

Schools Disclosure and Barring Policy**Effective from September 2019**

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1. Introduction

LGSS undertakes Disclosure and Barring Service (DBS) checks for its client organisations who participate in its online DBS checking service.

On behalf of LGSS, Northamptonshire County Council:

- is the Registered Body that undertakes criminal record disclosure checks via the Disclosure and Barring Service (DBS) for potential employees, volunteers and workers.
- carries out checks as an Umbrella Body for partner Councils and other organisations and voluntary groups.

The level of check undertaken must be appropriate for the post/type of work (paid or unpaid) that is undertaken. **The tasks undertaken determine whether a role is eligible for a DBS check and the level of check required.**

DBS checks may be undertaken on potential employees, existing employees, workers, and volunteers.

LGSS recognises that for its clients, and their customers, this policy is of critical importance, as part of a range of pre-employment checks that aim to ensure that all reasonable checks have been undertaken on individuals working with customers in a position of trust.

DBS certificates are issued directly to the individual. Therefore Schools have to ask for sight of the DBS certificate.

The HR Director is the Lead Counter-signatory for DBS and e-DBS registration purposes and has the responsibility for monitoring and reviewing the implementation of this policy.

2. Policy statement

This policy contains the overarching guidance on DBS checks for all organisations and groups that use LGSS to undertake DBS checks. **As an Umbrella Body, LGSS expects these organisations and groups to give a declaration that they:**

- **comply with the DBS Code of Practice**
- **only request checks that are appropriate for the post/type of work that is undertaken, in accordance with legislation, and guidance issued by the DBS (sections 6-9).**

DBS checks will be undertaken to:

- provide protection for children and vulnerable adults from individuals who might wish to harm them; and
- minimise the risk of employing an individual who is considered unsuitable to work in certain occupations.

This policy should be read alongside the Recruitment of Ex-Offenders statement, which aims to prevent discrimination against any employees, potential employees or volunteers on the grounds of offending behaviour that does not create risk to children, vulnerable adults or in key occupational areas.

LGSS strong advice is that where this policy has the Head Teacher as the authorisation, that if this process is being applied to a Head Teacher, that the Chair of Governors is the authorisation level. This would specifically apply to:

- *the Positive Disclosure Risk Assessment in relation to a Head Teacher DBS disclosure.*
- *the process to be followed regarding criminal record checks for overseas candidates*
- *the process reading starting a Head Teacher without receipt of a DBS that is satisfactory to the school.*

3. Scope

The policy applies to any individual in a role that meets the criteria for a DBS check.

In schools where the Council is the employer, the Governing Body have delegated responsibility for the employer duties outlined.

4. Legal background

The legislation underpinning DBS checks is as outlined below:

- the Rehabilitation of Offenders Act (1974),
- the Police Act (1997) and
- the Safeguarding of Vulnerable Groups Act (2006).

The **Rehabilitation of Offenders Act** enables some convictions to become 'spent' after a rehabilitation period; once this period of rehabilitation has passed the conviction is regarded as

spent. An individual is not normally obliged to disclose any spent conviction when applying for a job and an employer is prevented from taking spent convictions into account in the recruitment process.

However, in order to protect vulnerable groups some roles are exempt from this approach under the **Rehabilitations of Offenders Act 1974 (Exemptions) Order 1975**. In the case of these roles, employers are entitled to know about all previous criminal record information, when assessing an individual's suitability for the role.

The **Police Act** sets out the legal framework for employers to request DBS checks. This legislation **prescribes which roles can be checked at an enhanced level**.

The **Safeguarding Vulnerable Groups Act 2006**, as amended by the Protections of Freedom Act 2012, sets out the **definitions of 'regulated activity'** for roles within the Childrens and Adults workforce. **This means the individual will require an enhanced check plus the relevant barred list(s) check**. Under this legislation it is a criminal offence to engage a barred person to undertake regulated activity.

5. Levels of disclosure checks

There are different levels of disclosure check:

Level of check	Eligibility	What is shown on the DBS Certificate
Standard	Position must be included in the Rehabilitation of Offenders Act Exceptions Order . This legislation is available at http://www.legislation.gov.uk/ukxi/1975/1023/schedule/1/made Must not be used where regulated activity is undertaken.	All spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC).
Enhanced	Position must be included in both the Rehabilitation of Offenders Act Exceptions Order <u>and</u> in the Police Act 1997 (Criminal Records) Regulations . The police act is accessible at http://www.legislation.gov.uk/ukpga/1997/50/part/V Must not be used where regulated activity is undertaken.	Same PNC information as the standard checks plus a check of police records held locally.
Enhanced plus Barred List(s) checks	Position must be eligible for an enhanced DBS check as above <u>and</u> be undertaking ' regulated activity ' either relating to children, adults, or both. A barred list check will show if a person is barred (i.e. prevented from working in regulated activity, either with children, adults or both.) (See sections 7 and 8). Must be used for all positions undertaking	Same PNC information and check of police records held locally as an enhanced check, but in addition will check against the children's and/or adults barring lists.

	regulated activity.	
Basic check	For jobs where a Government Baseline Personnel Security Check is required. This is not used in Schools.	A check on unspent convictions.

In all cases, employers will need to consider the roles and responsibilities and level of contact with children and adults before applying for a DBS check, to make sure that they apply for the correct level of check. It is not enough to only consider the job title. Eligibility is based on the activity undertaken by that employee or volunteer.

6. Regulated activity relating to children (enhanced plus barred check)

In relation to children, regulated activity comprises:

1. * Unsupervised activities: teaching, training, instructing, caring for or supervising children or providing advice or guidance on well-being, or driving a vehicle only for children.
2. * Work in a limited range of establishments i.e. 'specified places'**, with opportunity for contact with children, but not work by supervised volunteers.
3. Relevant personal care (for example washing, feeding, or dressing) or health care by (or supervised by) a healthcare professional, even if done once.
4. Registered child-minders and fostering and adoption.

* Work under (1) or (2) above is regulated activity only if done **regularly**. 'Regular' means carried out by the same person:

- frequently (once a week or more often), or
- on 4 or more days in a 30-day period (or in some cases, overnight).

** Specified places

The following establishments are '**specified places**' in relation to children and those individuals working within these establishments will be engaging in regulated activity:

- schools (all or mainly full-time, for children);
- pupil referral units (also known as Short Stay Schools);
- nursery schools;
- institutions for the detention of children;
- children's homes;
- children's centres in England;
- childcare premises (including nurseries)
-

7. Regulated activity relating to adults (enhanced plus barred check)

There is no requirement to do activities a certain number of times before a person working with adults is considered to be engaging in regulated activity. In relation to adults, regulated activity is being undertaken by those who provide:

- **Healthcare:** if they are a regulated health care professional or are acting under the direction or supervision of one, for example doctors, nurses, health care assistants and physiotherapists
- **Personal care:** assistance with washing and dressing, eating, drinking and toileting or teaching someone to do one of these tasks
- **Social work:** provision by a social care worker of social work which is required in connection with any health services or social services
- **Assistance** with a person's cash, bills or shopping because of their age, illness or disability
- **Assistance** with the conduct of an adult's own affairs, for example, lasting or enduring powers of attorney, or deputies appointed under the Mental Health Act
- **Conveying** adults for reasons of age, illness or disability to, from or between places where they receive healthcare, personal care or social work. *This would not include friends or family or taxi drivers not working on employment contracts.*

8. Where a disclosure check is not required

Activities that involve a minor degree of direct face-to-face contact with children or vulnerable adults, or which are subject to direct supervision are unlikely to qualify for a DBS disclosure.

Examples might include people who are on site before or after hours when children and/or vulnerable adults are not present, or visitors who have contact with a child or vulnerable adult which is not regulated activity and where a member of staff will be present.

Consideration should always be given to the level of risk involved when determining if a DBS check is required. (See section 20 - Disclosure checks for other groups.)

9. DBS Workforce categorisation

The DBS application requires applications to indicate the 'Workforce' setting for employment or volunteering. The correct description must be used to tell the DBS which Workforce the individual will be working in. This is because **the police will use the 'Workforce' categorisation to determine whether to release any non-conviction information on an Enhanced DBS certificate.**

The following descriptions are used to define which sector the individual will be working within:

- **Child Workforce** - position involves working/volunteering with children.
- **Adult Workforce** - position involves working/volunteering with adults.
- **Child and Adult Workforce** - position involves working/volunteering with children and adults.
- **Other Workforce** - position does not involve working/volunteering with children or adults e.g. security guard.

10. Disclosure checks during recruitment and selection

Recruitment adverts for employment, or information for volunteering, should state if a DBS check is required.

The level of check required for a post should be confirmed to applicants by the Recruiting Manager, or Volunteering Manager.

A DBS check will only be undertaken for the preferred candidate, who will be required to provide proof of identity, e.g. passport or driving licence.

A DBS check is required before a preferred candidate can start working in a role requiring a DBS check.

The preferred candidate will be made a conditional offer of appointment subject to obtaining a satisfactory DBS check and other pre-employment checks.

There are two routes for obtaining disclosure information

Either:

1. The individual completes an **online DBS application form** via the e-Bulk system (section 11), or
2. **The individual confirms they subscribe to the DBS Update Service**, therefore an online status check can be processed by Payroll Services (section 12).

It is the School's decision as to whether to accept a DBS check through the Update Service or not. The school may decide that they will only use the standard check process.

An individual may not start work in the new role until a DBS check has been obtained unless, in exceptional circumstances, this has been authorised following the process in Section 15.

If an employee has left the school for any amount of time that constitutes a break in service with the school, and they are applying to re-join the school, **LGSS strongly recommends** that they complete a new DBS Disclosure application (See NOTE below.).

PLEASE NOTE:

DFE statutory guidance for schools (Keeping Children Safe Sept 2018) states that there is no ***requirement*** for a school to obtain an enhanced DBS certificate, or carry out checks for events that may have occurred outside the UK if (during a period which ended no more than 3 months before the person's appointment) the applicant has worked:

- In a school in England in a post:
 - which brought the person regularly into contact with children or young persons; or
 - to which the person was appointed on or after 12th May 2006 and which did not bring the person regularly into contact with children or young persons; or
- In an institution within the further education sector in England, or in a 16-19 Academy, in a post which involved the provision of education which brought the person regularly into contact with children or young persons.

However, LGSS strongly recommends that any preferred candidate who is appointed should have a new DBS check undertaken by the recruiting school. For individuals who have lived overseas in the previous 5 years, the DBS online system will highlight that a Certificate of Good Conduct will be requested, as per any new appointment.

Where LGSS provides a service to a school, and these circumstances occur, the Head Teacher must confirm their decision not to obtain a DBS check in writing to Payroll Services.

11. Online DBS application form (e-Bulk)

The Recruiting Manager/Volunteer Manager will need to complete the e-form, which can be found on the following [link](#) .

The Recruiting Manager is required to meet with the preferred candidate for ID verification for the DBS check. They must record the ID they have seen in the online DBS system.

The Recruiting Manager must complete all sections and then submit the online form to Payroll Services, who will counter-sign the application, and send it to the DBS.

The Recruiting Manager will receive an e-mail alert to confirm either that the check is clear or there is a disclosure:

- **Check is clear** - the Recruiting Manager will record the date of the certificate and the certificate number for the employee's personal file. .
- **Where there is content on a disclosure** the Recruiting Manager will need to contact the preferred candidate to request sight of the certificate, and assess the relevance of the conviction information (section 16).

12. DBS Update Service (portability)

It is an organisation's decision as to whether to accept use of the Update Service.

The DBS Update Service is designed to allow individuals undertaking or moving between a number of similar roles within the same 'Workforce' to avoid the need for multiple DBS checks. It is normally an individual's decision whether they choose to join the DBS Update Service and in these circumstances the annual fee must be paid by the individual.

For organisations who use the Update Service, the preferred candidate should complete the '**Applicant DBS Status Check Consent Form**' and present the original DBS certificate and their ID verification documents to the Recruiting Manager.

The Recruiting Manager must be entitled to undertake the **same level of check** as the certificate held by the applicant and the certificate must be for the right Workforce.

Payroll Services will then undertake the online DBS status check and inform the Recruiting Manager via email.

If the original DBS Certificate, and/or the Status Check, indicates a positive disclosure, the Recruiting Manager should assess the relevance of the conviction information (Section 16).

13. DBS checks for existing employees moving to new roles

An existing employee will require a new DBS check if they move to a new post within the school, and if any of the following apply:

- where a DBS check is required and they did not previously have one
- where a higher level of DBS check is required
- with a new Workforce, e.g. previously DBS checked for Adult Workforce, and moving to a post with Children Workforce.
- where the school's decision is to require a DBS for all new appointments within a school.

14. Re-checks

Re-checks on employees will not normally be undertaken other than when an employee moves roles, as detailed above.

However, the school retains the discretion to undertake a re-check where serious allegations have been made against an employee. In these circumstances, where a disclosure check reveals information that suggests that a current employee may present a risk to children or vulnerable adults, the manager should initiate the appropriate internal procedure to ensure that concerns are addressed. The matter may be dealt with under the Disciplinary Procedure and/or a new **Positive disclosure risk assessment process** must be carried out (section 17).

15. Starting employment before receiving DBS clearance

LGSS **strong advice** is that normally, candidates **must not** start working until a DBS check has been obtained which is satisfactory to the school. With the introduction of the quicker online DBS checking process, starting individuals before a satisfactory DBS check has been received should only occur in very exceptional circumstances.

It would be considered a serious disciplinary matter should a manager allow an individual to start work without DBS clearance without having followed the school's authorisation process.

LGSS strong advice is to use an authorisation process, and record the decision. The LGSS suggested form is attached as Appendix 4 – the 'Head Teacher approval – starting employment before DBS clearance form' (Appendix 4).

It is only appropriate to do this when not allowing a person to commence employment prior to clearance would:

- cause severe disruption to service provision; or
- impact on statutory staffing requirements; or
- mean that Ofsted or Care Quality Commission requirements for regulated services would not be met.

For jobs which require an Enhanced plus Barred DBS check, before the individual can start work, Payroll Services will still need to run: a Children's Barred List check (previously called List 99) or an

Adult-First (previously called PoVA) check, or both checks if the job undertakes regulated activity with both groups.

The preferred candidate will be required to sign a declaration stating that they have no offences that would prevent them from working with vulnerable groups and confirming that they **will not work unsupervised** with children or vulnerable adults until clearance has been received. The line manager and Head Teacher must ensure that arrangements are in place to ensure that the candidate's access to children or vulnerable adults is **appropriately supervised until a DBS check that is satisfactory is received**.

The organisation reserves the right to terminate an individual's employment where a DBS check at the correct level has either not been obtained within a reasonable timeframe, or subsequently the organisation decides that criminal record information disclosed is relevant to the post.

16. Positive disclosure risk assessment (assessing criminal record information)

A criminal record may not in itself prevent a person being appointed. Preferred candidates with criminal records should be treated according to their merits, however there may be legislation that prevents their employment, for example some convictions debar people from working with children and vulnerable adults (under the Safeguarding Vulnerable Groups Act).

LGSS strong advice is that where a DBS check indicates that an individual has a criminal record a risk assessment is undertaken, and that the Recruiting Manager completes a **Positive Disclosure Risk Assessment Form** which is available in **Appendix 5**. This form advises the manager on issues to consider, and is a means of recording that an assessment took place, and that the decision was made to appoint the candidate. The form should be held securely on the individual's file, and does not hold detail of the offence.

17. Not confirming a conditional offer of employment

Where it is considered by the employer that the DBS check indicates that a candidate is unsuitable, the conditional offer of employment **will not be confirmed**. The applicant will be informed of this decision in writing by the Recruiting Manager.

18. Overseas candidates

Where an individual is applying for a role that requires a DBS check and they have lived abroad in previous years, it may be necessary to undertake additional checks. This is because the DBS check is unlikely to provide information relating to overseas criminal records. This may include obtaining '**Certificates of Good Conduct**' from foreign embassies or police forces. The level of information contained in these certificates varies from country to country. However, they may provide critical information, enabling the employer to ascertain a candidate's suitability to work.

Where a candidate has **lived or worked abroad in the past 5 years**, a Certificate of Good Conduct must be requested from **each** country that they have lived in during this period. The application process varies from country to country. Individuals may have to apply in the country, or apply to the relevant embassy in the UK. Candidates are responsible for obtaining these certificates and for meeting any associated costs in doing so, such as the cost of translating the document into English, from a reputable translation agency that will be chosen by the organisation.

Applicants who have lived abroad have to notify this on the online DBS system. They will receive an e-mail which gives them information about what they need to do, and that they must present the Certificate of Good Conduct to the Recruiting Manager.

If there is content, then the **Positive Disclosure Risk Assessment process** will need to be followed (section 16).

What to do if a Certificate of Good Conduct cannot be obtained:

Sometimes a Certificate of Good Conduct cannot be obtained. In these circumstances the Recruiting Manager must be vigilant and ensure extra care is taken to explore any gaps in employment. For example following up written references with telephone verification, and/or requesting additional references if necessary.

LGSS **strong advise** is that the Recruiting Manager should complete the '**Criminal record checks for overseas candidates**' form (Appendix 6) as this guides a manager as to what to do in these circumstances .

The purpose of this form is to demonstrate:

- that the manager has seen the relevant Certificate(s) and assessed it as satisfactory
- that if a Certificate is missing, the action taken, and the Head Teacher approval to appoint in those circumstances.

The DBS will still need to proceed through the system (to ensure that there are no criminal records held in the UK for the individual).

Further guidance on obtaining information from other countries can be obtained at:
<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

19. Disclosure checks for Volunteers

The manager overseeing the volunteer role is responsible for determining whether a DBS check is required. **An individual must not start in a volunteer role requiring a DBS check until a DBS check at the correct level, that meets the requirements of the role has been obtained.**

There is statutory guidance on supervision of activity by workers with children that must be applied. This states that when a worker is supervised, activity that would normally be classed as regulated activity is classed as unregulated. This guidance should be consulted by the manager to determine if a volunteer will be supervised to such a level that the volunteer is not in regulated activity.

This guidance is available at
<http://www.education.gov.uk/aboutdfe/statutory/g00213977/supervision-guidance>

The manager is responsible for obtaining the DBS check using the online DBS system, using the e-form which can be found at:

<https://northamptonshire.firmstep.com/default.aspx/RenderForm/?F.Name=Ce61KaDfgm9>.

There is no charge from DBS to process a check for a voluntary role provided that the role meets the DBS criteria for a free check.

Where the outcome of a DBS check requires further consideration, LGSS **strong advice** is to use the **Positive Disclosure Risk Assessment process** to determine if the individual can or cannot undertake the volunteer placement. Where the risk assessment process indicates that the individual may present a risk to children or vulnerable adults, the potential volunteer should be informed of this decision and the offer of a volunteer position will not be confirmed.

It is strongly recommended that a decision to retain the voluntary worker where there is evidence of a conviction for a serious offence must be approved in writing by the Head Teacher.

Where a DBS check is required for a volunteering role, the Volunteer Manager must ensure that a record is kept of the fact that a DBS check was undertaken, the certificate number and date, and if a **Positive Disclosure Risk Assessment Decision process** was undertaken this should be held confidentially within the file.

A DBS certificate for a volunteer cannot be used for an employment setting. The Disclosure and Barring Service specify that the certificate cannot be transferred.

20. Agency workers

The school will ensure that any framework contracts for the provision of agency workers require providers to:

- be registered with DBS to undertake DBS checks
- have pre-employment checking procedures, and a Positive Disclosure Risk Assessment process, that are to the same standard as this organisation. This means that an agency must give written confirmation that they have satisfactory processes in place, regarding the following. This may be periodically reviewed for compliance.
 - checking of identity
 - checking the right to work in the UK
 - evidence of satisfactory career history information and references
 - evidence of medical fitness
 - confirmation of qualifications where appropriate
 - evidence that agency workers have the correct DBS certificate - at the correct level; if Enhanced Barred level, that they have the correct barred list(s) check, and that the certificate covers the correct Workforce criteria
 - evidence that the agency has received satisfactory Certificates of Good Conduct for agency workers who have lived overseas, plus carried out a DBS check in the UK.

When procuring an agency worker, if a DBS check is required the manager must specify to the Agency what level of check is required, if Enhanced Barred is indicated, which barred list(s), and which Workforce.

The Agency will be required to give **written confirmation** to the School that the check has been satisfactory. This written confirmation needs to set out the Certificate number and the date of issue. If the Agency uses the Update Service the written confirmation must indicate the latest date of check conducted. **A template is suggested at Appendix 7 for the school to specify its requirements, and for the Agency to confirm that the agency worker meets these requirements.**

This written confirmation must be kept by the Recruiting Manager while the agency worker is engaged with the organisation, but it is the responsibility of the agency to hold DBS check information in accordance with statutory guidance appropriate to the provision of services for Children and Vulnerable Adults.

The agency worker must show photographic proof of identity to the Recruiting Manager before starting the role. There is no need for them to provide the DBS Certificate to the Recruiting Manager.

The DBS check must have been undertaken by the Agency at the start of the agency workers placement with the client, or a re-check must have been conducted within the past 12 months for agency workers with continuous employment with the agency.

21. Disclosure checks for other groups

Consultants/Interims

If the Consultant/Interim is engaged **via an agency** or organisation, the agency or organisation is responsible for undertaking the DBS check and providing proof that a check has been done.

Self-employed Consultants/Interims engaged to undertake positions that are eligible for DBS checks must be checked **before** starting an engagement. A DBS check must be undertaken by the school, using the online DBS system, using the e-form.

Where the outcome of a DBS check requires further consideration, a **Positive Disclosure Risk Assessment process** must be undertaken. A decision to retain the consultant/interim must be approved in writing by the Head Teacher. .

School age volunteers/work experience

DBS does not undertake checks for children under the age of 16. Instead the organisation is advised to obtain a letter from the young person's school/college concerning his/her suitability to undertake the volunteer activity, before the young person starts to volunteer. Secondary school pupils on supervised work experience would not require a DBS check.

Work placements

The manager should determine if a DBS check is required, and where it is, the individual should not start until a check has been obtained. Where the outcome of a DBS check requires further consideration, the **Positive Disclosure Risk Assessment process** must be followed to determine if the individual can undertake the work placement.

Contractors

As a general principle, building contractors who will only have contact with children or vulnerable adults on an irregular basis for short periods of time or are working on a work site that is segregated from the main establishment will not require a DBS check. The responsible person should assess the risk to the children/vulnerable adults in their care, and in all cases appropriate control measures should be taken with such visitors to premises e.g. supervising the contractor, and keeping children/vulnerable adults away from the work area.

However, some contractors may require DBS checks. An example might be a provider of a Theatre Workshop at a school. In these circumstances the organisation expects such contractors to either:

- i.) register with the DBS on their own account or
- ii.) use Northamptonshire County Council as an umbrella body

Contractors that are registered with the DBS on their own account must provide proof of registration before any services are commissioned for which a disclosure check is required. The contractor

must also supply details of its policies including their risk assessment process, which must be agreed with the organisation before any services can be commissioned. All associated expenses will be met by the Contractor.

Managers tendering contracts or commissioning work must ensure that proof of DBS registration is obtained from such contractors. Failure to do so would be a serious disciplinary matter.

22. Disclosure costs

For potential/existing employees the fee for an online DBS check plus an administration fee will be charged to the School.

Schools recruiting volunteers will be charged the administration fee - the disclosure check itself is free.

The administration fee is subject to review. Further information is available from Payroll Services.

23. Monitoring and audit

As a registered body and an umbrella body, LGSS on behalf of Northamptonshire County Council will:

- undertake regular internal audits of the disclosure process;
- co-operate with compliance checks/audits from the DBS;
- report any suspected malpractice to the DBS (employers are liable for misuse of disclosure information);
- report any loss of disclosure information to the DBS; and
- use disclosure information for appointment purposes only.

Appendices

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APPENDIX 4 –Head Teacher approval – starting employment before DBS clearance

APPENDIX 5 – Positive disclosure risk assessment decision form

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APPENDIX 7 - Agency worker provision in Schools – template.

APPENDIX 8 - Specific responsibilities for organisations that use the Umbrella Body service.