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**TCF Disclosure and Barring Services (DBS) Policy**

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| **Review Date & Version #** | 1st February 2014 |
| **Owner**  | Robert Cuming |
| **Reviewed by** | Judy Mallinson |
| **Support/Co-review** | Sue Clements |
| **Date due for review**  | 31st January 2015 or earlier as required by change |

**1. Introduction**

The Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) merged on 1st December 2012 to become a single organisation called the Disclosure and Barring Service (DBS).

The DBS is responsible for processing requests for criminal records checks as well as checking the DBS children’s barred list and adults’ barred list for eligible roles. The DBS also has responsibility for deciding if a person should be placed on or removed from a barred list for England, Wales and Northern Ireland.

This policy provides guidance to managers on how to manage the Disclosure & Barring Service

(DBS) certificate process (to include employees, students, counsellors and volunteers) to positions where they will typically have access to or working with vulnerable groups in a regulated activity and/or privy to information held.

The Counselling Foundation has a duty of care to protect the well-being of the all staff, students and counsellors working with the Foundation and, in particular, those groups or individuals in its care who are considered to be especially vulnerable or at risk.

The Foundation will take every step to ensure that those of its employees, counsellors, contractors and volunteers who work with or otherwise come into contact with these vulnerable groups are suitable to undertake the work.

The Foundation Management Committee (FMC) in December 2013 decided that ‘Enhanced DBS Checks with Barred Lists’ will be required by all those working or volunteering at the Foundation for the reasons stated below:

1. Because our work is a **regulated activity;** *sensitive and confidential nature of clinical work, which is regular, substantial and unsupervised.*
2. Because of potentialexposure to **reputational risk;** *for protection of the quality, work and standing of the Foundation.*

**2. Scope/Implementation**

The Foundation will seek to ensure that DBS checks are in place for all new and existing staff, counsellors, contractors and volunteers working in clinical, managerial or administrative roles. This extends to those volunteering as well as in paid employment and comes into force from 1st February 2014.

1. *All employees will be required to complete a DBS check every 3 years.*
2. *All staff and volunteers in non-clinical roles will be able to start new employment whilst a DBS check is being sought.*
3. *All staff and volunteers in clinical roles will NOT be able to start new employment until a DBS certificate has been received.*
4. *Once a DBS certificate has been received and approved by the Line Manager he/she must ensure all relevant individuals and the Executive Assistant is informed.*

*Relevant individuals are:*

For all clinical roles, the employee or volunteer will not be able to start work until satisfactory receipt of the DBS check, or the successful conclusion of a Disclosure Reviewing Panel decision and/or CEO appeal decision.

This document should be read and applied in conjunction with the recruitment and selection and equalities policies.

**3. Accepting an existing DBS certificate**

The Foundation may accept an existing DBS certificate from a new member of staff, student or volunteer providing the certificate is less 30 months old.

**4. Re-checking existing employees**

Any existing employee of the Foundation who does not hold a DBS certificate or whose certificate is 3 years out of date will be required to undertake a new DBS application.

All employees will be expected to comply and any employee refusing to comply with the request for an application 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.

In addition to the requirement to complete a DBS check, the Foundation reserves the right to ask existing employees in relevant positions to apply for a certificate if their actions or activities give cause for concern. The grounds for this could include allegations of suspicious or inappropriate behaviour made to an individual in a vulnerable group or a colleague or member of the public. In such instances a full investigation will be conducted and the Foundation may ask for a new DBS application to be carried out.

If as part of the re-checking process, a DBS certificate is deemed unsatisfactory, a full investigation will be undertaken by the Disclosure Reviewing Panel (see Point 8) which may result in a member of staff being dismissed or re-deployed.

**5. Recruitment (Employment, Volunteering & Training)**

Whenever a vacancy arises for a position that will be subject to a DBS certificate, the following will always be observed:

1. The recruitment advertisement and any supporting information sent to prospective candidates will clearly state that the post is subject to a DBS check.
2. Only the successful candidate will be required to apply for a DBS check.
3. An offer of employment can be made subject to a DBS check.
4. If the employment is a clinical role the DBS check must be received and satisfactory before the start of any employment.
5. If the employment is for a non-clinical role, the employment can start whilst the DBS process in ongoing but the certificate not yet received.
6. If the DBS certificate contains a trace, or additional information is received from the police, the DBS Disclosure of Offences must be followed. This procedure is detailed below; point 8.

**6. Disclosure and barring service (DBS) barred lists**

The DBS children’s barred list contains details of those individuals barred from working with children and replaces List 99, the POCA list and disqualification orders. The DBS adult’s barred list contains details of those individuals barred from working with vulnerable adults (replacing the POVA list).

When recruiting to posts which undertake “regulated activities” with one or both vulnerable groups, the Foundation will request checks to be made against the relevant barred list(s) as part of the DBS check. It is a criminal offence for individuals barred by the ISA to work or apply to work with children or vulnerable adults in a wide range of posts including most social care posts, those in education, childcare, NHS and posts in the Prison Service.

Employers also commit a criminal offence if they knowingly employ a barred individual in such posts.

**7. Recruitment of ex-offenders**

As an organisation using the DBS to assess candidates’ suitability for positions of trust, the Foundation complies fully with the DBS Code of Practice and undertakes to treat all candidates fairly. It undertakes not to discriminate unfairly against any subject of a DBS certificate on the basis of conviction or other information revealed.

The Foundation is committed to the fair treatment of its staff, potential staff or users of its services, regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation or offending background.

We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience.

A certificate is only requested for posts that are eligible as per the Exceptions Order of the Rehabilitation of Offenders Act 1974. For those positions where a certificate is required, all application forms, job adverts and recruitment briefs will contain a statement that a check will be requested in the event of the individual being offered the position.

Where a DBS certificate is to form part of the recruitment process, we encourage all candidates called for interview to provide details of their criminal record at an early stage in the application process. The appointing officer will pose this question to candidates during the interview process.

Unless the nature of the position allows the Foundation to ask questions about a candidate’s entire criminal record we only ask about unspent convictions as defined in the Rehabilitation of Offenders Act 1974.

All appointing officers as part of the Foundation recruitment process have access to guidance and expertise from suitably trained officers to identify and assess the relevance and circumstances of offences. As part of the Foundation’s disclosure of offences procedure, the interview panel seek approval from a senior manager regarding the final decision on suitability.

**8. Employing people with criminal records**

Possessing a criminal record is not necessarily a bar to working for the Foundation, but it may preclude working in certain positions. This will depend on the nature of the position and the circumstances and background of the offences committed.

For all members of staff or individuals with an offer of employment, in the event of a certificate returned from the DBS highlighting either a disclosed or undisclosed conviction or other causes for concern the Line Manager must be informed. The Line Manager will inform the Executive Assistant who will have responsibility to set up a Disclosure Reviewing Panel, within a two week period, which will have the role of determining the employment status of the individual to ensure consistency across the Foundation.

***9.* Disclosure reviewing panel**

If the DBS certificate highlights a previous conviction or offence the following procedure will apply. Three members of FMC will meet to form a Disclosure Reviewing Panel to discuss the suitability of the candidate for the role in light of the conviction or offence. A decision will be taken as to whether the candidate can accepted for the role and the FMC will consider the risk management considerations as set out below; see Point 9, using the DBS Disclosure Risk Assessment form (see Appendix B)

If the candidate is turned down for the role as a result of this Panel’s decision, an appeal can be made by the candidate to the CEO. This subsequent appeal will be heard within a two week period, and this outcome of this decision shall be final.

**10. Risk Management**

Assessing and managing the risk of employing a person with a criminal record, or about whom positive information has been revealed following a check, means comparing the candidate’s skills, experience and conviction circumstances against the risk criteria identified for the job and deciding on the relevance of the conviction or other information.

Having a criminal record will not necessarily bar someone from employment with the Foundation. This will depend on the background to the offence(s) and the nature of the position being sought.

10.1 Considerations

Addressing issues relating to criminal offences needs an objective common sense approach which takes account of the following:

1. The name and gravity of the offence
2. Age at the time of the offence (s)
3. Length of time since the offence (s)
4. Number of offences
5. Any pattern of offending
6. The circumstances involved
7. The severity of the sentence
8. Efforts to avoid re-offending
9. Relevance of offence to profession
10. Applicants response to offence and rehabilitation
11. Safeguards against offending at work
12. Possible reactions of employees, clients etc, objectively assessed
13. Public Trust

10.2 Candidate Awareness

Candidates should be forewarned that enhanced checks might include non-conviction information such as details of cautions, reprimands, and warnings and may include police intelligence relating to ongoing investigations and relationships with any known or suspected criminals.

As highlighted above the fact that someone has a criminal record will not necessarily lead to a bar in employment with the Foundation, and an interview will be arranged to discuss the nature of the criminal record with the applicant who has disclosed they have a criminal record.

During the interview, the applicant should be able to give a full account of the circumstances of the offence(s), any extenuating circumstances and of their efforts to avoid re-offending.

Where assessment against the risk criteria indicates that the applicant could be employed on a conditional basis provided that extra safeguards are put into place, the appointing officer should discuss these with the applicant and explain the reasons for them.

Failure to reveal criminal history could lead to withdrawal of the conditional offer of employment.

**11. Payment for DBS check**

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| **Type of employee/contractor** | **Payment type** |
| Self-employed (contractor) | Own |
| Trainee placed internally or externally | Foundation |
| Placement from external organisation | Foundation |
| Counsellor receiving 3rd/4th client fee payment | Foundation |
| Staff | Foundation |

 **12. Legislation**

This policy has been written with regard to the following legislation:

1. The Protection of Freedoms Act 2012
2. Human Rights Act1998
3. Data Protection Act 1998
4. The Police Act 1997
5. The Safeguarding Vulnerable Groups Act 2006
6. The DBS Code of Practice
7. The Rehabilitation of Offenders Act (ROA) 1974
8. The Criminal Justice and Court Services Act 2000

**13. Secure handling of information**

The Foundation has a policy statement regarding the storage, handling, use, retention and disposal of DBS applications and certificate information available in the staff handbook.

**14. Applying, monitoring and reviewing DBS certificates (Individual Centre Responsibilities)**

The procedure for the application of a DBS Certificate is set out in Appendix A which is attached to this document.

The Training Centre:

Has the responsibility to ensure that all Training staff, students and volunteers meet the DBS Policy requirements of the Foundation and hold up to date records and DBS certificate numbers.

The Counselling Centres:

Each Centre Head will have the responsibility to ensure that all centre staff, counsellors and volunteers for any activity delivered at the centre, meet the DBS Policy requirements of the Foundation and hold up to date records and DBS certificate numbers

Foundation Central:

The Executive Assistant will have the responsibility to ensure that all central management staff, contractors and volunteers including Trustees and AQP counsellors meet the DBS Policy requirements of the Foundation and hold up to date records and DBS certificate numbers.

All records to be held in St Albans.

The Foundation will monitor and review this policy on a regular basis in order to ensure ongoing compliance with legislation and effective operational practice.

The Foundation reserves the right to alter and amend this policy in accordance with any recommendations, changes in law or other related legislation following consultation with relevant parties.

APPENDIX A (to come)

The procedure for the application of a DBS Certificate.

**DBS Disclosure** **Risk Assessment form**

**Supplied by HR Services**

|  |  |
| --- | --- |
| Name |  |
| **Position applied for** |  |

An applicant’s criminal record should be assessed in terms of the role they are to perform and the offences they have committed. Please note that all decisions on whether to appoint/not to appoint an applicant who has a criminal conviction should be approved by two members of the FMC on reviewing this form.[[1]](#endnote-1)

The DBS advises that employers should consider the following points in deciding the relevance of the offences and the risks they may pose to a particular post.

**Convictions**

**The job:**

* Does the post involve one-to-one contact with children or vulnerable adults?
* What level of supervision will the post holder receive?
* Does the post involve direct responsibility for finance or items of value?
* Does the post involve direct contact with the public?
* Will the nature of the job present any opportunities for the post holder to re-offend in the course of work?

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| --- | --- | --- |
| **The Job** | **Agree** | **Disagree** |
| The role involves one to one contact with children or vulnerable adults. |   |  |
| The post holder will have a low level of supervision. |   |  |
| The post involves direct responsibility for finances or items of value. |   |  |
| The post involves direct contact with the public. |   |  |
| The nature of the job may present an opportunity for re-offending. |   |  |

Comments

**The offence(s):**

* The seriousness of the offence and its relevance to the safety of other employees, clients, customers or property.
* The length of time since the offence occurred.
* Whether the offence was a one off or part of a history of offending.
* Whether the applicant’s circumstances have changed since the offence was committed, making re-offending less likely.
* Whether the offence has been de-criminalised by Parliament.
* The country in which the offence was committed. Some activities are offences in Scotland and not in England and Wales, and vice-versa.
* The DBS also encourages employers to look at any mitigating factors, the degree of remorse shown and changes that the individual has made to their lives, which makes them less likely to offend again. Caution should be used when taking such factors into account.

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| **The Offence(s)**  |
| Brief comments on the circumstances behind the offence (e.g. for possession of drug offence) |
|  | **Agree** | **Disagree** |
| It was related to children and / or vulnerable adults |  |   |
| It was a contact offence (i.e. it involved contact with a victim). |  |   |
| The offence occurred recently e.g. in the past 5 years |  |   |
| The offence is not yet considered ‘spent’ under the Rehabilitation of Offenders Act |  |   |
| The applicant did not declare the matters on the application form, the DBS Disclosure form or at interview |  |   |
| The applicant has not given an explanation of the offence or expressed regret or a change of attitude towards the matter(s) now |   |  |
| The applicant’s situation has not changed since the offence was committed e.g. location, friends, partner, education |   |  |
| The applicant has not provided any mitigation e.g. peer pressure, financial need, lack of judgement |   |  |
| The offence has not been decriminalised by parliament |   |  |
| The offence is part of a history/pattern of offending |   |  |
| The applicant cannot demonstrate any efforts not to re-offend e.g. Rehabilitation course |   |  |
| Safeguards to remove/reduce the risk cannot be implemented e.g. no unsupervised contact |   |  |
| The nature of the post presents realistic opportunities for re-offending |   |  |
| The offence(s) resulted in a fine |   |  |
| The offence(s) resulted in a custodial sentence |   |  |
| The offence(s) resulted in a suspended sentence |  |  |
| The offence(s) resulted in a probation order / community sentence. |  |  |
| The offence(s) resulted in an unconditional discharge |  |  |

|  |  |
| --- | --- |
| **Assessment of the risk** | **Please****tick** |
| The offence is relevant to the role applied for and may present a high risk. |   |
| The offence is relevant to the role but other factors mean that it presents a medium risk. |  |
| The offence is not relevant to the role and it presents a low risk. |  |

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| **Rationale for the above decision** |
|   |

 FMC, 13 September 2013

**Decision: Employ Not employ**

**To be signed and dated by three FMC members:**

1. [↑](#endnote-ref-1)