

# AGENDA

## Employment Panel

**Monday, 28 October 2019 AT 14:00  
In the Slupsk Room, Civic Centre, Carlisle, CA3 8QG**

### **Appointment of Chairman**

To appoint a Chairman of the Employment Panel for the Municipal Year 2019/20

### **Appointment of Vice Chairman**

To appoint a Vice Chairman of the Employment Panel for the Municipal year 2019/20

### **Apologies for Absence**

To receive apologies for absence and notification of substitutions

### **Declarations of Interest**

Members are invited to declare any disclosable pecuniary interests, other registrable interests and any interests, relating to any item on the agenda at this stage.

### **Public and Press**

To agree that the items of business within Part A of the agenda should be dealt with in public and that the items of business within Part B of the agenda should be dealt with in private.

### **Minutes of Previous Meeting**

To note that Council had, at its meeting on 5 March 2019, received and adopted the minutes of the meeting held on 11 February 2019. The Chairman is asked to sign the minutes. [Minute Book 45(6)]

## **PART A**

**To be considered when the Public and Press are present**

**A.1 WORKING TIME DIRECTIVE HOLIDAY PAY: OVERTIME AND OTHER ALLOWANCES 5 - 10**

The Corporate Director of Finance and Resources to submit a report providing details of legislation which the Council must comply with regarding holiday pay for overtime, non contractual allowances and non-standard hours as set out in the Working Time Regulations.

(Copy Report RD.37/19 herewith)

**A.2 DISCLOSURE AND BARRING SERVICE (DBS) POLICY 11 - 30**

The Corporate Director of Finance and Resources to submit a report on the Disclosure and Barring Services Policy.

(Copy Report RD.36/19 herewith)

## **PART B**

**To be considered when the Public and Press are excluded from the meeting**

- NIL -

### **Members of the Employment Panel**

**Conservative:** Ellis, J Mallinson, Mitchelson, Mrs Bowman (sub), Higgs (sub), Mrs Mallinson (sub)

**Labour:** Glover, Dr Tickner, Mrs Atkinson (sub), Robinson (sub)

**Independent:** Tinnion, Bomford (sub)

Enquiries, requests for reports, background papers etc to:

Rachel Plant, Democratic Services Officer, (01228) 817039 or  
[rachel.plant@carlisle.gov.uk](mailto:rachel.plant@carlisle.gov.uk)



# Report to Employment Panel

Agenda  
Item:  
**A.1**

Meeting Date: 28 October 2019  
Portfolio: Finance, Governance and Resources  
Key Decision: No  
Within Policy and Budget Framework YES  
Public / Private Public

Title: WORKING TIME DIRECTIVE HOLIDAY PAY: OVERTIME AND OTHER ALLOWANCES  
Report of: Corporate Director of Finance and Resources  
Report Number: RD37/19

**Purpose / Summary:** This report provides details of legislation which the Council must comply with regarding holiday pay for overtime, non-contractual allowances and non-standard hours as set out in the Working Time Regulations.

### Recommendations:

The Employment Panel is asked to:

- (i) Note the content of the Working Time Regulations as set out in the report;
- (ii) Consider, and provide direction to officers in respect of, the options for the basis of the payment, as set out in paragraph 2.3;
- (iii) Approve the basis of the annual payment and backdated calculation as set out in paragraph 2.4.

### Tracking

Employment Panel:	<b>28 October 2019</b>
Executive:	<b>n/a</b>
Scrutiny:	<b>n/a</b>
Council:	<b>n/a</b>

## **1 BACKGROUND**

- 1.1 The Working Time Regulations (WTR) came into force on the 1st October 1998. It is a law made to implement a Directive made by the European Union and applies to employment law in the UK. The law applies to full-time, part-time, agency and casual workers from the day they begin work. The legislation has had recent case law regarding payments for holiday pay for overtime, non-contractual allowances and non-standard hours.
- 1.2 Carlisle City Council has a legal obligation to comply with this legislation which requires the Council to revisit its procedures for the payment of holiday pay as a result of overtime and other allowances paid to its employees.
- 1.3 Most workers are entitled to 5.6 weeks' (this is 28 days made up of 20 working days and 8 bank holidays and is known as statutory leave) paid holiday a year (pro-rata for part-time worker).
- 1.4 Reference to overtime relates to all overtime worked, whether voluntary or compulsory.
- 1.5 The Council currently pays contractual overtime for all annual leave (for example where an employee has a 39.5 hour per week contract, they will be paid 2 hours per week overtime which is also reflected in their annual leave payments).
- 1.6 The issue arises when people work more hours than contracted and whilst they are paid for these hours it is not reflected in annual leave pay – these additional hours include overtime, stand by and other premium payments.
- 1.7 For the Council to be compliant, holiday pay for all overtime and premium payments should be paid 'live' when annual leave is taken. However, our system is unable to accommodate this, therefore this report puts forward an alternative recommendation which is considered acceptable by North West Employers.

## **2 CONSIDERATIONS**

In order to implement the necessary changes, the following issues need to be considered and addressed:

### **2.1 Voluntary V Compulsory Overtime**

This was an area for discussion, but recent court decisions have indicated that **all** overtime worked should be included when calculating a worker's statutory holiday pay entitlement.

## 2.2 **Regularity of overtime**

At present the regularity of overtime could be considered and assessed for all overtime worked on an individual basis; however, this would be costly and time consuming and advice from North West Employers is to pay based on all overtime.

In addition, the implementation of the Good Work Plan in April 2020 will mean a calculation period of 52 weeks.

The regularity of overtime worked will only be used to calculate for any back pay awarded.

## 2.3 **Statutory versus Contractual annual leave**

Whilst court decisions apply to the four weeks of annual leave which are required under European law (20 days); all workers in the UK must receive an additional 1.6 weeks of leave by law (8 days), and some receive more as part of their terms and conditions of employment. This is the case in Carlisle City Council as we offer increasing annual leave entitlement with length of service.

Whilst the legal obligation is to pay on the statutory entitlement of 28 days (including bank holidays) many authorities and large private businesses are applying the increase to an employee's contractual holiday entitlement. This approach is supported by North West Employers.

## 2.4 **Backpay**

The Deduction from Wages (Limitation) Regulations 2014 took effect from July 2015 to address concerns that recent holiday pay cases would lead to a flood of backdated claims for unpaid holiday pay and implemented a 2-year backstop for holiday pay claims, which limits the backdated claims that companies may have to pay.

It is suggested that the Council adopts the approach which is recommended by North West Employers and is as follows:

Backpay to be calculated on an individual basis of an average over a 12-week period prior to statutory leave being taken. If a break greater than 3 months occurs between each holiday, then backpay would cease prior to the 2-year backstop. This is currently being tested in the courts and therefore may change. Members should be aware that leavers would not automatically be entitled to any backpay.

It is therefore suggested that:

- Payment to be made annually in May payroll based on average across the previous leave year; the first payment being an average over 52 weeks (based on the Good Work Plan) for the financial year 01/04/2020 to 31/03/2021 and paid yearly in the May payroll moving forward.
- Backpay to be calculated and paid as a one-off payment and based on a 2-year period in line with current legislation – this will need to be on a case by case basis. It is suggested this payment is made in May 2020.

### 3 FINANCIAL IMPLICATIONS

3.1 The below costs have been calculated on an average of previous years and are indicative of the **maximum** costs (worst case scenario), if the scheme was active during these years.

Option 1 – Statutory Entitlement

Annual Leave	2017/18	2018/19
28 days 20 days + 8 bank hols	£23,261.38	£19,276.30

Option 2 – Contractual Entitlement

Annual Leave	2017/18	2018/19
41 days maximum entitlement of 33 days + 8 bank hols	£34,061.30	£28,226.00

3.2 These figures are assuming that **no** overtime has been made to any contractual, standby, callout or other premium payments. However, we are aware that some payments have been made but a detailed analysis would be required for exact figures.

3.3 Whilst the above costs will deal with the backpay issue, budgets moving forward will need to account for a certain amount of additional overtime pay.



#### **4 RISKS**

Any risks (i.e. breach of Working Time Directive (2003/88/EC) for the Working Time Regulations 1998) of non-compliance with legislation will be mitigated by implementing the process set out in this report.

#### **5 CONSULTATION**

5.1 SMT have agreed this approach, subject to Members confirmation and recommendations. The proposal would then be discussed with the Unions at CJC in December, with formal notification circulated to employees and the unions.

5.2 HR will continue to work with managers to lower the potential impact of costs by encouraging timely recruitment, supporting appropriate restructures, developing casual banks to offset agency costs and encouraging self-management of working hours through the flexi system.

#### **6 CONCLUSION AND REASON FOR RECOMMENDATIONS**

6.1 To ensure compliance with the relevant legislation, it is recommended that lawful holiday payments for non-contractual overtime, non-contractual allowances and non-standard hours are implemented as set out in the report.

6.2 To ensure the Council is legally compliant, an agreed process must be implemented no later than 6<sup>th</sup> April 2020.

**Contact Officer: Sue Kaveney**

**Ext: 7071**

**Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:**

- **None**

## **CORPORATE IMPLICATIONS:**

**Legal** – If any cases were taken to an Employment Tribunal then they will look back to establish an average figure, which will include basic pay and any overtime, or other payments such as for being on call. Each case will be looked at individually, but unless an overtime payment is effectively a one-off payment then such payments will be taken into account. The purpose is to ensure that holiday pay effectively mirrors an employee's recent pay entitlement so that s/he isn't worse off in taking a holiday.

There is a long stop period of going back 2 years from the lodging of a claim at the EAT, but if there have been no unlawful deductions for a period of 3 months (whether due to a correct procedure now in place, or no holidays taken), then any previous claims for the balance of the 2 year period are extinguished.

The above should limit any liability significantly, however it appears that larger organisations and public bodies are taking a more pragmatic view under pressure from unions to deal with claims for a 2-year period. It would be prudent to approach any claims in a uniform way with other local authorities as suggested in this paper. Similarly, whilst the provision only applies to the first 20 days of holiday, being the Statutory minimum, many authorities are applying the increase to an individual's full holiday entitlement.

**Finance** – Depending upon which option is agreed, the actual backdated payments will need to be verified and calculated on a case by case basis to determine the true costs. The figures reflected in this report are the maximum sums for each option and range from £42,000 to £62,000. Any costs associated with the backdated payment and any on-going costs would need to be funded from within existing salary budgets.

**Equality:** The Public Sector Equality Duty and Equality Policy have been considered by the service manager in preparing this report.

**Information Governance** – It is important that the Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Certificates and Certificate information. The Council must also comply fully with its obligations under the General Data Protection Regulation (GDPR) and Data Protection Act 2018, and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Certificate information and this policy fulfils that requirement.

# Report to Employment Panel

Agenda  
Item:  
**A.2**

Meeting Date: 28 October 2019  
Portfolio: Finance, Governance and Resources  
Key Decision: No  
Within Policy and Budget Framework YES  
Public / Private Public

Title: DISCLOSURE AND BARRING SERVICE (DBS) POLICY  
Report of: Corporate Director of Finance and Resources  
Report Number: RD36/19

**Purpose / Summary:**

There is a need for all existing HR policies to be reviewed, updated and approved periodically to ensure that a corporate approach is in place. Likewise, new policies may be implemented which reflect best practice and legal requirements.

Carlisle City Council has an obligation to protect individuals, and it is important that any staff in a position of trust are assessed to ensure their suitability for employment. The Council complies with the Codes of Practice issued by the Disclosure and Barring Service (DBS) to do this as well as complying with DBS guidance in relation to the recruitment of ex-offenders. The Council has a moral and legal duty to ensure the highest possible standard of care for the children, young people and vulnerable adults who receive its services and having an effective DBS Policy will assist with this requirement.

Although the Council's DBS guidance was last undertaken in 2014 there was no overarching policy in place, so a review was timely to reflect current practices.

The new policy is attached to this paper and has been agreed by both SMT and CJC (Trade Unions).

**Recommendations:**

Members are recommended to approve the policy.

**Contact Officer: Sue Kaveney Ext: 7071**

**Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:**

- **None**

#### **CORPORATE IMPLICATIONS:**

**Legal** – As an employer Carlisle City Council may request a criminal record check as part of our recruitment process. These checks are processed by the Disclosure and Barring Service (DBS). Access to the DBS checking service is only available to registered employers who are entitled by law to ask an individual to reveal their full criminal history.

Within certain organisations, for certain roles, the check will also include information held on the DBS children's and adults' barred lists, alongside any information held by local police forces, that is considered to be relevant to the applied-for post. The DBS checks Carlisle City Council undertake are to assist in making safer recruitment and licensing decisions; however such checks should be considered as just one part of recruitment practice. When a check has been processed by the DBS and completed, the applicant will receive a DBS certificate.

The Council must also comply with the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; however the DBS cannot access criminal records held overseas so a DBS check may not provide a complete view of an applicant's criminal record if they have lived outside the UK.

**Finance** – There are no financial implications arising from the implementation of this policy.

**Equality** – The Public Sector Equality Duty and Equality Policy have been considered by the service manager in preparing this report.

**Information Governance** – It is important that the Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Certificates and Certificate information. The Council must also comply fully with its obligations under the General Data Protection Regulation (GDPR) and Data Protection Act 2018, and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Certificate information and this policy fulfils that requirement.



DBS Checking & Recruitment of Ex-Offenders  
Policy, Guidance and Procedures

Version number:	
Date ratified:	
Review date:	
Author:	

The Council is fully committed to compliance with the requirements of the General Data Protection Regulations (GDPR) 2016 and the Data Protection Act (DPA) 2018. The Data Protection Legislation aims to balance the requirements of organisations to collect, store and manage various types of personal data in order to provide their services, with the privacy rights of the individual about whom the data is held. The Data Protection Legislation covers both manual and computerised records in any format, where the record contains details that can identify, directly or indirectly data on a natural person or persons. The Data Protection Legislation sets out principles which must be followed by those who process data; it gives rights to those whose data is being processed. Further information regarding how the Council collects, shares and uses personal information can be found in the Council's Privacy Notices.

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## **Introduction**

As part of Carlisle City Council's (the Council) obligation to protect individuals, it is important that any staff in a position of trust are fully vetted to minimise the risk of abuse. To do this, the Council uses the Disclosure and Barring Service (DBS) to assess the suitability of applicants in such positions.

It is important that the Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Certificates and Certificate information. The Council must also comply fully with its obligations under the General Data Protection Regulation (GDPR) and Data Protection Act 2018, and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Certificate information and this is our written policy on these matters, which is made available to those who wish to see it on request.

## **PART 1 – POLICY**

### **1 – Purpose**

The purpose of this policy is to set out how and when a DBS check will be used as a means of ensuring the safeguarding of staff and the public. As well as the process for the recruitment of ex-offenders.

### **2 – Aim**

The aim of the policy is to help identify which staff require DBS checked, set out the Council's procedure on carrying out a DBS check and the Council's policy on past criminal records.

### **3 – Scope and Application**

This policy applies to any staff who would be required to have a DBS check as part of their employment, and their line managers.

Generally, any staff who have access to sensitive information, vulnerable adults and/or children will require DBS checked. Further information regarding which staff should be DBS checked can be found in 'When Checking Will Take Place' within 'Part 2 – Guidance'.

### **4 – Risks**

Carlisle City Council is classed as a Registered Umbrella Body for the provision of DBS checks, and as such we are required to comply with the DBS code of practice. If we do not comply with the code of practice, the DBS may choose to cease issuing DBS Certificates requested by us.

Any staff with access to the Public Services Network (PSN) is required to comply with the HMG Baseline Personnel Security Standard ('BPSS'). A requirement of the BPSS is that all staff with access to the PSN are Basic DBS checked. Failure to be DBS checked may result in the staff member being restricted from any further access to the PSN and may lead to them being unable to access the required systems to perform their job.

It is a criminal offence to disclose information obtained through the DBS process to anyone who is not authorised to handle the data. Improper disclosure of information may result in a prison sentence of up to six months or a fine of up to £1,000, or both.

### **5 – Confidentiality & Storage**

As an organisation using the Disclosure and Barring Service (DBS) checking service to help assess the suitability of applicants for positions of trust, the Council complies fully with the code of practice regarding the correct handling, use, storage, retention and disposal of certificates and certificate information.



The Council also complies fully with its obligations under the General Data Protection Regulation (GDPR), Data Protection Act 2018 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information. The Council processes information about an individual's criminal convictions in accordance with the Council's Privacy Notices. In particular, data collected during recruitment is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the recruitment process.

The Data Protection Act 2018, which supplements the GDPR, authorises the use of criminal records checks where necessary for the purposes of performing or exercising employment law obligations or rights. Schedule 1 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 sets out roles that have a statutory requirement to carry out a DBS check.

The Council may also process criminal records when there is no statutory requirement set out under the Act. The Council would have a legitimate interest to require certain staff to have a Basic DBS check (as defined in 'When checking will take place'), as it is considered crucial to safeguard staff, members of the public and the Council as a whole, from abuse of positions of trust.

Certificate information is kept securely, in locked, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties. We maintain 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. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Council's Data Protection Policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

Minimal information about a staff member's criminal record data gathered in the course of the vetting process will be stored by the Council and will be kept separate to his/her personnel file.

## **Usage**

Certificate information is only used for the specific purpose for which it was requested.

## **Retention & Disposal**

All DBS certificates will be retained in accordance with the Council's Retention Schedule. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail. This retention will allow for the consideration and resolution of any disputes or complaints, or be for the purpose of completing safeguarding audits.

Once the retention period has elapsed, we will ensure that any Certificate information is immediately destroyed by secure means. While awaiting destruction, Certificate information will not be kept in any insecure receptacle. We will not keep any photocopy or other image of the Certificate or any copy or representation of the contents of a Certificate, without the applicant's permission.

A record of some information will be retained for the duration of a staff members employment, including: 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 and the unique reference number of the Certificate.

If appropriate, records of a criminal conviction and a recruitment risk assessment will be retained as long as the conviction is unspent.

## **6 – Individual Responsibilities**

### **Staff**

- Ensure that all forms are completed to the best of your knowledge and are not fraudulent.
- Provide documents in support of a check, and present certificate, to HR in a timely manner

### **Line Manager**

- Ensure all staff who are required to be DBS checks are checked
- Ensure any staff who are required to be checked and have not yet presented a valid DBS certificate have their access / responsibilities restricted or are supervised at all times.

### **HR**

- Maintain confidentiality during and after the DBS checking process.
- Report any member of staff/volunteer/contractor who is dismissed or removed from working within a Regulated Activity because they meet the referral criteria.

## **7 – Links to other Policies**

- Recruitment - Appointment Procedure
- Safeguarding Policy

## **PART 2 – CRIMINAL CHECKING PROCEDURE**

The Council requires any staff subject to DBS Checking to obtain a new DBS Certificate for each DBS check instance. The Council will not accept DBS Certificates issued by other organisations.

Any staff who maintain their own active DBS Update Service record may present their original certificate and DBS Update Service code in lieu of a new check. However, the Council will not reimburse members of staff for DBS Update Service costs.

Within our application forms, the Council will ask job applicants to disclose any unspent convictions. We will never ask members of staff or job applicants questions about spent convictions, nor expect them to disclose any spent convictions.

When a vacant post is advertised, we will include within the advert whether the post is subject to a DBS basic check. Any offer of employment for a post that requires a DBS check will be subject to the successful production of a valid DBS certificate at the relevant level.

## **How to get a DBS check**

### **Standard and Enhanced DBS Applications**

To get a standard and enhanced DBS check you need to complete an application form and present it along with supporting documents to HR. Applications for both DBS checks can be obtained from HR. Official copies of your documents will be taken and retained during the application process.

A list of acceptable documents will be provided along with your application form, or can be found on the Gov.uk website at the following location:

<https://www.gov.uk/guidance/documents-the-applicant-must-provide>

### **Basic DBS Applications**

Basic checks can be done entirely online and documents can be checked online for free via a Verify service. The process can be started at the following location:

<https://www.gov.uk/request-copy-criminal-record>

There is a cost of £25 associated with a Basic check with the member of staff is required to pay. However, the Council will refund this cost once the check has been carried out.

### **Tracking Your DBS Application On-Line**

The DBS provides a free, on-line tracking service that allows you to follow the progress of your applications. You will be able to see what stage the application has reached in the checking process; if your application has been returned due to errors; or if the results of the criminal record check have been dispatched.

To access tracking log on to the site

<https://secure.crbonline.gov.uk/enquiry/enquirySearch.do> you will need to have your application form reference to enable you to do this.

### **Who receives copies of the DBS Certificate?**

Once the application form has been processed by the DBS, they then send out a copy of the DBS certificate to the applicant only, this will contain any information revealed during its searches. You will be required to show this copy to HR / your manager, so that the recruitment process can continue.

### **The Update Service**

The Disclosure and Barring Service (DBS) update service lets applicants keep their DBS certificates up to date online and allows employers to check a certificate online.

An applicant can register for a fee of £13 per year. The service is free to volunteers.

It provides free online Employers check; conviction/barring information is regularly updated.

### How to register

- If you've not yet applied for a DBS check, you can [register for the update service](#) using your application reference number (the 'form ref' on your application form). The DBS must receive your application form within 28 days.
- If you've already applied, you can register for the update service using your DBS certificate number. You must do this within 30 days of the certificate being issued.

### What you get

You'll be able to take your DBS certificate from one job to the next, unless:

- an employer asks you to get a new certificate
- you need a certificate for a different type of 'workforce' (for example, you have an 'adult workforce' certificate and need a 'child workforce' certificate)
- you need a different level certificate (for example, you have a standard DBS certificate and need an enhanced one)

The employer can tell you what DBS certificate they need you to have.

Once you've registered, you can use the Update Service to:

- add or remove a certificate
- give employers permission to check if anything's changed on your certificate
- see who's checked if anything's changed on your certificate
- view your details

### Transgender process

The Disclosure and Barring Service (DBS) offers a confidential checking service for transgender applicants in accordance with the Gender Recognition Act 2004. This is known as the Sensitive Applications route and is available for all levels of DBS check - basic, standard and enhanced.

The Sensitive Applications route gives transgender applicants the choice not to have any gender or name information disclosed on their DBS certificate that could reveal their previous identity.

If you are asked to complete a DBS check and have a previous identity that you do not wish to be disclosed to your employer and/or on your DBS certificate, you should call or email the dedicated Sensitive Applications team before submitting your application. The team is experienced in dealing with sensitive cases and will advise you of the process and what you need to do.

To contact the Sensitive Applications team, please telephone 0151 676 1452 or email [sensitive@dbs.gov.uk](mailto:sensitive@dbs.gov.uk). Please note, that the telephone number also has an out-of-hours answering machine where you can leave your details, and a member of the team will call you back.

If you are happy to have your previous identity disclosed on your certificate, you do not need to contact the Sensitive Applications team and can simply submit this information under the 'any other names' section of your application.

Please note an applicant using the confidential checking service will still complete the same application form as any other applicant.

### **Time Spent Overseas**

Anyone undertaking a DBS check who has worked or been resident overseas for a period of 3 months or more in the previous 5 years is also required to obtain a Statement of Good Conduct (SOGC) from the country they were in.

This includes citizens of the UK who have worked or lived overseas. This does not apply to members of the UK armed forces and their families that were stationed overseas.

It is preferred that the SOGC is obtained via the relevant UK embassy of every country in which residency or employment is relevant. The applicant is responsible for acquiring this. Managers should request that the applicant obtains the SOGC in English or costs may be incurred for translation. For information on where to obtain a SOGC please see the following link:

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

This document should be considered along with the internal risk assessment process and all other employment checks before taking a decision regarding appointment. It is recommended therefore that prospective candidates are advised that they should obtain their SOGC prior to application or at least before interview.

Some countries do not provide SOGC. The unavailability of an applicant's SOGC may give cause for concern about his or her suitability to be offered employment in a position of trust. Although such candidates will not be barred from working for the Council, appointing officers must make their final recruitment decision with due regard to all the relevant facts, the risk assessment and the overall requirement to protect vulnerable groups. Any decision not to appoint must be carefully explained to the candidate and reassurance given about the reasons for it.

### **When checking will take place**

DBS checks will take place when an appointment into a post is made that requires a DBS check as set out below. In the case of jobs that require enhanced DBS checks, additional checks will be undertaken every 3 years thereafter.

Where, due to changes in legislation, occupational groups become subject to regulation for the first time, the Council will write to existing employees in those groups informing them of the requirement to obtain a DBS check and the required level of the check. All employees will be expected to complete an application and provide documentation in necessary.

## **Enhanced & Standard DBS Checks**

Any staff who could be engaged in a Regulated Activity must have an Enhanced DBS check carried out. If a role does not involve engagement in any Regulated Activity, then there is no entitlement to carry out an Enhanced DBS check.

Similarly, there is also a definitive list of roles and types of work that are eligible for a Standard DBS check. If the job does not fall within this list, then a Standard DBS check cannot be sought.

Further guidance on eligibility can be found at the below link:

<https://www.gov.uk/government/collections/dbs-eligibility-guidance>

## **Basic DBS Checks**

Where a role does not qualify for an Enhanced or a Standard DBS check, the council has the discretion to request a Basic DBS check and will do so if it falls within policy to request such a check. There are three primary triggers for requiring a Basic DBS check:

- Any staff who has access to personal identifiable information pertaining to another person as part of their role will require a Basic DBS check. This could be information of anyone inside or outside the council.
- Any staff who has access to the PSN as part of their role. Anyone with access to the PSN is required to comply with the BPSS requirements, part of which is the requirement of a Basic DBS check.
- Some roles may require staff to hold a licence or membership that requires a DBS to join.

## **Re-Checks for Employees**

It is the Council's policy to re-check all Enhanced DBS check holders every 3 years. All staff who have previously been DBS checked will be required to complete a new application and provide up-to-date documentation in support of their check. Staff will be required to obtain the same level of check as their previous check, unless there has been a change in legislation or their duties.

Volunteers will be checked through the online update service. If the online status check reveals a change in the disclosure status, then a re-check will be required.

Where there are reasonable grounds the Council may require existing employees to re-apply for an up to date Enhanced DBS check or Enhanced check for Regulated Activity. It reserves the right to ask existing members of staff in relevant positions to apply for a new DBS check if their actions or activities give 'cause for concern'. The grounds for 'cause for concern' could include allegations of suspicious or inappropriate behaviour made by a child or other person or a colleague, parent, carer or member of the public.

In such instances, a full investigation of any such allegations will be conducted in accordance with the Council's Disciplinary Policy. As part of the investigation process, the employee may be required to undergo a DBS check or Enhanced check for Regulated Activity with consideration and legal advice taken in respect of human rights and employment legislation.

## **Who should be checked**

All Council employees that fall within the parameters for requiring a DBS check will be DBS checked, additional information is provided for alternate types of Council workers:

### **Under 16's**

The minimum age that someone can have a criminal record check is 16 years old. Therefore, it is important that any staff under this age, for instance Work Experience workers, do not have access to any sensitive information that would require a DBS check under this policy.

If, as part of an employee's duties, they are asked to supervise young people (under 16's) on work experience then this is a regulated activity and an enhanced DBS check with Children's Barred List is required.

### **Elected Members**

Certain Members may be required to undertake an Enhanced DBS check depending upon which committees, panels or forums they are members of. Advice should be sought from HR.

Elected Members in these roles are not eligible for a Barred List check.

### **Agency Workers**

The agency is legally the employer of any agency workers and the responsibility to obtain a relevant Basic Disclosure, DBS check, or an Enhanced check for Regulated Activity is theirs. This check can then be used within any organisation that the agency provides workers to work within, provided that it is for the same workforce and relevant barred list check.

When using an agency worker, a manager should ask to see written confirmation from the Agency that the relevant checks for the role have been undertaken by the Agency and that the person the agency has sent is the person who has arrived for work.

### **Contractors**

As the Council is considered the employer of any contract, it is legally the Council's responsibility to obtain a relevant DBS check or Enhanced check for Regulated Activity.

### **Volunteers**

It does not matter whether a member of staff is a volunteer or is paid, if they meet the parameters for requiring a DBS check then they are required to undertake a DBS check,

and if the role is also classed as Regulated Activity they will be eligible for an Enhanced check for Regulated Activity. See Appendices A and B.

All Standard and Enhanced checks are free for volunteers, as well as subscription to the update service. All volunteers are asked to sign up to the subscription service to minimise the need to complete additional applications.

### **Failure to be checked**

While staff can refuse to get a DBS Check, there are some posts for which a DBS check is required by law. Job applicants who refuse to apply for a DBS check for such posts may have their offer of employment revoked, and existing applicants who refuse to be DBS checked during the course of their employment may be subject to disciplinary, redeployment or dismissal.

Any member of staff who requires a DBS check and has not yet presented a valid DBS certificate should have their access / responsibilities restricted, or be supervised at all times.

**For further information regarding the DBS Customer Services please contact:**

**Website:** [www.gov.uk](http://www.gov.uk)

**DBS Customer Services Email:** [customerservices@dbs.gov.uk](mailto:customerservices@dbs.gov.uk)

**DBS Information Line:** **03000 200 190 (Mon-Fri, 8am to 6pm, Sat, 10am to 5pm)**

**DBS Address:** **PO Box 3961, Royal Wootton Bassett, SN4 4HF**



## **PART 3 – PREVIOUS CONVICTIONS**

If the disclosure results are considered to be of a serious nature and prove to be correct the manager may consider various options. Options include:

- Termination of employment.
- Redeployment pending the availability of a suitable vacancy.
- The introduction of safeguards.

Only after a full appraisal of the situation including the risks involved and other alternative employment options investigated should dismissal be considered and then only after advice from HR. If the manager decides to consider termination of employment, then the employee must be informed in writing and a hearing held in line with the Council's Disciplinary Procedure.

Evidence of previous convictions can never be used to dismiss a person for poor job performance. The track record of the individual should be carefully assessed and if it is satisfactory, this should be considered positively.

### **Recruitment of ex-offenders**

The Council is committed to equality of opportunity for all job applicants and aims to select people for employment on the basis of their individual skills, abilities, experience, knowledge and, where appropriate, qualifications and training.

Having a conviction will not necessarily bar someone from employment with the Council and will consider ex-offenders for employment on their individual merits. It is important to take into consideration whether a criminal record would have a bearing on a role. Some offences are more serious than others and some roles require stricter prerequisites, for example if the role involves working with children or vulnerable adults. Protection of the applicant's rights and interests must be weighed against the rights and interests of clients, employees and the public, including the Council's duties and responsibilities towards these or other groups, and whether the job is or is not exempt from the provisions of the Rehabilitation of Offenders Act 1974.

If the candidate has made a false declaration on their application form, then the Council will not be able to confirm the appointment. If the disclosure certificate contains information that was not revealed by the candidate or additional information from the Police is received it will be necessary to hold a further discussion with the candidate and undertake a further review against any risk assessment before deciding to confirm or withdraw the offer of employment. HR and legal advice should be sought at this point.

### **Barred work**

It is an offence for a barred person to work, apply to work or offer to work in Regulated Activity with a group they are barred from working with. Candidates on the Barred List will not be employed in Regulated Activity by the Council. If the checks reveal that a candidate is on the Barred List for Regulated Activity the Council will make a referral to DBS, through the HR Manager, to notify them of the individuals attempt to apply for barred work.

## **Exemptions under the Rehabilitation of Offenders Act 1974**

If the job into which the Council is seeking to recruit is one of the excluded jobs listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended 2013), the Council will require the applicant to disclose all unspent convictions. Even in these circumstances, however, the Council will not refuse to employ a particular individual unless the nature of the conviction has some relevance to the job for which the individual has applied.

If there is uncertainty about whether the job is an excluded job, Human Resources will be able to advise accordingly.

## **Risk Assessment**

If an offer of employment is made to an ex-offender it is important to keep a record of why it was considered that the recruitment would not pose an unacceptable risk to the Council, any service users or members of public. A Risk Assessment proforma (Appendix A) must be completed and provided to HR to be logged on the employee's record.

The applicant will be asked to sign the completed risk assessment to verify the information provided is accurate and acknowledge that the risk assessment will be stored separately to their personnel record.



## APPENDIX A: RISK ASSESSMENT

Please complete this form fully, this risk assessment will form the basis of a decision to appoint/not to appoint someone into a position where adverse disclosures have been identified on a returned DBS Certificate.

Questions for consideration to help guide the Hiring Managers assessment can be found on the next page. You may wish to discuss any relevant issues with an HR Adviser.

Name of employee	
Appointed role	
Date of DBS Check	
Unspent conviction(s) & Date conviction(s) will be spent	
Employees account of the conviction(s)	
Hiring Managers assessment	
Proposed safeguards, if any	

**Employee**

I understand that any offer of employment will be subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could make an offer of employment invalid or lead to termination of employment.

I understand that a record of this document will be kept within my personnel file for the duration of my employment and any subsequent retention period.

Signature: .....

Name: ..... Date: .....

**Hiring Manager**

I have discussed this with an HR Advisor (delete as appropriate)? YES / NO

If yes, name of HR Advisor.....

Outcome of Risk Assessment (delete as appropriate):

Continue with offer of employment / Withdraw offer of employment

Signature: .....

Name: ..... Date: .....

**Service Manager / Director Authorisation:**

I have considered the content of this risk assessment and give approval for the candidate to commence employment with any relevant restrictions/safeguards as outlined by the Hiring Manager:

Signature: .....

Name: ..... Date: .....

Does the candidate meet all the essential criteria for the post in terms of skills, knowledge, experience and ability?
Does the applicant agree that the information detailed on the DBS certificate is correct? Did the applicant declare the matters on their application form? <i>In the event of a challenge from the applicant the matter needs directly referring to the disputes team at the DBS.</i>
The country in which the offence was committed e.g. some activities are offences in Scotland and not in England and/or Wales and vice versa.
What is the nature of the contact the applicant will have with children/adults/the public and how vulnerable are they? If working with adults, will the applicant have access to finances or to items of value?
What was the nature of the crime, is the offence(s) directly relevant to the post, do the matters disclosed form any pattern and when did the relevant offence(s) occur?
Was the relevant offence committed at work (either paid or unpaid work)? Does the job present any opportunities for the applicant to re-offend in the place of work?
What is the seriousness of the offence(s) and relevance to the safety of other employees, customers, service users and property?
Are there any mitigating circumstances e.g. any relevant information offered by the applicant about the circumstances that led to the offence being committed?
Has the applicant's circumstances changed since the offence was committed, making re-offending less likely.
Can the applicant demonstrate any efforts not to re-offend? i.e. rehabilitation course
Would the applicant do anything differently now - has their motivation changed? Does the individual regret the matter (degree of remorse) and what is their attitude towards the matters now?
Are there any assessments and reports from those agencies involved in the applicant's process of rehabilitation e.g. probation service, specialists working in prison, other agencies?
What level of and how much supervision is available to the applicant?
Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?