

HR Policy

Strategic Human Resources



Criminal Records Checking Policy

This policy applies to all workers of the County Council including agency staff and volunteers.

The policy is commended for adoption by governing bodies to apply to schools staff.

This information can be made available in a range of formats and languages, including Braille and large print. If this would be useful to you please contact [Human Resources](#) or [Schools HR Consultancy](#).

the knot unites



The County Council is a complex organisation and the workforce supports some of the most vulnerable groups in the county. The authority is committed to safeguarding these vulnerable groups and supporting those who need care, support and protection, whilst encouraging personal responsibility.

Safer Recruitment describes the practice of deterring, identifying and rejecting unsuitable job applicants in order to safeguard and promote high standards of service delivery as well as the welfare of vulnerable groups.

Policy Principles

This policy exists to complement Staffordshire County Council Resourcing Policy and specifically to:

- Reduce the risk of harm to vulnerable groups perpetrated by the workforce.
- Reduce the risk of inappropriate appointments damaging service delivery/ the reputation of Staffordshire County Council.
- Ensure compliance with legislation and statutory/regulatory requirements.

Tool Kit

1. For guidance on how to apply this policy visit:

<http://www.intra.staffordshire.gov.uk/hrinformation/hrssc/recruitmentdb/Recruitment.aspx>

2. If you need any further advice please contact the resourcing team or visit the intranet guidance here:

<http://www.intra.staffordshire.gov.uk/hrinformation/resourcing/ProcessGuidance/process.aspx> or for schools here:

<http://education.staffordshire.gov.uk/ProceduresAndGuidance/Procedures/HR/recruitment/>

Employees are expected to engage appropriately with this policy insofar as they are affected by it. Abuse or misuse of this policy is unacceptable and may give rise to action under the County Council's formal procedures.

3. Further information is available on the following websites:

<https://www.gov.uk/disclosure-barring-service-check>

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

4. Appendices 1-3 of this policy provide information and guidance for managers and/or candidates regarding Council policy.

See also national conditions of service and local agreements.

Policy Revisions

Revision Date	Summary of Changes
Nov 2011	First draft
Oct 2013	Updated
Dec 2013	Addition of appendices

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. Further, by ensuring that the content of this policy is widely disseminated, to secure consistent application throughout the Authority. For the purposes of this policy, Staffordshire County Council is hereafter referred to as 'the Council'.

2. Scope

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

This policy will also be applied to Elected Members of the Council, school governors, foster care and adoptive parent applicants, and to people involved with the Council 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 Council specifies the requirement for criminal record checks. In such cases the Council will expect organisations to provide written evidence of compliant processes and the suitability of the workforce servicing a contract.

3. Policy Statement

The Council is committed to fulfilling its duty to protect children and vulnerable adults 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 Council 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 Council 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 Council 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.

This Policy should be read together with the Policy on the Recruitment of Ex-Offenders and the Policy on the Security of criminal record Information.

4. Posts Subject to Criminal Record Checks

The Council will only specify that a criminal record check is required in respect of positions that meet the prevailing eligibility criteria. Guidance is provided by the Council for assessing risk and to determine the appropriate level of criminal record check for positions.

5. Criminal Record Checks

5.1 DBS Criminal Record and Barred List checks

The Council 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 Lead-Signatory and Counter-Signatories

The lead-signatory and counter-signatories for the Council are based in the HR Shared Service Centre; they will process all DBS requests for the Council.

5.3 Recruitment

Criminal record 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.

5.4 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.

5.5 Existing employees

Existing employees will be subject to a criminal record check where they apply for a position involving greater responsibility for children or vulnerable adults 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 or vulnerable adults becomes a cause for concern.

5.6 Rechecking

The Council 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.

5.7 Checking – applicants from abroad

The Council 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 Council will also seek guidance, on a case by case basis, in order to determine what other criminal record checks can and should be undertaken.

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 Council.

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

- 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 Council will request a new criminal record certificate

Internal applicants may have an existing criminal record certificate and offer this to the Council. The Council will accept a criminal record certificate previously requested by the 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 Council, 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/or vulnerable adults 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 Council 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.

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 Council 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 Council will only take into account convictions that are relevant to the position. The overriding consideration will be the duty to safeguard children and/or vulnerable adults. 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 for managers at Appendix 1.

10. Use of criminal record information and sharing information

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

The Council 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.

11. Monitoring and Review

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

HR will take the lead role in ensuring this policy, the associated policy and guidance notes are updated where changes in legislation, codes of practice and good practice deem this appropriate.

The HR Shared Service Centre will ensure that where the policies and/or guidance notes are altered, associated safe recruitment processes are reviewed and updated in line with any changes.

12. Communication and Training

The provisions of this policy are communicated to all employees of the Council, agencies, contractors and partner organisations and to organisations for which the Council is acting as an umbrella body. Appropriate training or briefing will be made available to staff involved in recruiting to posts requiring a criminal record check.

13. Accountabilities

Lead Signatory – overall responsibility for ensuring compliance with DBS Code of Practice; for keeping abreast of developments in guidance and legislation and for issuing guidance to Corporate/Directorate HR as appropriate regarding the DBS and criminal record checking.

Counter Signatories – responsibility for ensuring that DBS Application Forms are processed appropriately and for ensuring the appropriate storage and use of criminal record information

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.

HR – responsibility for leading on the monitoring, reviewing and updating of policies and guidance as well as providing advice and guidance on case by case basis, including in respect of the response to the receipt of positive certificates.

HR Shared Service Centre – responsibility for the integrity of electronic records; for the security and appropriate management of criminal record information; and for the administration of the Disclosure Application, Childrens barred list and Adults barred list checking processes.

Internal Audit – responsibility for assuring the integrity and effectiveness of this policy and its application through the annual audit programme.

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.

SCC - HR Advice on 01785 895828 or hradvice.guidance@staffordshire.gov.uk

Schools/Entrust – named HR advisor

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 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

CONFIDENTIAL – POSITIVE DISCLOSURE ASSESSMENT RECORD Decision maker's Interview/ risk assessment form	
Name of applicant:	
Establishment/Service:	
Position/Role:	
Certificate No:	Certificate Date:
Manager dealing:	Date:
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	
Are the offences related to the type of work which will be undertaken? Y/N (consider job description)	
Will the applicant pose a potential risk to service users/colleagues? Y/N (if YES give details)	
Will the applicant commence/continue in the role? Y/N	
(please explain the decision; including any mitigating action agreed/implemented e.g. – increased supervision, limiting access to certain areas and/or vulnerable groups)	
Signed:	Print Name:
Date:	Outcome notified to Shared Service Date:

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, ie 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 any body 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 principals 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.