

Isle of Wight Council DBS POLICY

References to “The Council” in this policy shall apply to Medina House School.

References to “Elected Members” in this policy shall apply to Governors of Medina House School.

References to “senior managers/managers” in this policy shall apply, as appropriate, to the Headteacher, Assistant Headteacher and members of the SLT.

References to “policies/procedures” in this policy shall apply to policies and procedures approved by the governors of Medina House School.

February 2021

IWC Policy - Adopted by Governors on

Signed Chair of Governors

Review February 2022

Policy Information	
Policy Title	DBS Policy
Policy Purpose	To enable Managers to make safer recruitment decisions by assessing the suitability of an individual for work in specific roles in line with the Disclosure and Barring Service (DBS) code of practice.
Policy Contact	pauline.bolwell@iow.gov.uk
Policy Date	January 2020
Supersedes	<ul style="list-style-type: none"> • DBS Guidance for Managers - v1.4 - February 2012 • Employment Screening Policy - v1.3.2 - April 2014
Consultation	Consulted with all recognised Trade Unions
Scope	<p>This policy applies in its entirety to all Council employees, including schools and fire.</p> <p>Where appropriate, this policy will be updated to account for any changes in legislation without further consultation</p> <p>This policy is non-contractual and therefore does not form part of the employee's contract of employment (and the Council reserves the right to amend or replace this policy at any time).</p>

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2 The Disclosure and Barring Service (DBS)

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions by processing and issuing DBS checks for England and Wales. The DBS also maintains the adult's and children's Barred Lists and makes considered decisions as to whether an individual should be included on one or both of these lists and barred from engaging in regulated activity.

The Isle of Wight Council complies fully with the DBS code of practice and complies fully with its obligations under the current Data Protection legislation regarding the correct handling, use, storage, retention and disposal of disclosures and disclosure information.

The Isle of Wight Council's Policy Statement on the Recruitment of Ex-offenders is at Appendix 1.

2.1 The Disclosure and Barring Service Check

2.1.1 Disclosure and Barring Service Checks

The DBS is an executive agency of the Home Office which was established under Part V of the Police Act 1997 to improve access to criminal records information for employers and potential employers. The DBS enables organisations in England and Wales to obtain details of spent and unspent criminal convictions and other related information including those people who have been barred from working with children and/or adults in certain circumstances.

The DBS provides employers and organisations with information to assist them to assess the suitability of an individual for work in specific roles. The service is also available to other professional, licensing and regulatory bodies who are required to perform DBS checks.

In England and Wales the DBS provides certificates for:-

- a basic check, which shows unspent convictions and conditional cautions
- a standard check, which shows spent and unspent convictions, cautions, reprimands and final warnings
- an enhanced check, which shows the same as a standard check plus any information held by local police that's considered relevant to the role
- an enhanced check with a check of the barred lists, which shows the same as an enhanced check plus whether the applicant is on the adults' barred list, children's barred list or both

The requesting organisation receives a corresponding disclosure revealing whether or not the certificate issued is clear. The type of information and amount of detail provided by each level of check is prescribed by the Police Act 1997 Part V and the Police Act 1997 (Criminal Records) Regulations 2002 and further restrictions have been applied under the Protection of Freedoms Act 2012.

2.1.2 Disclosure Checking Service

The Isle of Wight Council uses an umbrella body who act as a registered body to process criminal record applications on our behalf with the DBS. The DBS comprehensively checks each applicant. DBS Checks are an essential pre employment requirement for some roles, especially those working in Child and Adult Workforces. DBS Checks are just one in a range of pre-employment checks which must be carried out in order to assess the suitability of candidates. Any matter of potential concern in a disclosure must be fully discussed with the applicant and with your Human Resources Advisor before a decision to either withdraw or confirm a conditional offer of employment is taken.

2.1.3 Carrying out Criminal Records Checks

A Manager must request a DBS Check to determine whether an applicant or current employee has a criminal record, including where:

- The position is one which, by law, requires the employer to make such an inquiry (for example, Regulated Activity). Checks must be performed following the legal requirements to ensure applicants are checked at the correct level. The DBS Workforce guidance should be followed to determine the correct level of check <https://www.gov.uk/government/publications/dbs-workforce-guidance>; if an Enhanced check is applicable, then a Barred List eligibility check must be performed for the relevant workforce(s).
- Some roles may involve activity that does not require a mandated check, for example an administrative officer who has access to personal data in Adult Social Care or Children's Services. In this instance a Basic Check may be appropriate but is not a legal requirement.

The law places limits on the information an employer is entitled to obtain about a person's criminal record history, the information that a prospective employee is obliged to provide and the reliance which an employer can place upon that information.

In certain situations an employer is permitted to request and take account of information by virtue of exclusions to the Rehabilitation of Offenders Act 1974 (ROA 1974).

It is not legal to ask a current or prospective employee to provide a criminal history check through a Subject Access Request. This may lead to information being provided by the Police or other sources that is not relevant or not legally acceptable and would be a breach of Data Protection legislation.

2.1.4 Spent and Unspent Convictions

The Rehabilitation of Offenders Act 1974 (ROA 1974) provides that, subject to certain exceptions (see below), those convicted of a criminal offence who have not re-offended during a specified period from the date of conviction will be deemed rehabilitated and their convictions "spent". The period of time that must elapse before a conviction is spent will depend upon the sentence imposed (not the nature of the offence), although it should be noted that prison sentences of more than four years never become spent. The current time periods are set out below.

Rehabilitation Periods Table

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
A custodial sentence which is any of the following: a) over 4 years, b) an indeterminate sentence, c) a minimum sentence for public protection or d) a prison sentence with an extended period on licence	These sentences are excluded from rehabilitation and so will always be disclosed	These sentences are excluded from rehabilitation and so will always be disclosed
A custodial sentence of over 2 years 6 months but not exceeding 4 years	7 years from the date on which the sentence (including any licence period) is completed	3 years 6 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of over 6 months but not exceeding 2 years 6 months*	4 years from the date on which the sentence (including any licence period) is completed	2 years from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months*	2 years from the date on which the sentence (including any licence period) is completed	1 year 6 months from the date on which the sentence (including any licence period) is completed
A sentence of service detention	1 year from the date on which the sentence was completed	6 months from the date on which the sentence was completed
Dismissal from Her Majesty's Service	1 year from the date of conviction	6 months from the date of conviction
Fine	1 year from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order or youth rehabilitation order	1 year from the last day on which the order has effect	6 months from the last day on which the order has effect
Driving endorsements	5 years from the date of conviction	2 years 6 months from the date of conviction

Driving disqualification	When the period of the disqualification has passed	When the period of the disqualification has passed
Simple caution, youth caution	Spent immediately	Spent immediately
Conditional caution, youth conditional caution	3 months or when caution ceases to have effect if earlier	3 months or when caution ceases to have effect if earlier
Compensation order	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required
Absolute discharge	Spent immediately	Spent immediately
Relevant orders** (orders that impose a disqualification, disability, prohibition or other penalty)	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent

*Suspended custodial sentences are treated the same as custodial sentences for this purpose. It will be the length of the sentence imposed by the court, not the period it is suspended for that dictates when it will become spent.

**Relevant orders include conditional discharge orders, restraining orders, hospital orders, bind overs, referral orders, care orders and any order imposing a disqualification, disability, prohibition or other penalty not mentioned in the table.

If the post is exempt from the Rehabilitation of Offenders Act 1974 all cautions, reprimands and final warnings must be disclosed as part of the application process. If a caution, reprimand, warning, or conviction is on record then it **will** be listed as part of the disclosure certificate for Standard and Enhanced DBS checks to the applicant regardless of whether it is classed as spent or unspent as prescribed under the Legal Aid, Sentencing and Punishing Act 2012. An enhanced DBS Check will also show any information held by local police considered reasonably relevant relating to child and adult workforces and if the applicant is on the barred list for the role (where applicable).

The applicant must bring in their printed disclosure certificate to the recruiting manager.

Where someone is interviewed for a position covered by an exception to the Rehabilitation of Offenders Act 1974 (ROA 1974), the interviewing panel should be aware that:

- Questions about spent and unspent convictions can be asked and the applicant will be under an obligation to answer, provided the questions are asked for the purpose of assessing the applicant's suitability for the post.

Such enquiries are termed **excepted questions**. The applicant must be informed that spent convictions (in addition to unspent) should be disclosed by completing and submitting the Declaration of Offences form as part of the job application form. The job application form and declaration of offences will be considered by the selection panel during the shortlisting process.

Any failure to answer an excepted question or give truthful information on the existence of spent convictions (in addition to unspent) will be a valid reason to withhold employment. If the applicant is a current employee undergoing a re-check then failure to provide truthful information could result in dismissal.

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 also lists specifically excepted occupations, offices and professions.

<http://www.legislation.gov.uk/ukxi/1975/1023/schedule/1/made>.

2.1.5 The Limits of Disclosure

The Isle of Wight Council recognises that there are limits to both voluntary and DBS disclosure in that:

- The disclosure will only show the employer whether a check is 'clear' or 'not clear'
- The disclosure may not reveal any offences whilst committed overseas

The applicant will be required to provide further information to their recruiting manager if the disclosure is returned as 'not clear'.

The DBS certificate is only correct as at the date of issue, unless the applicant is subscribed to the DBS Update Service.

2.1.6 Work with Children and Adults

As the Isle of Wight Council employs or engages people to work with children or adults in a Regulated Activity ([check here](#)) an Enhanced with Barred List DBS check should be sought for that person.

2.1.7 Childcare Disqualification Regulations

In July 2018, the Department for Education issued new statutory guidance on the application of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (now referred to as 2018 Regulations) and related obligations under the Childcare Act 2006 in schools:

www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006

It applies to schools/local authorities to understand their responsibilities under the [Childcare Act 2006](#), where staff work with:-

- under 5s
- under 8s in before school settings such as breakfast clubs and after school provision

Under the 2018 Regulations, schools are no longer required to establish whether a member of staff providing or employed to work in childcare is disqualified by association. Regulation 9 does not apply to staff in a relevant school setting; disqualification by association is only relevant where childcare is provided in domestic settings (e.g. where childminding is provided in the home) or under registration on domestic premises. Accordingly, schools should not ask their staff questions about cautions or convictions of someone living or working in their household.

A person may be disqualified through:

1. inclusion on the Disclosure and Barring Service (DBS) Children's Barred List
2. being found to have committed certain violent and sexual criminal offences against children and adults which are referred to in regulation 4 and Schedules 2 and 3 of the 2018 Regulations (note that regulation 4 also refers to offences that are listed in other pieces of legislation);
3. certain orders made in relation to the care of children which are referred to in regulation 4 and listed at Schedule 1 of the 2018 Regulations.

A person who declares disqualification by association is not permitted to continue to work in a setting providing care for children under the age of 8 unless they apply for and are granted a waiver from OFSTED: www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers. Any enquiries about the waiver application process should be made to Ofsted by emailing disqualification@ofsted.gov.uk,

Further help on how the childcare disqualification arrangements should be applied in schools can be obtained from the Department for Education by email to mailbox.disqualification@education.gov.uk or phone 01325 340 409. Statutory guidance is also available for '[Keeping children safe in education](#)' and '[Statutory framework for early years foundation stage \(EYFS\)](#)'.

A Staff Disqualification Declaration Form can be found in the DBS Procedure.

2.1.8 Fair Use of Disclosure Information

The DBS is concerned that disclosure information could disproportionately affect recruitment decisions or uncover bias in potential employers. Disclosure information is also, by its nature, highly sensitive (and sensitive personal data for the purposes of the Data Protection legislation). DBS disclosures therefore must only be used for the purposes of making a decision regarding the suitability for an individual to undertake the duties of a position within the Isle of Wight Council/school.

2.1.9 Employees Changing Post within the Isle of Wight Council

Any existing employee who obtains a new appointment within the Isle of Wight Council, who has not already obtained the appropriate clearance for the role they have been appointed to, will be required to undertake a new DBS check before commencing in the role. If an employee who has undergone an Enhanced Children's with Barred List check is moving to either Beaulieu House or the Disabled Children's Intervention Team, then a new Enhanced Children's with Barred List check will be required if one has not been carried out within the previous 3 years.

2.1.10 Existing Employee Re-checks

The Isle of Wight Council will as a matter of course require employees operating in regulating activity to provide a self-declaration of any offences annually. A copy of the Annual self-declaration form is available within the DBS Procedure.

If any DBS checked employee has a break in employment of longer than 3 months, the Council will require a further DBS check to take place (unless due to maternity leave or long-term sickness absence).

School governing bodies may choose to request an update of DBS that enhanced checks on their staff are still current.

Existing employees who have not previously been subject to a DBS disclosure may, as a result of changes in legislation, regulations or working practices, be required to undertake a disclosure during the course of their employment with the Isle of Wight Council. All employees will be expected to comply and any employee refusing to comply with the request for a disclosure will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued and/or to comply with a contractual agreement, will lead to the employee being subject to a disciplinary investigation and potentially disciplinary action under the Isle of Wight Council's Disciplinary Procedure.

2.1.11 Transgender applications

The DBS offers a confidential checking process for transgender applicants in accordance with the Gender Recognition Act 2004 for transgender applicants who do not wish to reveal details of their previous identity to the person who asked them to complete an application form for a DBS check. For more information about the transgender process, email sensitive@db.gov.uk, telephone 0151 676 1452 or see the DBS Transgender Applications guidance:- <https://www.gov.uk/guidance/transgender-applications>.

2.1.12 Agency Workers and Contractors

It is the responsibility of the manager to ensure that any agency worker or contractor in a job that requires a DBS check has a valid DBS disclosure. Contract arrangements must make it clear that pre-employment checks (including a DBS declaration) are obtained for any person or persons delivering the contract.

The agency should provide evidence of the disclosure (providing the date the check was undertaken and the certificate) and identify if there are any convictions. The agency must also undertake a risk assessment to verify the suitability of their employee to work with the Council. The manager should check the risk assessment thoroughly concentrating on when the disclosure was issued to see if there have been significant gaps in employment (more than 3 months or time spent abroad) and discuss any declarations with the agency. The manager must be satisfied that any convictions would not prohibit the worker commencing their contract with the Council. If there is any doubt then the manager must contact their Human Resources Advisor.

2.1.13 Overseas Workers and Students

Checks must be carried out on workers from overseas. The UK Police Database is unlikely to have a record of people who have lived abroad for a period of time, or those who have never worked in the UK. Nevertheless, it is necessary to request a DBS check for all overseas applicants for relevant positions (limited information may be held on the Police Database for this purpose). For more information please see the following Home Office guidance: Criminal records checks for overseas applicants:- <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.

Managers must also be aware of the need to undertake checks on students in placements where they will have unsupervised access to children, young people or vulnerable adults or their personal data. An enhanced DBS with Barred List check must be applied for as soon as confirmation of a placement has been accepted (for Trainee Teachers this is usually carried out by the University). Normally students should not commence their placement prior to clearances being received. If clearances are delayed, and the student has not declared any prior convictions or issues that the manager should be aware of, then consideration may be given to commence the placement following the relevant risk assessment and waiver process.

A new process has been developed for employers appointing teaching staff from within the EEA (European Economic Area). In line with paragraph 75 in [Keeping Children safe in Education](#) there is now a reciprocal disclosure service for EEA members that details any sanctions or restrictions placed on teachers where they are recorded by the relevant members. This information is only accessible by self-service members of the Teacher Regulation Service where further information can be found.

2.1.14 Volunteers

The Isle of Wight Council uses volunteers in many activities, some of which require unsupervised contact with children or adults in what may be considered Regulated Activity, the nature of the volunteer role means some may require a DBS disclosure.

Volunteers who only accompany staff and children on one off outings or trips or who help at one off specific events such as sports days, school fete's etc. do not need to be DBS checked. If however an overnight stay is involved then an enhanced DBS with barred list must be obtained if the volunteer is not supervised by someone holding a DBS check. All DBS checks for volunteers are free as long as the DBS definition of volunteer is met which is "any person

engaged in an activity which involves spending time, unpaid (except for travel and other approved out of pocket expenses), which aims to benefit some third party other than or in addition to a close relative”.

Definitions of Regulated Activity [here](#).

2.1.15 Elected Members

Elected Members are not employees of the Council, but may be required to undertake certain duties or responsibilities that may be considered Regulated Activity.

Due to the restrictions associated with criminal record checks through the Disclosure and Barring Service there is no requirement for Elected Members to undertake a DBS check as a matter of course. Roles that may require a criminal record check to be sought will only be those associated with Regulated Activity, and these are likely to be limited to responsibility for overseeing and/or directing the activity of a person or persons undertaking Regulated Activity. This may include:

- Chairing a decision making committee or group that involves the management of resources and activity associated with children’s social care, education and adult social care

Definitions of Regulated Activity [here](#).

3 Jobs requiring DBS checks

Managers should refer to the DBS checking tool to ascertain whether undertaking a check is appropriate, via the following link

<https://www.gov.uk/find-out-dbs-check>

Additional guidance is also provided: <https://www.gov.uk/government/collections/dbs-eligibility-guidance>

The requirement for a DBS Check will be dependent on whether the role meets the criteria for the relevant workforce.

To determine which level of check the role is eligible for, refer to the guidance below which has been published by the Disclosure and Barring Service.

Eligibility guidance for Standard DBS checks:

<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

Eligibility guidance for Enhanced DBS checks:

<https://www.gov.uk/government/publications/dbs-workforce-guidance>

Please note the differences between Adult, Child and Other Workforce guidance when determining eligibility for an Enhanced Check. The disclosure certificate for a DBS check MUST be received prior to commencement in a role. In exceptional circumstances a temporary waiver can be requested by completing a 'DBS Waiver Request – Risk Assessment Form'. Further details are contained in the DBS Procedure. However, in this instance it should be noted that the recruiting Manager is responsible for ensuring that the applicant provides the necessary documentation for the DBS check at the earliest opportunity and failure to do so may result in the applicant having their employment terminated if the DBS check is not progressed within a satisfactory timescale.

4 Portability/DBS Update Service

DBS checks are not automatically **transferable**. However, the **DBS** does have an update service.

An applicant can elect to have an 'update' disclosure that allows any employer to access the disclosure rather than paying for a new check. It is the responsibility of the individual holder of the disclosure to maintain the 'update' on an annual basis and as such must bear the cost of this.

Further details can be found at <https://www.gov.uk/dbs-update-service>.

5 Making a Barring Referral to the DBS/Duty to Refer

- 5.1 The Isle of Wight Council has a duty to make a barring referral to the DBS in cases where an individual is dismissed or removed from regulated activity (or would have been removed had they not already left) because they may have harmed or posed a risk of harm to vulnerable groups including children or adults. The DBS will then consider if the individual needs to be added to a barred list(s). Further information on making a barring referral can be found at <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs> and in the Isle of Wight Council's 'DBS – Duty to Refer Guidance' which can be found within the DBS Procedure.
- 5.2 In cases where the Isle of Wight Council believes the individual has committed a criminal offence, information will also be provided to the police at the earliest opportunity.

6 Related Documents

- Isle of Wight Council Recruitment Policy & Procedure
- Isle of Wight Council HR Recruitment Guidance
- DBS Procedure

7 Appendix 1 - Policy Statement on the Recruitment of Ex-Offenders

Policy Statement

- The Isle of Wight Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion or belief, sexual orientation, marital or civil partnership status, gender reassignment status, responsibilities for dependants, age, physical/mental ability 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 candidates for interview based on their skills, qualifications and experience.
- The Isle of Wight Council complies fully with the Disclosure and Barring Service Code of Practice and undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
- A Disclosure is requested after a risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, application details will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
- Where a Disclosure forms part of the recruitment process, we encourage all applicants to provide details of their criminal record as part of the application process. We confirm that this information is only seen by those who need to see it as part of the recruitment process.
- We undertake to discuss with the job applicant any matter revealed in a Disclosure which may lead Isle of Wight Council to withdraw a conditional offer of employment.
- Unless the nature of the position allows the Isle of Wight Council to ask questions about the applicant's entire criminal record we only ask about unspent convictions as defined in the Rehabilitation of Offenders Act 1974.
- Those in the Isle of Wight Council who are involved in the recruitment process are given suitable guidance to identify and assess the relevance and circumstances of offences.
- During the selection process, an open and measured discussion will take 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 due to frustration of contract.

Having a criminal record will not necessarily bar you from working with us

This will depend on the nature of the position and the circumstances and background of your offences.