

Exmouth Community College



DISCLOSURE & BARRING SERVICE (DBS) POLICY

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POLICY

1. Introduction

Exmouth Community College (ECC), through its managers and staff, including those contracted to the College, has a duty of care to protect the well-being of the people of Devon, particularly those considered to be especially vulnerable or at risk, such as children or those with disabilities.

The Disclosure and Barring Service (DBS) (which replaces the Criminal Records Bureau and Independent Safeguarding Authority) helps employers make safer recruitment decisions about employees and volunteers. It also prevents unsuitable people from working with vulnerable groups, including children, through its criminal record checking and barring functions.

This policy provides guidance to managers on how to manage the DBS criminal records check process during recruitment, transfer or re-checking. DBS checks apply to employees, casual staff, agency workers, volunteers and contractors in positions which require it.

This document should be read and applied in conjunction with related ECC policies e.g. Recruitment and Selection.

2. Legislative Influences

This policy has been written with regards to the following legislation:

Human Rights Act, Data Protection Act, The Police Act 1997, The Safeguarding Vulnerable Groups Act 2006 and The Protection of Freedoms Act 2012.

Section 11 – Children Act 2004; Section 175 - Education Act 2002 (schools) and Section 157 Education Act 2002 (Academies/Free Schools). The Policy also complies with requirements under the Working Together to Safeguard Children (March 2013) and Safer Recruitment in Education Guidance produced by the Department of Education.

3. Validity of DBS Disclosures

ECC will only apply for Disclosures in respect of posts that are included in the Exceptions Order to the Rehabilitation of Offenders Act 1974. It may be an offence under section 123 (2) of the Police Act 1997 to apply for a Disclosure in respect of a post not covered by the Exceptions Order 1975. For example, if an employee has access to sensitive information such as home addresses or financial details of vulnerable clients, application for a disclosure does not currently fall within the legislation because the employee has no direct contact with children and/or vulnerable adults.

4. DBS Code of Practice

All organisations and their staff who wish to use DBS checks must comply with the DBS's Code of Practice. This is to ensure that the information released will be used fairly and handled and stored appropriately. Failure to comply with the Code of Practice can result in the potential de-registration of the organisation.

Every subject of a DBS Disclosure must be made aware of the existence of the Code of Practice and a copy of it will be made available to that individual on request or by visiting the DBS web-site at: <https://www.gov.uk/government/publications/dbs-code-of-practice>

5. DBS lists (previously ISA)

The DBS has a legal responsibility to:

- maintain a list of individuals barred from engaging in *regulated activity* with children;
- maintain a list of individuals barred from engaging in *regulated activity* with vulnerable adults;
- reach decisions as to whether a person should be included in one or both barred lists; and
- reach decisions as to whether to remove an individual from a barred list.

6. Rehabilitation of Offenders Act

The Rehabilitation of Offenders Act (ROA) 1974 is aimed at helping people who have been convicted of a criminal offence and who have not re-offended since. The length of the 'rehabilitation period' depends on the sentence given for the original offence. If the person does not re-offend during this rehabilitation period, they become a 'rehabilitated person', and their conviction becomes 'spent'.

Once a conviction is 'spent', the convicted person does not have to reveal it or admit its existence in most circumstances, including, for example, when applying for a job. However, there are exceptions relating to employment and these are listed in the Exceptions Order to the ROA. *The two main exceptions relate to positions working with children or vulnerable adults.* In these circumstances people may be required to reveal both spent and unspent convictions, although certain specified old and minor offences will be removed from criminal record certificates issued from 29 May 2013 onwards. Further information on which offences may be removed can be found at <https://www.gov.uk/government/news/disclosure-and-barring-service-filtering>

It is the policy of ECC to require applicants to declare information on any unspent previous criminal record that they hold. They must give details of all unspent convictions, cautions, reprimands or final warnings they have received (including any convictions in a court of law outside of Great Britain) and any prosecutions that they have pending. ECC will treat applicants who have a criminal record fairly and will not

discriminate because of a conviction or other information revealed. Possession of a criminal record will not automatically prevent applicants from working for ECC.

As part of the recruitment process, such information will only be considered in light of its relevance to the post for which they are applying. All appointments into posts subject to a DBS check are made only on condition of a satisfactory DBS Disclosure. If a candidate is successful in their application for employment, the failure to disclose previous unspent criminal history could result in withdrawal of the conditional offer of employment. All applicants will be required to show their DBS certificate to the HR Department prior to confirmation of employment.

7. Authorised Officers

The disclosure process must be managed by a nominated Authorised Officer (this may also be the Appointing Officer) who is a recognised contact with the Safer Recruitment Service. As both Appointing and Authorised Officers are given access to sensitive information relating to criminal records, they must be of an appropriate level within the organisation. At ECC the Authorised Officers are the Human Resources staff.

Authorised Officers should meet the following criteria:

- If eligible they must hold an enhanced DBS.
- Their role must be sufficiently senior to authorise the statutory request for an enhanced DBS check.
- They will need to have the authority to authorise the payment for the check
- They will need to be in a position to receive and process any positive disclosures on behalf of ECC.
- They should ensure they are registered as an Authorised Officer with the Safer Recruitment Service.

Authorised Officers are required to ensure they are fully aware of the application process and have read and understood the DBS Code of Practice. The Safer Recruitment Service can provide advice and guidance to Authorised Officers regarding the disclosure process, including guidance on identity checking.

Authorised Officers key responsibilities are:

- Providing adequate support and guidance to candidates on completing the Disclosure application and ensuring it is completed fully and correctly
- Ensuring candidates are aware of the College's policy on the recruitment of ex-offenders (see appendix 4)
- Ensuring the appropriate identity checks are undertaken.
- Validating the candidate's DBS certificate
- Ensuring payment is authorised for the disclosure.

Further advice on the responsibilities of Authorised Officers can be sought via the Safer Recruitment Service by contacting 01392 383266 or disclose@devon.gov.uk

MANAGEMENT GUIDANCE

1. Recruiting to posts that require a DBS check

When recruiting for a post that requires a DBS check, the job advertisement and any supporting information sent to prospective candidates must clearly state this.

Short-listed candidates must have completed section 13 of the relevant application form (equivalent to a PO7 form) detailing their unspent convictions.

If there are any declarations, these should be discussed either at interview or at a separate meeting. A record of the meeting must be kept until the return of the DBS Disclosure. A risk assessment should then be carried out using a DBS 2, to help determine if the criminal history is relevant to the role.

Only the successful candidate will be required to apply for a DBS Disclosure.

For posts which need to be filled with some urgency, it is suggested that the following steps are taken for a quicker process:

- Applicant advised to proceed with an On-Line Application
- Applicant advised to bring the required ID documents to interview for the appointing officer to validate.
- Authorised Officer conducts the ID checks and sets up applicant on Safe Recruitment Services On-Line system via the appropriate business Unit. The Authorised Officer requests a DBS Barred List check.

2. Disclosure Level

There are currently two levels of Disclosure available, Standard or Enhanced. ECC only applies for Enhanced disclosure checks, in seeking to fulfil its duty of care, as this is the only level that discloses all relevant information.

3. Processing DBS checks

The Disclosure checking service, offered by the DBS, is accessed via Devon County Council's Safer Recruitment Service, who are a registered Umbrella Body with the DBS. The department is primarily responsible for processing online Standard and Enhanced DBS checks but also offers support for paper-based DBS application forms for customers unable to use the online service.

Details of the application process and how to register for online checks with the Safer Recruitment team can be found at:

<http://www.devon.gov.uk/recordsdisclosureservice.htm>

4. Identity checks

All the appropriate original documents must be seen and evidenced in accordance with the DBS Code of Practice, along with completing the Evidence sheet (on the back of the DBS1 form- paper applications). The ID Evidence Sheet should be completed at interview for those being processed online. Copies of the documents should be taken in order to ensure that the on-line process can be verified as soon as the application has been completed. Comprehensive guidance on ID checking and the list of defined documents, can be found on the DBS website at: <https://www.gov.uk/government/publications/dbs-identity-checking-guidelines/id-checking-guidelines-for-dbs-check-applications>

If an applicant is unable to produce one of the key primary documents, Devon County Council is required to use an external ID verification company. An administrative charge will be applied to cover the costs of this process. Applicants will be advised of this during the recruitment process. For further guidance on this, please contact the Safer Recruitment Service by contacting 01392 383266 or disclose@devon.gov.uk.

5. Validating the DBS Certificate

Once the DBS check has been completed, the DBS certificate will be sent directly to the candidate. Copies are no longer sent to the employing organisation. It is therefore the responsibility of the Appointing Officer so ensure that they see the candidate's certificate and check it correctly.

6. Further action once the DBS certificate has been validated

Where the DBS disclosure comes back clear, a conditional offer of employment can be made, subject to the other relevant pre-employment checks.

Where a criminal record was revealed in the application form, this must be fully discussed with the candidate seeking the post before a decision to either withdraw or confirm a conditional offer of employment is taken. A risk assessment (DBS 2) should be carried out to help determine if the criminal history is relevant to the role before any decision is taken.

If the DBS Disclosure contains information which was not revealed by the candidate, or additional information is received by the police, it will be necessary to hold a further discussion with the candidate and a further review against the risk assessment carried out, to determine whether to confirm or withdraw the conditional offer of employment. This decision must be ratified by the Principal and HR advice sought.

7. Risk Management – Assessing the relevance of a criminal record

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

It has been estimated that a fifth of the working population has a criminal record. Employment is the single most important factor in reducing re-offending and failure to get paid employment is a major reason for re-offending. Having a criminal record will not necessarily bar someone from employment with ECC; this will depend on the background to the offence(s) and the nature of the position being sought.

7.1 Considerations

Addressing issues relating to criminal offences needs an objective common sense approach which takes into account ECC's responsibilities for safeguarding, corporate parenting and:

- the employer's duties in law
- the nature of the crime
- when it happened
- the circumstances involved
- the sentence
- patterns of offending
- efforts to avoid re-offending
- job requirements
- safeguards against offending at work
- possible reactions of employees, parents etc, objectively assessed.

7.2 Candidate Awareness

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

ECC policy states that failure to reveal criminal history could lead to withdrawal of the conditional offer of employment, however since having a criminal record will not necessarily lead to a bar in employment with ECC, it is vital that effective use of the positive disclosure risk assessment process is made in all cases where short-listed applicants have disclosed they have a criminal record.

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

Where assessment against the risk criteria (DBS2) indicates that the applicant could be employed on a conditional basis provided that extra safeguards are put into place, the Principal or Appointing Officer should discuss these with the applicant and explain the reasons for them. No conditional offer should be given until direct approval has been gained from the Principal and/or Devon County Council.

7.3 Assessing the Role for Risk

When assessing the position, role or contact, a number of factors need to be taken into considerations which are:

Issues	Reasons
Exemption status under the Rehabilitation of Offenders Act 1974, duties under the Police and Children's Acts regarding one-to-one contact with children, vulnerable adults or the elderly	It is illegal to employ certain offenders in some occupations.
To what extent are you bound by other legal constraints?	For example, those with motoring convictions employed as drivers.
Does the post involve any direct responsibility for finance or items of value?	What could happen and how serious would that be? What factors would increase or decrease the perceived risk? For example, the nature of the offence and impact of rehabilitation since then. Consider whether the offence would create unacceptable risks for other employees, customers, suppliers, clients, service users, etc.
Does the post involve direct contact with members of the public?	
Will the nature of the job present any realistic opportunities for the post holder to re-offend in the place of work?	

7.4 Assessing the Ex-Offender and the Offences

When assessing any disclosure or disclosed information, consideration should be given to the following:

- The availability of assessments and reports from those agencies involved in the applicant's process of rehabilitation. For example, the Probation Service, specialists working in prison, etc.
- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property. Generally speaking, the longer the sentence the more seriously the Courts viewed the offence at the time. Custodial sentences are usually for more serious crimes than non-custodial sentences.
- The length of time since the offence occurred. (How effective has rehabilitation been?)
- Was the offence 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 (eg improved personal circumstances, drug addiction therapy).
- The country in which the offence was committed. For example, some activities are offences in Scotland and not in England or Wales, and vice versa.
- Whether the offence has since been decriminalised by Parliament.
- The degree of remorse, or otherwise, expressed by the applicant.

7.5 Implementing Safeguards

It is important to consider any restrictions to ECC's insurance cover, that might exclude employment of some ex-offenders in specific positions. Any concerns in this respect should be referred to the insurers before the appointment is made.

It is also useful to assess the level and closeness of supervision which may be needed early on in the employment and the extent to which procedures such as audits and involvement of others in the work process would be a form of indirect supervision.

7.6 Further Guidance

Further support and guidance around employing someone with a criminal record is available by contacting the HR Department.

8. Staff Awaiting DBS Clearance

A DBS Disclosure MUST be obtained before an individual starts work. There are no exemptions. In all cases a DBS Disclosure must have been obtained and, if eligible, a check against the Adult First DBS and Child DBS Barred List check carried out and all other recruitment checks completed prior to commencement.

9. Other pre-employment checks

It should be stressed that, whilst DBS checks are vital in the consideration of appropriately staffing posts with access to vulnerable people, they are just one in a range of pre-employment checks which **must** be carried out in order to assess the suitability of candidates. Other checks include thoroughly confirming identities, qualifications, taking up references and examining dates of employment histories on application forms to include evidence of exploring any gaps in employment.

10. Re-checking of existing employees

Each Disclosure will contain the date the Disclosure was printed. Disclosures do not carry a pre-determined period of validity because a conviction or other matter could be recorded against the subject of a Disclosure at any time after it is issued.

10.1 Employees Changing Post within ECC

Any existing employee who is offered a new position within ECC will be required to undertake a new DBS check if there has been a break in service of over 3 months, the post involves greater access to, or responsibility for children, regardless of whether they have been subject to a previous DBS check.

10.2 Existing Employee Re-checks

Existing ECC employees who have not previously been subject to a DBS Disclosure may, as a result of changes in legislation, regulations or working practices, be required to undertake a Disclosure during the course of their employment with ECC.

All employees will be expected to comply and any employee refusing to comply with the request for a Disclosure will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued and/or to comply with a contractual agreement, will lead to the employee being subject to a disciplinary investigation.

In addition to any corporate re-checking policy, ECC reserves the right to ask existing employees in relevant positions to apply for a Disclosure if their actions or activities give cause for concern. The grounds for this could include allegations of suspicious or inappropriate behaviour made by a child or vulnerable adult, or a colleague, parent, carer or member of the public. In such instances a full investigation will be conducted and ECC may ask for a new Disclosure to be carried out, only after seeking legal advice.

All existing employee re-checks should be undertaken in conjunction with the 'Managing Disclosure Information during Employment' policy statement (Appendix 4). This policy underpins the contractual requirement for all staff in posts subject to a DBS check to disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, reprimand, bind-over or final warning received during their employment or since their last DBS Disclosure.

10.2 Update Service (DBS)

ECC follows DCC procedure with regards to the Update Service. DCC is currently reviewing its recheck policies in line with the new Update Service launched by the Home Office/Disclosure & Barring Service in June 2013. DCC does not currently accept a DBS Certificate issued via another organisation where the individual has signed up to the annual update service. This is under consideration.

11. **DBS checks in schools**

11.1 Central School Record

In addition to the various staff records which are kept as part of normal business, from 1st January 2007 Schools and FE colleges must also keep and maintain a single central record of recruitment and vetting checks. This record must include all employed staff, supply staff, volunteers, governors or any others who work in regular contact with the children.

The central record must indicate whether or not the following have been completed; identity and qualification checks, checks of permission to work in the UK, checks of the DBS Barred list, enhanced DBS Disclosure information and overseas criminal record checks (where appropriate). The record must show the date on which each check was completed and should show who carried out the check.

11.2 Volunteers

Many parents and other volunteers help regularly in the classroom and some will require a DBS Disclosure. This should be determined by the frequency and nature of contact with children i.e. if being left unsupervised with children and/or if having

regular contact, which is defined as once a week or more or any 4 occasions in a 30 day period or more.

Volunteers who only accompany staff and children on one off outings or trips or who help at one off specific events such as sports days, school fete's etc do not need to be DBS checked. If however an overnight stay is involved then an enhanced DBS must be obtained.

It is unlikely that ECC will be able to support the robust supervision required for volunteers and therefore the majority of volunteer roles are likely to require an Enhanced DBS disclosure.

11.3 Supply Staff

The same vetting checks will be required for those who work as supply staff in ECC, including those who are employed via a supply agency (whether local authority or commercial) and should be recorded on the central school record (see 11.1).

Where supply staff are employed directly by ECC, the same process must be followed as for all employed staff and an enhanced DBS Disclosure applied for.

Before taking on supply staff from an agency, ECC must obtain written confirmation from the agency that the relevant DBS Disclosure has been seen, checked and confirmation on whether it contained any disclosed information. ECC does not need to see or carry out a check themselves unless there is information contained in the DBS Disclosure, although an identity check must still be carried out. Where there has been disclosed information, ECC must obtain a copy of the DBS Disclosure from the agency in order to make their own decision on suitability. Regulations under the Police Act authorise passing Disclosure information from agencies to schools or FE colleges where the subject's suitability is under consideration.

11.4 Governors

In line with volunteers, governors in positions that include regular unsupervised work with children, or who care for, train, supervise or are in sole charge of children should be asked to obtain an enhanced DBS Disclosure. In addition, any governor giving cause for concern should also be asked to obtain an enhanced Disclosure. All others, who are supervised or who do not work within the above criteria should be asked to sign the declaration confirming their suitability to fulfil the role and will have an enhanced DBS check (without a check of the Barred list) provided they meet the rules on regular contact.

12. Overseas candidates

All persons appointed to a post, or seeking to volunteer with children and/or vulnerable adults who have lived outside the United Kingdom must undergo a DBS check regardless of their length of stay in the UK, or even if they have never been resident.

Although it may be of limited value to ask a person who has little or no previous residence in the UK to apply for a Disclosure, if that person seeks to work in a regulated activity, there is a statutory requirement to carry out a DBS check and where appropriate a DBS Barred List Check.

All foreign nationals including UK citizens who have lived or worked overseas in the previous 5 years (for a period of 6 months or more) must provide a Statement of Good Conduct (SOGC) or overseas criminal record check, in addition to immigration documentation and DBS requirements. The applicant should provide a SOGC or overseas criminal record for every country in which residency or employment is relevant and it should be requested in English otherwise translation costs may be incurred. It is recommended that this is obtained prior to leaving the country of residence and prior to application for a post requiring a DBS Check.

The DBS cannot currently access overseas criminal records or other relevant information as part of the Disclosure service. If you wish to obtain a fuller picture of the applicant's background, the DBS provides guidance on how to acquire information from certain countries.

The unavailability of applicant's SOGC or overseas criminal record may give cause for concern about his or her suitability to be offered employment or access to children or vulnerable adults. Although such candidates will not be barred from working for ECC, appointing managers must make their decision with due regard to all the relevant facts, the risk assessment and the overall requirement to safeguard vulnerable groups. Any decision not to appoint the person or allow access must be carefully explained and reassurance given about the reasons for it. In all cases Appointing Officers should ensure that if a SOGC/CGC or Police Check is not available, a reference is sought from someone in the county of residence i.e. an overseas employer or professional person.

13. Volunteers & Students

13.1 Volunteers

Volunteers who work in positions of trust with children and other vulnerable groups may be subject to a DBS check although there is no legal requirement to vet all volunteers. Your decision to get a DBS check should be based on either:

- A thorough risk assessment of the role to be performed by the volunteer and the extent to which this will bring them into contact with children or vulnerable adults or
- If the voluntary work is to be carried out on someone else's premises, for example a school or care home, whether it is a requirement of that organisation for a check to be done, in order to comply with the legislation that governs their business

Eligible volunteers will be offered a free DBS check, although a handling fee from the Safer Recruitment Service may still apply. Not all people who work free of charge are classed as a volunteer with the DBS. To qualify for a free DBS check the role must meet with the DBS's definition of a volunteer which is: 'a person who is engaged in any activity which involves spending time, unpaid (except for travelling and other

approved out-of-pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative'. Therefore students gaining credits towards qualifications, people on work experience, foster parents/carers etc., must pay for their checks.

When applying for a DBS check volunteer roles must be properly described on the application as just the term 'volunteer' is not sufficient. A description of the role must be provided in order for the Records Disclosure Service to ensure it meets the DBS definition of a volunteer e.g. volunteer with elderly in community.

13.2 Students

13.2.1 Students working with Children

For those students undertaking regulated activity it is the responsibility of the training institution to ensure all the required vetting checks have been undertaken including the appropriate DBS Disclosure. ECC managers must ask to see the student's copy of their DBS Disclosure to ensure that it has been carried out at the right level and to discuss/risk assess any information disclosed. A note should be made of the disclosure number and risk assessment undertaken for any that have information disclosed. This will be valid for all the placements undertaken during the course providing it was unbroken.

Pupils under the age of 18, who undertake short periods of work placements that involve contact with children need not be checked, providing that appropriate supervision is in place.

13.2.2 Students working with Vulnerable Adults

For adult settings, students under 18 years of age undertaking placements do not require a DBS check, based on the understanding they will be in a supervised position.

For students over 18 years of age undertaking placements within services involved in regulated activities a DBS check is required. An ECC DBS check should be applied for through the Safer Recruitment Service.

14. **Accepting an Existing DBS Check**

ECC does not accept existing DBS Disclosures from other authorities or outside organisations, unless there are exceptional circumstances. Disclosure certificates are intended to be used on receipt, for a recruitment decision to be made as soon as possible after it has been received.

There are however instances when a Disclosure certificate issued for one position within ECC or Devon County Council could be used for another job or voluntary position within the College, provided that there has been no break in service.

Where casual, temporary or agency staff move frequently between short appointments within ECC or DCC, it will not be necessary to apply for a fresh

Disclosure each time they move jobs, provided that they remain within the same area of work, have the appropriate level of Disclosure certificate and have been in continuous employment (i.e. with no break in service of 3 months or more) with ECC or DCC since the Disclosure certificate was issued.

Similarly, those who take up two positions requiring DBS checks at the same time, for example, a full time job and a weekend or voluntary position, may not be required to make two separate applications to the DBS if the client group is the same, the nature of the role is similar or identical and the level Disclosure required for both position is the same.

15. Agency & Contractors

The HR Department and Premises Manager must ensure that where agency or contractor workers are supplied to carry out duties within ECC, that brings them into contact with children and or vulnerable adults, a DBS Disclosure check must be carried out before they commence work. ECC must ensure that relevant clauses are included in any contracts in advance of the work starting. It is essential that these checks are up to date and renewed in accordance with this policy.

16. Helpful links

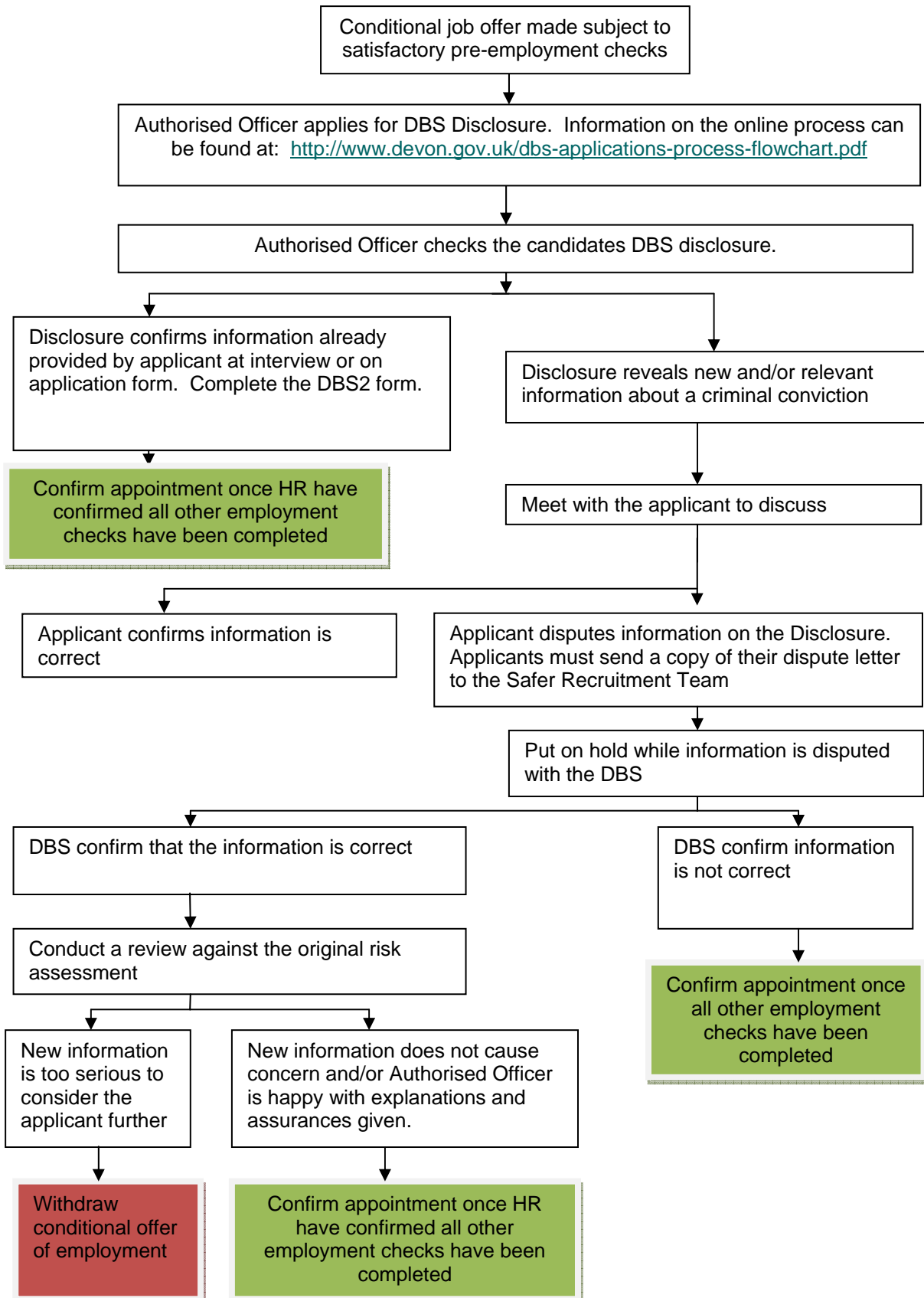
Further details on the Safer recruitment team, including a DBS application process flowchart can be found at:

<http://www.devon.gov.uk/recordsdisclosureservice.htm>

Disclosure and Barring Service (DBS) website:

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

New Appointments Flowchart



Policy Statement - Secure storage, handling, use, retention and disposal of Disclosures and Disclosure information these statements include electronic disclosure information

1. General principles

As an organisation using the Disclosure & Barring Service (DBS) to help assess the suitability of applicants for positions of trust, ECC complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information.

2. Storage and Access

Disclosure information is never kept on an applicant's personnel file and is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

3. Handling

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

4. Usage

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

5. Retention

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six-months, we will consult the DBS about this and will give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

6. Disposal

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding,

pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, in order to maintain Devon County Council's Criminal Records Checks Database, we will keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

Policy Statement – Recruitment of Ex-Offenders

1. As an organisation using the Disclosure & Barring Service (DBS) to assess candidates' suitability for positions of trust, ECC complies fully with the DBS Code of Practice and undertakes to treat all candidates for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
2. ECC is committed to the fair treatment of its staff, potential staff or users of its services, regardless of age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, responsibilities for dependants, or offending background.
3. This policy on the recruitment of ex-offenders will be made available to all Disclosure applicants at the outset of the recruitment process.
4. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience.
5. A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms, job adverts and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
6. Where a Disclosure is to form part of the recruitment process, we encourage all candidates called for interview to provide details of their unspent convictions at an early stage in the application process. We request that this information is sent under separate, confidential cover, to the Human Resources Department and we guarantee that this information is only be seen by those who need to see it as part of the recruitment process.
7. Unless the nature of the position allows ECC to ask questions about a candidate's entire criminal record, we only ask about "unspent" convictions as defined in the Rehabilitation of Offenders Act 1974.
8. We ensure that all those in ECC who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure 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.
9. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be

relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

10. We make every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and make a copy available on request.

11. We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

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

Policy Statement – Managing Information Disclosed During Employment

- 1.1 Since 1st January 2009 it has been a condition of employment for all employees in posts which are subject to a DBS disclosure, to disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, bind-over received during the course of their employment.
- 1.2 Following the implementation of the Protection of Freedoms Act 2012, key legislation remains in place under the Safeguarding Vulnerable Groups Act for a “Duty to Refer” information to the DBS on individuals who pose a risk to children or vulnerable adults. The Disclosure & Barring Service makes decisions as to who should be barred from working with vulnerable groups. Anyone who is barred from working in regulated activity with children, vulnerable adults or both will be committing an offence if they work in such regulated activity.
- 1.3 Failure to disclose information, as per para.1.1 above, may result in disciplinary action being taken; as may the nature of any criminal offence (depending upon its impact on the employment) and this may result in dismissal from ECC.

2. PRINCIPLES

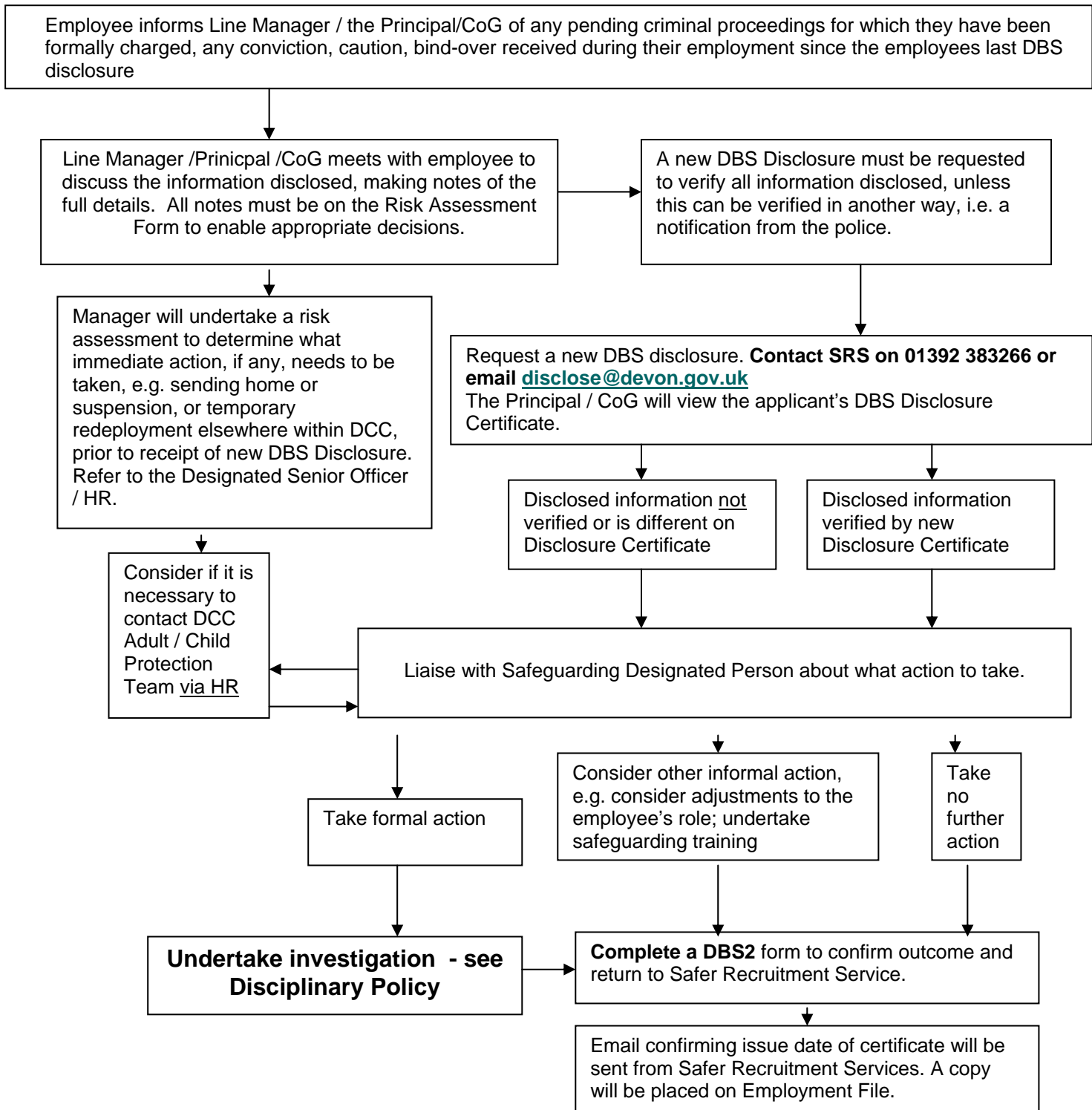
- 2.1 ECC through its managers and staff, has a duty of care to protect the well-being of the people of Devon and, in particular, those groups or individuals in its care who are considered to be especially vulnerable or at risk, such as children, the elderly and those with disabilities.
- 2.2 ECC will take every step to ensure that those employees who work with or otherwise come into contact with these vulnerable groups are suitable to do so.
- 2.3 If a person seeks to work in a position that involves working with children and/or vulnerable adults they are required to reveal all criminal convictions and cautions not protected under current legislation, including overseas convictions, and will be subject to a DBS check.
- 2.4 If an employee asks to meet with their Line Manager, Principal, or in the case of the Principal the Chair of Governors (CoG), to make a disclosure, a request to be accompanied by a Trade Union / Professional Association Representative or fellow work Colleague should not be unreasonably refused.

3. PROCESS

- 3.1 The flowchart below illustrates the process for managing information disclosed by employees relating to convictions, cautions, a bind-over and any pending criminal proceeding during the course of their employment.

- 3.2 The Line Manager / Principal / CoG must ensure that any discussion with an employee who discloses information must be carried out in complete confidence and no information should be shared with any unauthorised person.
- 3.3 A new DBS Disclosure **must** be requested to verify the information disclosed by the employee, unless the manager is able to verify it in some other way, perhaps by way of a notification from the police.
- 3.4 The employee must be allowed to give a full account of the information disclosed and any extenuating circumstances. Any separate notes taken detailing the disclosed information **MUST** be destroyed, apart from that contained in the DBS2, once a decision has been made following completion of the DBS2 form. Please note it is important that the actual conviction information is recorded on the DBS2 to ensure clear understanding of the risk involved.
- 3.5 Having a criminal record is not necessarily a bar to working for the organisation, so it is vital to gather as much information from the employee as is possible, so that a balanced decision can be made. However, it must be remembered that it could be illegal to employ a person with a conviction for a relevant offence in a specific job. The Disclosure and Barring Service list those convictions that may prevent a person working with children. Contact HR or Safer Recruitment Services for further information.
- 3.6 Assessing the risk of employing people following disclosed information needs an objective, common sense approach which takes account of matters such as legislative requirements, job requirements, safeguarding against offending at work, assessing the nature and circumstances of the offence and listening to the explanations of the employee.
- 3.7 Once the risk criteria have been identified for the position, the relevance of all disclosed information can be assessed in the light of these. It is important to keep an open mind at all stages of this process to ensure that the employee is treated fairly and to remember that many people with criminal records are safely employed in positions of trust.
- 3.8 Consideration will need to be given as to whether any immediate action is necessary to reduce the risks, prior to viewing the applicant's new DBS Disclosure Certificate. This might include moving the employee to work elsewhere temporarily, putting in closer supervision on a temporary basis or sending the individual home. In the most serious situations the manager might consider instigating the formal Disciplinary Policy and considering formally suspending the employee from work..
- 3.9 Failure by an employee to disclose all relevant information may result in disciplinary action being taken, as will the nature of the offence (depending upon its impact on their work) and this may result in dismissal from ECC's employment.
- 3.10 Where it is deemed appropriate to take formal action following the disclosure this will be managed in line with the Disciplinary Policy.

DBS DISCLOSURE INFORMATION – PROCESS FLOWCHART



TERMS AND ABBREVIATIONS

Glossary of terms including those likely to be used on a Disclosure certificate.

A	
Absolute Discharge	An absolute discharge (which is not to be confused with a finding of not guilty) is used where the court, having found the offender guilty of the offence charged, considers that no further action is required on its part beyond the finding of guilt. This may reflect the triviality of the offence, circumstances in which it came to be prosecuted, or factors relating to the offender.
Acquittal	Discharge of defendant following verdict or direction of not guilty
Appeal	Application to a higher Court or authority for review of a decision of a lower Court or authority
Appointing Officer	A person within Devon County Council who takes responsibility for making an appointment to a particular role. This may either be the Departmental Manager or Head or another suitably qualified person who is designated Appointed Officer by the Departmental Manager or Head.
Approved Information	Information provided at the discretion of the local Police which appears on an Enhanced Disclosure certificate and is therefore made available to both the applicant and the registered body. This information is distinct from <i>additional information</i> which does not appear on the Disclosure certificate.
Assault	An unlawful attack on someone by words or deeds. Physical contact is not essential
Authorised Officer	A person of the appropriate level, who is recognised by the Records Disclosure Service and has the authority to ask for Disclosures to be applied for, can authorise payment and can act on the results of a Disclosure.
B	
Bail	Release of a defendant from custody, until his/her next appearance in Court, subject sometimes to security being given and/or compliance with certain conditions
Battery	The deliberate use of unlawful force on somebody, ranging from touching them to the use of physical violence.
Bind over for sentence	An order that requires the defendant to return to Court on an unspecified date for sentence. Failure to observe this order may result in a forfeit or penalty to be enforced
Breach	Person failing to fulfil the requirements of either a court order or the conditions of a post-release license.
C	
Care Order	The Care order is available both in care proceedings in the juvenile court and in criminal proceedings if a juvenile is prosecuted and found guilty of an offence punishable in the case of an adult with imprisonment. It commits the offender to the care of the local authority who decides on the placement in a residential centre, community home, voluntary home or boarding with foster parents
Caution	A caution can be given when there is sufficient evidence for a conviction and it is not considered to be in the public interest to institute criminal proceedings. For a caution to be issued there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction; the offender must admit the offence; and the offender must understand the significance of a caution and give informed consent to being

	<p>cautioned</p> <p>Simple Caution - A simple caution should only be given if the public interest justifies it and in accordance with Home Office guidelines. Where it is felt that such a caution is appropriate, Crown Prosecutors must inform the police so they can caution the suspect. If the caution is not administered, because the suspect refuses to accept it, a Crown Prosecutor may review the case again.</p> <p>Conditional Caution - Conditional Cautions are a new disposal introduced in the Criminal Justice Act 2003. A Conditional Caution may be appropriate where a Crown Prosecutor considers that while the public interest justifies a prosecution, the interests of the suspect, victim and community may be better served by the suspect complying with suitable conditions aimed at rehabilitation or reparation. These may include restorative processes.</p>
Conditional Discharge	A discharge of a convicted defendant without sentence on condition that he/she does not re-offend within a specified period of time
Conviction	<p>A conviction is each finding of guilt for every (notifiable) offence considered by a criminal court for each convicted person. A finding of guilt would include a plea of guilty.</p> <p>Convictions are classified by their severity into Category A, B or C. This categorisation will decide the retention policy for such conviction details.</p> <p>Further information can be found using this link ACPO which includes full lists of all convictions</p>
Counter signatory	A registered person with the DBS who is authorised to countersign the Disclosure application form.
D – G	
Damages	An amount of money claimed as compensation for physical/material loss, e.g. personal injury, breach of contract
Defendant	Person standing trial or appearing for sentence
Exempt positions	There are a number of occupations or professions where ex-offenders must disclose information about spent and unspent convictions. Exempted occupations include working with children and vulnerable adults.
Exceptions Order	The Exceptions Order to the Rehabilitation of Offenders Act 1974 lists those professions and occupations whereby ex-offenders have to disclose information about previous convictions, spent or otherwise.
False Accounting	Providing dishonestly, information which is misleading or deceptive with a view to cause loss to another, or the destruction concealment or falsification of information relating to a financial account
Fines	Every criminal offence, except murder, is punishable by a fine, and for many of the less serious offences a fine is the only penalty prescribed by law. Fines are by far the most frequently used power available to the Court. A fine is a principle, not ancillary, sentence and may not be used in conjunction with an order for absolute or conditional discharge, probation or Community Punishment Order. A Magistrate's Court is required to take into account what it knows of an offender's means in fixing the level of a fine. Where a juvenile offender is ordered to pay a fine, damages, compensation or costs the court may – and must if the offender is under the age of 14

	– order the sum to be paid by the parent or guardian.
Fixed Penalty Notice (FPN)	FPNs, including the Penalty Notices for Disorder (PND) scheme, have been introduced as a means of dealing with low-level, anti-social and nuisance offending, which does not require a court hearing. Once a penalty notice has been issued, the recipient must either pay the amount shown on the notice or request a court hearing. This must be done within 21 days of the date of issue. Payment of the penalty by the recipient discharges their liability to conviction of the offence for which the notice is issued. Payment involves no admission of guilt and removes both the liability to conviction and a record of criminal conviction.
H	
Hospital/Guardian Order	Similar to the Care Orders, Hospital and Guardianship orders enable a juvenile court, where a juvenile is prosecuted and found guilty of an offence punishable in the case of an adult with imprisonment, to remand the offender in custody or on bail for medical examination and assessment under the Mental Health Act 1959
I - Q	
Imprisonment	The power of the Courts to pass sentences of imprisonment and the maximum for each offence is specified by law. Where an offence is dealt with by the Crown Court, the maximum term of imprisonment that may be imposed is, in nearly all cases, higher than that available to Magistrates' Court.
Indictable Offence	Offences for which an adult defendant must be tried by the Crown Court, e.g. robbery, arson, and rape. The different types of offence are classified 1, 2, 3 or 4. Murder is a class 1 offence
DBS (ISA)	Independent Safeguarding Authority
DBS First Child (ISA First Child)	A check against the Barred List for working with Children
DBS Adult (ISA Adult)	A check against the Barred List for working with Adults
Juvenile	Person under 17 years of age
Licence	If an offender is released from prison under licence, they are placed under the care of the Probation Service. Certain conditions are attached to the release. Breach of these conditions will result in the offender being returned to prison.
Probation Order	Also called a Supervision Order. The aim of a probation order is to leave the offender at liberty in the community but subject to certain conditions regarding his way of life. The order requires the offender to be under the supervision of a probation officer for a specified period of not less than 6 months nor more than 3 years. The court has discretion to include any further requirements that it considers of the case to secure the good conduct of the offender or to prevent him from committing further offences.
R	
Remand	To order an accused person to be kept in custody or placed on bail pending further Court appearance
S	
Spent Convictions	A conviction that, after a period of time, can be treated as if it never existed and no longer needs to be disclosed, unless applying for a post that would warrant an Enhanced Disclosure from the DBS
Suspended Sentence	A custodial sentence, which will not take effect unless there is a subsequent offence punishable by imprisonment within a specified period, the sentence of imprisonment, cannot exceed 2 years. It is not intended as a substitute for non-custodial penalties or for probation but as an incentive for the offender to avoid trouble in future. This gives

	the Court the opportunity to distinguish between the gravity of the offence and mitigating circumstances which they mark by the length of the sentence and the needs of the offender.
Supervision	Statutory Guidance has been issued from the Department of Education which can be accessed via this link (insert). DCC has produced a risk assessment to be used to ensure that Enhanced DBS disclosures are only undertaken where eligibility exists and where supervision is deemed to not meet the criteria.
T - Z	
Youth Custody	Also known as Borstal or Youth Detention. Where a person under the age of 17 is convicted of an offence for which an adult may be sentenced to imprisonment, the Court may, if it is of opinion that none of the other available non-custodial measures such as fining or probation is suitable, sentence the offender to be detained in a Detention Centre. The offender is carefully observed and assessed, usually in a remand centre, and an Institution Board then makes its recommendations to the Secretary of State regarding a suitable allocation. This may vary according to the age of the offender and circumstances of the case but may be a community home, a youth treatment centre, a borstal or a young prisoner's centre.

POLICY HISTORY				
Policy Date	Summary of change	Contact	Implementation Date	Review Date
26.09.08	Updated version of previous policy 'Managing Recruitment & The Disclosure Process'	Tara Hall RDS Manager	October 09	26.09.09
October 2012		Sue Beard RDS Manager Laura Taylor – Senior HRA	October 2012	
December 2012	Updated to change CRB to DBS to reflect the change in organisation from Criminal Records Bureau to the Disclosure & Barring Service.	Sue Beard RDS Manager Laura Taylor Senior HRA	December 2012	02/04/2013
January 2014	Re-worded the policy and included updates about on-line DBS applications and removal of some minor convictions	Lisa Thomas HRA Sue Beard – Safe Recruitment Service Manager.		