



## DISCLOSURE & BARRING SERVICE (DBS) POLICY

*This policy sets out the guidance relating to DBS (Formerly the Criminal Records Bureau) disclosures for current and prospective employees*

Our objectives:

This policy sets out the statutory rights and responsibilities of employees of Boston Borough Council relating to DBS disclosures.

We recognise that, from time to time, employees may have questions or concerns relating to their rights. It is our policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible.

This procedure applies to all employees of Boston Borough Council.

### Principles

This policy incorporates the following principles.

- **Good faith**  
This policy and procedure will be applied in a consistent manner and without discrimination.
- **Fairness**  
Any action taken will be reasonable and necessary. Members of staff involved are entitled to be heard with courtesy and respect.
- **Confidentiality**  
Information relating to DBS disclosures will only be shared with individuals who have a need to know.
- **Representation**  
If issues arise within these procedures and a formal approach is required to deal with them, employees will be entitled to be accompanied by a trade union representative or by a work colleague.

### **Version History**

<b>Version</b>	<b>Author</b>	<b>Reason For Issue</b>
July 2005	People Services	New policy
March 2013	People Services	Changes to disclosure & barring

### **Document Distribution**

<b>Name</b>	<b>Role</b>
JCC	For consideration of amendments for policy
CMT	For approval of amendments to policy
HOST	For implementation.
All staff	Revised scheme/ staff benefit.

### **Document References**

<b>Reference</b>	<b>Document Title</b>

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## **INTRODUCTION**

Boston Borough Council is committed to safeguarding the welfare of those accessing our services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Exceptions Order to the Rehabilitation of Offenders Act (1975). However, this duty must be carried out with due regard to all other relevant legislation including the Protection of Freedoms Act 2012, the Rehabilitation of Offenders Act (1974), the Data Protection Act (1998), the DBS Code of Conduct and the Human Rights Act (1998). A description of each piece of key relevant legislation can be found in [Appendix E: Relevant Legislation](#)

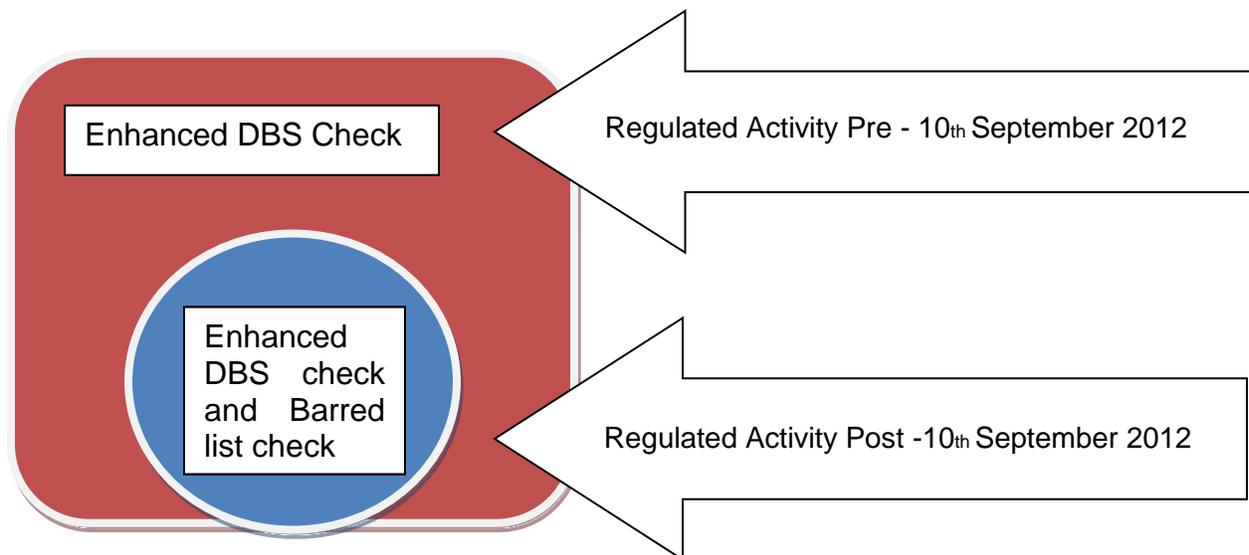
This policy outlines the council's procedure for obtaining criminal record disclosure (DBS) checks.

### **1. What are the changes in terminology I should be aware of?**

With the merging of the CRB and ISA to form the DBS there has been a change in terminology which will now appear throughout this policy, these are:

<b>Previous term</b>	<b>New term</b>
Criminal Records Bureau (CRB), Independent Safeguarding Authority (ISA)	Disclosure & Barring Service (DBS)
Enhanced CRB check	Enhanced DBS check
Enhanced CRB check with Barred List Check	Enhanced check for Regulated Activity
ISA Adult first	DBS Adult first
Vulnerable Adults	Vulnerable groups

The Protection of Freedoms Act 2012 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). The definition of regulated activity changed from 10th September 2012.



The red square represents the posts that fell within the old definition of regulated activity. From 10th September 2012 employees in posts that fall within this area are still entitled to an Enhanced DBS check.

The blue circle represents the new definition of regulated activity. There are now fewer posts that fall within this definition. From 10th September 2012, employees in posts that fall within this area are entitled to an Enhanced check for Regulated Activity.

As a manager you should begin by looking at [Appendix B](#) to establish if a position comes under the post 10th September definition of regulated activity and is therefore entitled to an Enhanced check for Regulated Activity. If the position does not come under this definition then turn to [Appendix A](#) to establish if the position comes under the pre 10th September definition and is therefore entitled to an Enhanced DBS check. If a post does not come under either definition then it is not entitled to a DBS check.

It is an offence for individuals on the Barred List to apply for posts in regulated activity (post 10th September 2012 definition). Previously it was illegal for them to apply for all the posts illustrated above. In effect this means that individuals who are currently on the Barred List can now apply for posts that fall under the old definition of regulated activity (i.e. regulated activity pre 10th September 2012) so long as these posts do not fall within the parameters of the new definition of regulated activity (post 10th September 2012).

The fact that someone is on the Barred List will not be stated on an Enhanced DBS check, but there will be details of criminal convictions that would indicate that someone might be on the Barred List. If any such disclosures are received People Services will investigate thoroughly and complete [Appendix D: Cause for Concern Risk Assessment Proforma](#).

## 2. Who does this policy apply to?

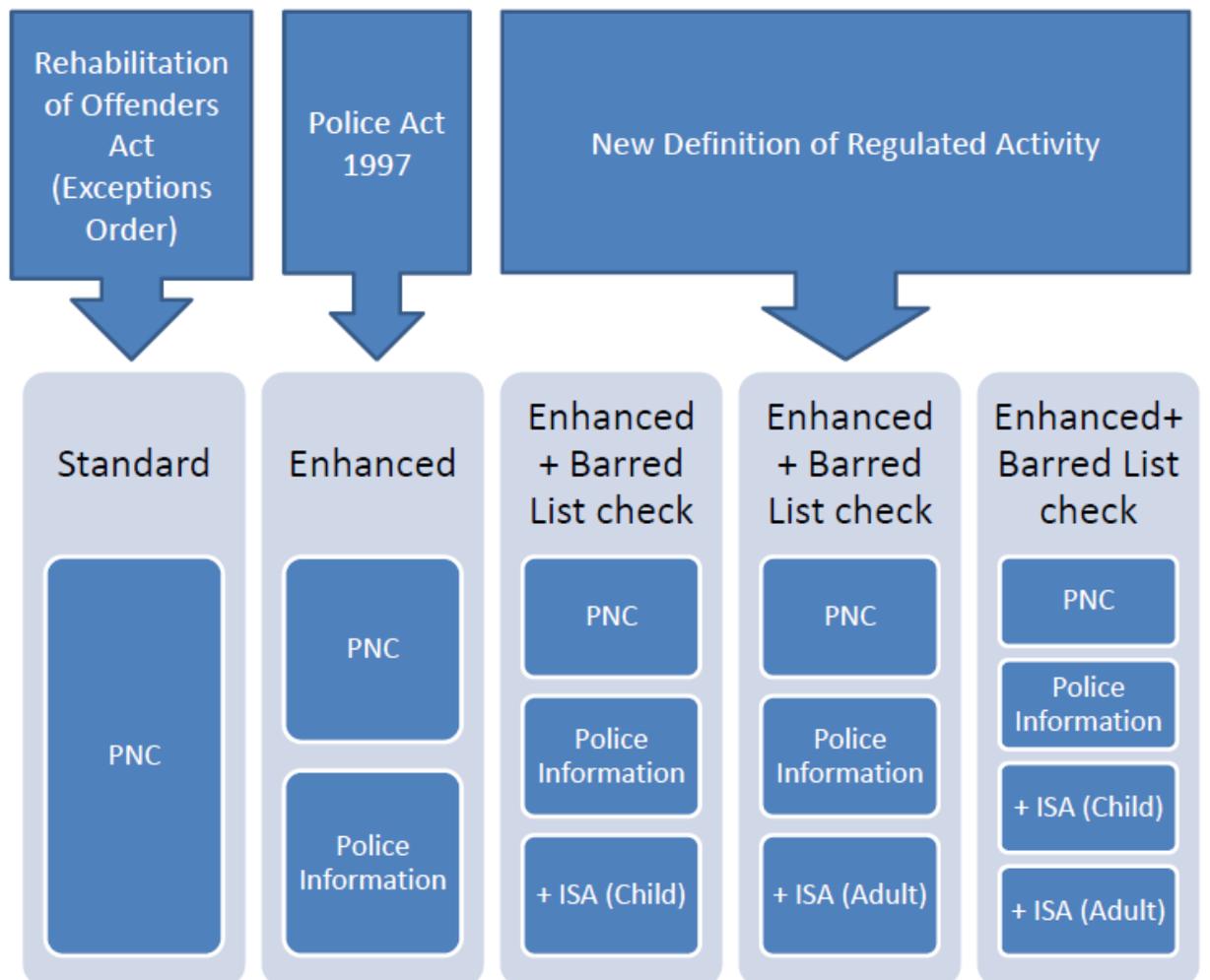
This policy applies to anyone applying for or working in roles providing specific services relating to:

- Children; or
- Adults (only those who may require certain services which lead to that adult being considered vulnerable at that particular time)

It applies to job applicants, current employees and any other individuals e.g. volunteers who will be or who are engaged in “regulated activity”. However the minimum age that someone can have a DBS check is now 16 years old. Council countersignatories will not be able to countersign an application for anyone under the age of 16.

At present, for some roles requiring a DBS check, a re-check must also be carried out every three years but this may change over a transitional period.

The types of checks available and the relevant legislation is as listed below:



### **3. What are the legal requirements for an enhanced DBS check?**

The Council will ensure the national minimum requirement for Disclosure & Barring Service compliance is met. This requires all those who commenced working in a role exempt from the Rehabilitation of Offenders Act after 1st March 2002 to undertake an Enhanced DBS check.

The Council will only ask for an Enhanced DBS check when it is not an offence under the Police Act 1997 to do so. See [Appendix A](#): Posts requiring an Enhanced DBS check (pre 10th September 2012 definition).

We are still entitled to ask all post holders in these posts to undertake an Enhanced DBS check but not all these posts are now entitled to a Children or Adult Barred List check (See below for further details).

All job descriptions for posts across the Council will identify whether they:

- Require a DBS check at the start of an employment.
- Require a three yearly DBS check.
- Do not require a DBS check

And will include where there is a requirement for a Barred List check , stating whether:

- No Barred List check required.
- Children's Barred List check required.
- Adults Barred List check required.
- Children's & Adults Barred List check required.

A list of positions within Boston Borough Council that are subject to Enhanced DBS or an Enhanced check for Regulated Activity is stated at [Appendix J](#).

### **4. What are the legal requirements for an Enhanced Check for Regulated Activity (after 10th September 2012) ?**

Where an individual occupies a role that meets the new definition of undertaking "regulated activity" an application will be made for an enhanced DBS check and a relevant (Adult or Children) Barred List check (an Enhanced check for Regulated Activity).

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012. For information on the new definition of regulated activity and posts for which a check can be made against the barred list, please see [Appendix B](#): Posts requiring an Enhanced check for Regulated Activity (post 10th September 2012 definition).

## **5. What is the definition of young people / children?**

A person who is under the age of 18.

## **6. What is regulated activity in relation to children?**

Regulated activity relating to children is defined as work that a barred person must not do. It is as follows:

### Category 1:

- Teaching, training, instructing, caring for or supervising children in an unsupervised capacity;
- Providing advice/guidance on well-being to children in an unsupervised capacity;
- Driving a vehicle for children only in an unsupervised capacity;
- Work for a limited range of establishments (specified places) with opportunity for contact.
- It is work that is done on a 'regular' basis i.e. one or more times a week or on 4 or more days in a 30-day period.

### Category 2:

- Relevant personal care e.g. washing or dressing a child; or healthcare by or supervised by a professional, even if done only once
- Registered childminding
- Foster carers.

A DBS check is not required in respect of the activities in categories 1 and 2 if the person undertaking these activities:

- is supervised at a reasonable level (refer to guidance on supervision).
- is providing treatment or therapy (instead of 'health care').
- Is a supervised volunteer – supervised at a reasonable level
- Is carrying out occasional or temporary services e.g. window cleaners.
- Is an office holder e.g. governors

## **7. What is the definition of a vulnerable adult?**

A vulnerable adult will be aged 18 years or over. An adult may be considered to be vulnerable at the time they require certain services provided to them for:

- accommodation and nursing or personal care in a care home; or
- personal care in their own home through a domiciliary care agency; or
- health care services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body; or
- is an expectant or nursing mother living in residential care;
- is receiving direct payments from the council in lieu of social care services; or
- services provided in an establishment catering for a person with learning difficulties.

and in consequence of any one, or any combination, of the following factors:

- a substantial learning or physical disability; or
- a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- a substantial reduction in physical or mental capacity due to advanced age;
- they are substantially dependent upon others in performing basic physical functions, or their ability to communicate with those providing services or to communicate with others is severely impaired, and, as a result, they would be incapable of protecting themselves from assault or other physical or mental abuse, or there is a potential danger that their will or moral well being may be subverted or over powered.

## **8. What is regulated activity in relation to vulnerable adults?**

Regulated activities relating to adults is outlined below. There is no requirement to carry out these activities a certain number of times before a person is deemed to be engaging in regulated activity with vulnerable adults:

- Work undertaken by regulated health care professional e.g. health care assistants, physiotherapists.
- Work undertaken by a person under the direction or supervision of a health care professional
- Personal care provided to an adult e.g. assistance with washing and dressing, eating, drinking and toileting or teaching someone to do 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.
- Providing assistance to an adult e.g. with a person's cash, bills or shopping because of their age, illness or disability e.g. collecting a pension
- Providing assistance with the conduct of an adult's own affairs e.g. 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.

## **9. What if I want to move into a role which requires a DBS check when I haven't needed one before?**

If you are moving from a role where a DBS disclosure check is not needed into a new role which is a regulated activity you will not be able to start work in the new role until a DBS disclosure check has been obtained. This will include if you are currently working in a role supporting children moving to a role supporting vulnerable adults or vice versa.

## **10. What if legislation changes the eligibility of my role for a DBS check?**

Where, due to changes in legislation, any roles within Boston Borough Council become subject to regulation for the first time, the Council will write to existing employees in those roles informing them of the requirement to obtain an Enhanced DBS check or Enhanced check for Regulated Activity. All employees will be expected to comply. Any existing

employee refusing to comply with the request for an enhanced DBS check or Enhanced check for Regulated Activity will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager and/or to comply with a contractual agreement will lead to the employee being subject to a disciplinary investigation.

### **11. How do I know if a new post needs a DBS check?**

If a manager has a new post which they believe requires an Enhanced DBS check/ Enhanced check for Regulated Activity they should complete the pro-forma at [Appendix K](#) and check this with People Services who will confirm whether the post is eligible for a DBS check. If People Services believe it would be illegal to request a DBS check they will ask for the managers' rationale behind their request and clarify the parameters for which the Exceptions Order can be applied. If the manager disagrees, they can ask the People Services Manager to refer the details of the post in question through to the DBS for a final decision. This is because employers who knowingly request checks for positions which are not eligible leave themselves open to legal challenge, so the Council must ensure they do not undertake any illegal DBS checks.

### **12. How is DBS relevant to undertaking Recruitment?**

All recruitment will be in line with the Councils Recruitment Policy (HR043).

Where a post is identified as one that requires an Enhanced DBS check, or an Enhanced check for Regulated Activity, all application forms, 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. The job description will also state the requirement for a DBS check. 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. 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.

### **13. What should Managers know about DBS and Agency workers?**

The agency is legally the employer of any agency workers and the responsibility to obtain a relevant 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. Our agency managed service provider (currently Manpower) undertakes annual audits of the agencies to ensure they are compliant with our safeguarding requirements.

When using an agency worker, the ordering Manager/Supervisor should ask to see written confirmation from the agency or a copy of the DBS check (this should be no more than three years old), to ensure that each worker supplied to them has had a satisfactory DBS check and checks against the Children's and/or Adult's barred list

#### **14. How will recruitment of Ex-Offenders work?**

Boston Borough Council has a policy ([Appendix H](#)) on the Recruitment of Ex-Offenders, you should refer to this for further details.

We will not employ someone to work in Regulated Activity (post 10th September 2012 definition) with children if they have been barred through the DBS Children Barred list, or someone to work with adults if they are barred through the DBS Adult Barred List. The Council would be breaking the law if we did so. Conversely 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 will report them to the relevant Authorities.

We will use an Enhanced check for Regulated Activity as one part of a range of safeguarding tools for assessing the suitability of preferred candidates, volunteers, contractors, agency workers, those transferring within the Council and the continued employment of those in specific roles which require re-checking. Other tools include thoroughly confirming identity, qualifications, taking up and verifying references and examining dates of employment histories on application forms.

#### **15. What if I have TUPE transferred to Boston Borough Council?**

Where employees transfer to Boston Borough Council as part of a service transfer under the Transfer of Undertakings (TUPE) Regulations, the DBS disclosures of such staff will transfer to Boston Borough Council. Where necessary DBS re-checks will be undertaken on those transferred staff whose DBS checks are older than 3 years at the point of transfer.

#### **16. What if I have only just been checked through DBS and join Boston Borough Council in a position requiring a check?**

At present we will not accept an Enhanced DBS check or Enhanced check for Regulated Activity obtained by an applicant from their previous employer as a disclosure is technically out of date on the day it is issued (i.e. new or further criminal conviction, caution, etc. will not be recorded against the individual after the issue date). However you should be aware of the changes to this detailed below:

**Portable DBS (CRB) checks:** The Protection of Freedoms Act 2012 includes provisions to effect changes relating to Disclosure and Barring Service (DBS) checks (Criminal Records Bureau (CRB) checks prior to 1 December 2012). From Spring 2013, once a DBS check has been completed, the results will be available online for employers to confirm that no new information has been added since the check was originally conducted. This will mean that DBS

checks are portable, and that an employee will not have to have a new check every time he or she starts a new job. Portable DBS checks will be free for volunteers.

**17. What are the fees relating to DBS checks?**

As a current or prospective employee the Authority undertakes to fund the cost of required checks, so there is no cost to you, whether these are first checks or re-checks being carried out.

DBS checks are free of charge to volunteers. Where the checking process is being undertaken on behalf of an umbrella client the fees are as follows:

<u>Type of Check</u>	<u>Fee</u>	<u>What will it check for?</u>
DBS adult first check	£6.00	Check against the DBS adults barred list
Standard DBS Check	£26.00	Spent and unspent convictions, cautions, reprimands, final warnings
Enhanced DBS Check	£44.00	As above - plus any additional information held locally by police forces that's reasonably considered relevant to the post applied for
Enhanced DBS & barred list check (child)	£44.00	As above - plus a check of the appropriate DBS <a href="#">barred lists</a>
Enhanced DBS & barred list check (adult)	£44.00	As above - plus a check of the appropriate DBS <a href="#">barred lists</a>
Enhanced DBS & barred list check (both)	£44.00	As above - plus a check of the appropriate DBS <a href="#">barred lists</a>

**18. What is the role of the evidence checker at the Council?**

This role will usually be undertaken by the People Services Administrator, however one of the countersignatories could act as evidence checker. They will check the documents of the individual and ensure that the correct documents are viewed. A copy of these documents will be retained on the personnel record of the individual. Full guidelines on the documents which can be used and how to check them is available at [Appendix C](#).

**19. What is the role of the Countersignatory at the Council?**

They will ensure each individual application is eligible for a DBS disclosure check, first checking that:

- the position applied for is in 'regulated activity';
- it has a specific category code under which the position is eligible for a DBS check;
- an explanation can be given as to why this category code applies to the position in question;
- They may need to verify information with recruiting managers to ensure that each check is an eligible one;
- They will continue to work with the criminal records bureau and will comply with the DBS guidelines and regulations as part of its role as a registered body;

- They will strive at all times to ensure that all applications are legitimate applications based on the specific DBS category codes.

## **20. What information do you need from me to process a DBS application?**

The list of documents which can be used to confirm your ID can be found at [Appendix C](#)

## **21. When should a Manager allow a prospective employee to start without the relevant DBS check in place?**

In order to protect children and vulnerable adults this will not be an option in any circumstance.

## **22. What if I am an applicant and my DBS check reveals details of convictions?**

If a DBS check reveals details of convictions which may render you unsuitable for the applied post – termed “Cause for Concern” - the appointing manager and a representative of People Services will discuss the situation with you in line with the DBS Code of Practice and through use and completion of [Appendix D: Cause for Concern Risk Assessment Proforma](#). You will be asked to sign the completed risk assessment to verify the information provided and give permission for the risk assessment to be stored securely and later destroyed in accordance with [Appendix G: Policy on the secure storage, handling, use, retention and disposal of disclosures and disclosure information](#).

When assessing any disclosure or declared conviction information received, consideration will be given to a range of issues and the risk assessment will support a managers decision enabling them to assess the suitability of the applicant for their proposed position in light of matter(s) disclosed on their DBS certificate. In some cases a manager may wish to discuss the information with a People Services Adviser for guidance prior to discussing it with you.

Having a conviction will not necessarily bar someone from employment with the Council who will only take a criminal record into account when the conviction is relevant. Protection of your 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.

Managers will not allow personal prejudices to “cloud” their judgement and good practice. They will consider the relevance of offences and be aware that no two offences are exactly alike e.g. a premeditated burglary that involves extensive damage to property and the physical intimidation of the occupants is different from the opportunist convicted of reaching in through an open window and stealing a purse.

If any 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. Advice from People Service should be sought at this point. The People Services Manager will decide if legal advice should also be sought and be responsible for sourcing that advice.

It is an offence for a barred person to work, apply to work or offer to work in regulated activity (post 10th September 2012) 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 People Services Manager will make a referral to DBS to notify them of the individuals attempt to apply for barred work.

### **23. What if I am an employee and my DBS check reveals details of convictions?**

Where existing employees, who have not been previously checked, or their post requires a re-check and subsequently have an adverse disclosure result, the manager should follow the guidance in section the question above, complete [Appendix D: Cause for Concern Risk Assessment Pro-forma](#) and discuss the contents of the check with a People Services Advisor. It may be appropriate to move you to an alternative post with no access to children and/or vulnerable groups, property/information/resources etc. depending on the nature of the disclosures and pending the outcome of a full investigation. It may be that there are no suitable duties that you could undertake during this period which do not bring you into contact with children/adults. If this is the case, the manager must give consideration to suspension on full pay pending the outcome of the disciplinary investigation.

You may confirm or refute the information provided by the DBS. Where this is the case the People Services Advisor in conjunction with your line manager may pursue a range of options and this may include further checking with the DBS.

When completing [Appendix D: The Cause for Concern Risk Assessment Proforma](#) it should be considered whether the conviction is relevant to the post. Evidence of previous convictions will not be used to dismiss a person for poor job performance.

Your track record will be carefully assessed and if it is satisfactory, this should be considered positively. 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 but are not limited to:

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

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 People Services. If your manager decides to consider termination of employment, then you will be informed in writing and a hearing held in line with the Disciplinary Procedure (HR019).

If the disclosure results are considered not to be serious and do not impinge on your ability to work in your existing role then People Services will confirm this in writing within 7 calendar days of making the decision .

#### **24. Once I have been checked do I have to be re-checked at any point?**

If a post requires an Enhanced DBS check or an Enhanced check for Regulated Activity the Council can legally re-check their staff as regularly as they wish to. Where there has been no cause for concern checks will routinely be carried out every three years.

The Council may require existing employees to re-apply for an up to date Enhanced DBS check or Enhanced check for Regulated Activity sooner than three years from the last check. Boston Borough Council 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 (HR019). As part of the investigation process, the employee may be required to undergo an Enhanced DBS check or Enhanced check for Regulated Activity with consideration and legal advice taken by the People Services Manager in respect of human rights and employment legislation.

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 an Enhanced DBS check or Enhanced check for Regulated Activity. All employees will be expected to comply. Any existing employee refusing to comply with the request for an enhanced DBS check or Enhanced check for Regulated Activity will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager and/or to comply with a contractual agreement will lead to them being subject to a disciplinary investigation.

#### **25. Tell me about 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 a requirement for their role with Boston Borough Council 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 (email: sensitive@dbs.gsi.gov.uk or telephone: 0151 6761452).

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 individuals gender

change would become evident through the provision of conviction information on the DBS disclosure certificate showing both gender names.

**26. When would Boston Borough Council make a referral to the DBS?**

The Safeguarding Vulnerable Groups 2006 Act sets a legal duty for the Council to refer information to the DBS if we dismiss or remove a member of staff/volunteer from working with children and/or adults (in what is legally defined as regulated activity) because they meet the referral criteria. The Council has a duty to refer information to the DBS as both a Regulated Activity Provider and as a Local Authority. See [Appendix I](#): Referral to the DBS.

**27. How does the Council comply with data protection relating to DBS checks?**

The Council will ensure that sensitive personal information is held securely, and only seen by those entitled to see it in the course of their duties. An Enhanced DBS or Enhanced check for Regulated Activity and, if applicable, the cause for concern assessment (APPENDIX D: Cause for concern risk assessment pro-forma) will only be stored for as long as necessary, and then confidentially destroyed. See [Appendix G](#): Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

Under section 124 of The Police Act 1997 it is a criminal offence to pass disclosure information about a spent conviction to anyone who is not entitled to receive it. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.

**APPENDIX A: Posts requiring an enhanced DBS check (pre September 2012)**

Note: All of these posts are still entitled to an enhanced DBS check but may not be entitled to a barred list check. Only posts which fall under the parameters of Regulated Activity Post 10<sup>th</sup> September 2012 are entitled to a Barred List Check (See Appendix B).  
 For ease of understanding, this Appendix keeps the terminology that was in place pre 10<sup>th</sup> September 2012.

The enhanced CRB check searches the applicant’s details against criminal records and other sources, including the Police National Computer. The check may disclose convictions, cautions, reprimands and warnings. The applicant and the employer will see the results of the search. The CRB check will either confirm that the applicant doesn’t have a criminal record, or it will disclose any relevant convictions, cautions, reprimands, warnings and, if applicable, whether the applicant has been barred from working with children and/or vulnerable adults. The police can also include non-conviction information, for example, fixed penalties, that may be relevant. An enhanced CRB check uses a range of different information sources, including the records of:

- the Police National Computer (PNC) and other data sources
- the Independent Safeguarding Authority

The Council will obtain an enhanced CRB check for every employee or volunteer who is involved in regulated activity (pre 10<sup>th</sup> September 2012 definition) working with children or vulnerable adults. The same principle is also applied to agency workers and contractors/sub-contractors.

An activity is classed as ‘regulated’ and therefore eligible for an enhanced CRB check if **one** of the three following criteria is met:

1. The work is of a Specified Nature – e.g. teaching, training, supervision, advice, treatment, transport	<b><u>and</u></b>	Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am-6am.		
<b>or</b>				
2. The work is <u>in</u> a Specified Place – e.g. schools, pupil referral units, childcare premises, residential children’s care homes, children’s centres, adult care homes	<b><u>and</u></b>	Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am-6am	<b><u>and</u></b>	Gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with children or vulnerable adults.
<b>or</b>				
3. The work is in a Specified Role – including fostering and adoption or a ‘defined office holder’ such as Director of Children’s Services, Member of a Local Safeguarding Children’s Board, Members of Fostering and Adoption Panels, Member of any committee of a Local Authority that discharges any of that Authority’s education or social services function.				

No distinction is made between paid and voluntary work.

There is a fine line of distinction with some posts across the Council. A library is not a listed establishment in the Safeguarding Vulnerable Groups Act 2006 and therefore all roles must be assessed on the nature of the duties the individual will carry out, i.e. training, teaching, instructing and supervising children or vulnerable adults. Examples include:

- There is a story time session for the general public. Some people may bring their children along and the children may join in. This is classed as incidental contact with children and the assistant is therefore not eligible for a CRB check.
- There is a story time session for children aged 18 and under. The assistant meets the criteria and is eligible for a CRB check even if the children in the club may differ from week to week.

In summary, activities in a library which are open to the general public are not covered by any exceptions in legislation and, therefore, unless a class or event has been organised wholly or mainly for children or vulnerable adults on a regular basis, the instructor/facilitator would not meet the criteria for a CRB check.

Direct supervisors of staff who require an enhanced CRB check and Barred List check, will also require an enhanced CRB and Barred List check themselves.

Certain posts within the Council are not eligible for a CRB check, for example, if an employee has access to sensitive or confidential information such as home addresses, financial details, databases of vulnerable clients or medical information, application for a disclosure does not currently fall within legislation; this is because the employee has no direct contact with children and/or vulnerable adults.

### **What is meant by working regularly?**

The key test is 'frequent' or 'intensive' contact which was clarified in December 2009 by Sir Roger Singleton and the Secretary of State for Children, Schools and Families as:

"The frequent contact test should be met if the work with children takes place once a week or more. The intensive contact test should be met if the work takes place on four days in one month or more or overnight. Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive."

## **APPENDIX B: POSTS REQUIRING AN ENHANCED CHECK FOR REGULATED ACTIVITY (POST 10TH SEPTEMBER 2012 DEFINITION)**

### **Legislation on definition of Regulated Activity**

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012). Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

### **What is meant by working regularly?**

The key test is 'frequent' or 'intensive' contact which was clarified in December 2009 by Sir Roger Singleton and the Secretary of State for Children, Schools and Families as:

“The frequent contact test should be met if the work with children takes place once a week or more. The intensive contact test should be met if the work takes place on four days in one month or more or overnight. Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive.”

### **Regulated Activity (Children) - New Definition of Regulated Activity - Children (post 10th September 2012)**

The new definition of regulated activity relating to children comprises only:

1. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
2. Work for a limited range of establishments ('specified places' – see list below), with opportunity for contact, (but not work by supervised volunteers).

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). Statutory guidance about supervision of activity – currently out for consultation.

- Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once;
- Registered childminding; and foster-carers;

Regulated activity still excludes:

- family arrangements; and
- personal, non-commercial arrangements.

## **Definition of Supervision**

Supervision must be:

- Regular;
- Day to day;
- Reasonable in all the circumstances for the purpose of protecting the children concerned; or
- Carried out by someone who is engaging in regulated activity relating to children.

## **Specified Places**

- Schools and colleges wholly or mainly for under 18 year olds (all or mainly full-time, for children).
- Pupil referral units (also known as Short Stay Schools) not falling within the above.
- Nursery schools.
- Institutions for the detention of children.
- Children's homes.
- Children's centres in England.
- Childcare premises (including nurseries).

No longer in regulated activity - children

## **Activities**

- Activity supervised at reasonable level.
- Health care not by (or directed or supervised by) a health care professional.
- Legal advice.
- "Treatment/therapy" (instead "health care").

## **Establishments**

- Occasional or temporary services, e.g. maintenance (not teaching etc.).
- Volunteers supervised at reasonable level.
- Office holders (England):
- All "positions" removed, e.g. governors, councillors.
- Inspectorates removed.

**Part 1: Regulated Activity in relation to children activities**

The activities in the left-hand column are regulated activity in relation to children, subject to:

- exceptions in the right-hand column;
- different provisions for “establishments” (specified places) in Part 2 below.

Do not read the left-hand column in isolation from the right-hand column or from Part 2.

In the right-hand column:

- “new” exceptions are those in the 2012 Act;
- “existing” exceptions are already in the 2006 Act as amended before the 2012 Act, or in secondary legislation under it.

Changes to Legislation: There are outstanding changes not yet made to the Safeguarding Vulnerable Groups Act 2006, but which are in force.

<b>Activity</b>	<b>Exceptions – not Regulated Activity</b>
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All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the “peer exemption”.
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In para 2(1) of Schedule 4: of the Safeguarding Vulnerable Groups Act 2006:

<p>(a) Teaching, training or instruction of children, 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 overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p> <p>*Sources:</p> <p>- once a week: guidance, March 2010, Annex B, page 70 para B.12;</p> <p>- four or more days/ overnight: Schedule 4, para 10(1) as amended.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3A).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</li> <li>• Activity merely incidental to activity with adults.</li> </ul>
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<p>(b) Care or supervision of children if 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 overnight.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3B)(b).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> <li>Activity merely incidental to activity with adults.</li> </ul>
<p>Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.</p>	
<p>(i) Relevant personal care. Para 1(1B):</p> <p>(a) physical help in connection with eating or drinking, for reasons of illness or disability;</p> <p>(b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> <li>toileting (including re menstruation);</li> <li>(ii-iii) washing, bathing, or dressing;</li> </ul> <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;</p> <p>(e)-(f) other training or advice in relation to (a)-(b).</p>	
<p>(ii) Health care. Para 1 (1C):</p> <p>All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>Health care not by, or directed or supervised by, a health care professional*. Para 2(3B)(a).</li> <li>*Defined by reference to regulatory bodies. Para 1(1C).</li> </ul>

<p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if 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 overnight.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>• Legal advice. Para 2(3C);</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul>
<p>(a), (b) &amp; (c): Definition of “overnight”:</p> <p>In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. Schedule4, Para 10(2).</p>	
<p>Former category (d), treatment or therapy, is now replaced by “health care” provisions.</p>	
<p>(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity by a person who does not have access to the content of the matter, or contact with users.</li> </ul>
<p>(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p> <p>*Prescribed by SI 2009-1548</p>	
<p>In para 1 of schedule 4:</p>	
<p>(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006.</p> <p>*That is: on domestic premises, for</p>	

<p>reward; as opposed to “childcare premises”, part 2 below.</p>	
<p>(5) Fostering** a child.</p> <p>**Defined at section 53.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>• Care arranged by family members and not for reward is not regulated activity. Section 53(8).</li> <li>• Local Authority can foster child with barred person who is, or lives with, a relative of the child. SI 2009-1797, Art 3(2).</li> </ul>
<ul style="list-style-type: none"> <li>• (14) Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity:</li> </ul> <p>at (a) to (f) above; or in establishments in part 2 below;</p>	

## Part 2: Regulated Activity in relation to Children - Establishments

An activity is regulated activity in relation to children if carried out (subject to exceptions below):

- in one of the following establishments;
- frequently (once a week or more often), or on 4 or more days in a 30-day period;
- by the same person, engaged in work for or in connection with the purposes of the establishment; and
- it gives the person the opportunity, in their work, to have contact with children.

Day to day management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

Establishment	Exceptions – not Regulated Activity
Schedule 4, para 3(1) of the Safeguarding Vulnerable Groups Act 2006:	
<p>(a) schools (all or mainly full-time, for children);</p> <p>(aa) pupil referral units (also known as Short Stay Schools) not falling within the above;</p> <p>(b) nursery schools;</p> <p>(d) institutions for the detention of children;</p> <p>(e) &amp; (f) children’s homes;</p> <p>(fa) children’s centres in England;</p> <p>(g) childcare premises (including nurseries).</p> <p>Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i></p>	<p>New:</p> <ul style="list-style-type: none"> <li>• Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a);</i></li> <li>• Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1(2B)(b).</i></li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;</li> <li>• childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>• for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</li> </ul>

Note: Categories for office holders (“Positions” - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed.

## **Regulated Activity (Adults)**

This provides information on the scope of regulated activity in relation to adults, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA) and as amended by the Protection of Freedoms Act 2012 (PoFA)<sup>1</sup> in England and Wales.

The definition of regulated activity for adults from 10th September 2012 will identify the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time. The SVGA will no longer label adults as 'vulnerable' because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult receiving the activities.

This means, for example, anyone providing personal care to an adult is in regulated activity irrespective of whether that occurs in, say, a hospital, a care home, a day care centre, a prison or in sheltered housing.

There is no longer a requirement for a person to carry out the activities a certain number of times before they are engaging in regulated activity. Any time a person engages in the activities set out below, they are engaging in regulated activity.

### **General points**

1. Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.
  - a. Family relationships involve close family (e.g. parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.
  - b. Personal, non-commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.
2. An adult is a person aged 18 years or over.
3. A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

### **New definition of regulated activity Adults**

There are six categories within the new definition of regulated activity.

1. Providing Healthcare

The provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is

regulated activity. A health care professional is a person who is regulated by one of the following professional regulators:

- General Medical Council
- General Dental Council
- General Optical Council
- General Osteopathic Council
- General Chiropractic Council
- General Pharmaceutical Council
- Pharmaceutical Society of Northern Ireland
- Nursing and Midwifery Council
- Health Professions Council

Health care includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. Health care also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with a medical condition. An example of this is taking blood from a blood donor or cosmetic surgery.

- The provision of psychotherapy and counselling to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional, is regulated activity. This would include the provision of psychotherapy and counselling over the telephone. Life coaching is excluded. The secondary legislation that will bring psychotherapy and counselling into regulated activity is soon to be laid before Parliament (as of September 2012).
- First aid, when any person administering the first aid is doing so on behalf of an organisation established for the purpose of providing first aid (for example, St John Ambulance Service), is regulated activity. This includes first aid given by Community First Responders.
- A worker employed for another purpose who volunteers, or is designated, to be that organisation's first aider is not in regulated activity. For example, a person who works in a department store whose role includes being a first aider is not engaging in regulated activity.
- Members of peer support groups (for example, Alcoholics Anonymous), are not in regulated activity, even if the group is directed or supervised by a health care professional.
- All staff who work in community pharmacies and opticians who are not regulated health care professionals will be excluded from regulated activity. For example, a person who works in a high street pharmacy providing health advice to customers over the pharmacy counter will not be in regulated activity.
- Staff in GP surgeries or dental practices who do not provide health care (for example, receptionists) will not be in regulated activity.

## 2. Providing Personal Care

- Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability, is in regulated activity.
- Anyone who prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting and supervision, is in regulated activity.
- Anyone who trains, instructs or provides advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability, is in regulated activity.
- There is one exception to this. Excluded from regulated activity is any physical assistance provided to an adult in relation to the care of their hair when that assistance relates only to the cutting of the adult's hair. This is to ensure that hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

### Illustrative examples:

- A care assistant in a care home who cuts and files an adult's nails to keep the nails short and safe, because the adult cannot do it themselves, because, for example, they cannot see well enough, would be engaging in regulated activity.
- A beauty therapist who attends a day care centre once a week and provides manicures for anyone who would like one, instead of for people who need them because of their age, illness or disability, is not engaging in regulated activity.
- A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, for example spoon feeding that person, or you must be prompting and supervising (for example, prompting and supervising a person with dementia, because without it they would not eat), or you must be training or instructing (for example, teaching a person who has suffered a stroke to eat using adapted cutlery).
- A health care assistant on a hospital ward who feeds an adult because they are too frail to feed themselves would be engaging in regulated activity.
- A worker in a care home who reminds a person with dementia to eat their lunch, and ensures they do so is in regulated activity.

## 3. Providing Social Work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing ongoing support to clients.

#### 4. Assistance with general household matters

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:

- managing the person's cash,
- paying the person's bills, or
- shopping on their behalf.

Illustrative examples:

- A volunteer who collects shopping lists and the cash to pay for the shopping from older adults' homes, who then does the shopping on their behalf, would be engaging in regulated activity.
- A befriender who helps a disabled person compile their weekly shopping list is not in regulated activity.

#### 5. Assistance in the conduct of a person's own affairs

Anyone who provides assistance in the conduct of an adult's own affairs by virtue of:

- Lasting power of attorney under the Mental Capacity Act 2005.
- Enduring power of attorney under the Mental Capacity Act 2005.
- Being appointed as the adult's deputy under the Mental Capacity Act 2005.
- Being an Independent Mental Health Advocate.
- Being an Independent Mental Capacity Advocate.
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006.
- Receiving payments on behalf of that person under the Social Security Administration Act 1992 is in regulated activity.

#### 6. Conveying

The secondary legislation that will prescribe when conveying is regulated activity is soon to be laid before Parliament (as of September 2012).

- Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying for the purpose of enabling the adult to receive services. Health care, relevant personal care and relevant social work are discussed above.
- In addition, hospital porters, Patient Transport Service drivers and assistants, Ambulance Technicians and Emergency Care Assistants who transport an adult because of their age, illness or disability to or from places where they have received,

or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.

- Conveying does not include licensed taxi drivers or licensed private hire drivers, and does not include trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

Illustrative examples:

- A person who volunteers to take an adult to and from their GP appointment on behalf of a community group is in regulated activity. It would not matter if that person knows, or is friends with, the adult they were taking to the appointment if the conveying is on behalf of the group.
- A friend who takes their neighbour to a hospital appointment would not be in regulated activity, as this is a personal relationship.

## **APPENDIX C: The Manager/ Evidence Checkers guide to completing an applicant's DBS application form and verifying identity checks**

Please read this before you start

DBS forms must be obtained through People Services. Telephone 01205 314483.

### **Contents**

- [Hints and tips for completing the form](#)
- [Overview of who should complete each section](#)
- [Role of the Evidence/Data checker](#)
- [Verifying Sections 'A' & 'B'](#)
- Completing question E55
- [Completing Sections 'W' & 'X'](#)
- [Verifying Applicants Identity](#)
- [How to check Identity Documents](#)
- [Where to send the DBS form](#)
- [Identity Checking Verification Form](#)

### **Hints and tips for completing the forms**

1. When you are satisfied that the applicant has correctly and clearly completed all relevant parts of the DBS Disclosure Application Form in accordance with the guidelines provided the sections of the form listed below must be completed in BLACK ink, in BLOCK CAPITALS, one letter or number per box. **DO NOT** use any other colour ink anywhere on the form or your application will be rejected. Do NOT "cross" the number 7.
2. You must also ensure that you insert an appropriate 'X' in the 'registered body use only' boxes against sections 20 to 24 and against section 37.
3. SECTION W - Insert your name in capitals under block 58 and then indicate a cross as appropriate under block 59 to indicate if you have established the identity of the applicant by examining an appropriate range of documents. See below for information on the list of valid identity documents (updated August 2012).
4. SECTION X – Please complete all boxes as appropriate if you require any clarification on any point please contact the People Services on the telephone number below.
5. Do not complete Sections Y and Z.



PEOPLE SERVICES (countersignatories only) should complete: Section Y

DISCLOSURE & BARRING SERVICE should complete: Section Z

### **What is the role of the evidence checker?**

In your role as Evidence Checker you MUST:

- Follow the process outlined below using the list of groups 1, 2a and 2b documents.
- Check and validate the information provided by the applicant on their application form and any continuation sheets.
- Establish the true identity of the applicant through the examination of a range of documents as set out in this guidance.
- Ensure applicant provides details of all names by which they have been known.
- Ensure the applicant provides details of all addresses where they have lived in the last five years.
- Ensure the application form is fully complete and the information it contains is accurate.

If there are any **discrepancies** in the information provided or the identify documents supplied, and fraud is not suspected, please **seek clarification from the applicant**. Failure to do this may compromise the integrity of the DBS and introduce risk into recruitment and licensing arrangements.

You **must not attempt to amend** the application form without the applicant's knowledge and agreement as it will invalidate the declaration by the applicant and may breach data protection legislation.

Please note that:

- You must only accept valid, current and original documentation.
- You must not accept photocopies or documentation printed from the internet e.g. internet bank statements.
- Identity information for the applicant's name, date of birth and address recorded in Section 'A' and Section 'B' on the DBS application form must be validated.
- You should in the first instance, seek documents with photographic identity (e.g. passport, new style driving licence, etc.) and for this to be compared against the applicant's likeness.
- All documents must be in the applicant's current name as recorded in Section 'A' (see below for guidance on recent changes of name).
- One document must confirm the applicant's date of birth as recorded in Section 'A'.
- You must ensure that the applicant declares all previous change of name, and provides documentary proof to support the change of name. If the applicant is unable to provide proof to support the change of name, you should hold a probing discussion with the applicant about the reasons why before considering to validate their identity.

- You must see at least one document to confirm the applicant's current address as recorded in Section 'B', in accordance with the guidance.
- You must be provided with a full and continuous address history covering the last five years. Where possible you should seek documentation to confirm this address history.
- You should cross-match the applicant's address history with any other information you have been provided with as part of any recruitment, such as their work history on an application form. This can highlight if an address has not been given e.g. if the applicant's work history shows that they have worked in Liverpool in the last five years, but the application form only shows Lincoln addresses, you may wish to question the applicant further about this.
- A document from each of the groups should be included only once in the document count e.g. do not accept two bank statements as two of the required documents, if they are from the same bank.
- You should not accept the foreign equivalent of an identity document if that document is listed as '(UK)' on the list of valid identity documents.

### Verifying sections 'A' & 'B'

- (a) You must ensure that you insert an appropriate 'X' in the 'registered body use only' boxes against **sections 20 to 24** and against **section 37** to show you have verified the appropriate documents for these sections.

**Completing question E55:** This question asks the applicant "have you ever been convicted of a criminal offence or received a caution, reprimand or warning?". **Applicants should now ignore this question and instead treat this question as if they were being asked "do you have any unspent convictions, cautions, reprimands or warnings?"**

### Completing sections 'W' & 'X'

SECTION W : This section requires you to enter your name (block 58) and put a 'x' in the appropriate box under block 59 to indicate if you have established the identity of the applicant by examining an appropriate range of documents from the list of valid identity documents (updated September 2012). You can only confirm the identity of the applicant if you have seen documents for Route 1 (see over). Only then should you tick block 59. If you cannot meet Route 1 **leave blank** for People Services to complete at a later date.

SECTION X : Please complete all boxes as appropriate.

Due to a change in legislation, you will need to complete field x61 on the application form differently, and you should start to do this right now. Changing the way you complete this field now, for **all** DBS application forms, will ensure that any DBS certificate issued after the Update Service commences can be used by the individual in the new service, and to take it with them from role to role within the relevant workforce(s). This is because the Police will now use this broader definition of 'workforce' to assess the relevance of any information that they may consider for release, in place of 'position applied for'.

### Action Required

You should now include one of the following phrases in field x61, line 1:

- 'Child Workforce'. Use this for any position that involves working/volunteering with children.
- 'Adult Workforce'. Use this for any position that involves working/volunteering with adults.
- 'Child and Adult Workforce'. Use this for any position that involves working/volunteering with both children and adults.
- 'Other Workforce'. Use this for any position that does not involve working/ volunteering with Children or Adults e.g. security guard.

Line 2 should still be completed with details of the job title which should indicate the type of role to be undertaken or location they will be based in, eg volunteer classroom helper. If you require any clarification on any point please contact People Services on the telephone number below.

To summarise, the accurate completion of both of these fields is critical because they are required for the consideration of relevance by the police, and will allow the applicant to use the Update Service if they choose to do so. They are referenced in the declaration which the countersignatory signs before submitting the application.

If the role meets the new definition of regulated activity and is eligible for a check against the children’s or adults barred list (see [Appendix B](#): Posts requiring an enhanced DBS Check and a Children or Adult Barred List Check (post 10th September 2012 definition), then please put a ‘x’ in the corresponding box in **sections 64-65**

DO NOT complete Sections Y and Z

**Verifying Applicants Identity**

Can applicant produce any documents from Group 1?	
YES	NO
<p><b>Route 1</b> Applicant must produce:</p> <ul style="list-style-type: none"> <li>a. 1 document from Group 1, and</li> <li>b. 2 further documents from either Group 1 , 2a or 2b;</li> </ul> <p>One document must verify current address.</p> <p><b>You have successfully established the identity of the applicant and can tick Block 59</b></p>	<p><b>Route 2</b> Applicant must produce 3 documents comprising of;</p> <ul style="list-style-type: none"> <li>a. 1 document from Group 2a; and</li> <li>b. 2 further documents from Group 2a or 2b; one of which must verify current address.</li> </ul> <p><b>You have not successfully established the identity of the applicant and cannot tick Block 59. Return paperwork to People Services who will now conduct an external ID Check to establish the name and living history footprint of the applicant.</b></p> <p>PLEASE NOTE THIS ROUTE IS NOT APPLICABLE TO NON-EEA NATIONALS.</p>

**If you are unable to use route 1 or 2 to verify identity, please contact People Services to discuss the further options.**

Please note: Documents must be in current name or with a marriage certificate.

- **1 Document must show current address,**
- **1 Date of Birth and**
- **Ideally, 1 photo ID**

A full guide to checking identity is available from the DBS website at

<http://www.homeoffice.gov.uk/dbs>

## List of Valid Identity Documents

<b>Group 1: Primary identity documents</b>	
<b>Documents</b>	<b>Notes</b>
Passport	Any current and valid passport
Biometric residence permit	UK
Current driving licence – photo card with counterpart	UK/Isle of Man/Channel Islands (full or provisional)
Birth certificate - issued at time of birth (Photocopies are not acceptable)	UK and Channel Islands – including those issued by UK authorities overseas e.g Embassies, High Commissions and HM Forces

<b>Group 2a: Trusted government documents</b>	
<b>Document</b>	<b>Notes</b>
Current driving licence – old-style paper version	UK
Current photo driving licence	Non-UK – valid for up to 12 months from the date you entered the UK
Birth certificate – issued after time of birth	UK and Channel Islands
Marriage/civil partnership certificate	UK and Channel Islands
Adoption certificate	UK and Channel Islands
HM Forces ID card	UK
Firearms licence	UK and Channel Islands

<b>Group 2b: Financial and social history documents</b>		
<b>Document</b>	<b>Notes</b>	<b>Issue Date and Validity</b>
Mortgage statement	UK or EEA	Issued in last 12 months
Bank or building society statement	UK and Channel Islands or EEA	Issued in last 3 months
Bank or building society account opening confirmation letter	UK	Must still be valid
Credit card statement	UK or EEA	Issued in last 3 months
Financial statement e.g. pension or endowment	UK	Issued in last 12 months

**Group 2b: Financial and social history documents**

P45 or P60 statement	UK and Channel Islands	Issued in last 12 months
Council Tax statement	UK and Channel Islands	Issued in last 12 months
Work permit or visa	UK	Issued in last 12 months. Valid up to expiry date
Letter of sponsorship from future employment provider	Non-UK or non-EEA only – valid only for applicants residing outside of the UK at time of application	Must still be valid
Utility bill	UK – not mobile telephone bill	Issued in last 3 months
Benefit statement e.g. Child Benefit, Pension		Issued in last 3 months
Central or local government or government agency or local authority document giving entitlement e.g. from the Department for Work and Pensions, the Employment Service, HMRC	UK and Channel Islands	Issued in last 3 months
EU National ID card		Must still be valid
Cards carrying the PASS accreditation logo	UK and Channel Islands	Must still be valid
Letter from Head Teacher or College Principal	UK - for 16-19 year olds in full time education – only used in exceptional circumstances if other documents cannot be provided	Must still be valid

## **How to check Identity documents**

### **How can I check driving licences?**

Do not accept licences, other than those stated in the list of Valid Identity Documents. English, Welsh and Scottish driving licence numbers contain information about the applicant's name, sex and date of birth. This information is written in a special format but can be gleaned and matched against the information provided by the applicant in Section 'a'.

Please note that the date of birth on English, Welsh and Scottish driving licences, issued before 1977, is not recorded as a separate entry on the licence. The date of birth can be deciphered from the driving licence number and checked against the date of birth field on the application form.

For example the format of the number for Christine Josephine Robinson, born 2 July 1975:

ROBIN757025CJ99901  
NNNNNYMMDDYI IC CCCC

1. N = 1st five letters of the surname (if the surname begins MAC or MC it is treated as MC for all).
2. Y = YEAR of birth.
3. M = MONTH of birth (In the case of a female, the number represented by the first M will have the value 5 added to the first digit e.g. a female born in November (i.e. 11) would display '61' in the MM boxes or if born in February (i.e. 02) would display '52').
4. D = DAY of month of birth.
5. I = Initial letter of the first two forenames - if only one, then 9 will replace the second letter. If the licence indicates that the applicant has a middle name, ensure that one has been provided in Section 'a'.
6. C = Computer generated (random number).

Please note, for Northern Ireland; Isle of Man and Jersey driving licences the licence number is in a different format. The licence number is unique to the driver and the 'name' or 'date of birth' validation, as shown above, cannot be used.

### **What if the applicant has been adopted?**

Registered Bodies should inform applicants that if they were adopted before the age of 10, they do not need to provide their surname at birth in Section 'a' of the DBS application form, they should give their adoptive name in this section.

This is because the age of criminal responsibility is deemed to be 10 years, under the Children and Young Persons Act 1933, Chapter 12, Section 50. This means that there is no possibility that an individual could have a criminal record in a name that was used until the age of 10.

## **What if the applicant has changed their name recently and cannot provide ID documents in this new name?**

Documents in a previous name can be accepted ONLY where the applicant can provide documentation supporting a recent change because of:

1. Marriage/civil partnership (marriage/civil partnership certificate).
2. Divorce/civil partnership dissolution (decree absolute/civil partnership dissolution certificate).
3. Deed poll (Deed Poll certificate).

In these instances, you must return a 'Continuation Sheet' with the application form clearly stating:

1. Current and previous names.
2. Date of the change.
3. Reason for the change.
4. The document you have seen to support this change.

Ensure that all 'Previous names' and 'Dates used' are recorded in Section 'a' (Additional Personal Details).

## **What should a Registered Body do if they suspect false identity or documents?**

If you suspect that you have been presented with a false identity or documents at the time of application, do not proceed with the application process.

1. To report suspected identity fraud go to [www.actionfraud.org.uk](http://www.actionfraud.org.uk).
2. For further information on identity fraud click here [www.met.police.uk](http://www.met.police.uk).
3. If you suspect identity fraud once a DBS check has been submitted, you must contact the DBS.

You are also advised that under Section 8 of the Asylum and Immigration Act 1996 all employers in the United Kingdom are required to make basic document checks to help prevent anyone from working illegally. By carrying out checks employers will be able to establish a defence for themselves if any of their employees are found to be working illegally at a later date. Further details are available on the [UK Border Agency](#) website and the UK Border Agency Employer Helpline on 0845 010 6677.

The following guidance applies to individuals applying for a DBS check and those applying for Lead or Counter-signatory status.

## **How do I check for indicators of fraud?**

Always check for signs of tampering when checking identity documents. Documents should be queried if they display any signs of damage, especially in the areas of personal details

such as the name and the photograph. The following guidelines should help you look out for any suspicious signs when authenticating documents.

### **Checking a passport**

Check the general quality and condition of the passport. Treat it with suspicion if it is excessively damaged; accidental damage is often used to conceal tampering. Photographs should be examined closely for signs of damage to the laminate or for excessive glue or slitting of the laminate; these signs would indicate photo substitution. If the photograph appears excessively large, this might indicate an attempt to hide another photograph underneath. There should also be an embossed strip embedded into the laminate, which will catch a portion of the photograph.

Check there is no damage to this area. If the passport is from a foreign national, you can still follow the same general procedures as above.

A Basic UK passport checking guide is available from the [Home Office](#) website.

### **Checking a photo driving licence**

Examine the licence for evidence of photo tampering or any amendment of the printed details.

Further information on new driving licences and UK Driving Licence level 1 security features are available from the <http://www.homeoffice.gov.uk/> website.

### **Checking an old style driving licence (no photograph)**

Remove the document from the plastic wallet and check that it is printed on both sides. It should have a watermark visible by holding the licence up to the light and there should be no punctuation marks in the name or address. The 'Valid To' date should be the day before the bearer's 70th birthday (unless the bearer is already over 70). The 'Valid To' date can therefore be cross-referenced with the applicant's date of birth detailed in Section A.

### **Checking a birth certificate**

Birth certificates are not evidence of identity, and are easily obtained. Although certificates issued at the time of birth may give more confidence that it belongs to the individual, unlike a recently issued certificate they will not show if any information has been corrected or superceded by a new registration.

Check the quality of paper used; genuine certificates use a high grade. There should be a watermark visible when the document is held up to the light. Any signs of smoothness on the surface would indicate that original text might have been washed or rubbed away. There should be no signs of tampering, changes using liquid paper, overwriting or spelling mistakes.

The following list provides some general information about certificate completion which may help to establish whether the certificate and/or the details have been falsified. This is provided solely as a guide and is not exhaustive:

- The certificate format used should be appropriate for the year of registration.
- Only the surname should be entered in upper case, not the forename(s).
- Dates of birth should be shown with the day and month in words and the year in figures.

The following information might indicate that the certificate has been altered:

- Spacing between falsely added particulars might be irregular compared to original information. 'Thick' or 'thin' spacing might infer particulars have been added.
- False particulars might not have been aligned with other words.
- Characters may not be of the same size or shape with the rest of the particulars.
- Movement of handwriting may look mechanical and does not flow with the rest of the particulars.
- Changes might not be consistent e.g. parents' surnames might be altered, but not the signatures.
- The area around falsely added or removed particulars may react differently under an ultra violet light i.e. show signs of staining. In addition, such areas of paper may appear thinner where the paper fibres have been disturbed by abrasion.

**For more information on checking birth certificates, please refer to guidance on the Identity and Passport Service section of the [Home Office](#) website.**

### **Checking an EU photo identity card or HM Forces Card**

Examine the card for evidence of photo tampering or any amendment of the printed details.

### **Checking a firearms licence**

Check the licence is printed on blue security paper with a Royal crest watermark and a feint pattern stating the words 'Home Office'.

Examine the licence for evidence of photo tampering or any amendment of the printed details, which should include home address and date of birth.

The licence should be signed by the holder and bear the authorising signature of the chief of police for the area in which they live, or normally a person to whom his authority has been delegated.

### **Other forms of identification**

Ensure all letters and statements are recent, i.e. within a three month period. Do not accept documentation printed from the internet. Check letter headed paper is used, bank headers

are correct and all documentation looks genuine. The address should be cross-referenced with that quoted in Section 'b'.

### **Where to go for help**

The PRADO website is provided by the Council of European Union. Employers are able to use this website to identify the basic safeguards contained in European documents and a few more other nationality documents.

The Public Register of Authentic Identity and Travel Documents Online ([PRADO website](#))

### **Where to send you DBS form**

When you are satisfied the applicant has correctly and clearly completed all relevant parts of the DBS application form, and you have completed Parts W & X in accordance with the guidelines, please complete the identity checking verification form indicating the documents you have seen to verify identity, and providing the details of where you want the outcome for the application to go to. Return this verification form, with the completed DBS application, in a confidential envelope to:

People Services  
Boston Borough Council  
Municipal Buildings  
West Street  
BOSTON  
Lincolnshire  
PE21 8QR

Telephone 01205 314273

Email: [debby.cooper@boston.gov.uk](mailto:debby.cooper@boston.gov.uk) OR [becky.gardner@boston.gov.uk](mailto:becky.gardner@boston.gov.uk)

**If this guide is not sufficient a full e-guide version to completing the Application Form is available from the [DBS website](#).**

## Identity Checking Verification Form

I certify that I have checked the content of the DBS Application Form and Verified the Documents indicated over-leaf, where only Group 2 ID is evidenced I have witnessed the Applicant sign their consent for further External Identity Validation.

I have completed the 'registered body use only' verification boxes, in Section A & B of the DBS application form and completed Sections W & X. I have kept a record of the form reference number and date of birth to enable me to check the [on-line tracking system](#).

(a) Please send the letter confirming the outcome of this application to me

at .....

.....

or to .....

at .....

.....

This is a 3 yearly follow up check Yes / No

Payment has been included with this/these application(s) Yes / No

(b) Signed ..... Date .....

Name (in capitals) Mr, Mrs, Miss, Ms .....

Job Title .....

Contact Telephone Number(s) .....

E-Mail Address .....

E-Mail Address for billing .....

## Identity Document's Verification Check List.

*Please tick to confirm with documents you have seen.*

### Group 1 – Primary Trusted Identity Credentials:

Current valid Passport	
Biometric Residence Permit (UK)	
Current Driving Licence (UK) (Full or provisional) Isle of Man /Channel Islands; (A photo card is only valid if presented with the associated counterpart licence; except Jersey).	
Birth Certificate (UK and Channel Islands) - issued at the time of birth; Full or short form acceptable including those issued by UK authorities overseas, such as Embassies, High Commissions and HM Forces.	

### Group 2a – Trusted Government / State Issued Documents

Current UK Driving Licence (old style paper version)	
Current Non-UK Photo Driving Licence (valid for up to 12 months from the date the applicant entered the UK)	
Birth Certificate (UK & Channel Islands) – (issued after the time of birth by the General Register Office/relevant authority i.e. Registrars – Photocopies are not acceptable)	
Marriage / Civil Partnership Certificate (UK & Channel Islands).	
Adoption Certificate (UK & Channel Islands).	
HM Forces ID Card (UK).	
Fire Arms Licence (UK & Channel Islands).	

### Group 2b – Financial / Social History Documents

Mortgage Statement (UK or EEA)** (Non EEA statements must not be accepted)	
Bank / Building Society Statement (UK or EEA)** (Non EEA statements must not be accepted)	
Bank / Building Society Account Opening Confirmation Letter (UK).	
Credit Card Statement (UK & EEA)* (Non EEA statements must not be accepted)	
Financial Statement** - e.g. Pension, endowment, ISA (UK).	
P45/60 Statement** (UK & Channel Islands).	
Council Tax Statement** (UK & Channel Islands).	
Work Permit / Visa (UK)** (UK Residence Permit) (valid up to expiry date).	
Letter of Sponsorship from future employment provider (Non-UK / Non EEA only – valid only for applicants residing outside of UK at time of application).	
Utility Bill (UK)* - not mobile telephone.	
Benefit Statement* - e.g. child allowance, pension.	
A document from Central / Local Government / Government Agency / Local Authority giving entitlement (UK & Channel Islands)* e.g. from the Department of Work and Pensions, Job Centre, Job Centre Plus, Social Security	
EU National ID Card.	

Cards carrying the PASS accreditation logo (UK& Channel Islands).	
Letter from Head Teacher or College Principal (16/19 year olds in full time education – only used in exceptional circumstances when all other documents have been exhausted).	

\* **documentation should be less than 3 months old**

\*\* **documents should be issued within past 12 months**

**Route One: (You must make the best possible effort to follow ‘Route One’ ID verification first).**

At least 1 document from Group 1 must be seen and a further 2 documents from Groups 1, 2a or 2b one of which must verify the applicants current address.

**Route Two: (Only follow ‘Route Two’ ID verification if you have failed to check via ‘Route One’).**

A total of 3 documents from Group 2 must be seen.

- One document from Group 2a **and**
- 2 further documents from Group 2a or 2b; one of which must verify the applicants current address **and** the applicant will be required to provide written permission with their DBS application for Boston Borough Council to carry out an external ID check using a validation service, to check the details against their records to establish identity and living history footprint. At the time of publishing this policy the validations service used is ComplianceAssist Limited.

**Route Three: (If you are unable to follow ‘Route One’ or ‘Route Two’ contact this office).**

**Applicants Authorisation for External Identity Verification**

I authorise a Boston Borough Council and DBS Countersignatory to contact a relevant External Identity Validation Service to confirm/establish my identity as I am unable to provide any Group 1 ID.	
I understand this information will only be used as necessary to assist in my DBS application.	
Signed:	Date:
Print Name:	Date of Birth: .....
	Form Ref, No. F.....

**APPENDIX D: CAUSE FOR CONCERN RISK ASSESSMENT PRO-FORMA**

This form should be completed by People Services Adviser for discussion with the Service Manager. The information recorded on this pro-forma 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 check.

Name of Manager: .....

Name of Applicant: .....

Name of People Services contact .....

Position Applied For .....

Directorate .....

Date of Risk Assessment: .....

Questions	Comments
Does the applicant 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? In the event of a challenge from the applicant the matter needs referring to the disputes team at the DBS.	
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. Whether the offence has since been decriminalised by Parliament.	
What was the nature of the crime, when did the relevant offence(s) occur e.g. less/more than two years ago, what were the circumstances involved and what was the sentence?	
Do the matters disclosed form any pattern? Was the offence a one-off, or part of a history of offending e.g. is the offence likely to re-occur?	
What is the seriousness of the offence(s) and relevance to the safety of other employees, customers, service users and property?	

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?	
Are the type and/or nature of the offence(s) directly relevant to the post?	
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?	
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?	
Did the applicant declare the matters on the DBS disclosure application form and/or the Boston Borough Council application form?	
Are there any mitigating circumstances e.g. any relevant information offered by the applicant about the circumstances that led to the offence being committed e.g. the influence of domestic or financial difficulties?	
Has the applicant's circumstances changed since the offence was committed, making re-offending less likely (e.g. improved personal circumstances, drug addiction therapy etc.). 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?	
What level of and how much supervision is available to the applicant?	
Can safeguards be implemented to reduce and/or remove any risk e.g. no unsupervised contact?	
Any questions/additional comments from the applicant?	

**Declaration by applicant and any additional comments in support of their employment**

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 this proforma will be held securely by People Services for 25 years from the date of the assessment if appointed/6 months if not appointed. It will only be accessed if a) Regulatory/enforcement organisations ask for clarification on this recruitment decision, or b) any allegations are made against me during the course of my employment with the Council, where an investigation would require access to this data. It will be destroyed in line with the Council's Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

**I consent to the above:**

Signature: ..... Date.....

Name:.....(please PRINT)

**Additional comments from the Recruiting Manager**

**Outcome of Risk Assessment**

- \*Continue with offer of employment
- \*Withdraw offer of employment
- \*delete as appropriate

Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions, safeguards to be implemented by the employing service

Name of Recruiting Manager: .....

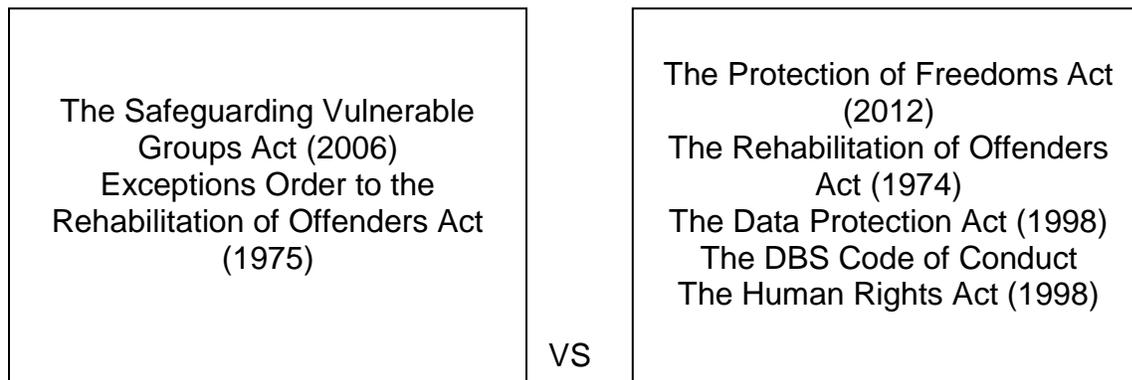
Signature of Recruiting Manager: .....

## **APPENDIX E: Relevant Legislation**

### **INTRODUCTION TO THE LEGISLATION**

- F.1 The Safeguarding Vulnerable Groups Act (2006)
- F.2 The Rehabilitation of Offenders Act (1974)
- F.3 Exceptions Order to the Rehabilitation of Offenders Act (1975)
- F.4 The Protection of Freedoms Act (2012)
- F.5 The Data Protection Act (1998)
- F.6 The Disclosure & Barring Service and the DBS Code of Practice
- F.7 The Human Rights Act (1998)

The Council is committed to safeguarding the welfare of those accessing our services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Exceptions Order to the Rehabilitation of Offenders Act (1975). However, this duty must be carried out with due regard to all other relevant legislation including the Rehabilitation of Offenders Act (1974), the Data Protection Act (1998), the DBS Code of Conduct and the Human Rights Act (1998). In effect the Council needs to balance the legislation carefully to ensure we recognise the rights of ex-offenders and remain within the legal requirements of the law whilst meeting our Safeguarding responsibilities.



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### **F.1 The Safeguarding Vulnerable Groups Act (2006)**

The Safeguarding Vulnerable Groups Act (2006) provides the legislative framework for the new Vetting and Barring scheme (VBS). In summary the Act allows for the Independent Safeguarding Authority (ISA) to make all decisions about who should be barred from working with children and vulnerable adults. The Vetting and Barring scheme will consider those activities that are classified as 'regulated'. These activities include both paid and unpaid (voluntary) work. This Act has been superseded to a degree by the Protection of Freedoms Act (2012). Regulated Activity based upon the SVGA can be seen under [Appendix A](#): Posts requiring an enhanced DBS check (pre 10<sup>th</sup> September 2012 definition).

## **F.2 The Rehabilitation of Offenders Act (1974)**

The Rehabilitation of Offenders Act (1974) (ROA) ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. After a certain period of time certain (not all) convictions will become 'spent' which means a person no longer needs to disclose these to potential employers. See [Appendix I](#). However there are a number of professions and posts where the ROA is 'over ridden' by the Exceptions Order to the Rehabilitation of Offenders Act (1975) – see below.

## **F.3 Exceptions Order to the Rehabilitation of Offenders Act (1975)**

Various kinds of employment, occupations and professions are 'exempted' and this Exceptions Order to the Rehabilitation of Offenders Act (1974) overrules the employment rights an ex-offender would otherwise have in respect of 'spent' convictions. Ex-offenders have to disclose information about spent and unspent convictions provided the employer states clearly on the job advert and literature and the application form that the job applied for is exempted. These posts are those where it is legally permissible to ask an applicant to complete an enhanced DBS check (which discloses information on all spent and unspent convictions). See [Appendix A](#): Posts requiring an enhanced DBS check (pre 10<sup>th</sup> September 2012 definition) and [Appendix B](#): Posts requiring an enhanced check for regulated activity (post 10<sup>th</sup> September 2012 definition).

## **F.4 The Protection of Freedoms Act (2012)**

The Protection of Freedoms Act (2012) makes a number of amendments to the vetting and barring scheme under the Safeguarding Vulnerable Groups Act (2006), which are in force from 10<sup>th</sup> September 2012. The 2012 Act introduces a new definition of "regulated activity" in relation to children and adults and the activities covered. See [Appendix B](#): Posts requiring an enhanced check for regulated activity (post 10<sup>th</sup> September 2012 definition).

## **F.5 The Data Protection Act (1998)**

Under the Data Protection Act (1998) the Council has a duty to ensure confidentiality of all information - where all information will be handled and stored appropriately and used only for its proper purpose. Individuals have the right to see their own personal data subject to the rights of confidentiality of any third parties involved in that information and will receive their own copy of the Enhanced DBS check certificate.

## **F.6 The Disclosure & Barring Service and the DBS Code of Practice**

The DBS was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). Its primary role is to help employers in the public, private and voluntary sectors identify individuals who may be unsuitable for certain types of work, especially that involving contact with children or other vulnerable members of society, by providing controlled access to criminal records and related information through its Disclosure service.

The Code of Practice is produced by the Disclosure & Barring Service and all staff, Members, Partnerships, Agencies and Contractors must abide by its contents. The Code is published under section 122 of the Police Act 1997 in connection with the use of information provided to registered persons (Disclosure information) under Part V of that Act.

It is a requirement of the DBS Code of Practice that all Registered Bodies must treat applicants who have a criminal record fairly and not to discriminate because of a conviction or other information revealed. The DBS is empowered to refuse to issue a disclosure if it believes that a registered person, or someone on whose behalf a registered person has acted, has failed to comply with the Code of Practice. This code can be accessed at: [DBS Code of Practice](#).

### **F.7 The Human Rights Act (1998)**

Under the Human Rights Act anyone who believes their rights as set out in the European Convention on Human Rights have been violated by a Public Authority is able to raise their complaint before a UK court. Managers should therefore be aware of the possibility of legal challenge from ex-offenders who believe their rights have been violated under Article 14 of the Act, which guarantees freedom from discrimination.

Equally, they should be aware that victims of physical/verbal/sexual abuse caused by employees known to have a criminal record might also seek legal challenge on the grounds that the organisation failed to protect them sufficiently. In order to avoid prosecution by the courts, the Council needs to apply policies in such a manner that ensure vulnerable people are protected but at the same time treat ex-offenders fairly.

## **APPENDIX F: Statement of good conduct (SOGC)**

The DBS can only access criminal records held on the Police National Computer and this does not hold details of convictions, cautions, reprimands or warnings from outside the United Kingdom. An enhanced DBS check will not provide details of an overseas criminal record that may, or may not exist. All persons who are appointed to a post requiring an enhanced DBS check must however undergo a DBS check regardless of their length of stay in the UK even if they have never been resident.

All new arrivals to the UK must provide, in addition to all documentation in relation to the immigration requirements, and DBS requirements, a Statement of Good Conduct (SOGC). The definition of new arrival is an applicant who has worked or been resident overseas in the previous five years for a period of more than three months and this includes citizens of the UK who have worked or lived 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. 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. SOGC from the appropriate UK embassy can be authenticated by contacting that embassy. Contact details for those countries that have a representative in the UK can be found at <http://www.fco.gov.uk/en/travel-and-living-abroad> or by telephoning 020 7008 1500.

References must be obtained from previous employers and in the case of those seeking to work with children and/or adults, one of these references should be from the last employer where the individual worked with clients. In addition particular care must be taken with the usual range of other pre-employment checks such as confirming identity, qualifications, verifying right to work in the UK and employment medical questionnaires.

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.

Countries that currently carry out CRB checks include Australia, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Irish Republic, Italy, Jamaica, Latvia, Malaysia, Malta, Netherlands, New Zealand, Philippines, Poland, South Africa, Spain and Sweden. If an applicant is from a country listed above then they should be asked to follow the procedure for that country. Details can be found at [www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/legal-services/local-document-search/010-certificate-of-good-conduct/](http://www.fco.gov.uk/en/about-us/what-we-do/services-we-deliver/legal-services/local-document-search/010-certificate-of-good-conduct/)

## **APPENDIX G: Policy on the secure storage, handling, use, retention and disposal of disclosures and disclosure information**

The Council complies fully with the DBS code of practice regarding the correct handling, use, retention and disposal of disclosures and disclosure information. It complies fully with its obligations under the Data Protection Act and other relevant legislation.

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

A photocopy of the "top portion" of the disclosure certificate is retained on the personnel file of the individual. This is to avoid a situation where on an original there could be conviction information on the reverse side. Additionally there should be no indication of the existence of "additional information to follow" in the top right hand corner (this is a reference indicating that additional information is to be forwarded by a Chief Police Officer).

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

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

Once a recruitment decision or other relevant decision has been made we do not keep disclosure information for any longer than is necessary and they are destroyed confidentially after six months which allows for consideration and resolution of any disputes or complaints. In exceptional circumstances it may be considered necessary to keep disclosure information for longer than six months. We will consult the DBS before we do this and give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time the usual conditions regarding safe storage and strictly controlled access will apply.

Exceptions allowed by the DBS are as follows:

- For establishments regulated by the Care Quality Commission/ Ofsted Social Care Regulations - disclosure must be destroyed after 12 months.
- For staff employed in residential schools - disclosures must be destroyed after 12 months
- For disclosure relating to fostering or adoption - disclosures must be destroyed after 36 months

Once the retention period has elapsed, we will ensure that any disclosure information is immediately destroyed by secure means, i.e. by shredding, pulping or burning. Whilst awaiting destruction disclosure information will not be kept in an insecure receptacle (e.g.

waste bin or confidential sack). We will not keep any photocopy or other image of the disclosure or any copy or representation of the contents of the disclosure.

If [Appendix D](#): Cause for Concern Risk Assessment is completed this is kept securely for:

- 6 months from the date of the Assessment if not appointed
- 25 years from the date of the Assessment if appointed

The form will then be destroyed as above.

In order to maintain the Council's DBS database (a record of disclosures undertaken) we will keep a record of the name of the subject, the date of the disclosure, the position for which the disclosure was requested, the unique reference number of the disclosure and the details of any associated recruitment decision taken e.g. employed or not employed.

## **APPENDIX H: Rehabilitation of offenders and self disclosure**

The Rehabilitation of Offenders Act (ROA) 1974 ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. A person convicted of a criminal offence and who receives a sentence of no more than 2.5 years in prison, whether suspended or not, is protected by the Act if they are not convicted again during a specified period referred to as the "Rehabilitation Period". Generally the more severe the penalty the longer the rehabilitation period. Please refer to the section on Rehabilitation Periods for further information.

Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be "spent". Once a conviction has been spent, the convicted person does not have to reveal it or admit its existence. However there are exceptions.

### **Exceptions to the Act**

The Council has a duty of care to protect the well-being of the public and service users and in particular children and adults in its care who are considered to be especially vulnerable or at risk. The Exceptions Order overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Ex-offenders have to disclose information about spent, as well as unspent convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempted. Exempted occupations fall into the following categories:

- Work that brings the person into contact with groups such as the infirm, elderly, mentally ill and young people under the age of 18.
- Professionals that have legal protection, for example, nurses, doctors, dentists, chemists, accountants.
- Posts concerned with the administration of justice, for example, police officers, lawyers, probation officers, and traffic wardens.
- Health service appointments.

Pre-employment checks and other safe recruitment practices are a requirement to ensure that people who may pose a threat to children and adults are not given positions of trust where they could exploit those entrusted to their care in most circumstances, including when applying for a job. In most circumstances, an employer cannot refuse to employ someone, or dismiss them, on the basis of a spent conviction.

### **Job Applicants**

Boston Borough Council is committed to the fair treatment of its staff, potential staff and users of its services regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal

records. We select all candidates for interview based on their skills, qualifications and experience.

As an organisation using the DBS disclosures to assess applicants' suitability for positions of trust, we comply fully with the DBS Code of Practice and undertake to treat all applicants for positions fairly.

A disclosure is only requested when it is legal to do so. The parameters are set out in the Council's Disclosure & Barring Service (DBS) Policy (HR042). For those positions where a disclosure is required all job adverts, application forms, and recruitment material will contain a statement that a disclosure will be requested before an appointment is made. Unless the nature of the position allows the Council to ask questions about a person's entire criminal record we only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act (1974).

We ensure that all those in the Council who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act (1974).

Having a criminal record will not bar you from working at the Council. This will depend on the nature of the position and the circumstances and background of your offences. We do not discriminate unfairly against any subject of a disclosure on the basis of conviction or other information revealed. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position before any offer of employment is considered.

### **Protection of a Rehabilitated person**

The unauthorised disclosure of information about a spent conviction is illegal. Unauthorised disclosure is where an official with access to information about the person's criminal record discloses this information other than in the course of official duties. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.

### **Self Disclosure**

Where a disclosure is to form part of the recruitment process, we ask all applicants to voluntarily provide details of their criminal record at an early stage in the application process. We guarantee that this information will only be seen by those who need to see it as part of the recruitment process. This information will be treated in strict confidence, will be securely stored and kept for only as long as is necessary. Failure to disclose convictions on an application form that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

## Council Employees

Following appointment, employees have a responsibility to report any relevant changes of circumstance to their employer. This is contained within the Council's Code of Conduct. These include any criminal investigations, convictions or warnings they may become the subject of, or any other relevant information which a reasonable employer might consider to impact on the employment of that individual. Employees should always discuss with their line manager any difficulties or problems that may impact on their suitability to work with children and adults so that appropriate support can be provided or action taken. Failure to disclose convictions with the line manager may result in disciplinary action.

Any existing employee may be asked to undertake a DBS re-check in line with Council policy. Refusing to comply with such a request may result in the employee being subject to formal disciplinary action for deliberate and/or unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager/supervisor, and/or to comply with a contractual agreement.

Confidentiality cannot be guaranteed where concerns arise about the welfare or safety of children or adults but any information sharing will be in accordance with relevant legislation and policy and only as is necessary in the circumstances.

<b>REHABILITATION PERIODS</b>		
<b>Sentence</b>	<b>AGE 18 OR OVER WHEN CONVICTED</b>	<b>UNDER 18 WHEN CONVICTED</b>
<u>Convictions resulting in terms in imprisonment in excess of 2 ½ years are never spent.</u>		
Prison and Young Offender Institution – sentence of more than 6 months – 2 ½ years	10 years	5 years
Prison and Young Offender Institution – sentence 6 months or less	7 years	3 years
Fines, compensation order, probation (for people convicted on or after 3 February 1995), community service, combination order, action plan, curfew order, drug treatment, reparation order.	5 years	2 ½ years or until the order expires (whichever is the longer)
Borstal (abolished 1983)	7 years	7 years
Detention Centres (abolished 1988)	3 years	3 years
Absolute Discharge	6 months	6 months

### **Sentences for which the rehabilitation period varies**

Probation order (for people convicted prior to 3 February 1995), conditional discharge, bind over, supervision order, care order.	Until the order expires (minimum period of 1 year)
Attendance Centre Orders	Length of the order plus 1 year
Hospital Order	2 years after the order expires (with a minimum of 5 years from the date of conviction)

### **Suspended sentences**

A suspended prison sentence is treated as one that has taken effect and the rehabilitation period is the same as for the full sentence.

### **Consecutive and concurrent sentences**

An offender may be sentenced at one time for several offences. If the court decides that imprisonment is the right penalty for more than one offence, it can order that these run concurrently or consecutively. If a person is sentenced to two terms of imprisonment of six months each, to run concurrently, the person will be subject to a rehabilitation period of seven years. If they were ordered to run consecutively, they would be subject to a rehabilitation period of ten years.

### **Extension of rehabilitation periods**

Rehabilitation periods may be extended if a person receives further convictions while an original rehabilitation period is still running. If the second conviction is for a summary offence, i.e. an offence that can be tried only in a Magistrates' Court, then the first rehabilitation period is not affected and both rehabilitation periods will run their separate course. If, however, the second conviction is more serious and could be tried in a Crown Court, then neither conviction will become spent until the longer rehabilitation period has expired.

Where the original sentence resulted in a disqualification, probation or other penalty, the rehabilitation period will not be affected if the person is convicted of a further offence.

## **APPENDIX I: Referral to the Disclosure & Barring Service (DBS)**

This appendix should be read in conjunction with the Council's DBS Policy (HR042), the Council's Children's Safeguarding Policy and the Council's Disciplinary Policy (HR019).

The DBS was created with the merger of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA). The ISA was created to prevent unsuitable people from working with children and adults. The ISA had four statutory duties:

1. To maintain a list of individuals barred from engaging in regulated activity with children;
2. To maintain a list of individuals barred from engaging in regulated activity with adults;
3. To make well-informed and considered decisions about whether an individual should be included in one or both barred lists; and
4. To reach decisions as to whether to remove an individual from a barred list.

The DBS has responsibility for making barring decisions on the Children's list and the Adults list, previously known as:

- the PoCA list under the Protection of Children Act 1999,
- the PoVA list under the Care Standards Act 2000,
- List 99 under the Education Act 2002

### **The legal duty to refer**

The Safeguarding Vulnerable Groups Act (2006) sets a legal duty for the Council to refer information to the DBS if we dismiss or remove a member of staff/volunteer from working with children and/or adults (in what is legally defined as regulated activity) because they meet the referral criteria. The Council has a duty to refer information to the DBS as both a Regulated Activity Provider and as a Local Authority. Regulated Activity is defined in Appendix B of the DBS Policy.

### **Duty to refer as a Regulated Service provider**

The Council, as a regulated activity provider, has a duty to refer all allegations of abuse or misconduct towards a child or adult made against a member of staff or a member of staff of a contractor or partner organisation. The terms 'staff' or 'employee' should be read as including unpaid staff (volunteers). The term 'employer' should be read as including any person or organisation responsible for volunteers.

A referral must meet **both** criteria below:

- The Council withdraws permission for an individual to engage in regulated activity, or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not regulated activity because;
- They think that the individual has:

**EITHER** - engaged in relevant conduct i.e. conduct:

- That endangers a child or adult or is likely to endanger a child or adult;
- If repeated against or in relation to a child or adult, would endanger them or would be likely to endanger them;
- Involving sexual material relating to children (including possession of such material);
- Involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate;
- Conduct of a sexual nature involving a child or adult, if it appears to DBS that the conduct is inappropriate.

**OR** - satisfied the harm test: where the Council believes that an individual:

- may harm a child or adult,
- may cause a child or adult to be harmed,
- puts a child or adult at risk of harm,
- attempts to harm a child or adult, or
- incites another to harm a child or adult.

**OR** - received a caution or conviction for a relevant offence.

If both conditions have been met the information must be referred to the DBS once the regulated activity provider has gathered sufficient evidence as part of their investigations to support their reasons for withdrawing permission to engage in regulated activity and in following good practice, consulted with their Safeguarding Officer. . The DBS has produced a range of factsheets, information and guidance to assist in making a referral and these can be found on the [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) website.

If following an internal investigation, it is decided that the best course of action is to issue a formal warning and return the employee to a regulated activity with additional training the Council still have a duty to refer to the DBS. This is because we have satisfied both conditions by withdrawing the employee from regulated activity and we have established that relevant conduct or the harm test has been satisfied.

### **Duty to refer as an Authority**

It is possible that, in the course of a child protection or adult safeguarding investigation, or by other means, a Local Authority officer may become aware that a person not employed by the Council may have satisfied the relevant criteria but that no referral has been made by any other agency. Where possible the employer of the individual concerned should be informed of their legal duty to refer and of the implications for failing to do so. If they still fail to fulfil this duty then a referral should be made as follows.

- In cases involving adults the manager in the relevant department, will initiate a referral with the People Services Manager.
- In cases involving children a referral will be initiated by the Safeguarding Officer, who will advise the People Services Manager of any such referral.

## **No legal duty to refer**

There are situations in which the Council may make a referral but there is no legal duty to refer for example following an internal investigation there is insufficient evidence to show relevant conduct occurred but there are serious concerns about that individual. Even though the circumstances do not meet legal requirements, the individual may have left the Council employment and we know or believe they work in regulated activity in another setting. This may be reported as “patterns of behaviour” form evidence on which the DBS might make a future decision to bar.

Although there is a legal duty to refer in certain circumstances there is now the power (but not a mandatory duty) for Local Authorities to make a retrospective referral to the DBS. This is when there is evidence that an individual has engaged in relevant conduct prior to 12<sup>th</sup> October 2009 and that the person is engaged or may engage in regulated activity.

## **Duty to provide information to the DBS if requested**

The DBS has the legal right to receive information where it asks for it from regulated activity providers and personnel suppliers. There may be occasions during an investigation when the DBS will ask for additional information to assist it with its decision making. However, this legal right only extends to existing information that you might hold. Employers are not required to undertake any additional investigations or enquiries.

## **Who should make a referral to the DBS?**

Responsibility for initiating a referral (via People Services or the Safeguarding Officer) will lie with the Manager who has raised the initial concern. To ensure that the Council has a consistent approach to the delivery of information to the DBS all referrals should be made through one of these two contacts, who have responsibility for making the referral to the DBS. All issues which may lead to a referral will be discussed, investigated and co-ordinated by Managers with support from the People Services Manager.

## **How to make a referral to the DBS**

The DBS has a single referral form process for use in relation to both children and vulnerable groups. DBS requires the referral form and all associated papers to be presented in hard copy and this will be done through a secure delivery process.

People Services will securely retain a copy of the referral form and all associated papers for future reference, as the DBS may need to refer to any specific case on a subsequent occasion.

## **Useful contacts**

People Services Manager: Rebecca Gardner  
01205 314270 [becky.gardner@boston.gov.uk](mailto:becky.gardner@boston.gov.uk)

Safeguarding Officer : Andrew Fisher  
01205 314554 [andy.fisher@boston.gov.uk](mailto:andy.fisher@boston.gov.uk)

**APPENDIX J: Posts within Boston Borough Council (at time of publishing) that may, subject to risk assessment, require a DBS check**

- Lead DBS countersignatories and DBS countersignatories
- Play & Physical Activities Officer
- Swimming Teachers
- Leisure Attendants
- Fitness Instructors
- Leisure Pool Manager
- Duty Officers
- Housing Advice Officers
- Senior Housing Advice Officer
- Anti social behaviour caseworkers

Risk assessments exist for these posts and will be reviewed in line with any amendments to job duties or legislation. Any other post would require a risk assessment to be undertaken to determine whether a DBS check or barred check is relevant. The form at [Appendix K](#) can be used to gather information to inform any decision in this respect.

**APPENDIX K: Risk assessment (pre-employment) pro-forma**

This form should be completed if a post is newly created, or the nature of the post has changed. This form will assist to assess whether or not a post should carry a disclosure check as part of the pre-employment clearance. [NB. All posts which involve contact with children or vulnerable groups should be assessed as subject to some level of disclosure].

Once complete you may wish to discuss the level set with a People Services representative to ensure the level has been appropriately set in relation to the roles and responsibilities of the post.

Position to be assessed:.....

What is the nature of the work?
Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers and clients?
Does the post involve any direct responsibility for finance or items of value?
Does the post involve direct contact with the public?
What level of supervision will the post holder receive?
Level of Disclosure Needed
Overall assessment and Comment

**Name of Manager:** ..... (please print)

**Date of Assessment** .....

# Regulated Activity Decision Making Flowchart

