Appendix 2

Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

Criminal Record Checking Policy and Procedure

Document Control and Overview

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Document Distribution

Name	Job Title
All employees of Cherwell District Council.	

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1. Introduction

1.1 This policy applies to all eligible employees (including agency/locum workers, casual workers, apprentices, volunteers and student placements) who are working in regulated activity or those identified in the Rehabilitation of Offenders (Exemption) Order.

1.2 The aim of this policy is to provide a fair and consistent framework for checking criminal record information and to ensure those responsible for recruitment and management understand their responsibilities, the activities and jobs that are eligible for DBS checks and the information they can legally ask applicants to disclose.

1.3 This policy also ensures those subject to criminal record checking understand the information they are required to provide and how the information will be handled.

1.4 The Council requires criminal record checks for people applying to work or volunteer in certain types of jobs, such as to work with children, young people and adults at risk.

1.5 Checking criminal records is one of a range of measures that help the Council make safe recruitment decisions and protect those using its services, the public and public funds from the risk of criminal activity and abuse.

1.6 Individuals are informed when applying for work or volunteering with the Council, what information they are required to disclose about criminal convictions and whether the role is eligible for a criminal record check.

1.7 Applications for Criminal Record Certificates (DBS checks) are processed via Human Resources, as the registered body and are handled in accordance with the DBS code of practice.

1.8 The Council will only ask applicants for criminal record information and apply for DBS checks that are permissible by law for the role.

1.9 The Council undertakes not to unfairly discriminate against anyone who is subject to a criminal record check because of a conviction or other information revealed. The Council is committed to promoting equality of opportunity and reducing barriers to employment wherever legally possible.

1.10 Having a criminal record will not normally automatically bar an individual from working for the Council. The Council recognises that people with previous convictions can make a valuable contribution to the workforce. Decisions will be made on an individual basis, taking account of the nature of the offence, its relevance to the role, the time elapsed, evidence of rehabilitation and the requirements of the Equality Act 2010. **Appendix 1** provides examples of offences that may lead to refusal to appoint or require a risk assessment before an appointment decision can be made.

1.11 Any information revealed as part of criminal record checking, will be dealt with in accordance with the Data Protection Act 2018.

2. Types of workers and requirement for DBS checking

2.1 DBS checks are required for anyone applying to carry out certain jobs or activities regardless of whether they are applying for:

- Permanent, temporary or casual employment
- Volunteering
- An assignment as an agency/locum worker
- An apprenticeship

2.2 **Contractors**
Where the Council enters into contracts with external organisations which employ staff for the provision of services on the Council's behalf, it will ensure that the contractor's employment conditions comply with this policy.

2.3 **Agency Workers**
For agency workers it is the responsibility of the employing agency to ensure that appropriate criminal record checking is carried out to comply with this policy. A DBS check must have been processed within 12 months of the start date of the temporary agency assignment.

If, during the duration of the assignment, the DBS certificate date looks likely to exceed 12 months, a new application (or DBS Update Service check) must be processed by the employing agency. Council managers are responsible for verifying with the employing agency that satisfactory checks have been carried out.

3. Rehabilitation of Offenders Act 1974

3.1 All applicants are required to disclose, as part of their application, details of any unspent criminal convictions or cautions, and when applying for certain eligible roles, details of convictions or cautions that are classed as 'spent' under the Rehabilitation of Offenders Act 1974.

3.2 **Spent convictions**
The Rehabilitation of Offenders Act 1974 (ROA) allows most convictions and all cautions to be considered 'spent' after a specified 'rehabilitation' period.

Once a caution or conviction is spent, the ROA treats a rehabilitated person as if they had never committed or been convicted for the offence. The individual has the right not to disclose information about the spent conviction when applying for jobs, unless they are applying for a job or to undertake activities that are listed under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. **Appendix 2** provides examples of activities included in the Exceptions Order.

3.3 **Failure to disclose information**
Failure by applicants to disclose information about criminal convictions, where required, is likely to result in an offer of employment being withdrawn or disciplinary action being taken for an employee, which may result in dismissal. Other legal action may be taken if appropriate.

If applicants have any concerns about what to disclose then they are advised to seek their own independent legal advice. The charity NACRO provides support and advice to ex-offenders and employers.

4. Levels of DBS checks

4.1 The Council will ensure that it only requests DBS checks for roles that it is legally entitled to and will ensure the level of criminal record check requested is relevant to the type of work being undertaken.

4.2 **Basic DBS Checks**
These checks provide details of unspent convictions only. A Basic Check, in accordance with the government's Baseline Personnel Security Standard (BPSS), is required for Council roles that have access to the Public Service Network (PSN).

4.3 **Standard DBS checks**
These checks provide information about spent and unspent convictions. To be eligible for a standard level DBS check, the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.

4.4 **Enhanced DBS checks**
These checks include the same information as the standard check plus any additional information held by the local police that's reasonably considered relevant to the role being applied for. Eligibility for an Enhanced DBS check is determined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Police Act 1997 and associated Criminal Records Regulations.

4.5 **Enhanced checks with Children's and/or Adults' Barred List check(s)**
These checks are like the enhanced check but also include a check against the Children's and/or Adults' Barred Lists for certain roles that involve what is termed '*regulated activity*'. These are lists of individuals identified as unsuitable for working with children and/or Adults at risk.

Eligibility for an Enhanced DBS check, including a check of the Children's Barred List and/or Adults' Barred List, is determined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Police Act 1997 and associated safeguarding legislation. It is unlawful to request a Barred List check on individuals who are not going to be engaged in regulated activity.

Appendix 3 provides examples of activities that are defined as "regulated" under the Act.

4.6 The Disclosure and Barring Service online tool can also be used to check if a role is eligible for a DBS check. https://www.gov.uk/find-out-dbs-check

4.7 DBS certificates are subject to filtering rules. Certain old or minor cautions and convictions are protected and will not be disclosed on Standard or Enhanced DBS certificates. All unspent convictions and conditional cautions will be disclosed. Further guidance is available from the DBS filtering guide.
https://www.gov.uk/government/publications/dbs-filtering-guidance/dbs-filtering-guide

5. Requesting a DBS check

5.1 Please liaise with Human Resources if you believe a DBS check is required for an applicant, volunteer or employee.

5.2 Where appointments are subject to a satisfactory DBS check the successful applicant or volunteer will not normally be able to start in their role until this is in place.

In exceptional circumstances, where there are critical service needs, permission may be given by the relevant Assistant Director / Head of Service for an appointee to start work only if:

- all other pre-employment checks are in place and,
- a risk assessment is undertaken and establishes that there is low risk.

6. Portability of DBS checks

6.1 If an existing employee or casual worker is appointed to an eligible role, and they already have a DBS check, this will be accepted provided that:

- it covers the same workforce e.g. adults or children's and the relevant barred list check (where this is required)
- the employee has been continuously employed by the Council
- the check is not due for renewal until this policy and,
- where convictions were disclosed, a risk assessment is carried out and approval has been given by the Assistant Director / Head of Service to proceed with the appointment.

7. Re-checking

7.1 The Council will re-check all DBS checks every three years.

7.2 Managers have the discretion to request a re-check at any time if they have cause for concern about an employee's criminal record status.

7.3 All employees are responsible for notifying their manager immediately if their criminal record status changes, including driving offences.

7.4 Wherever possible, and with the employee’s consent, the Council will use the **DBS Update Service** to re-check criminal record status rather than requesting a new DBS check.

8. Receiving results of DBS checks

8.1 Criminal Record certificates are issued directly to the individual, who must then show the original certificate to a member of Human Resources.

8.2 Where criminal offence information is disclosed, the line manager will meet with the employee or applicant to gather information about the conviction and carry out a risk assessment. An employee may be accompanied at this meeting by a recognised trade union representative or workplace companion.

8.3 The Assistant Director / Head of Service, in conjunction with Human Resources, will make a final decision whether an appointment can be confirmed, and/or any further action to be taken.

9. Requirement to inform the Council of any criminal involvement

9.1 Employees and volunteers of the Council are required to notify their line manager immediately if they are under investigation, charged, convicted, cautioned, reprimanded or warned in relation to any criminal offence. This will be investigated and may result in formal action.

9.2 The Council will not assume guilt solely because an employee is subject to investigation. Any action taken will be proportionate, based on risk assessment, safeguarding requirements and the specific circumstances of the role.

9.3 Where an individual fails to notify their line manager however, this will be treated as a disciplinary offence and may result in dismissal.

9.4 There may be separate requirements imposed on the employee or volunteer to notify a regulatory or professional body as well. This requirement is not covered in this policy.

10. Criminal cases pending at the time of application for employment or volunteering

10.1 Where an applicant is under investigation, charged, convicted, cautioned, reprimanded or warned in relation to any criminal offence or has criminal proceedings pending at the time an application for a job is made, full consideration will be given to the individual case before deciding on any offer of employment. Failure to disclose any pending investigation may result in disciplinary action.

11. Confidentiality and records

11.1 Where an applicant is required to provide a DBS certificate, the original certificate must be viewed by a member of Human Resources, who will record the following information:

- the DBS certificate number
- the date of issue of the certificate
- the level of DBS check obtained
- whether the certificate contains any information
- the date the certificate was verified; and
- the name of the person who carried out the verification

11.2 DBS certificate information will be handled, stored, retained and disposed of in accordance with the DBS Code of Practice, data protection legislation and the Council’s data retention requirements.

11.3 Data relating to criminal convictions and offences will be processed only where there is a lawful basis for processing and appropriate safeguards have been implemented.

Appendix 1

Categories of offences which may lead to refusal to appoint or require a risk assessment before an appointment decision can be made.

For further advice please contact Human Resources.

Categories of offences which will normally disqualify applicants	**Categories of offences which require a risk assessment**
• Any sexual offence involving a child or an adult at risk. • Any sexual offence involving violence or the misuse of drugs. • Any sexual offence involving organising sexual activity.	• Where the applicant was convicted of sex with an under-age person when they themselves were of a similar age. • Any other sexual offences.
• Any violent offence against a child or an adult at risk. • Murder, manslaughter, grievous bodily harm or aggravated bodily harm. • Domestic violence.	• Actual bodily harm, wounding, assault and battery. • Possessing an offensive weapon. • Death by reckless driving. • Any other violent offences.
• Any offence related to dealing, cultivating or supplying controlled drugs or substances.	• Possession of a class A, B or C drug. • Offences involving supplying alcohol to a child. • Repeated offences involving alcohol. • Being drunk or under the influence of drugs in charge of a motor vehicle. • Any other offences involving alcohol or drugs.
• Any offence involving theft or dishonesty with a child or adult at risk. • Any offence involving theft or dishonesty, including benefit fraud. • Burglary, aggravated burglary, robbery, blackmail, going equipped to commit burglary.	• Any other convictions involving dishonesty.
	• Any other offence relating to the misuse of information.

• Any offence relating to the misuse of the internet / technology involving a child or adult at risk. • Any offence for illegal pornography. • Any offence relating to the misuse of the internet / technology for the purposes of abusing others or inciting violence or racism.	

Where a risk assessment is required, it should consider:

1. Relevance of offence to role
2. Seriousness of offence
3. Time elapsed
4. Age at time of offence
5. Pattern of offending
6. Evidence of rehabilitation
7. Mitigating circumstances
8. Safeguarding risk

The Assistant Director / Head of Service, in conjunction with Human Resources, will make a final decision whether an appointment can be confirmed, and/or any further action to be taken.

Appendix 2

Examples of activities listed under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

This is not a comprehensive list but gives an indication of the types of Council employment included in the Exceptions Order. The key point is that eligibility is determined by the actual duties of the role, not simply the job title. The DBS eligibility rules should be checked for each post before requesting a DBS check.

1. Roles involving the care, supervision, training or being in sole charge of children. Examples could include youth activity workers, holiday activity staff and certain community-based roles.

2. Employment concerned with the provision of health services, where applicable through council-run or commissioned services.

3. Employment concerned with the provision of care, training, supervision or welfare of persons under 18. This could apply to staff working in youth programmes or community activities delivered by the Council.

4. Licensing functions where legislation requires consideration of criminal history. Certain taxi and private hire licensing roles, for example, are associated with exempt positions and enhanced disclosure arrangements because of public safety considerations.

5. Housing roles involving regular access to vulnerable residents, where separate legislation and DBS eligibility criteria linked to the Exceptions Order may apply.

6. Safeguarding and community safety roles, particularly where staff work directly with children, adults at risk, victims of crime, or individuals receiving statutory support services.

Appendix 3

Examples of activities that are defined as Regulated activity in relation to children and adults at risk

Regulated activity is work that a person who is barred from working with children and/or adults must not carry out.

For **children**, regulated activity generally includes:

- Teaching, training, instructing, caring for or supervising children on a frequent basis.
- Providing advice or guidance wholly or mainly for children's wellbeing.
- Driving a vehicle solely for children.
- Working regularly in specified establishments (such as schools or children's homes) where there is opportunity for contact with children.

For **adults**, regulated activity focuses on the nature of the activity being undertaken rather than the setting. This includes:

- Providing healthcare, personal care or social work services.
- Assisting with eating, drinking, washing, dressing or toileting.
- Supporting adults in managing their own affairs.
- Transporting adults because of their age, illness or disability.

Roles that may constitute regulated activity will have direct responsibility for, or unsupervised contact with, children or adults receiving regulated services.

Where a role is identified as regulated activity, the Council will undertake an **Enhanced DBS check with a check of the relevant Barred List(s)** before appointment is confirmed. This check will be repeated at least every three years.

The Council will assess each role individually to determine whether it meets the legal definition of regulated activity. Not all roles involving contact with children, young people or adults at risk will qualify as regulated activity, and the level of DBS check required will be based on the specific duties and responsibilities of the post.