

Somerset County Council

HR Policy Committee

– 18 September 2017

Disclosure Policy

Cabinet Member: Cllr Anna Groskop

Lead Officer: Chris Squire

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| | Seen by: | Name | Date |
|---|---|---|-------------|
| Report Sign off | Legal | Honor Clarke | 6/9/17 |
| | Corporate Finance | Kevin Nacey | 15/8/17 |
| | Human Resources | Chris Squire | 15/8/17 |
| | Senior Manager | Richard Williams | 6/9/17 |
| | Cabinet Member | Anna Groskop | 5/8/17 |
| | Monitoring Officer | Julian Gale | 21/7/17 |
| | Summary: | <p>The proposed Disclosure Policy consolidates the Council's current guidance and processes in relation to the disclosure of criminal records and complements and expands on the current Recruitment of Ex-Offenders Policy, which states the circumstances in which we are legally allowed to request full criminal disclosure.</p> <p>It sets out how Somerset County Council will make effective use of the Disclosure and Barring Service (DBS) in recruitment to safeguard the children and vulnerable adults who access our services. It also outlines how we will comply with the Cabinet Office Baseline Personnel Security Standards for employees that access the Public Services Network.</p> <p>The policy gives an explanation of eligibility and the different types of disclosure and checks against 'barred lists' and when they should be used, expectations of employees whose post is covered by DBS eligibility criteria and our procedures for dealing with disclosure checks and disclosure certificates.</p> | |
| Recommendations: | It is recommended the committee agree to the introduction of the new Disclosure Policy. | | |
| Reasons for Recommendations: | The policy consolidates the Council's current guidance and processes to accord with the DBS Code of Practice and the Baseline Personnel Security Standards for employees using the Public Services Network. | | |
| Links to Priorities and Impact on Service Plans: | CSC – Keeping Children Safe ASC – Keeping People Safe | | |

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| Financial, Legal and HR Implications: | <p>Legal: Complies with the Rehabilitation of Offenders Act 1974 and Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.</p> <p>Financial: There are no financial implications in implementing this policy. There may be financial risks arising from not having a compliant policy in place.</p> <p>HR: This policy will support our safer recruitment practices.</p> |
| Equalities Implications: | <p>This policy will be applied equally to all employees/job applicants for posts eligible for disclosure checks, it is not envisaged that it will disadvantage any group who share a protected characteristic. In any case, it is believed that the policy is proportionate to the legitimate aim of safeguarding children and vulnerable adults to whom we provide services to.</p> |
| Risk Assessment: | <p>The implementation of this policy aims to lower the risk of a breach of the DBS Code of Practice and the relevant legislation. There is a legal requirement to make sure an application for a standard or enhanced disclosure, with or without an additional check against either the Childrens or Adults barred lists, meets the eligibility criteria as outlined in the legislation. Requesting a DBS disclosure for an applicant for a post that does not meet the DBS eligibility criteria is an offence and a breach of the DBS Code of Practice and could lead to SCC losing registered umbrella body status with the DBS. If SCC lost the registered umbrella body status, the Council would have to pay another umbrella body to carry out checks on the Council's behalf this would be an increased cost to the Council.</p> <p>The Council's registered umbrella body status with the DBS, means we are able to process applications on behalf of external organisations, such as academies. As we charge for providing this service loss of registration would result in loss of income to the Council.</p> <p>The DBS has announced that it will be conducting compliance inspections during which it will review the Councils process and procedures to ensure we are complying with the DBS Code of Practice. They would expect to see a clear policy outlining how we manage and process DBS checks. If we do not have a policy in place, when we are inspected a best case scenario is that the Council would be recommended to implement a policy as soon as possible, the worst case scenario, is that the DBS could decide we cannot effectively demonstrate compliance and therefore suspend or cancel our registered umbrella body status.</p> |
| Scrutiny comments / recommendation (if any): | |

1. Background

- 1.1. The Disclosure Policy aims to consolidate the Council's current processes and guidance in relation to applications for disclosure checks and put in writing the arrangements for complying with the requirements of the Disclosure & Barring Service (DBS) Code of Practice 2012 issued under the Police Act 1997.

Additionally, the Disclosure Policy sets out the requirement to undertake Basic Disclosure checks as required by the Cabinet Office Baseline Personnel Security Standards for users of the Public Services Network. Basic Disclosures are currently provided by Disclosure Scotland although the DBS plan to take over this service in 2017.

- 1.2. The Council has an existing policy on the Recruitment of Ex-offenders which sets out our obligations under the Rehabilitation of Offenders Act 1974 (ROA). The ROA was introduced to allow individuals convicted of a criminal offence to consider it 'spent' after a defined amount of time as set out in the Act. Under the Act it is unlawful to require a job applicant to disclose any 'spent' convictions. However, in order to protect the vulnerable groups within society, namely children and vulnerable adults, the Act excepts certain professions and types of work for which individuals should be required to disclose all convictions whether 'spent' or not. Those professions and types of work are listed as exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023).

Historically, the Council was able to request police checks directly from the police service to verify criminal convictions, this was replaced in 2002 by a national Criminal Records Bureau Service.

In addition, the Department for Education had established 'List 99' which was a list of individuals considered unsuitable to work with children, this became the DBS Children's Barred List. Similarly a separate list of individuals considered unsuitable to work with vulnerable adults was compiled by the Department of Health in 2004, known as 'Adults POVA First' (POVA stands for Protection of Vulnerable Adults), this is now known as the DBS Adult Barred List.

In response to the Soham murders, procedures around background criminal records checks were tightened, and these were revised under a new piece of legislation, the Safeguarding Vulnerable Groups Act 2006. A new Vetting and Barring Service was proposed and due to be launched in 2009, which would have seen a broader definition of the types of work where a full criminal disclosure was required. However, following a change in government in 2010 and a view that the suggested vetting and barring service was disproportionate to the risk, given that it is only a small minority of individuals that pose a risk of harm to vulnerable groups and a large number of people who would be affected by the new legislation, the Safeguarding Vulnerable Groups Act was amended by the Protection of Freedoms Act 2012 which withdrew the proposed widening of the scope of roles to be the subject to criminal records checks. In the same year the Criminal Records Bureau and the Independent Safeguarding Authority (who 'owned' the barred lists) were merged into a single organisation the Disclosure and Barring Service which was launched on 1st December 2012 to create one organisation which can 'disclose' both criminal convictions and whether an individual is listed on one of the 'barred lists'.

Over the last decade there have been many changes in the legislation and the Council has complied with these through the Recruitment of Ex-Offenders Policy and by constantly updating our processes and guidance. Over recent years the scale of change has stabilised and therefore it feels like an appropriate time to consolidate the current guidance and processes into a formal policy not least because the DBS will be commencing compliance inspections.

- 1.3. The Council changed from a registered body status to an umbrella body status in 2012, in response to a number of school's converting to academies but still wanting the Council to process DBS applications on their behalf. Subsequently a growing number of Academies and other external organisations such as Somerset Skills and Learning, Taunton Deane Borough Council and Exmoor National Park have bought into the service. As a registered umbrella body, it enhances our ability to comply with the DBS Code of Practice if we have a formal policy and reassures internal and external users of the service.
- 1.4. As a DBS registered umbrella body the Council must have an officer undertaking the DBS Lead Signatory role. This is currently undertaken by a Strategic Manager within Support Services for Education. This role is responsible for ensuring compliance with the DBS Code of Practice the relevant legal frameworks, making final decisions on eligibility and signing off all suitability assessments, (where a conviction or other information comes back on a disclosure certificate), thus ensuring a consistent approach. This officer has taken the lead in preparing the Disclosure Policy.
- 1.5. The Council has an in-house Disclosure Team that administers applications for the Council as well as 18 external organisations, which include Academy Schools and Multi-Academy Trusts, Taunton Deane Borough Council, Exmoor National Park and partner organisation such as You Can Do who organise opportunities for volunteers. In the year 2016/2017, the SCC Disclosure Team processed a total of 6,354 applications.

The team will also offer advice to managers on the eligibility of roles under the DBS Code of Practice where there is lack of clarity.

- 1.6. Examples of roles that require a DBS clearance within the Council include Social Workers, Occupational Therapists, Drivers and all employees working in a school setting or residential setting where children or vulnerable adults are present. The proposed disclosure policy sets out in more detail the scope of work and roles that are eligible and the different levels of disclosure check required for different circumstances.
- 1.7. The Council is obliged by the Cabinet Office Baseline Personnel Security Standards to carry out a number of checks on employees who share personal data with external organisations, via email or through shared databases referred to as the Public Services Network. The Baseline Personnel Security Standard checks include identification checks, references and criminal records checks. In April 2014, the requirements of these checks changed, whereas previously employees were able to self-declare any 'unspent' convictions, from April 2014, organisations were required to undertake an independent Basic Disclosure checks, available through Disclosure Scotland.

Projects within the Council have been ongoing to ensure independent checks have been carried out on any employees with access to a secure email (known as a GCSx email) and more recently anyone using the Public Services Network, this includes users of the SWIFT AIS Adult Social Care client database and Liquidlogic Children's System (LCS). The employees affected by this have been informed.

- 1.8. The Council has a number of existing documents and forms in relation to DBS checks as outlined below:

| Name of document | Purpose |
|---|--|
| Recruitment of Ex-offenders Policy | Outlines the Council's responsibilities under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023). |
| Guidance for Applicants and Employers: DBS Clearance Certificates | Outlines the process the Council follows for applications for DBS clearance. |
| Approval to Start Work without Certificate of Good Conduct: Risk Assessment | When an employee has spent over 3 months abroad and a certificate of good conduct cannot be obtained. |
| DBS Documentary Evidence Sheet | To be completed by the verifier when checking ID documents. |
| e-DBS Applicant and Verification Process User Guide | Detailed guide to aid applicants and verifiers making an online DBS application. |
| DBS Identification Checking Guidance for Applicants | List of documents that are acceptable for verification purposes. |
| DBS Clearance Risk Assessment | Form to complete if a manager wants to start an employee in work before the DBS clearance has come through. |
| Disclosure Suitability Assessment Form | Form to complete if a trace comes back on a disclosure certificate. |

2. Options Considered

- 2.1.** Carry on with the status quo of not having a written policy. This leads to a lack of clarity and the risk of non-compliance. If the Council repeatedly processes applications for DBS checks for roles that are not eligible according to the legislation, there is a risk that the Council could lose registered body status. The consequence of this would be that we would have to pay for another organisation to administer the checks on our behalf and lose the income from external organisations using the service.
- 2.2.** Producing a SCC Disclosure Policy that consolidates the Council's current guidance, practice and procedures in addition to outlining the already established DBS and Cabinet Office guidance in one document.

East Sussex County Council's Disclosure Policy was used as a template in developing the Council's policy, East Sussex's policy was chosen as the organisation is similar to Somerset County Council and it was identified as exemplary policy as well as good practice in this area.

3. Consultations undertaken

- 3.1. The HR Policy Team had informal briefings on the Disclosure Policy with local Unison and Unite representatives.

The Strategic Manager SSE and DBS Lead Signatory held informal discussions with School Unions (ASCL, NAHT, NUT, NASUWT, ATL).

- 3.2. Whilst the policy largely follows legislation and DBS guidance, one of the areas of discretion is in paragraph 2, as below. We consulted with Unions on this point in particular and no concerns were raised.

“2. Validity of disclosures and expectation that staff will inform Somerset County Council of any changes to their status.

There is no period of validity for a disclosure check. A disclosure certificate is accurate only on the day it is issued as a new or further criminal conviction, caution etc. may be recorded against the individual at any time after the issue date.

SCC expects that staff undertaking roles that are subject to disclosure checks who are arrested, cautioned, charged with, or convicted of a criminal offence will inform their line manager immediately. Any such information will be considered in relation to the role the employee undertakes and whether it adversely impacts upon their suitability for the role. Failure to disclose such information may undermine trust and confidence and lead to consideration of disciplinary action.”

- 3.3. The Disclosure Policy was formally approved by unions at the following meetings:

Schools JCNC with Unite, Unison, NUT, ATL and NASUWT representatives present held on 16th May 2017 (ASCL and Voice received the agenda but did not attend).

JNF with Unison and Unite representatives present held on 17th May 2017 (GMB received the agenda but did not attend).

4. Implications

- 4.1. There are legal and reputational risks around requesting DBS checks on applicants and employees which could lead to financial risks.
- 4.2. The eligibility criteria for requesting DBS checks are outlined in law by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) regulations. We are legally required to ensure the applications we are submitting are eligible under the current legal provisions. There is not a definite list of roles that are eligible, rather the duties and activities of the role that need to be assessed against the criteria.
- 4.3. If we do not abide by the DBS eligibility criteria, SCC could lose its registration umbrella status with the DBS and would have to pay another organisation to undertake these checks on our behalf.

- 4.4. The Disclosure Team comprises of a team of 4 employees (FTE 3.4) if we lose our registered body status and can no longer administer checks, the team could be at risk of redundancy.
- 4.5. In addition we currently administer checks as an umbrella body for Academies and other external organisations. We charge £12 per application. If we lost our umbrella status it has the potential to damage our reputation as those organisations would also have to seek an alternative umbrella body to process their applications and loss of income to the Council.

5. Background papers

- 5.1. SCC's Recruitment of Ex-Offenders Policy
- 5.2. Storage and Retention of DBS Disclosures Policy

Note: For sight of individual background papers please contact the report author.