



## **DCC SAFEGUARDING – MANAGING INFORMATION DISCLOSED DURING EMPLOYMENT**

**This applies to all employees in posts which are subject to a Disclosure and Barring Service Check (DBS) previously known as a Criminal Record Check**

**For Schools:**

**This Policy was adopted by the Full Governing Body of**

.....**School on**

.....**Date**

Policy Date: 31 July 2010  
Version Date: 15 December 2016  
HR One  
Devon County Council

If you require further help in the interpretation of this policy you can contact HR Direct at [hrdirect-mailbox@devon.gov.uk](mailto:hrdirect-mailbox@devon.gov.uk) or on 01392 38555

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## 1. POLICY

- 1.1 This Policy applies to those employees who are in posts within the organisation which are subject to a Disclosure & Barring Service Check (DBS) previously known as a CRB, including those within schools where this Policy has been adopted (which is recommended). These employees will typically be in posts that are regulated activity, have regular contact with children and/or vulnerable adults, access to certain data in relation to children and vulnerable adults or where their post is based in a specified setting, such as a school or children's home. For further clarification on whether a post applies contact the Safer Recruitment Services Team on 01392 383266.
- 1.2 Since 1<sup>st</sup> January 2009 it has been a condition of employment for all employees in posts which are subject to a DBS disclosure to disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, bind-over received during the course of their employment. This may be either since the employee's last DBS disclosure, or where a DBS disclosure has never been carried out, all criminal information must be disclosed.
- 1.3 Following the implementation of the Protection of Freedoms Act 2012 key legislation remains in place under the Safeguarding Vulnerable Groups Act for a "Duty to Refer" information to the DBS on individuals who pose a risk to children or vulnerable adults. The Disclosure & Barring Service makes decisions as to who should be barred from working with vulnerable groups. Anyone who is barred from working in regulated activity with children, vulnerable adults or both will be committing an offence if they work in such regulated activity. See DBS Referral Policy [DBS Referral Policy](#) for further information.
- 1.4 Failure to disclose information, as per para.1.2 above, may result in disciplinary action being taken; as may the nature of any criminal offence (depending upon its impact on the employment) and this may result in dismissal from the Authority.

## 2. PRINCIPLES

- 2.1 The organisation, through its managers and staff, has a duty of care to protect the well-being of the people of Devon and, in particular, those groups or individuals in its care who are considered to be especially vulnerable or at risk, such as children, the elderly and those with disabilities.
- 2.2 The organisation will take every step to ensure that those employees who work with or otherwise come into contact with these vulnerable groups are suitable to do so.

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- 2.3 If a person seeks to work in a position that involves working with children and/or vulnerable adults they are required to reveal all criminal convictions and cautions not protected under current legislation including overseas convictions and will be subject to a DBS check. See definitions at Appendix 3.
- 2.4 The Safer Recruitment Services Team within Devon County Councils HR Service process DBS checks for all staff and volunteers\* within the organisation where eligibility exists and the staff member is working with children and vulnerable adults. The Safer Recruitment Service enables the organisation to make safer recruitment decisions by checking the background of applicants to ensure they do not have a history that would make them unsuitable for the position for which they have applied and also ensuring that staff working with vulnerable people are not on one of the DBS barred lists.
- \* Unless the employee/volunteer produced a suitable DBS Disclosure carried out by another organisation and was subscribed to the Update Service. See Section 10.2 of the DBS Disclosure Policy for information on DBS Certificates accepted using the DBS Update Service.
- 2.5 Possessing a criminal record is not necessarily a bar to working for the organisation, but it may preclude working in certain positions. This will depend on the nature of the position and the circumstances and background to the offences committed. However, it is a criminal offence for an individual to work or seek to work in regulated activity if they are on one of the DBS barred lists. Information and a definition of regulated activity can be accessed via the DBS website [Home Office Disclosure & Barring Service](#).
- 2.6 The organisation will comply with the DBS Code of Practice and undertakes not to discriminate against any employee on the basis of a conviction or any other disclosed information.
- 2.7 All sensitive information disclosed will be managed via Human Resources (HR) and Safer Recruitment Services which operates within the strict DBS Code of Practice. It also complies fully with its obligations under the Rehabilitation of Offenders Act, Data Protection Act and other relevant legislation pertaining with the safe handling, use, storage, retention and disposal of disclosure information. If the employee works within a school, information disclosed will be managed by the Headteacher or in the case of a disclosure by a Headteacher then this would be managed by the Chair of Governors.
- 2.8 If an employee asks to meet with their Line Manager, Headteacher or in the case of a Headteacher the (CoG) to make a disclosure, a request to be accompanied by a Trade Union / Professional Association Representative or fellow work Colleague should not be unreasonably refused.

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### 3. PROCESS

#### **Disclosure of conviction, caution, bind-over or pending criminal proceedings during employment.**

- 3.1. There is an established process in operation across all DCC Services and within Schools for managing information disclosed by employees relating to convictions, cautions, a bind-over and any pending criminal proceeding. A flowchart at Appendix 1 illustrates this process.
- 3..2 Appendix 2 sets out how the line manager/Headteacher/CoG will assess information that is disclosed, including assessing any risk(s) and verifying information by requesting a new DBS disclosure.
- 3..3 Where it is deemed appropriate to take formal action following the disclosure this will be managed in line with the [Corporate Disciplinary Policy](#)

### 4.0 EQUALITY

- 4.1 Devon County Council, including all schools, is committed to equality in its 'Managing Information Disclosed during Employment' Policy.
- 4.2 No employee will be unlawfully disadvantaged on the grounds of sex/gender, gender re-assignment, race (nationality, national and ethnic origin or skin colour), sexual orientation, religion or belief, age or disability within the operation of this policy.

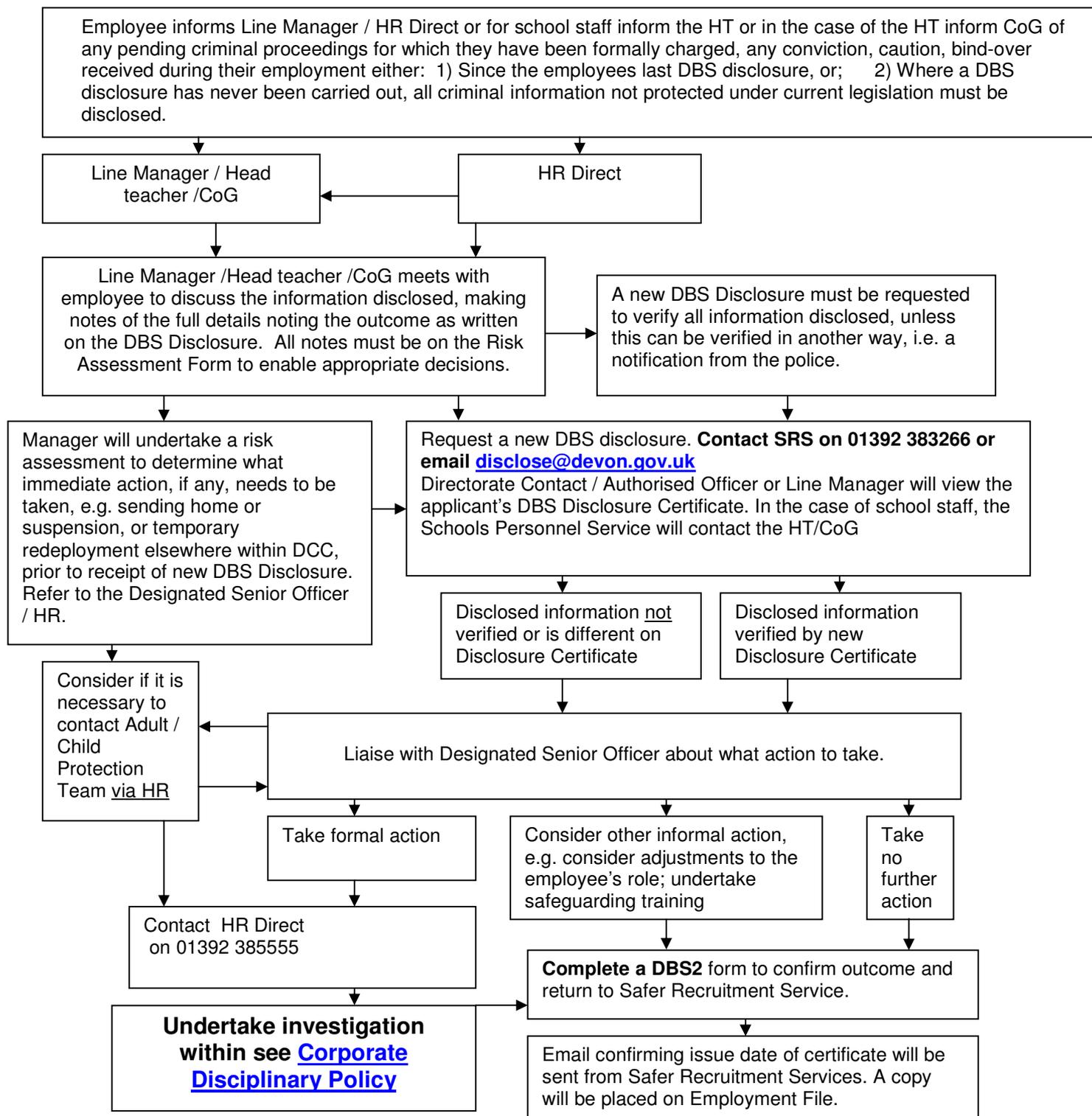
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**DBS DISCLOSURE INFORMATION – PROCESS FLOWCHART      APPENDIX 1**



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1.0 The Line Manager / Head Teacher / CoG must ensure that any discussion with an employee who discloses information must be carried out in complete confidence and no information should be shared with any unauthorised person.

2.0 A new DBS Disclosure **must** be requested to verify the information disclosed by the employee, unless the manager is able to verify it in some other way, perhaps by way of a notification from the police.

3.0 The employee must be allowed to give a full account of the information disclosed and any extenuating circumstances. Any separate notes taken detailing the disclosed information **MUST** be destroyed, apart from that contained in the DBS2, once a decision has been made following completion of the DBS2 form. [Please note it is important that the actual conviction information is recorded on the DBS2 to ensure clear understanding of the risk involved]

4.0 Having a criminal record is not necessarily a bar to working for the organisation, so it is vital to gather as much information from the employee as is possible, so that a balanced decision can be made. However, it must be remembered that it could be illegal to employ a person with a conviction for a relevant offence in a specific job. The Disclosure and Barring Service list those convictions that may prevent a person working with children. Contact HR or Safer Recruitment Services for further information.

5.0 Assessing the risk of employing people following disclosed information needs an objective, common sense approach which takes account of matters such as legislative requirements, job requirements, safeguarding against offending at work, assessing the nature and circumstances of the offence and listening to the explanations of the employee.

6.0 Once the risk criteria have been identified for the position, the relevance of all disclosed information can be assessed in the light of these. It is important to keep an open mind at all stages of this process to ensure that the employee is treated fairly and to remember that many people with criminal records are safely employed in positions of trust. See the Managers Toolkit Risk Assessment Table which can be accessed <http://staff.devon.gov.uk/ppriskassmanagerstoolkit.doc>

Additional advice and support can be obtained by contacting the HR Direct on 01392 385555.

7.0 Consideration will need to be given whether any immediate action is necessary to reduce the risks, prior to viewing the applicant's new DBS Disclosure Certificate. This might include moving the employee to work elsewhere temporarily, putting in closer supervision on a temporary basis or sending the individual home. In the most serious situations the manager might consider instigating the formal Disciplinary Policy and

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considering formally suspending the employee from work. Advice must be sought from HR and the Designated Officer in these circumstances.

8.0 Failure by an employee to disclose all relevant information may result in disciplinary action being taken, as will the nature of the offence (depending upon its impact on their work) and this may result in dismissal from the County Council's employment.

**See the [Corporate Disciplinary Policy](#)**

9.0 Each Service has Designated Officers who are responsible for making employment decisions in situations where information is disclosed that may impact upon the employee's ability to undertake their job. When the applicant's DBS Disclosure Certificate is viewed and photocopied (with the applicant's consent), details of the disclosed information will be forwarded to the Head of Service or Designated Officer who will liaise with the Head of Child and Adult Safeguarding to sign off the decision and action taken.

In the case of school staff the Schools HR Service will contact the Head teacher/Chair of Governors.

A DBS2 form will need to be completed and returned to Safer Recruitment Services to confirm the outcome.

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**1.0 CONVICTION**

A person found guilty of an illegal act / offence through Court prosecution. They may have pleaded Guilty or Not Guilty.

**2.0 CAUTION**

This is an alternative to prosecution for an offence. Imposed by Police on an adult. The offender **MUST** have admitted guilt before the caution can be imposed. Used for less serious offences or where culpability is lower.

There are two types of cautions; i) simple caution – previously known as a formal caution – is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from court and to reduce the likelihood of them offending again, ii) conditional caution – introduced by the Criminal Justice Act 2003 – differs from a simple caution in that the offender must comply with certain conditions to receive the caution and avoid prosecution for the offence they have committed.

**YOUTH CAUTION** a youth caution is a formal out-of-court disposal and are primarily administered by the police. Youth cautions are intended to provide a proportionate and effective response to offending behaviour and can be used for any offence provided that the statutory criteria are satisfied: the police are satisfied that there is sufficient evidence to charge the youth with an offence; the youth admits the offence to the police; the police do not consider that the youth should be prosecuted or given a youth conditional caution for the offence.

**YOUTH CONDITIONAL CAUTION** youth conditional caution can be given to a youth provided that the following conditions are satisfied: the authorised person has evidence that the youth has committed an offence; the prosecutor is satisfied that there is sufficient evidence to charge the youth with the offence and that a youth conditional caution should be given in respect of the offence; the youth admits the offence to an authorised person; the authorised person has explained the effect of the YCC to the youth and has warned him or her that failure to comply with any of the conditions may result in a prosecution. If the youth is 16 or under this must be done in the presence of an appropriate adult; the youth signs a document that contains details of the offence, an admission that he committed the offence, consent to the YCC and the conditions attached to the caution.

*Cautions are not convictions but the offender would have to admit to the offence to be issued with the sanction. They all remain on the person's criminal record until filtered and would be cited in future criminal proceedings in the same way as convictions.*

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### 3.0 BIND-OVER

A bind-over order is not a conviction or a penalty. It is an undertaking as to future conduct. Its purpose is to prevent offences being committed in the future.

### 4.0 UNSPENT CONVICTION

A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed.

### 5.0 SPENT CONVICTION

The Rehabilitation of Offenders Act (ROA) 1974 sets out to make life easier for many people who have been convicted of a criminal offence and who have since lived on the right side of the law. A person convicted of all but the most serious criminal offences and who receives a sentence less than 4 years in prison, benefits from the Act if they are not convicted again during a specified period. This is called the rehabilitation period.

In general terms, the more severe a penalty is, the longer the rehabilitation period. 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 in most circumstances.

However, there are some exceptions to the general principle that spent convictions do not have to be declared.

**If an individual works with children and/or vulnerable adults then the provisions of the ROA regarding non-disclosure of spent convictions will NOT apply because of the work it entails, as detailed in the Exceptions Order. The individual must disclose details of 2.5 - ALL convictions not protected under the current legislation.**

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## USEFUL CONTACTS & INFORMATION

## APPENDIX 4

1. HR Direct  
Email: [hrdirect-mailbox@devon.gov.uk](mailto:hrdirect-mailbox@devon.gov.uk)  
01392 385555
  
2. Safer Recruitment Services (Devon County Council) Service(RDS)  
[disclose@devon.gov.uk](mailto:disclose@devon.gov.uk)  
Telephone: 01392 383266
  
3. Disclosure & Barring Service (DBS) – Including Duty to Refer  
<http://www.DBS.gov.uk/>
  
5. DBS Policy  
[Corporate Disclosure & Barring Service Policies and Procedures](#)
  
6. Disqualification from Caring for Children  
<http://staff.devon.gov.uk/pp/er/recruitment/disqualificationchildren.htm>
  
7. Recruitment Standards  
<http://staff.devon.gov.uk/recruitment.htm>
  
8. Child Protection in Schools  
<http://staff.devon.gov.uk/childprotection.htm>
  
9. Teaching Agency – Department of Education  
<http://www.education.gov.uk/vocabularies/educationtermsandtags/7386>
  
10. Department of Education.  
<http://www.dfes.gov.uk/>
  
11. People Services – Management Action –  
Managing Recruitment & the Disclosure Process  
<http://staff.devon.gov.uk/cypsman24.pdf>

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## POLICY HISTORY

Policy / Version Date	Summary of change	Contact	Implementation Date	Review Date
1.10.12008	<p>A new clause requiring all those employees in posts which are subject to a DBS Disclosure to disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, reprimand, bind-over or final warning received during the course of their employment will be incorporated into the contract of employment for all existing employees with effect from 1.01.2009.</p> <p>All existing affected employees are given three months notice of this change with effect from 1.10.2008.</p> <p>From 1.10.2008 all new employees with DCC and new appointments of existing employees into posts which are subject to a DBS disclosure will be issued with a contract of employment within which this new contractual term takes immediate effect.</p>	P&S	1.10.2008	
	<p>Unison, GMB and TGWU were informed of this change 10.06.2008. Teacher Unions were informed of this at TCC 16.07.2008</p>			
6.10.2008	HR Helpdesk and Schools Personnel Helpline email details updated. Additional sentence to para.2.7 relating to those employed within schools.	P&S	6.10.2008	October 2009 -ISA Registration
12.10.2008	Process amended to take account of HT/CoG role. Para's 3.1 and 9 amended to take account of new DBS Policy.	P&S	12.10.2008	October 2009 -ISA Registration
31.07.2010	Policy re-written as DBS contractual requirement is now imbedded into practice so no longer a need to set out timescales for the introduction of this contractual term. Reference made to ISA referral policy at para. 1.3.	P&S	31.07.2010	ISA Registration
June 2014	Policy amendments to change terminology from CRB to DBS following implementation of	Sue Beard – Safer	June 2014	April 2015

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	Protection of Freedoms Act 2012. Changes to ROA and process to account for Single Applicant Only Certificate.	Recruitment Services HR One		
15.12.16	Update section 2.4 following change in DCC policy on DBS update service.	Phil Barrett Team Manager Safer Recruitment	15.12.16	15.12.16

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