

# **Disclosure Barring Service (DBS) Policy**

## **Policy Statement**

All Wales People First has a duty of care to protect its members and groups or individuals we work with who are considered vulnerable or at risk. The law requires that checks must be carried out to ensure that people who may pose a potential threat to others are not given positions of trust where they could exploit adults with vulnerabilities.

This policy refers to vulnerable groups including children and adults. A child is anybody under the age of 18. An adult is considered vulnerable during the time which they require services including health, social or personal care; transport to and from their home because of their age, disability, or illness to receive such service; require assistance in the conduct of their affairs; or with cash, bills, or shopping.

## **Legislation**

The following legislation has been followed in drawing up this policy and guidelines:

- Rehabilitation of Offenders Act 1974 and Exceptions Order 1975
- Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012
- Police Act 1997 (Amendment) Regulations 2013
- General Data Protection Regulation 2018
- Code of Practice - DBS

- Equality Act 2010

## **Equality Considerations**

This policy will apply to potential employees, current employees, students on placement, volunteers, and Board Members. This policy will also apply where external agencies recruit and employ staff to carry out contract work on our behalf, or where external agencies recruit staff to become employees. Students will be expected to have the appropriate level of clearance prior to being placed with us.

We are committed to the fair treatment of our employees, potential employees, or users of our services, regardless of gender, race, sexual orientation, religion or belief, age, disability or any other protected characteristic or offending background that does not create a risk to children and vulnerable adults.

Our policy requires applicants who will be working with vulnerable groups, in positions of trust or sensitive areas to disclose any “unspent” criminal convictions as part of their application. These positions are exempt from the Rehabilitation of Offenders Act 1974. Having a criminal record will not necessarily bar an applicant from working for us. The nature of a disclosed conviction and its relevance to the post will be considered.

## **Links to Other Policies**

The Disclosure & Barring Service Policy and associated guidance procedures should be read with other policies and procedures as appropriate, including but not exclusively:

- Recruitment policy
- Recruitment of ex-offenders' policy
- Disciplinary policy
- Code of Conduct
- GDPR & Data Protection policy

## **Procedures**

The Disclosure & Barring Service guidelines / procedures can be found in the document

## **Training**

All DBS ID verifiers will be fully trained to obtain the appropriate identity documents for all disclosures. They will need to be aware of the relevant documentation that is required and that they are alerted to ensure that documents are in order.

# DISCLOSURE & BARRING SERVICE (DBS) PROCEDURES

This document should be read in conjunction with the Disclosure and Barring Policy.

## 1.1 Levels of Clearance

The Chief Executive and senior management team will assess and define whether a role requires a DBS disclosure and if so, the level of disclosure. The Protection of Freedoms Act 2012 has resulted in a differentiation between those posts which can legally have an Enhanced DBS check and those posts which can also legally be checked against the Children or Adult Barred Lists (an Enhanced check for Regulated Activity).

## Types of Disclosure and Barring Service check

There are three types of Disclosure and Barring Service (DBS) check available to us:

**Standard disclosure:** Shows details of spent convictions, unspent convictions, reprimands, cautions and final warnings that have not been filtered.

**Enhanced disclosure:** Shows details of spent convictions, unspent convictions, reprimands, cautions and final warnings that have not been filtered. Includes a check of local police records.

**Enhanced disclosure with barred lists check:** Shows details of spent convictions, unspent convictions, reprimands,

cautions and final warnings that have not been filtered. Includes a check of local police records and the barred lists held by the DBS.

To be eligible for an enhanced level DBS check with either or both of the barred list (Adult or Children) an employee must be expected to be working in a regulated activity with either children or adults or both. It must be specifically listed in the Police Act 1997 (Criminal Records) Regulations.

### **Regulated activities relating to adults**

Activities which, if any adult requires them, lead to that adult being considered vulnerable at that time e.g., healthcare, or social work. The focus is on the activities required by the adult and not on the setting in which the activity is received, nor the persons characteristics or circumstances of the adult receiving the activities. There is no requirement for a person to do the activities a number of times before they are engaging in regulated activity.

### **Regulated activity relating to children**

- i) Unsupervised activities: teach, train, instruct, care for, or supervise children, or provide advice / guidance on well-being, or drive a vehicle only for children.
  
- ii) Work for a limited range of establishments ('specified places'), with opportunity for contact, for example schools, children's homes, childcare premises (but not work by supervised volunteers).

Work under (i) or (ii) is Regulated Activity only if done regularly. Regular means conducted 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).

iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once.

iv) Registered child minding; and foster-carers.

The minimum age at which someone can apply for a DBS check is 16 years.

There will be a limited number of groups who may also be subject to DBS Disclosure such as chartered accountant, legal professionals who are subject to a disclosure.

## **1.2 Agency Workers**

The level of disclosure for agency workers should be the equivalent to the level of disclosure that would be applied to an internal post of the same nature. This will be carried out by the agency as the employer prior to the placement commencing. The line manager will ask to see written confirmation from the agency to ensure that each worker from agencies has a satisfactory DBS check and checks against the relevant Children's and/or Adults' barred list.

### **1.3 Volunteers**

A volunteer is described as a person who performs an activity which involves spending time unpaid (except for travelling and approved out of pocket expenses) doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

Volunteers who assist on a regular basis in a role which meets the parameters for requiring a DBS check are required to undertake a DBS check, and if the role is also classed as Regulated Activity (post 10th September 2012) they will be eligible for an Enhanced check for Regulated Activity.

### **1.4 Working Before the DBS Certificate is Issued**

Any posts, which are subject to an Enhanced Disclosure that have not yet been received, should not have unsupervised access to children or vulnerable adults until the certificate has been received. The Organisation would wish to follow good recruitment practice and aim to ensure that all pre-employment checks are in place before formal offers of employment are confirmed and therefore where the Disclosure and Barring Service check is part of that process people should where possible not be employed until receipt of this information.

### **1.5 DBS Umbrella Body service**

For the purposes of processing DBS applications, The Organisation engages the professional services of a DBS Umbrella Body.

## **1.6 ID verifiers**

This group of staff will be fully trained to obtain the appropriate identity documents for all disclosures. They will need to be aware of the relevant documentation that is required and that they are alerted to ensure that documents are in order.

## **1.7 DBS Disclosure repeated at regular intervals**

All employees whose post is subject to DBS should have a repeat DBS every 3 years.

## **1.8 Movement Between Posts**

Movement between posts within the organisation will not always require a new DBS disclosure as the information can be shared between parties. Care must be taken when people move from a post where they solely had responsibility for vulnerable adults and now will be responsible for children and vice versa. In most cases the DBS disclosure can only be for one of those categories but there are exceptions and where an employee has two posts, which cover both areas the latest DBS disclosure must be undertaken for both vulnerable adults and children. New DBS checks will be required when moving from one registered group to another.

## **1.9 Criminal Record During Employment**

It is a requirement in the contract of employment that all employees immediately disclose any criminal record gained during their employment whether they are employed in a post that is subject to a DBS disclosure or not. A disclosure of a criminal record will not necessarily be a bar to employment, but failure to declare may be

considered a breach of the Code of Conduct and will be dealt with in line with the Disciplinary Policy and Procedure.

## **2. Procedure for obtaining a DBS Check**

The Rehabilitation of Offenders Act 1974 was introduced to ensure that ex-offenders who have not re-offended for a period of time since the date of their conviction are not discriminated against when applying for jobs. The Act means that ex-offenders are no longer legally required to disclose to organisations convictions that have become 'spent'.

However, to protect certain vulnerable groups, there are a large number of posts and professions that are exempt from the act. Additionally Safeguarding Vulnerable Groups Act 2012 sets out the activities and work which are 'regulated activities' and which a person who has been barred by the Disclosure and Barring Service must not do. Please refer to the Agency's Recruitment of Ex-Offenders Policy.

In such cases, we are legally entitled to ask applicants for details of all convictions, whether unspent or spent. This is shown on a DBS Enhanced Certificate. Regulated activity legislation further allows information to be disclosed as to whether an individual is barred from working with a particular vulnerable group. Such information is requested and obtained through a DBS Enhanced Certificate to include a check against the DBS barred lists.

Applicants should be made aware that Enhanced Disclosures might include non-conviction information from local police records if the police 'reasonably believe' the information is relevant to the post in question.

We will make every subject of an Enhanced DBS check aware of the existence of the DBS Code of Practice.

Where an Enhanced DBS check is to form part of the recruitment process, we will ask all applicants to 'self-disclose' details of their criminal record at an early stage in line with our Recruitment policy. This information will only be seen by those that need to as part of the recruitment process. Failure to reveal information that is directly relevant to the position sought may lead to the withdrawal of an offer of employment.

We will not employ someone to work in Regulated Activity with children if they have been barred through the DBS Children Barred list, or someone to work with vulnerable groups who are barred through the DBS Adult Barred List. The Organisation would be breaking the law if we did so. If we receive an application from a person barred from working with children or adults, they are breaking the law if they work/volunteer or seek to work/volunteer with these groups and we are obliged to report them to the relevant Authorities.

## **2.1 Employment**

All recruitment will be in line with our Recruitment Policy. Where a post is identified as one that requires an Enhanced DBS check, or an Enhanced check for Regulated Activity, all job adverts and recruitment literature will contain a statement advising that this will be requested in the event of the individual being offered the position.

Once the applicant has been appointed to the post the DBS check will be one of the requirements as part of pre-employment vetting. To undertake the disclosure, the

identity of the individual must be verified. This will be made once the appointment has been agreed. A conditional offer of employment will be sent to the successful applicant asking them to complete the DBS disclosure application and provide relevant original ID documentation to the ID Verifier.

Once the DBS disclosure application is completed by the applicant, the ID verifier will perform the ID check.

The Disclosure and Barring Service will issue the Disclosure Certificate to the applicant and the applicant must promptly send the original document to the ID Verifier.

If the disclosure shows that there is no information on record the ID Verifier will confirm to the applicant's line manager that a satisfactory DBS disclosure has been received. If the disclosure shows any positive results this should be communicated to the line manager in the strictest of confidence. The line manager should seek advice from our Human Resources management services provider.

## **2.2 DBS Re-check for existing members of staff**

The ID Verifier will write to the existing member of staff approximately 2 months before the 3-year renewal date with instructions on how to renew the DBS. The ID Verifier will inform the line manager of the result of the DBS re-check. If the disclosure shows any positive results this should be communicated to the line manager in the strictest of confidence and the line manager should seek advice from our Human Resources management services provider.

Any existing member of staff who does not submit their documents in good time to enable a continuation of their

DBS clearance will be unable to continue working with vulnerable adults and children when their existing DBS clearance expires. We reserve the right to send the member of staff home without pay in these circumstances.

If a member of staff is offered a change of role, a re-check may be necessary before they are able to start the new role. On occasion, it may also be necessary for a retrospective DBS check to be carried out. This will only be requested when appropriate, and when the level of risk is considered sufficient. In the above scenarios, if such a check reveals a criminal conviction, this will be discussed with the employee. In some cases, it may be necessary for the employment to be terminated, but this will only be done as a last resort.

### **3. Handling of Data**

**3.1** We are committed to ensuring that all information provided about an individual's criminal convictions, including any information released in disclosures, is used fairly, and is stored and handled appropriately and in accordance with the provisions of the Data Protection Act 1998.

Data held on file about an individual's criminal convictions will be held only for as long as is required for employment purposes and will not be disclosed to any unauthorised person.

We are also committed to going through the proper DBS channels to establish whether an individual has a criminal record. We will not require job applicants or existing employees to use their subject access rights under data

protection provisions to provide criminal record details unless this is required by law.

**3.1** It should be noted for employee records only that the relevant DBS disclosure including level, number, outcome and date will be kept on employees HR personnel files until such time that it is replaced by a new disclosure.

#### **4. Portability and Update Service**

The DBS's current guidance on 'portability' of disclosures (i.e., the use of a disclosure for another purpose, or the use of a disclosure carried out by another organisation) will be followed. However, if there is any concern about the validity of a disclosure, a new check must be requested.

The employee is entitled to subscribe to the DBS Online Update Service. For individuals this means that if they move to another position within the Organisation, providing it is with the same workforce that is on their DBS certificate, they will not need another DBS check. Instead, we, with the employee's written permission will be able to carry out an online status check to ensure that their disclosure is still valid.

For new applicants to the Organisation who already have an enhanced DBS certificate for the relevant workforce and who are signed up to the online update service, The Organisation will accept this disclosure and with the applicant's written permission carry out an online status check to ensure that their disclosure is still valid.

If internal applicants or external applicants are applying for a position within a different workforce (moving from adult workforce to children's workforce or vice versa) a new DBS check will be required.

## **5. Payments**

We will pay the fee for disclosures for new and existing staff where their work within the Organisation requires a criminal record check. No fee is payable to the DBS for those working in a voluntary capacity which involves spending unpaid time on an activity that aims to benefit a third party.

## **6. Gender Recognition Certificates**

The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for a gender recognition certificate. When a full gender recognition certificate has been issued, the person is legally considered to be of the acquired gender.

If the person is required to undergo a DBS check as part of the recruitment process, they must disclose any previous names and/or gender to the DBS who have established a special application procedure/dedicated contact officer to maintain confidentiality. In this situation the applicant should contact the DBS directly.

Gender confidentiality will be maintained where the individual has no criminal convictions and where there is no other information held by any Police Authority, as a clear disclosure certificate is the ultimate result. However, if they did have convictions under their previous gender that were considered relevant to the post/position, then the individual's gender change would become evident through the provision of conviction information on the DBS disclosure certificate showing both gender names.