


4.4 Failure to Disclose Criminal Records Information

- 4.4.1 Failure by an applicant to disclose relevant cautions, convictions or other relevant information through the self-declaration process will be treated as a serious matter in its own right, and all such cases will be referred to the relevant Head of Department/Learning by the Human Resources Department. If it is established that the individual's application was untruthful or relevant information was omitted, the offer of employment may be withdrawn. If the individual has commenced in post their employment may be terminated.

4.5 Volunteers

Those who engage with the College on a voluntary basis are not employees of the College, and therefore, there the usual recruitment process does not apply to volunteers although certain checks do need to be undertaken. It is therefore the responsibility of the relevant manager to liaise with Human Resources and arrange for the necessary DBS check to be undertaken, where appropriate.

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4.6 External contractors

4.6.1 Occasionally the College will engage external contractors to undertake work. This can range from individual freelance workers to larger companies. Depending on the nature of the work the College will assess whether Disclosure checks would be appropriate. Such individuals may not be engaged by the Human Resources Department, however, agreement to engage a contractor should have been given in advance by the Human Resources Department.

4.6.2 Where Disclosure checks are required this will be a condition of the contract and the College Human Resources Department will require confirmation from the contractor and the College manager engaging them, that the necessary checks have been undertaken.

4.6.3 No external contractors should be brought on to site to work, until the Human Resources Department have confirmed that all necessary checks have been completed satisfactorily.

4.7 Work Experience placements within the College

In the case of students aged under 16 undertaking work experience placements within the College, which have been organised by a School or Local Authority, the organising body should satisfy itself as to the safeguarding arrangements at the College. Staff should ensure that safeguarding measures are implemented. (See Safeguarding Policy & Procedure for further guidance).

5. Re-checking

Except in the specific circumstances detailed below (or where an individual moves roles) the College does not routinely require staff and volunteers to be re-checked by the DBS. However, upon local risk assessment prompted by an incident or for another significant reason, the line manager may agree with HR circumstances where a role/individual may require suitable re-checking.

5.1 DBS Online Update Service

The DBS update service lets applicants keep their DBS certificates up to date online and allows employers to check a certificate. Staff subject to a re-check may be asked to register for the DBS update service at recruitment or following their next scheduled DBS check and the College may use the online update service for subsequent re-checks.


6. Single Central Record

The College's Human Resources Department will maintain a Single Central Record in accordance with current regulations.

7. Disclosure Application process

7.1 Successful candidates will receive the link to the DBS Disclosure Application Form and guidance on completing the form when they are sent their offer letter and contract of employment from the Human Resources Department. For new starters, employment will always be offered on a conditional basis, subject to a satisfactory DBS Disclosure, as well as other outlined conditions.

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- 7.2 The disclosure application must be completed in full. The relevant identification documents will be checked by a Human Resources Officer.
- 7.3 When the DBS have completed of all the necessary checks, the Disclosure certificate will be sent to the individual, and a notification will be sent to the Human Resources Department, with advice as to whether the Disclosure is clear or contains remarks. Where there are remarks recorded, the individual will be required to bring their certificate to the Human Resources Department to discuss it further (see 7.4 below).
- 7.4 If there is no information contained in the Disclosure the Counter-Signatory will write to both the recruiting manager and to the individual to confirm that the Disclosure has been received and is satisfactory. If there are details contained in the Disclosure the Assessing Criminal Record Information procedure will be followed.
- 7.5 When all of an individual's pre-employment and on-boarding checks have been completed, they will receive a 'Confirmation of Offer' letter from the Human Resources Department, to unconditionally offer them the post. At this point, if they have not already signed a contract of employment, they will be required to do so.

8. Applications from transgender individuals

- 8.1 The DBS service offers a confidential checking service for transgender applicants. This is known at the sensitive applications route and ensures that any previous gender or name information is not disclosed on their certificate.
- 8.2 If you wish to proceed with the sensitive application process, please contact the sensitive applications team by telephone 0300 131 2784 or email sensitive@dbb.gov.uk.


9. DBS Online Update Service at Recruitment

- 9.1 The DBS update service lets applicants keep their DBS certificates up to date online and allows employers to check a certificate.
- 9.2 When applying for a DBS check, applicants will be asked if they are registered with the DBS online update service and if so will be asked to provide the original DBS certificate to the HR department who will check that it is the same level as the required level for the position. The HR Department will then access the online update service to check the DBS status and will not require a new DBS check to be undertaken.

10. Applicants with a substantial record of overseas residence

- 10.1 Applicants who fall into this category will include nationals of other countries, and UK nationals who have lived abroad for more than 6 months with the previous 5 years.
- 10.2 Where an individual from overseas is offered a post requiring DBS clearance the College will contact the Embassy or High Commission of the country in question for information on how to obtain criminal records information. This will normally involve the individual obtaining a

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Certificate of Good Conduct from the country they were resident in. It is not normally possible for the prospective employer to access this information and must be sought by the individual.

- 10.3 Where an applicant has been resident in the UK for at least 2 months, a Disclosure should be sought in addition to confirmation of their criminal record overseas, although it is recognised that the Disclosure is likely to be of limited value where the period of UK residence has been short.

11. Commencement in post

- 11.1 New starters will not normally be allowed to commence prior to receipt of their Disclosure, which must be satisfactory to the College.
- 11.2 However, there may be limited circumstances where individuals are able to commence in post prior to receipt of the Disclosure providing sufficient safeguarding measures can be put in place and a previous DBS check at the appropriate level can be provided. In such situations the recruiting manager should contact the Human Resources Department for further advice and should ensure that, if required, they complete a detailed Risk Assessment, which will be stored on file by HR and should be reviewed and updated regularly by the recruiting manager. The Risk Assessment template is available to Recruiting Managers from the Human Resources Department.
- 11.3 If it is not possible to allow commencement in post at that point, the individual's start date may need to be postponed. In rare circumstances where service delivery is seriously affected by a protracted delay in start date, the offer of employment may be withdrawn if a Disclosure is not received within a reasonable period of time.


12. Portability of DBS Disclosures

- 12.1 Portability refers to the re-use of a Disclosure, obtained for a position in one organisation and later used for another position in different organisation without a DBS online update check available or new disclosure applied for.
- 12.2 Portability of DBS checks will not be accepted by the College and a new DBS check will be required for all relevant positions.
- 12.3 However, in certain cases, the College may accept the previous Disclosure (at the required level) if it was completed within the last 3 month period prior to appointment, as an interim measure to enable commencement in post whilst applying for an up-to-date DBS check.

13. Confidentiality

Information provided on any Disclosure is both sensitive and confidential. The College fully adheres to the DBS Code of Practice and with its obligations under the Data Protection Act 2018 and the General Data Protection Regulation, as well as other relevant legislation pertaining to the safe handling, use storage, retention and disposal of Disclosure information.

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14. Preservation of Rights

Nothing in this policy will in any way detract from or impinge upon an individual member of staff's statutory employment rights or those contained in College policies and contracts of employment. Where changes to a statutory provision, or to employment legislation, affect this procedure, the College retains the right to amend the procedure accordingly.

15. Review

The operation of this Policy & Procedure will be reviewed annually by the HR Department.


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Annex A - Levels of DBS Disclosure and Applicable Roles

Level of disclosure	Checks Undertaken	Criteria	Examples of Applicable Types of work
Standard check	Unspent and spent convictions/cautions (subject to DBS filtering of 'protected' information) held on the Police National Computer	The position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.	Positions NOT working with children or vulnerable adults , available for specified occupations, licences and entry into specified professions, e.g. private security, chartered accountants, legal professions
Enhanced check	As above <u>plus</u> Police information held locally that is considered to be 'reasonably relevant' to the post	The position must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) regulations and meet the Pre-September 2012 definition of regulated activity	Supervised activities with children which would be considered as 'regulated activity' if unsupervised (following statutory guidance regarding supervision) not in a 'specified place' Infrequent activities with children which would be considered as 'regulated activity' if frequent Activities with vulnerable adults that are not deemed as 'regulated activities' under the new post 2012 definitions
Enhanced check for regulated activity (children and/or adults)	As above <u>plus</u> a check against the Adult or Child Barred List of individuals who must not work with these groups	The position must be eligible for an enhanced level DBS as above and be specifically listed in the Police Act 1997 (Criminal Records) and meet the Post-September 2012 definition of regulated activity	Unsupervised 'regulated activities' with children on a regular basis Working in a 'specified place' (children) Specified activities with adults deemed as vulnerable when in receipt of those activities.

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Annex B – Definitions of Regulated Activity

1. Summary of the definition of regulated activity post-September 2012

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012).

Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

1.1 Regulated activity relating to children

The new definition of regulated activity relating to children comprises only:

- (i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- (ii) Work for a limited range of establishments ('specified places'), with opportunity for contact:
for example, schools, children's homes, childcare premises. Not work by supervised volunteers; Work under (i) or (ii) is regulated activity only if done regularly. Statutory guidance about supervision of activity which would be regulated activity if unsupervised is also provided.
- (iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
- (iv) Registered child-minding; and foster-carers.

A child is a person under the age of 18, or under the age of 16 when in employment.

1.2 Regulated activity relating to adults


The new definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities.

There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people).

- i. Providing healthcare
- ii. Providing personal care
- iii. Providing social work
- iv. Assisting with cash, bills and/or shopping
- v. Assistance with the conduct of a person's own affairs
- vi. Conveying

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Annex C - Policy statement on the recruitment of ex-offenders, Information Disclosure and Procedure for Assessing Information Disclosed


1. Policy Statement

- 1.1 As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), the College complies fully with the Code of Practice and undertakes to treat all applicants for positions fairly. The College undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.
- 1.2 The College can only ask an individual to provide details of convictions and cautions that they are legally entitled to know about. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended), the College can only ask an individual about convictions and cautions that are not protected.
- 1.3 An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.
- 1.4 The College ensures that all those who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. The College also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

2. Assessing Disclosed Information

- 2.1 The College makes every subject of a criminal record check submitted to DBS aware of the existence of the Code of Practice and makes a copy available on request.
- 2.2 The College undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before making an employment decision.

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Annex D – Procedure for Assessing Disclosed Criminal Record Information

1. Assessing Information Declared at Application/Interview stage

1.1 If an applicant discloses that they have a caution, conviction or other relevant information (spent and/or unspent depending on whether the post is exempt under the Rehabilitation of Offenders Act 1974) this will be indicated on the online application form, along with optional additional information outlining the details of the information.

1.2 Where an applicant discloses an offence which may show as a trace on their Disclosure certificate, and the candidate shortlisted, the Interview Panel Chair should contact the Human Resources Department for advice on when and how to discuss this information with the individual.

2. Assessing Information Contained in DBS checks following a conditional offer of Employment.


2.1 All individuals whose DBS check contains criminal record information will be invited to a meeting with a member of the Human Resources Department and the recruiting manager, regardless of the offence. Should an individual choose not to attend the meeting, the offer of employment will be withdrawn.

2.2 Where the individual has disclosed their caution/conviction on the at application or interview stage and this has been discussed and recorded at interview, if it is acceptable to the College to proceed, it may not be necessary to hold a further meeting on receipt of the Disclosure unless it reveals information not previously disclosed. The Chair of the interview panel should contact Human Resources for advice in this situation.

2.2 At the meeting, the individual will be asked to confirm whether the information contained in the Disclosure is correct and relates to them. Assuming the information is correct, consideration will be given, where appropriate, to the following:

- a) Whether or not the conviction is considered 'spent' in line with legislation and the details of their sentence;
- b) Whether the offence was disclosed at application of interview stage;
- c) Whether the applicant's explanation corresponds with their disclosure;
- d) The nature of the role and the relevance of the offence to the role;
- e) Any risk to the College and the safeguarding of its learners, of employing this individual;
- f) Whether the responsibilities of the role applied for link closely to the applicants' offending background;
- g) Whether the responsibilities of the role present any opportunities for the individual to re-offend;
- h) When the offence occurred and what age the individual was at the time;
- i) The seriousness of the offence indicated by the sentence received;
- j) The background to/circumstances surrounding the occurrence of the offence;
- k) Whether the applicant's circumstances changed since the offence(s) and if so, how?
- l) Whether the individual has learned from the experience, the extent of remorse shown and what steps they have taken to prevent a re-occurrence;

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- m) Whether the offence was a single occurrence? If multiple offences, whether they were part of a pattern or offending behaviour, or not;
- n) The effectiveness of rehabilitation programmes, for example relating to drug and alcohol abuse or anger management, and the outcome;
- o) Whether the ex-offender is currently on probation or under supervision;
- p) Whether mental health issues were part of the background to the offence, and if so whether the individual is receiving any treatment;
- q) The country in which the offence was committed; some activities are offences in Scotland and not in England and Wales and vice versa;
- r) Whether the offence has since been decriminalised by Parliament;
- s) Consideration of any Police information provided directly to the employer. **N.B. If the Counter-Signatory / College has received any such information under separate cover this must not be disclosed to the individual).**

2.3 Based on the information recorded on the DBS check and that obtained from the Meeting with the individual, a decision will be taken to either confirm or withdraw the offer of employment. If the offer is to be confirmed, the individual will be sent a letter confirming that their DBS Disclosure was deemed to be satisfactory and that the condition of their offer of employment and contract has been satisfied.


2.4 If the offer is to be withdrawn, the individual will receive a letter confirming the decision and the rationale.

2.5 Should the individual wish to appeal against the decision, they should put this in writing to the Chief People Officer, within 10 working days of receipt of the decision letter, stating the reasons for their appeal.

3. Regulated Activity and Barred List Information

Where the DBS check reveals that the individual is barred from working with children and/or vulnerable adults, and the post involves undertaking 'regulated activity' with either/both groups, the College will withdraw the offer of employment, as it is illegal for a barred individual to undertake 'regulated activity'. There is no appeal procedure in this instance.

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Annex E - Policy Statement on Secure Storage, Handling, Use, Retention and Disposal of Disclosure and Barring Service (DBS) certificates and certificate information

General principles

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. The Human Resources Department maintains a record of all those to whom certificates or certificate information has been revealed and it is a criminal offence to pass this information to anyone who is not entitled to receive it.

Usage


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

Retention

We receive only notification of an individual's disclosure being issued. We do not receive a copy of the disclosure, and will only request to see this if information is contained. Where a scanned copy is emailed to the Human Resources Department, it will be deleted immediately after viewing and use.

We will not keep any photocopy or other image of the certificate or any copy or representation of the contents of a certificate. However, notwithstanding the above, we may 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.

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Annex G - Duty to Refer to the DBS

The College has a legal duty to make a referral to the Disclosure and Barring Service (DBS) when one of their employees, workers or volunteers has harmed or poses a risk of harm to a child or vulnerable adult. The College must make a referral to the DBS when the following two conditions have both been met:

Condition one:

The College withdraws permission for a person to work in regulated activity with children and/or adults either through dismissal or by moving the person to another area of work that is not regulated activity.

This includes situations where an employer/volunteer manager would or may have dismissed the person or moved them to other duties, if the person had not resigned, retired, or otherwise left their work.

AND

Condition two:

The College reasonably believes that the person has carried out one of the following:

- i. been cautioned or convicted of a relevant (automatic barring) offence as are listed in the DBS guidance referral guide: relevant offences in England and Wales; or,
- ii. engaged in relevant conduct in relation to children and/or adults (i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk or harm); or,
- iii. satisfied the harm test in relation to children and / or vulnerable adults. (i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable still exists).

The legal duty to refer to DBS applies to regulated activity providers even when a referral has been made to another body such as a local authority safeguarding team or professional regulator regardless of whether that body has made a referral to the DBS about the person.

There may be occasions when the College wishes to make a referral in good faith in the interests of safeguarding children or vulnerable adults including acting under the advice of the Police or a safeguarding professional, but the legal duty has not been met. For example, where there are strong concerns but the evidence is not sufficient to justify dismissing or removing the person from working with children or vulnerable adults. The DBS is required by law to consider any and all information sent to it from any source.

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Appendix H

Risk Assessment Guidance – Positive DBS

**To be used when completing the Risk Assessment form below, when a Positive DBS Certificate is received
(there is sensitive Police or other Agency information on a DBS Certificate)**

This guidance should be used by managers to complete the Risk Assessment form below, when a DBS certificate shows sensitive information, and should then be reviewed by the Human Resources Department before approving.

Where DBS Certificates reveal sensitive Police or other Agency information	Considerations for risk mitigation measures when carrying out the Risk Assessment
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Risks:

You may mistakenly employ someone:

- ☐ who is not of good character;
- ☐ who is unsuitable to work with children or vulnerable adults;
- ☐ who may pose a risk of harm to children or vulnerable adults; who has been bound-over,
- ☐ cautioned or convicted for offences relevant to the position applied for; who has a pattern of offending behaviour; or
- ☐ who may have lied or not told the whole truth about previous criminal convictions and there relevance for the post.

Examples (to support completion of the risk assessment form)

1. I met with the prospective/current employee to discuss the content of the DBS certificate and gave him/her opportunity for explanation prior to confirming appointment.

Prospective Employee

<I was satisfied/not satisfied with the explanation given and agreed to confirm/not to confirm the appointment <please provide details>.>

Current Employee

<Whilst I was satisfied with the explanation and agreed that employment could continue I reminded the employee of the requirements of the College's Code of Conduct/Professionalism>

<I was not satisfied with the explanation given but agreed that employment could continue but with appropriate risk mitigation measures. I reminded the employee of the requirements of the College's Code of Conduct.>

<I was not satisfied with the explanation given and informed the employee that I would invoke the staff disciplinary procedure giving consideration to suspending the employee <please provide details>>

2. In making my decision I considered:

- ☐ the College's policy on the recruitment of ex-offenders;
- ☐ whether the conviction or other matter was relevant to the post;
- ☐ the seriousness of the conviction or other matter;
- ☐ the length of time since the offence or other matter occurred;

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- ☐ the age of the prospective/current employee at the time of the offending behaviour or other relevant matters; whether the prospective/current employee had a pattern of offending
- ☐ behaviour;
- ☐ what the circumstances around the information revealed were and whether these have changed since the offending behaviour; and/or the requirements of the College's Code of
- ☐ Conduct/Professionalism (for current employees only).

3. I sought advice and guidance from <please specify> on <please insert date> before deciding whether the appointment could be confirmed/continued or not. The advice given was <please insert>. My decision was <please insert decision and reasons for it>.

4. The prospective/current employee made me aware on <please insert date> that a (DBS) check would reveal confidential sensitive information and provided details. I met with him/her on <please insert date> to compare the information previously provided with that revealed by the (DBS) check.

Prospective Employee

<I was satisfied/not satisfied with the explanation given and agreed to confirm/not to confirm the appointment <please provide details>.>

Current Employee

<Whilst I was satisfied with the explanation and agreed that employment could continue I reminded the employee of the requirements of the College's Code of Conduct/Professionalism>

<I was not satisfied with the explanation given but agreed that employment could continue but with appropriate risk mitigation measures. I reminded the employee of the requirements of the College's Code of Conduct/Professionalism.>

<I was not satisfied with the explanation and informed the employee that I would invoke the staff disciplinary procedure giving consideration to suspending the employee <please provide details>>

5. The prospective/current employee had not previously made me aware that the (DBS) check would reveal confidential sensitive information. I met with him/her on <please insert date> to explain my concern.

Prospective Employee

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<I was satisfied/not satisfied with the explanation given and agreed to confirm/not to confirm the appointment <please provide details>.>

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Current Employee

<Whilst I was satisfied with the explanation and agreed that employment could continue I reminded the employee of the requirements of the College's Code of Conduct/Professionalism>

<I was not satisfied with the explanation given but agreed that employment could continue but with appropriate risk mitigation measures. I reminded the employee of the requirements of the College's Code of Conduct/Professionalism.>

<I was not satisfied with the explanation and informed the employee that I would invoke the staff disciplinary procedure giving consideration to suspending the employee <please provide details>>

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Appendix H


RISK ASSESSMENT FORM – Positive DBS

(to be completed by the appointing manager, using the guidance and examples provided above)

Name of prospective/current employee		Post title	
Category: Prospective employee/Re-Check/Volunteer/ Update Service		Employee number (if applicable)	
Names and job titles of interviewers		Date of interview	


Factors/considerations	Comments
Does the post involve one to one contact with children, young adults or other vulnerable groups as customers or clients?	
Does the post involve any direct responsibility for finance or items of value?	
Does the post involve direct contact with the public?	
Had the applicant fully disclosed the conviction or has this come to light retrospectively?	

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Are there any safeguarding issues in relation to the conviction, i.e. adults/children (consider ISA guidelines)?	
What level of supervision will the post holder receive?	
The seriousness of the offence and its relevance to the safety of the learners, other employees and property.	
The length of time since the offence occurred.	
The age of the applicant at the time of the conviction/caution/bindover.	
Any relevant information offered about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties.	
Whether the offence was a one off, or part of a history of offending. Check whether several convictions emanated from the one act.	
Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely.	
The country in which the offence was committed. Some activities are offences in Scotland and not in England and Wales and vice versa.	

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The degree of remorse or otherwise expressed by the applicant and their motivation to change.	
Does the nature of the job present any opportunities for the post holder to re-offend in the place of work?	

Risk Rating	Tick	Considerations and Measures to mitigate risk
Low DBS Disclosure information of low relevance to the position and has no/low effect on suitability for the position.		

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<p>Intermediate</p> <p>DBS Disclosure information is relevant to the position but is not considered sufficiently serious to render the prospective/current employee unsuitable for employment. Risks can be safely managed through sensible measures (specify what they are and who will be responsible for implementing them). Discussion to take place with individual to explain decision and agree and confirm mitigation measures.</p>		
<p>High</p>		


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<p>DBS Disclosure information is sufficiently serious and relevant to render the prospective/current employee unsuitable for the position. For the prospective employee the appointment will be aborted and the offer of employment withdrawn. For a current employee referral will be made to the College's Disciplinary or Dismissal procedure as appropriate.</p>		
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To Be Completed In All Cases		
1	To continue in post with no further action	
2	Redeployment to another role whilst further internal and/or external investigation takes place	
3	Suspension from duty whilst investigation continues	
4	Disciplinary Process to be invoked	
5	Withdrawal of offer of employment	

Name (Director of Human Resources)		Signature		Date	
Name (Line Manager)		Signature		Date	

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