

# Disclosure and Barring Service Policy HRPOL002

#### **OFFICIAL**

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# **Revision and Signoff Sheet**

# **Change Record**

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#### **Reviewers**

Name	Version Approved	Position	Organisation	Date
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#### **Distribution**

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#### 1 Introduction

The policy sets out the main principles that West Yorkshire Fire and Rescue Service operates in relation to Disclosure and Barring Service checks on employees in both recruitment and continued employment of people within the Service.

As an organisation using the Disclosure and Barring Service to assess applicants' suitability for positions of trust, West Yorkshire Fire and Rescue Service 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.

West Yorkshire Fire and Rescue Service is committed to the fair treatment of its staff, potential staff or users of its services, regardless of age, race, sex, gender reassignment, marriage or civil partnership status, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.

All job applicants who will be subject to a Disclosure and Barring Service check (previously Criminal Records Bureau check) will be advised at the beginning of the recruitment process that this check will be carried out towards the end of the recruitment process, should they be selected and made a conditional job offer subject to pre-employment checks.

West Yorkshire Fire and Rescue Service will ensure that those involved in identifying and assessing the relevance and circumstances of offences 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.

#### 2 Legal Context

In March 2014 some important changes to the Rehabilitation of Offenders Act 1974 came into force. The legislation was originally introduced to prevent ex-offenders who have not re-offended for a significant period of time from being denied access to jobs purely on the basis of their past criminal convictions. The general intent of the Act is that an ex-offender who has not re-offended for a specific length of time will be considered 'rehabilitated', and the ex-offender will be entitled to present him or herself to employers as if he or she had never been convicted in the first place.

For individuals it is a criminal offence to work or volunteer in "regulated activity" whilst barred. Potential penalties include up to five years' imprisonment or an unlimited fine.

For employers and personnel suppliers it is a criminal offence to:

- knowingly allow someone to work in a "regulated activity" while barred potential penalties include up to five years' imprisonment or an unlimited fine, and managers and directors can be liable as well as the company itself.
- ▶ allow someone to work in "regulated activity" without carrying out the required checks. The potential penalty is a fine of up to £5,000.

Appendix B provides details on regulated activity for adults and children.

#### 3 Process

The Disclosure will be completed by the individual once a conditional offer has been made and forwarded to Human Resources with originals of all documentation required. In circumstances where an applicant cannot provide the required number of documents the DBS may accept other identity documents, however this is determined on a case-by-case basis. The information on the Disclosure and documentation will be checked by Human Resources and sent off to the Umbrella Body\* who will then counter sign it and forward to the DBS. The Disclosure Certificate will be sent to the applicant who will need to disclose this to Human Resources. The Disclosure Certificate Information will only be seen by those authorised to receive it in the course of their duties will only be used for the specific purpose for which it was requested and for which the applicant's consent has been given.

All posts subject to a Disclosure are offered 'subject to DBS' check and the employee will not be allowed to commence employment until the DBS check is received, unless for operational reasons it is decided to start them before a check is completed. If this is the case, a Risk Assessment (Appendix C) will need to take place and it should be guaranteed that they will not work in that capacity or unsupervised until the DBS is cleared. This will be the decision of the Corporate HR Manager and the Area Manager/Executive Officer.

#### 4 Applicants with adverse disclosures

If a Criminal Records check reveals details of convictions which may render the applicant unsuitable for the applied post the appointing manager will discuss the situation with the applicant completing Appendix D – Cause for Concern Risk Assessment Proforma. This form will then be assessed by the Corporate Human Resources Manager and Area Manager/Executive Officer and will form the basis of a decision to appoint/not appoint the applicant.

When assessing any disclosure or declared conviction information received, consideration will be given to a range of issues such as the type of convictions, how long ago the conviction happened and the post the individual is to be employed in. The risk assessment will support the decision enabling assessment of the suitability of the applicant for their proposed position in light of the matter disclosed on their DBS/certificate.

Having a conviction will not necessarily bar someone from employment with the Authority who will only take a criminal record into account when the conviction is relevant. Protection of the applicant's rights and interest must be weighed against the rights and interest of employees and the public, including the Authority's duties and responsibilities towards these or other groups.

If the candidate has made a false declaration on their application form then the Authority will not be able to confirm the appointment. If the disclosure certificate contains information that was not revealed by the candidate or additional information from the Police is received it will be necessary to hold a further discussion with the candidate and undertake a further review before deciding to confirm or withdraw the offer of employment.

# 5 Employees with adverse disclosures and re-checks

Employees have a duty to inform their Line Manager of any criminal convictions which occur during the course of their employment.

Where existing employees who have not been previously checked, or their post requires a re-check and subsequently receive an adverse disclosure result, the manager should complete Appendix D – Cause for Concern Risk Assessment Proforma. Once completed this should then be discussed with the Corporate HR Manager.

When completing The Cause for Concern Risk Assessment Pro-forma it should be considered whether the conviction has been declared to the service and whether the conviction is relevant to the post. If the

conviction is relevant to the post or not previously declared then a full investigation should be undertaken. A formal disciplinary hearing may be convened in line with the Authorities Disciplinary Procedures in cases of a serious nature.

It may be appropriate to move the employee to an alternative post with no access to children and or vulnerable groups, property/information/resources etc. depending on the nature of the disclosures and pending the outcome of a full investigation.

If the disclosure results are considered to be of a serious nature and prove to be correct the manager or Director may consider various options:-

#### Options include:

- The introduction of safeguards.
- Redeployment pending the availability of a suitable vacancy.
- Termination of employment.
   Only after a full appraisal of the situation including the risks involved and other alternative employment options investigated should dismissal be considered and then only after advice from HR. If the manager decides to consider termination of employment, then the employee

An existing employee transferring or obtaining promotion to a new post which is listed on Appendix A will need to undertake a DBS Check.

must be informed in writing and a hearing held in line with the Disciplinary Procedure.

If a post requires an Enhanced DBS check or an Enhanced check for Regulated Activity the Authority can legally re-check their staff as regularly as they wish to and we normally re-check these posts every three years.

#### 6 Employees supervising young people on work experience

If as part of an employee's duties they are asked to supervise young people (under 16's) on work experience this is a regulated activity and an enhanced DBS check with Children's Barred List is required.

# 7 Agency Workers

If utilising agency staff, the agency is legally the employer of any agency workers and the responsibility to obtain a relevant Basic Disclosure, DBS check, or an Enhanced check is theirs. This check can then be used with any organisation that the agency provides workers to work within provided that it is the same and relevant barred list check.

When using an agency worker, the Human Resources Department will ask the agency to see written confirmation from the agency or a copy of the DBS check (this should be no more than one year old), to ensure that each worker supplied to them has had a satisfactory DBS check.

# 8 Types of Check

#### Disclosure and Barring Service – Enhanced check

This check details an individual's convictions, cautions, reprimands or warning recorded on police central records and information held locally by police forces that it is reasonably considered might be relevant to the post applied for. The check includes both 'spent' and 'unspent' convictions. There are very strict conditions set by the Disclosure and Barring Service for these checks. Positions that qualify for these checks are those where normal duties include caring for, training, supervising, or being in sole charge of children or vulnerable adults. Appendix A: details eligible positions in West Yorkshire Fire and Rescue Service, please note this is not an exhaustive list.

#### Disclosure and Barring Service – Standard check

A standard Disclosure and Barring Service check is an in-depth background check used by employers on behalf of applicants to verify if a candidate is suitable to hire for work in a specific industry. It will show details of all cautions, warnings, reprimands, as well as all spent and unspent convictions held on an individual's criminal record. Standard Criminal Record checks can only be applied for if you work in certain industries such as; Health and Social Care, Financial Services, Accountancy, Childcare, Education and Legal.

#### Disclosure and Barring Service – Basic Check

These checks are basic checks and are the most common and lowest level of disclosure available. It includes information on any 'unspent convictions' the person has.

Appendix A: details positions in West Yorkshire Fire and Rescue Service that require a check, please note this list is not exhaustive and any new posts need to be risk assessed for the requirement and level of a Disclosure and Barring Service Check.

#### 9 Fees

As West Yorkshire Fire and Rescue Service carry out less than 100 DBS checks a year we have to use an Umbrella body to provide our Disclosure and Barring Service Checks. There is no requirement to use an Umbrella Body for basic checks and applications are made directly to the DBS by the applicant for the basic check.

The current fees for both Disclosure and Barring Service checks are:-

Type of check	Fee	Admin Fee	Total Cost
Enhanced Check	£44	£13	£57
Standard Check	£26	£13	£39
Basic Check	£25	£0	£25

The fee for this check is paid for the by the candidate or employee and the authority reimburse this fee on production of their Disclosure and Barring Service certificate.

## 10 Retaining Records

Disclosures can be retained for a maximum period of six months to allow for the consideration and resolution of any disputes or complaints. The Umbrella Body will ensure that Disclosures are not kept for longer than the six-month period and that they are securely destroyed. If there is no contention over the recruitment decision Disclosures will be destroyed as soon as the recruitment decision has been made. If, in exceptional circumstances it is considered necessary to retain Disclosure information for longer than the six month period the organisation will request permission, via the Umbrella Body, from the DBS. Certificate information will be kept securely, in lockable, non-portable safe with access strictly controlled and limited to those who are entitled to see it as part of their duties.

The authority is permitted to keep indefinitely a separate record of basic information such as the date of Disclosure, the subjects name, the type of Disclosure and the decision on whether they were employed or not.

# 11 Portability

DBS portability guidelines state that as an organisation we are obliged to confirm the validity of the Disclosure presented to us. This should be done by contacting the organisation that requested the original Disclosure after gaining written consent of the applicant concerned. If the applicant refuses consent or the original Disclosure is more than one-month-old then a new Disclosure check must be carried out.

<sup>\*</sup> Individuals can carry-out Basic checks directly with the Disclosure and Barring Service but not Standard or Enhanced checks. Organisations that do less than 100 checks per year for checks have to use an Umbrella Body to carry-out checks on their behalf.

# Appendix A - West Yorkshire Fire and Rescue Service List and Categorisation of Posts for vetting with the Disclosure & Barring Service (DBS)

En	hanced			
Post Title		Area	Detail of Check	Person to review
•	Fire Prevention Trainer (Gd7)	Fire Safety	Teaching Children unsupervised – children's barred list	Central Fire Prevention Manager
•	Youth Intervention Trainers (Gd7)	Fire Safety	Teaching Children unsupervised – children's barred list	Central Fire Prevention Manager
•	Fire Prevention Assistant Grade 5)	Fire Safety	Teaching Children unsupervised – children's barred list	Central Fire Prevention Manager
•	Anyone involved in Fire Setter training/Interventions/ Young Firefighter Schemes		Teaching Children unsupervised – children's barred list	Central Fire Prevention Manager

Standard		
Post Title	Area	Person to review
<ul> <li>Chief Finance &amp;         Procurement Officer         Senior Finance Manager     </li> <li>Chief Legal and Governance officer</li> </ul>	Finance  Legal and Governance	Chief Fire Officer

Basic		
Post Title	Area	Person to review
<ul><li>Firefighters (including control)</li></ul>	Operations	AM Operations
<ul> <li>Chief Fire Officer</li> </ul>		
<ul> <li>Chief Employment Services</li> </ul>	Employment	Chief Fire Officer
Officer	Services	
<ul> <li>Director of Service Delivery</li> </ul>	Service Delivery	Chief Fire Officer
<ul> <li>Director of Service Support</li> </ul>	Service Support	Chief Fire Officer
<ul> <li>All Central Staffing/Employee</li> </ul>	Service Support	GM Employee Resourcing
Resourcing Staff		
<ul> <li>Workforce Development Staff</li> </ul>	Employment	GM Employee Resourcing
	Services	
▶ All HR Staff	Employment	Corporate HR Manager
•	Services	
All Equality and Diversity	Employment	Equality & Diversity Policy Adviser
Staff	Services	
<ul> <li>All Occupational Health Staff</li> </ul>	Employment	Chief Employment Services Officer/OHSU
	Services	Manager
▶ ICT Staff	Service Support	ICT Strategy Programme Manager
<ul><li>All Finance staff</li></ul>	Finance	Senior Finance Manager
<ul><li>All Prevention staff</li></ul>	Fire Safety	Central Fire Prevention Manager
<ul><li>All Protection staff</li></ul>	Fire Safety	Fire Protection Manager

## Appendix B - Guidance on Regulated activity in relation to adults:

This document provides information on the scope of Regulated Activity in relation to adults, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA) and as amended by the Protection of Freedoms Act 2012 (PoFA)

The definition of regulated activity for adults identifies the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time. The SVGA will no longer label adults as 'vulnerable' because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult receiving the activities. For example, anyone providing personal care to an adult is in regulated activity irrespective of whether that occurs in a hospital, a care home, a day care centre, a prison or in sheltered housing.

There is no longer a requirement for a person to carry out the activities a certain number of times before they are engaging in regulated activity. Any time a person engages in the activities set out below, they are engaging in regulated activity.

There are six categories of people who fall within the new definition of regulated activity and this includes anyone who provides day to day management of supervision of those people. An adult is a person aged over 18 years of age.

#### Regulated activity:

#### 1. Providing Health Care

The provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity. A health care professional is a person who is regulated by professional regulators i.e General Medical Council, General Dental Council. Health care includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care.

The provision of psychotherapy and counselling to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional, is regulated activity.

#### 2. Providing Personal Care

Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability, is in regulated activity.

Anyone who prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting and supervision, is in regulated activity.

Anyone who trains instructs or provides advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability, is in regulated activity.

A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, for example spoon feeding that person, or you must be prompting and supervising (for example, prompting and supervising a person with dementia, because without it they would not eat), or training or instructing (for example, teaching a person who has suffered a stroke to eat using adapted cutlery).

#### 3. Providing Social Work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing on-going support to clients.

#### 4. Assistance with general household matters

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity: managing the person's cash, paying the person's bills, shopping on their behalf.

#### Illustrative examples:

- A volunteer who collects shopping lists and the cash to pay for the shopping from older adults' homes, who then does the shopping on their behalf, would be engaging in regulated activity.
- A befriender who helps a disabled person compile their weekly shopping list is not in regulated activity.

#### 5. Assistance in the conduct of a person's own affairs

Anyone who provides assistance in the conduct of an adult's own affairs by virtue of:

- Lasting power of attorney under the Mental Capacity Act 2005
- ▶ Enduring power of attorney within the meaning of the Mental Capacity Act 2005
- Being appointed as the adult's deputy under the Mental Capacity Act 2005
- Being an Independent Mental Health Advocate
- Being an Independent Mental Capacity Advocate

would be engaging in regulated activity.

#### 6. Conveying

Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying on behalf of an organisation and for the purpose of enabling the adult to receive services.

In addition, hospital porters, Patient Transport Service drivers and assistants, Ambulance Technicians and Emergency Care Assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.

Conveying does not include licensed taxi drivers or licensed private hire drivers, and does not include trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

#### Illustrative examples:

- A person who volunteers to take an adult to and from their GP appointment on behalf of a community group is in regulated activity, regardless of whether there is a personal relationship
- A friend who takes their neighbour to a hospital appointment would not be in regulated activity, as this is a personal relationship

#### **General points:**

- Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.
- Personal, non-commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.
- A person whose role includes the day to day management or supervision of any person who is engaging in "regulated"

#### Appendix B - Guidance on Regulated activity in relation to children:

The new definition of regulated activity relating to children comprises only:

- (i) Unsupervised activities: teach, train, instruct, care for, or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
- (ii) Work for a limited range of establishments ('specified places') with opportunity for contact with children: for example schools, nurseries, pupil referral units, children centres, children's homes, childcare premises. This definition does not include work by supervised volunteers.

NOTE: Work under (i) or (ii) is regulated activity only if done 'regularly'.

- (iii) Relevant personal care, for example washing or dressing or health care by or supervised by professional.
- (iv) Registered childminding and or foster carers.

Activities no longer covered by the new definition of regulated activity:

- Activities supervised at a reasonable level children
- Health care not by, or directed, or supervised, by a health care professional.
- Legal Advice
- Treatment/therapy.

# **Appendix C - Risk Assessment Form - Pre DBS check**

This form is only for use in exceptional cases where the recruiting manager wishes to consider an individual commencing work with children/young people/vulnerable adults prior to the receipt of a valid, satisfactory DBS check. The form should be completed by the recruiting manager, authorised by the Corporate HR Manager and the Area Manager/Executive Officer and then retained on the employee's PRF. The form should not be used as an alternative to submitting DBS forms at the earliest possible date.

Employee details	
Name	
Date of birth	
Date of commencement in post	
Post recruited to	
Date completed DBS application form submitted for checking	
Pre-employment checks	
Have all breaks in employment been satisfactorily explained by the candidate?	
Have relevant original qualification certificates been seen, checked and copied?	
Proof of ID – have original documents been seen, checked and copied?	
Right to work – have original documents been seen, checked and copied?	
Have two references been received including one from the last employer?	
Does one reference relate to working with the relevant client group e.g. children young people or vulnerable adults?	
Have the references been verified with the referee and any issues clarified?	
Safeguarding checks	
Has the candidate disclosed any previous convictions/cautions?	
If so have these been satisfactorily explained?	

Do these pose a risk to the safety of	
children/young people or vulnerable adults?	
Do the duties of the post require	
unsupervised access with children/young	
people or vulnerable adults?	
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If so, are there duties which can be	
performed without direct contact with	
children/young people or vulnerable adults?	
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In the course of such duties can the	
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# Appendix D - CAUSE FOR CONCERN RISK ASSESSMENT PROFORMA

This form must be completed by the recruiting manager and Corporate HR Manager with the candidate present. Please complete this form fully, you **may** wish to discuss any relevant issues with an HR Business Partner. This risk assessment will form the basis of a decision to appoint/not to appoint someone into a position where adverse disclosures have been identified on a returned DBS Certificate.

Name of Manager
Name of Candidate
Position Applied For
Service Area

	Questions	Comments
1	Does the candidate meet all the essential criteria for the post in terms of skills, knowledge, experience and ability?	
2	Does the applicant agree that the information detailed on the DBS certificate is correct? Did the applicant declare the matters on the disclosure application form and/or the application form?  In the event of a challenge from the applicant the matter needs directly referring to the disputes team at the DBS.	
3	The country in which the offence was committed e.g. some activities are offences in Scotland and not in England and/or Wales and vice versa.	
4	What is the nature of the contact the applicant will have with children/adults/the public and how vulnerable are they? If working with adults, will the applicant have access to finances or to items of value?	
5	What was the nature of the crime, is the offence(s) directly relevant to the post, do the matters disclosed form any pattern and when did the relevant offence(s) occur, e.g. less/more than two years ago, what were the circumstances involved and what was the sentence?	
6	Was the relevant offence committed at work (either paid or unpaid work)? Does the job present any opportunities for the applicant to reoffend in the place of work?	

7	What is the seriousness of the offence(s) and relevance to the	
	safety of other employees, customers, service users and	
	property?	
	proporty.	
8	Are there any mitigating circumstances e.g. any relevant information	
	offered by the applicant about the circumstances that led to the	
	offence being committed e.g. the influence of domestic or financial	
	difficulties?	
9	Has the applicant's circumstances changed since the offence was	
	committed, making re-offending less likely (e.g. improved personal	
	circumstances, drug addiction therapy etc.). Can the applicant	
	demonstrate any efforts not to re-offend? i.e. rehabilitation course	
10	Would the applicant do anything differently now - has their motivation	
	changed? Does the individual regret the matter (degree of remorse)	
	and what is their attitude towards the matters now?	
11	Are there any assessments and reports from those agencies involved	
	in the applicant's process of rehabilitation e.g. probation service,	
	specialists working in prison, other agencies?	
40	What level of and how much aurominion is available to the amplicant?	
12	What level of and how much supervision is available to the applicant?	
13	Can any safeguards be implemented to reduce/remove any risk e.g.	
	no unsupervised contact?	
14	Any questions from the applicant?	

Applicant			
Are there any additional comments in support of your employment			
I understand that any offer of employment will be subject to the information I have supplied and that this is			
complete and correct. False information, or a failure to supply the details required could make an offer of			
employment invalid or lead to termination of employment and I consent to the above:			
Signature: Date			
Name:			
Line Manager			
Are there any additional comments, eg approval is dependent upon conditions being met, restrictions			
and/or safeguards to be implemented by the employing service:			
I have discussed this with an HR Business Partner?YES / NO			
If yes, name of HR Business Partner			
Outcome of Dialy Assessment (delete as appropriate).			
Outcome of Risk Assessment (delete as appropriate):			
Continue with offer of employment / Withdraw offer of employment			
Name			
Signature: Date:			
Area Manager/Executive Officer Authorisation:			
I have considered the content of this risk assessment and give my approval for the candidate to <b>continue</b> with offer of employment/ <b>withdraw</b> offer of employment* delete as appropriate.			
Name			
SignatureDate			
Signature			
Corporate HR Manager Authorisation:			
I have considered the content of this risk assessment and give my approval for the candidate to <b>continue</b> with offer of employment/ <b>withdraw</b> offer of employment* delete as appropriate.			
Continue with one of employment withou aw one of employment delete as appropriate.			
Name			
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SignatureDate			

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