

# PORTFIELD SCHOOL & SATELLITE CENTRES



## POLICY DOCUMENT FOR CRIMINAL RECORD INFORMATION IN EMPLOYEE SELECTION



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Llywodraeth Cymru  
Welsh Government



Mar 2018

Portfield School adopts the LEA guidance on:-

## CRIMINAL RECORD Information in Employee Selection Policy

This policy will be reviewed annually.

Signed ..... (Chair of Governors)

Signed .....(Headteacher)

Date .....

## Portfield School Mission Statement

Working together    Learning together    Achieving together

At Portfield School we strive to

- Create a happy, safe, supportive and stimulating learning environment
- Value everyone
- Develop everyone's personal, social, emotional health and wellbeing
- Promote relevant academic and vocational skills
- Meet individual needs through an imaginative and flexible approach
- Enable all learners to achieve their full potential

UNCRC United Nations Convention on the Rights of the Child

- Portfield School places the values and principles of the UNCRC at the heart all policies and practices
- Portfield School is a Rights Respecting School

## Safe Recruitment

# Statement of Policy and Practice on the use of Criminal Record Information in Employee Selection

### 1. Policy Statement

- 1.1. Pembrokeshire County Council has a duty to ensure the suitability of everyone it employs, in whatever capacity. It also has a duty of care to children and vulnerable adults to whom it provides services. The safe recruitment of people to work with children or vulnerable adults is of the utmost importance and demands due diligence.
- 1.2. As part of its employee vetting procedure, the Council has, by virtue of its status as a Registered Body, access, where appropriate, to criminal record information through the Disclosure and Barring Service (DBS). The DBS exists to enable organisations to make safe recruitment decisions.
- 1.3. In accordance with its duty to protect children and vulnerable adults from those who may pose a risk of harm to them, the Council will apply for a DBS disclosure certificate in order to identify such people and to prevent them from being recruited to work in sensitive occupations.
- 1.4. The Council is also committed to preventing unfair discrimination against existing and prospective employees on the grounds of offending behaviour that does not, on the basis of a careful and objective assessment, pose unacceptable risks to the safety of children or vulnerable adults.
- 1.5. In accordance with its obligations as a DBS Registered Body, the Council has adopted a policy on the recruitment of ex-offenders (Appendix A) and also on the secure storage, handling, use, retention and disposal of disclosure information (Appendix B).
- 1.6. This policy statement is prepared in the context of the requirements of relevant legislation, notably the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012), the Rehabilitation of Offenders Act 1974 (and associated Exemption Orders), the Data Protection Act 1998, and also in the context of the DBS Code of Practice which is binding on all Registered Bodies.

### 2. Scope

2.1. This policy shall apply to:-

- Job Applicants for employment with Pembrokeshire County Council;
- All employees of the Council in schools, including those employed in ancillary services such as catering and building cleaning;
- All other county council employees;
- Those who seek to work for the Council on a voluntary basis, including school-based volunteers.

### 3. Application of the Policy

- 3.1. The Council shall, as part of its employee vetting procedure, require an Enhanced Disclosure in respect of any person to whom it is considering offering employment (including a person sourced through an employment agency) at the point that an offer is made, in an occupation that is eligible for such a disclosure. Generally, this will mean a position that is covered by the exemption orders to the Rehabilitation of Offenders Act and/or by the Safeguarding Vulnerable Groups Act 2006.
- 3.2. In particular, an Enhanced Disclosure will be required in relation to any position that meets the original definition of '**regulated activity**' relating to children and regulated activity relating to vulnerable adults, within the meaning of Schedule 4 of the Safeguarding Vulnerable Groups Act, 2006.

'Regulated activity' was originally defined as:-

- *Activity involving contact with children or vulnerable adults and is of a specified nature (e.g. teaching, training, care, supervision, advice, medical treatment or in certain circumstances transport) on a frequent, intensive and/or overnight basis;*
- *Activity involving contact with children or vulnerable adults in a specified place (e.g. schools, care homes etc), frequently or intensively;*
- *Fostering and childcare;*
- *Certain specified positions of responsibility (e.g. school governor, director of children's services, director of adult social services;*
- *'Frequently' means once a month or more. 'Intensively' means on three or more days in a 30 day period.*

Furthermore, an Enhanced Disclosure with a check against either the Children Barred List or the Adults Barred List, or both Barred Lists, shall be required for any person being considered for employment in a position covered by the revised definitions of 'regulated activity' introduced by the Protection of Freedoms Act 2012 (amending the Safeguarding Vulnerable Groups Act). A summary of the revised definition of regulated activity is shown at Appendix C.

- 3.3. The positions listed below are examples of typical PCC jobs which are eligible for a disclosure, and for which a disclosure will always be required as part of the Council's employee vetting process:
- Social Worker
  - Home Carer
  - Residential care worker
  - Support worker

## Pembrokeshire County Council

- Registered Home Manager
- Community Support Manager
- Family Placement Officer
- Day Centre Assistant
- Head Teacher
- Teacher
- Supply Teacher
- Learning Support Assistant
- Lunch Time Supervisor
- Youth Worker
- Leisure Attendant
- Summer Play Scheme worker
- Driver of transport for children or vulnerable adults
- Escort / passenger assistant for children or vulnerable adults
- Ancillary service staff working at premises wholly or mainly used by children or vulnerable adults, including caretakers, cleaners, certain maintenance workers, administrators, catering operatives.
- Voluntary workers employed at premises wholly or mainly used by children or vulnerable adults.

(Note: this list is indicative, not exhaustive).

3.4 The decision as to whether or not a DBS disclosure application is appropriate, and at what level, shall generally be based on the criteria set out in Section 3.2 above, and informed by an assessment of risk produced by the recruiting manager. Where doubt exists on the eligibility of a position for a DBS disclosure, and whether barred list checks are required, managers shall contact the HR Division for advice. HR Advisers, as registered body counter-signatories, must satisfy themselves that a position is eligible for a disclosure based on all available information on the nature of the duties it entails and the setting in which those duties are performed.

#### **4. Administrative process**

4.1. In the case of recruitment of new employees it shall be made clear in recruitment advertising and in other recruitment literature that a DBS disclosure will be required of the person selected to fill the position.

Pembrokeshire County Council

- 4.2. An offer of employment for a position that requires a DBS disclosure certificate shall be made conditional upon a disclosure being provided and its content being considered satisfactory by the Council.
- 4.3. Generally, no person selected for a position that requires a satisfactory disclosure certificate will be permitted to take up that employment *before* the disclosure has been received and its content considered by the recruiting manager.
- 4.4. Disclosure application forms will be issued to prospective applicants by the HR Division, with appropriate guidance on its completion and return to the Council for counter-signature.
- 4.5. Applicants will be required to provide acceptable evidence of their identity, in accordance with DBS standards, as part of the application process. Documentary evidence of identity will be scrutinised for authenticity by appropriately trained staff. Where identity checking is carried out locally, e.g. at a school or at a leisure centre, managers or Head Teachers shall be responsible for ensuring that it is carried out efficiently and that disclosure applications are submitted promptly to the HR Division for processing.
- 4.6. Applicants will be given a maximum of 7 calendar days to complete and return their disclosure applications to the Council. A single reminder will be issued at the end of that period. If the application has not been returned within 7 days of the reminder, the appointment process will be suspended, and the offer of employment may, at the discretion of the recruiting manager, be withdrawn. In the case of renewal for existing employees, the employee concerned shall be suspended from duty pending renewal of their disclosure (but refer also to paragraph 6.2 below for possible exceptions to the suspension rule) . The Disciplinary Procedure may be invoked in cases of suspected wilful non compliance, including suspension from duty without pay unless there is a good reason for the failure to comply within the specified period.
- 4.7. The recruiting manager will be informed of the outcome of the disclosure application by HR Division, within the constraints imposed by the DBS. HR Advisers will be authorised to share detailed information on disclosure content only with those that need to know it to enable managers to assess its relevance and to make informed decisions on suitability.
- 4.8. In evaluating disclosure information, managers shall have due regard to the Council's document *Supplementary guidance for managers on the employment of people who have a criminal record*, which is designed to assist in the interpretation of criminal conviction information, and to enable fair and consistent decisions to be made on suitability. Managers and their HR Advisers shall apply the Council's policy on the employment of ex-offenders. In particular, managers shall observe the requirement to discuss the content of a disclosure certificate with the individual concerned (i.e. the disclosure subject), prior to making a decision on its implications for an offer of employment.
- 4.9. Where a disclosure reveals any information that suggests that a person may pose a risk to, or otherwise be unsuitable for work with, children or vulnerable adults, the case shall be referred immediately by the relevant HR Adviser to the Head for HR for determination, in consultation with the Head of Child Care (in respect of the protection of children) or the Head of

Community Care (in respect of the protection of vulnerable adults) and also the relevant Head of Service or Head Teacher. In cases where it is decided, following an interview with the disclosure subject, to abort recruitment, the decision of the Head of HR shall be final. There shall be no right of appeal.

- 4.10. In all cases where a disclosure has revealed criminal conviction information, the assessment outcome will be recorded and a copy placed either on the recruitment file (if the person is not subsequently employed) or the individual's personnel file (if the person is subsequently employed).

## **5. Portability of disclosures**

- 5.1 The Council will not accept disclosure certificates obtained by other employers/ through other Registered Bodies, however recently they may have been issued. Consequently, a new disclosure certificate will be required of all new appointees, irrespective of whether they already possess one by virtue of a recent application at the instigation of another employer/body.
- 5.2 In the case of internal transfers, those responsible for the appointment must take care to determine whether or not the employee concerned has already been vetted to the correct standard before that person is permitted to transfer into his /her new post. In some cases, the employee may already be vetted to the correct standard, whereas in other cases further vetting may be necessary e.g. a barred list check if the transfer entails a move into regulated activity for the first time.

## **6. Frequency of disclosure certificate renewal**

- 6.1 Disclosure certificates for existing employees shall be renewed every three years, from the date of their current certificate. It will be a requirement for all employees to fully co-operate with the process of disclosure certificate renewal (see also paragraph 4.6 above). The cost of the renewal process will be met by the Council.
- 6.2 In the case of DBS certificate renewals for existing employees not received before the expiry date, generally the employee concerned shall be suspended from duty pending renewal of their DBS certificate. In exceptional circumstances, having undertaken a risk assessment taking into consideration the reason for the delay and the nature of the post held, a Head Teacher / Head of Service may, at their discretion, submit a request to the relevant Director for the employee to remain in post during what would otherwise be a period of suspension. The completed risk assessment should then be forwarded to HR. The Disciplinary Procedure may still be invoked in cases of suspected wilful non-compliance, including suspension from duty without pay where there appears to be no reasonable explanation for an employee's failure to comply within the specified period.

*Explanatory note: It is apparent that in a very small number of cases, the processing of DBS renewals can take longer than the usual period of 4-6 weeks, a matter that is outside the control of the Council and the employees concerned. Where such delays lead to renewals not being received before the notional 3-year expiry date, the suspension policy inevitably has a negative effect on service delivery including, in the case of schools, pupil learning, and sometimes necessitates the buying-in of supply teacher cover.*

*In the case of long serving employees with an exemplary employment record and past DBS clearance, the suspension policy may be disproportionate to a reasonable assessment of the risk of harm to children, young people and vulnerable adults.*

- 6.3 It is a requirement that disclosure certificates in respect of agency personnel shall be renewed on exactly the same basis as if they were employees of Pembrokeshire County Council, through their employer.

## **7. Monitoring and control**

- 7.1 A central database of disclosure certificates and their renewal dates will be maintained by HR Division, within the limits set by the DBS on data retention.
- 7.2 The Corporate HR Manager will fulfil the role of 'Lead Counter-signatory' and take managerial responsibility for compliance with the DBS Code of Practice.
- 7.3 Monthly monitoring reports will be produced in order to audit compliance and to ensure adequate management control over the process and its outcomes.
- 7.4 This policy statement, and the operating systems it describes, will be kept under review and revised as required to reflect developments in relevant legislation, HR Management and safeguarding best practice.



## Appendix A

### **POLICY STATEMENT ON THE RECRUITMENT OF EX-OFFENDERS**

1. **As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, Pembrokeshire County Council 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 conviction or other information revealed.**
2. Pembrokeshire County Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
3. 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 candidates for interview based on their skills, qualifications and experience.
4. 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 and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
5. 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 under separate, confidential cover, to a designated person with Pembrokeshire County Council and we guarantee that this information is only seen by those who need to see it as part of the recruitment process.
6. We ensure that all those in Pembrokeshire County Council who are involved in the recruitment process have been suitably trained 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, eg the Rehabilitation of Offenders Act 1974.
7. 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.
8. 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.
9. 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 you from working with us**

This will depend on the nature of the position and the circumstances and background of your offences.

## Appendix B

### **POLICY STATEMENT ON THE SECURE STORAGE, HANDLING, USE, RETENTION AND DISPOSAL OF DISCLOSURES AND DISCLOSURE INFORMATION SUPPLIED BY THE CRIMINAL RECORDS BUREAU**

#### 1. **General Principles**

As an organisation using the Disclosure and Barring Service to help assess the suitability of applicants for positions of trust, Pembrokeshire County Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures 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 Disclosure information and has a written policy on these matters, which is available to those who wish to see it on request.

#### 2. **Storage and Access**

Disclosure 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.

#### 3. **Handling**

In accordance with section 124 of the Police Act 1997, Disclosure 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 recognise that it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.

#### 4. **Usage**

Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

#### 5. **Retention**

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information 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 the Data Protection and Human Rights individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

#### 6. **Disposal**

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, ie by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (eg 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, notwithstanding the above, we may 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.

## Appendix C

## **SUMMARY OF THE DEFINITION OF REGULATED ACTIVITY**

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.

### **Regulated Activity in relation to children**

- (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: e.g. schools, children's homes, childcare premises. Not work by supervised volunteers.
- (iii) Relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;
- (iv) Registered childminding and foster carers.

Work under (i) and (ii) is regulated activity only if done 'regularly' (once a week or more often, or 4 or more days in a 30-day period, or overnight).

Exceptions to the categories listed above are:

- (i) Activities: supervised activity- under reasonable day to day supervision by another person engaging in regulated activity.
- (ii) Establishments: activity by a person contracted (or volunteering) to provide occasional temporary services (not teaching, training or supervision of children) e.g. maintenance work.  
Volunteering, under day to day supervision of another person engaging in regulated activity.
- (iii) Health care: health care not by, or directed or supervised by, a health care professional( e.g. first aid).

The Government has published advice on supervision.

### **Regulated Activity in relation to adults**

There are six categories of people who fall within the new definition of regulated activity, as will anyone who provides day to day management or supervision of those people.

- (i) Providing healthcare – provision by a healthcare professional or under the direction or supervision of one
- (ii) Providing personal care – provision of 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; 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 prompting or supervision.  
Trains, instructs or offers 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.

- (iii) Providing social work: the provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.
- (iv) Assisting with general household matters – assistance with managing a person's cash, paying a person's bills or shopping on their behalf because of the adult's age, illness or disability.
- (v) Assisting in the conduct of people's own affairs: anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney ( see the Safeguarding Vulnerable Groups Act, as amended by the Protection of Freedoms Act 2012, for further categories covered by this clause).
- (vi) Conveying adults to, from, or between places, where they receive healthcare, relevant personal care or social work because of their age, illness or disability (excludes family, friends and taxi drivers).

Note: the frequency test has been removed and an individual only needs to engage in a defined activity once to be carrying out Regulated Activity and the new definition removes the word 'vulnerable' when describing Regulated Activity relating to adults.

An adult is a person aged 18 years or over.

A person whose role includes the day to day management or supervision of any person engaging in Regulated Activity, is also in Regulated Activity.

Regulated Activity for adults excludes activity carried out in the course of family relationships and personal, non-commercial relationships.

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