



# Queen's Croft High School

## DBS POLICY

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## **DBS policy**

**The following policy has been commended by Staffordshire County Council for adoption by Queen's Croft High School. This has been updated with localised information October 2017.**

### **Legislative Framework**

Details of the key pieces of relevant legislation applicable to this policy are provided in Appendix 4.

#### **1. Purpose**

To ensure that Staffordshire County Council's arrangements in respect of criminal record checking comply with relevant legislation, codes of practice and guidance, and constitute good practice.

#### **2. Scope**

This policy applies to applicants for appointment to all positions that are working with vulnerable groups, and therefore, eligible for a criminal record check.

This policy will also be applied to school governors, and to people involved with the school in any capacity where their position meets eligibility criteria for criminal record checks.

The principles of the policy will also be applied to agency staff as well as contract/partnership staff where the contract/partnership agreement with the school specifies the requirement for criminal record checks. In such cases the school will expect organisations to provide written evidence of compliant processes and the suitability of the workforce servicing a contract.

#### **3. Policy Statement**

The school is committed to fulfilling its duty to protect children to whom it provides a service by ensuring the highest integrity of those appointed to positions of trust and in doing so, complying with the relevant legislation and codes of practice.

The school is also committed to the elimination of discrimination and to equal treatment in employment. This applies to prospective employment and all stages of employment, including recruitment and selection, and the commitment extends to applicants with criminal records.

The school will utilise Disclosure and Barring Service (DBS – former Criminal Records Bureau - CRB) criminal records certificates to inform safer recruitment decisions by checking the background of applicants to determine that they do not have a history that renders them unsuitable for a position of trust.

The school will only request a criminal record certificate where it is relevant to do so, and will not require a level higher than that which is appropriate for the position.

#### **4. Posts Subject to DBS checks**

The school will only specify that a criminal record check is required in respect of positions that meet the prevailing eligibility criteria. Statutory Guidance is provided by the DfE Keeping Children Safe in Education document, this gives guidance to school for assessing risk and to determine the appropriate level of criminal record check for positions.

The level of DBS required depends on the role and duties of an individual within the school, and whether they are considered to be working in 'regulated activity'.

All paid employees in school are considered to be working in regulated activity and an enhanced DBS with Children's Barred List check must be obtained.

A person will be considered to be in 'regulated activity', if as a result of their work they:

- will be responsible, on a regular basis in a school or college, for teaching, training instructing, caring for or supervising children; or
- will carry out paid, or unsupervised unpaid, work regularly for a school or college where that work provides an opportunity for contact with children; or
- engage in intimate or personal care or overnight activity, even if this happens only once.

#### **5. DBS Checks**

##### **5.1 DBS Criminal Record and Barred List checks**

The school will utilise the DBS Disclosure Service to undertake criminal record checks. Independent checks of the barred lists (pending receipt of a criminal record certificate) will also be used, in line with DBS/regulator guidance, where the circumstances are such that service users would be at significant risk if individuals were not recruited. In such instances, individuals appointed to positions will only be employed in accordance with the supervisory arrangements stipulated by legislation/regulators.

##### **5.2 Recruitment**

DBS checking is a key element in safer recruitment processes which also incorporate checks in respect of qualifications, employment history/gaps, references and eligibility to work in the UK.

Where a post has been assessed as requiring a criminal record check, applicants will be made aware at the earliest opportunity that they will be required to disclose unspent criminal convictions in the job advertisement and related correspondence/documentation.

Details of convictions will be requested from all applicants through completion of the application form – guidance is provided to applicants regarding what offences must

be disclosed. Details revealed in the application form will only be shared with those who need to be aware of the information as part of the recruitment process.

Short-listed applicants will be requested to complete details for a criminal records check, but only the successful candidate's details will be submitted to the DBS.

### **5.3 Internal and external applicants**

Requesting a criminal record check will be applied equally to internal and external applicants applying/being appointed to posts that have been assessed as requiring a criminal record check. In respect of internal applicants, an existing certificate will be accepted in the circumstances described in paragraph 6 below.

### **5.4 Existing employees**

Existing employees will be subject to a criminal record check where they apply for a position involving greater responsibility for children than their existing position, and if they do not have an existing certificate at the appropriate level for the position for which they are applying. Accepting an existing certificate should only be considered as described in paragraph 6 below apply.

Existing employees may also become eligible for a criminal record check in response to changes in guidance, statute or the regulatory standards relating to the nature of the duties of their post (e.g. National Minimum Standards), or where their suitability to continue to work with children becomes a cause for concern. [In such situations we would carry out all relevant checks as if the individual was a new member of staff. We would also do this if the individual moves from a post that is not regulated to one that is.](#)

### **5.5 Rechecking**

The school will only require employees to be rechecked where guidance, statute or regulatory standards require this, or where their suitability to continue to work with children or vulnerable adults has become a cause for concern. Rechecking requirements will be specified in contract/partnership agreements where relevant.

### **5.6 Checking – applicants from abroad**

The school will require applicants from abroad to complete the relevant section of the application form regarding criminal convictions.

They will also be required to complete a criminal record check application and, if successful, this will be submitted to the DBS.

The school will also seek guidance, on a case by case basis, in order to determine what other criminal record checks can and should be undertaken. [This may include further additional checks as appropriate on candidates who have lived or worked outside the UK, including \(where relevant\) any teacher sanctions or restrictions](#)

imposed by a European Economic Area professional regulating authority, and criminal records checks or their equivalent.

## **6. Accepting Existing Certificates/Portability**

### **6.1 Applicants**

External applicants may have a criminal record certificate and a subscription to the update service and may offer this to the school.

The school will accept criminal record certificates, with an update service subscription, in the following circumstances:

- Where school has the applicant's permission to undertake a status check
- Where the certificate is for the appropriate workforce and at the appropriate level for the position
- Where the update service determines the certificate 'remains current' – if new information is available the school will request a new criminal record certificate

Internal applicants may have an existing criminal record certificate and offer this to the school. The school will accept a criminal record certificate previously requested by Staffordshire County Council where the certificate is for the appropriate workforce and at the appropriate level for the position.

### **6.2 TUPE transfers**

Under TUPE regulations, in respect of transfers in and out of the school, the intention of the regulations is that employment transfers and is continuous. As such, portability of criminal record certificates will be deemed applicable in such circumstances. The exception to this is where the transfer results in an individual working at a different level with children and the appropriate level of certificate is not already in place.

This principle will also apply in terms of contracts for the provision of works, goods, services and/or utilities, where a contract transfers to/from the school to/from another provider.

## **7. Commencing employment without a certificate**

Applicants will only be able to commence employment without a certificate where guidance/statute supports this. Each situation will be appropriately risk assessed and mechanisms may be put in place to mitigate the risk e.g. a separate barred list check may be requested in an employee is to start work in a regulated activity before the DBS certificate is available.

## **8. Disclosing criminal convictions during employment**

Employees in positions for which a criminal record check is stipulated will be required to declare any cautions, convictions or reprimands that they receive during

the course of their employment. The relevance of any conviction, caution or reprimand will be considered as detailed in paragraph 9 below.

## **9. Considering the relevance of convictions**

The school is committed to ensuring that applicants for positions, and existing employees who have had occasion to be checked/rechecked, with a criminal record are treated fairly, in line with the Council's Policy on the Recruitment of Ex-Offenders (Appendix 2).

Receipt of a certificate containing criminal record information will not automatically render an applicant or existing employee unsuitable for a position unless stipulated by statute/guidance. However, individuals commit a criminal offence if they seek to work with children/adults if they are listed on the Childrens/Adults Barred List.

The school will only take into account convictions that are relevant to the position. The overriding consideration will be the duty to safeguard children. The suitability of an applicant or existing employee will be reviewed in light of all the information available and having regard to accepted best practice.

Should the receipt of a positive certificate result in an existing employee being deemed unsuitable for the position that they are in, attempts will be made to redeploy them to another role where appropriate. However, this redeployment will be based on a position being immediately available, and the individual will not receive prior consideration or pay protection. Should alternative employment not be available, then employment will be terminated with due notice.

Further guidance regarding assessing the relevance of convictions is provided at Appendix 1.

## **10. Agency and third party staff**

All agencies and third party organisations will be required to provide written notification that they have carried out the necessary safer recruitment checks that school would otherwise perform. The school will check that the person presenting themselves for work is the same person on whom the checks have been made and request photographic ID documentation along with evidence of their current address.

## **11. Volunteers**

When recruiting volunteers to the school, the same safeguarding measures are to be adopted as for paid staff, with checks being completed before they commence work. The specific checks are determined based on the activity, whether this is regulated activity and whether they will be supervised. All volunteers undertaking regulated activity in school are required to undertake an enhanced DBS check. A barred list check is determined on whether they are likely to be unsupervised with the children.

## **12. Contractors**

The school will ensure that any contractor, or any employee of the contractor, who is to work at the school has had the appropriate level of DBS check. This will be:

- An enhanced DBS check with barred list information for contractors engaging in regulated activity
- An enhanced DBS check, not including barred list information, for contractors who are not in regulated activity but whose work provides them with an opportunity for regular contact with children
- Occasional or temporary contractors who are not in regulated activity do not require a DBS or barred list check

School will obtain the DBS check for self-employed contractors.

Contractors who have not had any checks will not be allowed to work unsupervised or engage in regulated activity under any circumstances. School will check the identity of all contractors and their staff on arrival at the school.

## **13. Governors**

All governors in school will have an enhanced DBS check without barred list information. They will have an enhanced DBS check with barred list information if working in regulated activity.

## **14. Trainee/student teachers**

Where applicants for initial teacher training are salaried by us, we will ensure that all necessary checks are carried out.

Where trainee teachers are fee-funded, we will obtain written confirmation from the training provider that necessary checks have been carried out and that the trainee has been judged by the provider to be suitable to work with children.

## **15. Use of criminal record information and sharing information**

The school will comply with the DBS Code of Practice in respect of use of criminal record information. The Staffordshire County Council has developed a Policy on security of criminal record Information (Appendix 3) which must be adhered to.

The school will never reveal to applicants any additional information supplied by a police force in addition to criminal record information unless the permission of the relevant Chief Constable is given.

## **16. Monitoring and Review**

The provisions of this policy will be subject to regular review and as required by changes in legislation and guidance.

## **17. Accountabilities**

**Head Teachers/managers/appointing officers** – responsibility for ensuring, as an integral part of the recruitment process, that criminal record and other specified checks are initiated at the appropriate level for identified posts; for exercising discretion in line with this policy in respect of individuals commencing work before a DBS certificate has been received, and for ensuring (in respect of school based staff specifically) that appropriate records are created and maintained.

## **Appendix 1 - Guidance – Positive DBS Criminal Record Certificates**

If you wish to seek advice regarding the decision making process for criminal record certificates which reveal information please contact your HR Advice service.

### **How does a recruiter decide whether a person's criminal record is relevant?**

An applicant's suitability must be judged in the light of the results of all the relevant pre-appointment checks carried out on them. The fact that a person has a criminal record does not automatically make them unsuitable. Recruiters must make a judgement about suitability, taking into account only those offences which may be relevant to the particular role in question.

In deciding the relevance of convictions a number of points should be considered, after providing the individual the opportunity to discuss the details of the convictions to understand the context of the offences:

1) **Honesty:** did the applicant self-disclose prior to completion of the DBS application? Failure to disclose could be considered a breach of trust and confidence and could be cause for concern.

2) **Context:** was there a geographic, social, financial or relationship issue which contributed to the offence; is it likely to be repeated – if circumstances have changed does that reduce the risk of re-offending?

3) **The nature of the offence:** In general, convictions for sexual, violent or drug offences will be particularly strong contra-indications for work with vulnerable groups; however, remember that offences vary within the UK (different laws in England, Scotland & Wales) and also that offences can become decriminalised. Finally, offences abroad will require further investigation due to significant cultural differences regarding criminal convictions.

4) **The nature of the appointment:** Often the nature of the appointment will help to assess the relevance of the conviction. For example, serious sexual, violent, drug or drink offences would give rise to particular concern where a position was one of providing care. Driving or drink offences would be relevant in situations involving provision of transport.

5) **The age of the offence:** Offences which took place many years in the past may often have less relevance than recent offences. However, convictions for serious violent or sexual offences or serious offences involving substance abuse are more likely to give cause for continuing concern than, for instance, an isolated case of dishonesty committed when the person was young. The potential for rehabilitation must be weighed against the need to protect the vulnerable.

6) **The frequency of the offence/s:** a series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction.

7) **The degree of remorse;** or otherwise, expressed by the applicant and their motivation to change.

Anyone who is barred from working with children or adults commits an offence if they apply for, offer to do, accept or do any work in a regulated position. It is also an offence for an employer knowingly to offer work in a regulated position to an individual who is barred from working with the client group, or to fail to remove such an individual from such work. The DBS inform the police if a barred person attempts to obtain work in a regulated position.

The [www.gov.uk](http://www.gov.uk) website provides guidance for employers on employment of ex-offenders: <https://www.gov.uk/DBS-criminal-records-bureau-check/arranging-checks-as-an-employer>

**Positive DBS Disclosure risk assessment**

<b>CONFIDENTIAL – POSITIVE DISCLOSURE ASSESSMENT RECORD</b>	
<b>Decision maker’s Interview/ risk assessment form</b>	
<b>Name of applicant:</b>	
<b>Establishment/Service:</b>	
<b>Position/Role:</b>	
<b>Certificate No:</b>	<b>Certificate Date:</b>
<b>Manager dealing:</b>	<b>Date:</b>
Did the applicant disclose convictions prior to receipt of criminal record certificate: Y/N	
Has the applicant demonstrated remorse/regret/commitment to change: Y/N	
Is there a pattern to the offences: Y/N (if YES give details)	
Is the nature of the offences similar: Y/N (if YES give details)	
Length of time since last offence?	
What is the person’s explanation of the circumstances relating to the offences?	
Is the behaviour which constituted the offence, a cause for concern; If so why? Y/N	

<p>Are the offences related to the type of work which will be undertaken? Y/N (consider job description)</p>	
<p>Will the applicant pose a potential risk to service users/colleagues? Y/N (if YES give details)</p>	
<p>Will the applicant commence/continue in the role? Y/N</p> <p>(please explain the decision; including any mitigating action agreed/implemented e.g. – increased supervision, limiting access to certain areas and/or vulnerable groups)</p>	
<p>Signed:</p>	<p>Print Name:</p>
<p>Date:</p>	<p>Outcome notified to Shared Service Date:</p>

## **Appendix 2 – Policy Statement on the Recruitment of Ex-offenders**

As a Disclosure and Barring Service (DBS) Registered Body, SCC treats applicants who have a criminal record fairly and does not discriminate unfairly because of a conviction or other information revealed.

- As an organisation using the Disclosure and Barring Service (DBS) Disclosure service to assess applicants' suitability for positions of trust, SCC complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of a conviction or other information revealed.
- SCC is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, caring responsibilities, age, physical/mental disability or offending background.
- This written policy on the recruitment of ex-offenders is available to all applicants at the outset of the recruitment process.
- 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.
- A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms, job adverts and recruitment information will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
- Where a Disclosure is to form part of the recruitment process, we encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process. We request that this information is sent securely and we guarantee that this information will only be seen by those who need to see it as part of the recruitment process.
- Unless the nature of the position allows SCC to ask questions about your entire criminal record, we only ask about 'unspent' and/or unfiltered convictions as defined in the Rehabilitation of Offenders Act 1974/ amended by the Protection of Freedoms Act 2012.
- We ensure that all those in SCC who are involved in the recruitment process have been suitably trained and supported 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/ amended by the Protection of Freedoms Act 2012.
- 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. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
- We make every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and make a copy available on request.
- We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

**Having a criminal record will not necessarily bar applicants from working for the Council.** This will depend on the nature of the position and the circumstances and background of offences.

## **Appendix 3 – Policy Statement on Secure Storage, Handling, Use, Retention and Disposal of Criminal Record Information**

The following is the Staffordshire County Council policy statement on the secure storage, handling, use, retention and disposal of criminal record certificates.

### **General Principles**

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust, Staffordshire County Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of criminal record certificates and disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of information and has a written policy on these matters, which is available to those who wish to see it on request.

### **Storage and Access**

Criminal record 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 controlled and limited to those who are entitled to see it as part of their duties. Electronic disclosure information is held on the Council SAP HR/Payroll system which is protected with a secure password and accessible only to those authorised to view it in the course of their duties.

### **Handling**

In accordance with section 124 of the Police Act 1997, criminal record information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we ensure information is marked 'confidential'. The Council recognises that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

### **Usage**

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

### **Retention**

Once a recruitment decision has been made, we do not keep information (electronic or paper/hardcopy) for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints.

If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six-months, we will consult the DBS about this and will give full consideration to Data Protection and the Human Rights of an individual

before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

## **Disposal**

Once the retention period has elapsed, we will ensure that any information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, we will keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

For disposal of electronic Disclosure results and information, the e-bulk system automatically deletes the record in line with the DBS retention guidelines above; automatically archiving only the minimum information as laid out in the DBS Code of Practice and the same as the paper process.

Before acting as an Umbrella Body (processing criminal record information on behalf of other employers), we ask employers to sign an agreement to satisfy ourselves that they will handle, use, store, retain and dispose of Disclosure information in full compliance with the DBS Code and in full accordance with this policy. We also ensure that anybody or individual, at whose request applications for Disclosure are countersigned, has such a written policy and, if necessary will provide a model policy for that body or individual to use or adapt for this purpose.

## **Appendix 4 – Legislative Framework**

**Rehabilitation of Offenders Act (1974)** – this legislation introduced the concept of ‘spent’ and ‘unspent’ convictions and created exceptions to the general rule that spent convictions should be ignored for purposes of employment. The 1975 Exceptions Order introduced exceptions for posts involving working with children and vulnerable adults.

**Police Act (1997)** – this legislation brought about the creation of the Criminal Records Bureau (CRB) Disclosure Service.

**Data Protection Act (1998)** – this created specific principles around the storage and use of personal information (paper and computerised) regarding individuals. It also gives rights to individuals to access such information – known as ‘subject access’.

**Protection of Children Act (1999)** – this introduced a cross sector system to identify people unsuitable to work with children and introduced the requirement of the Secretary of State to keep a list (POCA List) of individuals considered unsuitable. It made it an obligation for employers to check employees/applicants against this list.

**Criminal Justice and Court Services Act (2000)** – this created powers for courts to disqualify individuals who have committed specific offences from working with children. It also created the concept of ‘regulated’ positions for which criminal record checks are necessary.

**Education Act (2002)** - this gives the Secretary of State the power to make directions which prohibit or restrict a person's employment in the education sector. This legislation is supported by the Education (Prohibition from Teaching or Working with Children) Regulations 2003.

**Care Standards Act (2000) (Establishments and Agencies)(Miscellaneous Amendments) 2004** – this introduced the possibility of people commencing in care positions prior to receipt of a full Disclosure subject to suitable supervision and induction arrangements.

**School Staffing Regulations (2009)** - these introduced the requirement for all new staff joining schools from May 2006 to be subject to an enhanced check. Furthermore, they introduce the requirement for schools to maintain a single central record of all staff employed in the school covering recruitment checking/vetting that has been undertaken.

**DBS Code of Practice** – although not a piece of legislation, all organisations registered with the DBS to access the Disclosure Service are expected to comply with the Code of Practice. Failure to do so could ultimately lead to the registered body losing registration status.

**Safeguarding Vulnerable Groups Act 2006** – created definitions of regulated activity determining eligibility for criminal record checks. Created the Independent

Safeguarding Authority (ISA) as an independent decision making body charged with determining when inclusion and review of barred list status was appropriate.

**Protection of Freedoms Act 2012** – amended definitions of regulated activity determining eligibility for criminal record checks. Abolished the ISA and CRB – created the merged Disclosure and Barring Service.