

**Honiton Community College  
Academy Trust**



This Policy was approved by the Governing Body of  
Honiton Community College Academy Trust  
on 10<sup>th</sup> February 2021 and will be reviewed annually.

# **HCC DISCLOSURE AND BARRING SERVICE POLICY**

## CONTENTS

	Page No.
<u>POLICY</u>	
1. Introduction	3
2. Legislative Influences	4
3. The DBS Code of Practice	5
4. Rehabilitation of Offenders	5
5. Policy Statement – Secure storage, handling, use, retention and disposal of Disclosures and Disclosure information	6
6. Recruitment	7
7. Policy Statement – Recruitment of Ex-Offenders	8
8. Monitoring and Review of the Policy	9
 <u>PROCEDURE</u>	
9. The Disclosure and Barring Service	9
10. Roles and Responsibilities of ‘Authorised Officers’	10
11. Managing the Disclosure Process	11
12. Re-checking of Existing Employees	12
13. DBS Checks in Schools	13
13.1 Central School Record	
13.2 Volunteers	
13.3 Supply Staff	
13.4 Governors	
13.5 Re-checking existing staff	
 <u>MANAGEMENT GUIDANCE</u>	
14. Employing People with Criminal Records	14
15. Staff Awaiting DBS Clearance	15
16. Risk Management - Assessing the relevance of Criminal Records	15
17. Overseas Candidates	17
18. Volunteers and Students	18
19. Accepting an Existing DBS Check	19
20. Agency and Contractors	19
 <u>TERMS / ABBREVIATIONS</u>	 20
 <u>APPENDICES / FLOW CHARTS</u>	
21. New Appointments Flowchart	24

## **POLICY**

### **1. Introduction**

- 1.1 This document provides the policy, procedures and guidance to Authorised Officers and managers on how to manage the recruitment, transfer and re-checking process of all employees, casual staff, volunteers etc. into positions where they will typically have unsupervised access to children and vulnerable adults.
- 1.2 Honiton Community College (HCC), through its managers and staff, has a duty of care to protect the well-being of all students under their care.
- 1.3 Honiton Community College will take every step to ensure that those of its employees, volunteers and contractors who work with or otherwise come into contact with these vulnerable groups are suitable to undertake the work.
- 1.4 Honiton Community College is also committed to the elimination of discrimination and to equal treatment in employment. This applies at all stages of employment and prospective employment including recruitment. Although no aspects of employment are excluded, there are certain circumstances where different treatment can be shown to be justified and is appropriate in order to fulfil the College's duty of care, outlined above.
- 1.5 This framework document has been written with regard to the Rehabilitation of Offenders Act 1974, the Exceptions Order 1975 (amended 2013) to the Rehabilitation of Offenders Act 1974, the Disclosure and Barring Service Code of Practice, the Police Act 1997, the Criminal Justice and Court Services Act 2000 and the Data Protection Act 2018, and the Safeguarding Vulnerable Groups Act (2006). It has also encompassed observed and informed examples of best practice.
- 1.6 This document should be read and applied in conjunction with these other related HCC policies: Recruitment and Selection and Safeguarding.
- 1.7 This policy will apply equally to internal candidates (i.e. those currently employed by Honiton Community College) and external candidates being considered for relevant permanent, temporary, casual/relief or volunteer positions. It will also apply where external agencies recruit and employ staff to carry out contract work on behalf of HCC or where external agencies recruit staff to become employees of HCC. As a responsible employer, Honiton Community College will ask short-listed candidates to volunteer information about their criminal history including unspent convictions when applying for positions which are included in the Exceptions Order 1975 to the Rehabilitation of Offenders Act 1974.
- 1.8 Honiton Community College will only apply for Disclosures in respect of posts that are included in the Exceptions Order to the Rehabilitation of Offenders Act 1974. It may be an offence under section 123 (2) of the Police Act 1997 to apply for a Disclosure in respect of a post not covered by the Exceptions Order 1975.

## **2. Legislative Influences**

### **2.1 Human Rights Act**

Under the Human Rights Act anyone who believes their rights as set out in the European Convention on Human Rights have been violated by a public authority is able to raise their complaint before a UK court. Managers should therefore be aware of the possibility of legal challenge from ex-offenders who believe their rights have been violated under article 14 of the Act, which guarantees freedom from discrimination. Equally, they should be aware that victims of physical/verbal/sexual abuse caused by employees known to have a criminal record might also seek legal challenge on the grounds that the organisation failed to protect them sufficiently. In order to avoid prosecution by the courts, the College needs to apply policies that ensure vulnerable people are protected but at the same time treat ex-Offenders fairly.

### **2.2 Data Protection and GDPR**

Under the Data Protection Act 2018 individuals have the right to see their own personal data subject to the rights of confidentiality of any third parties involved in that information. In addition all applicants receive their own copy of the Disclosure certificate. The College is committed to confidentiality and complies with the Data Protection Act and GDPR policies. All information will be handled and stored sensitively and used only for its proper purpose. The policy statement regarding secure storage, handling, use, retention and disposal of Disclosures and Disclosure information can be seen at section 5. This should be read in conjunction with the privacy notices which are available on our website.

### **2.3 The Police Act 1997**

Part V of The Police Act 1997 is the legislation supporting the establishment of the Criminal Records Bureau (CRB). The CRB was established in 2002, is an Executive Agency of the Home Office and provides wider access to criminal record information through its Disclosure Service.

### **2.4 The Safeguarding Vulnerable Groups Act 2006**

The Safeguarding Vulnerable Groups Act was passed as a result of the Bichard Inquiry arising from the Soham murders in 2002. The Inquiry questioned the way employers recruit people to work with vulnerable groups, and particularly the way background checks are carried out. Recommendation 19 of the Inquiry Report highlighted the need for a single agency to vet all individuals who want to work or volunteer with children or vulnerable adults and to bar unsuitable people from doing so.

### **2.5 The Protection of Freedom Act 2012**

On December 1<sup>st</sup> 2012 the Criminal Records Bureau (CRB) merged with the Independent Safeguarding Authority (ISA) to become the Disclosure and Barring Service. The DBS was established under the Protection of Freedom Act 2012 and provides a joined up service to combine the criminal records and barring functions. This service enables organisations in the public, private and voluntary sectors to make safer recruitment decisions by identifying candidates who may be unsuitable for certain work, especially that involve children or vulnerable adults.

### **3. The DBS Code of Practice**

All organisations who wish to use DBS checks must comply with the DBS's Code of Practice which was developed after a lengthy public consultation exercise with input from a range of organisations.

**Please note: Although the code of practice document, which is published under section 122(2) of the Police Act 1997, has not been rebranded with the DBS logo or new terminology, organisations who receive certificate information from the DBS should still comply with the obligations set out in the document.**

**There are some minor terminology inconsistencies in the glossary which is now out-dated due to the introduction of the Protection Of Freedoms Act 2012. Please see the latest DBS glossary for the most up to date descriptions of terms.**

The Code of Practice is intended to ensure – and to provide assurance to those applying for Standard and Enhanced Disclosures – that the information released will be used fairly. The Code also seeks to ensure that sensitive personal information is handled and stored appropriately and is kept for only as long as necessary.

Anybody, who receives Standard or Enhanced Disclosure information, must abide by the Code of Practice which includes Registered Bodies, Umbrella Bodies, Recruiters and others receiving such information.

The Code of Practice states that Disclosure information should only be used in the context of a policy on the recruitment of ex-offenders, designed to protect applicants from unfair discrimination on the basis of non-relevant past convictions. The Code of Practice also states that the information revealed is considered only for the purpose for which it was obtained. It should be destroyed after a suitable period has passed – usually not more than six months.

Organisations must therefore use Disclosure information fairly, and ensure that it is handled and stored appropriately. They must also satisfy the DBS that they are complying with the Code of Practice, which means co-operating with requests from the DBS to undertake assurance checks, as well as reporting any suspected malpractice in relation to the Code or misuse of Disclosures.

Failure to comply with the Code of Practice can result in the DBS refusing to issue the results of a DBS check or potential de-registration of the organisation.

### **4. Rehabilitation of Offenders**

The Rehabilitation of Offenders Act (ROA) 1974 applies to England, Scotland and Wales, and is aimed at helping people who have been convicted of a criminal offence and who have not re-offended since. Anyone who has been convicted of a criminal offence, and received a sentence of not more than 2.5 years in prison, benefits as a result of the Act, if he or she is not convicted again during a specified period otherwise known as the 'rehabilitation period'. The length of this period depends on the sentence given for the original offence and runs from the date of the conviction. If the person does not re-offend during this rehabilitation period, they become a 'rehabilitated person', and their conviction becomes 'spent'.

Sentences can carry fixed or variable rehabilitation periods and these periods can be extended if the person offends again during the rehabilitation period. However, if the sentence is more than 2.5 years in prison the conviction never becomes 'spent'. It is the sentence imposed by the courts that counts, even if it is a suspended sentence, not the time actually spent in prison.

Once a conviction is 'spent', the convicted person does not have to reveal it or admit its existence in most circumstances, including, for example, when applying for a job. However, there are exceptions relating to employment and these are listed in the Exceptions order to the ROA. The two main exceptions relate to working with children or vulnerable adults and in this circumstance people are required to reveal all convictions, both spent and unspent.

## **5. Policy Statement on the secure storage, handling, use, retention and disposal of Disclosures and Disclosure information**

### **5.1 General principles**

As an organisation using the DBS service to help assess the suitability of applicants for positions of trust, Honiton Community College 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.

### **5.2 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.

### **5.3 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.

### **5.4 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.

### **5.5 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 of the individual before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

## 5.6 Disposal

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure 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, in order to maintain the College's DBS Check Database 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.

## 6. Recruitment

Whenever a vacancy for a position which will be subject to a DBS check arises the following will always be observed:

- 6.1 A suitability qualified and trained Appointing Officer should be designated to be responsible for the recruitment process.
- 6.2 The job advertisement and any supporting information sent to prospective candidates should clearly state that the post is subject to a DBS Disclosure.
- 6.3 Short-listed candidates will be sent a PO7 form to complete and bring to interview detailing their full criminal history including both spent and unspent convictions.
- 6.4 Either at interview or at a separate meeting the candidate will be asked to discuss the circumstances around their declarations on the PO7 form and a record of this meeting kept until the return of the DBS Disclosure. A risk assessment should then be carried out (see 17.) to help determine if the criminal history is relevant to the role.
- 6.5 Only the successful candidate will be required to apply for a DBS Disclosure. A new Disclosure must be applied for; previous Disclosures are unacceptable (see 20.)
- 6.6 Where it is determined the candidate's criminal background does not preclude employment, a conditional offer of employment can be made, subject to relevant pre-employment checks including a DBS Disclosure.
- 6.7 Once the DBS Disclosure is returned, if it has revealed the same information as the candidate disclosed and only if this is not considered to pose a risk following the risk assessment (see 17.) then providing all other pre-employment checks are satisfactory an unconditional job offer can be confirmed, following a meeting with the candidate.
- 6.8 If the DBS Disclosure contains information which was not revealed by the candidate, or additional information is received by the police, it will be necessary to hold a further discussion with the candidate and a further review against the risk assessment carried out to determine whether to confirm or withdraw the conditional offer of employment. This decision must be ratified by the Head of Service or designated senior manager and HR advice sought.

## **7. Policy Statement – Recruitment of Ex-Offenders**

- 7.1 As an organisation using the DBS service to assess candidates' suitability for positions of trust, Honiton Community College complies fully with The DBS Code of Practice and undertakes to treat all candidates for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
- 7.2 Honiton Community College 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.
- 7.3 This policy on the recruitment of ex-offenders will be made available to all Disclosure applicants at the outset of the recruitment process.
- 7.4 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.
- 7.5 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 briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
- 7.6 Where a Disclosure 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. We request that this information is sent under separate, confidential cover, to a designated person within Honiton Community College and we guarantee that this information is only be seen by those who need to see it as part of the recruitment process.
- 7.7 Unless the nature of the position allows Honiton Community College 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.
- 7.8 We ensure that all those in Honiton Community College 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, e.g. the Rehabilitation of Offenders Act 1974.
- 7.9 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.
- 7.10 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.
- 7.11 We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.



7.12 Having a criminal record is not necessarily bar to working with us. This will depend on the nature of the position and the circumstances and background of the offences

## **8. Monitoring and Review**

The College's Records Disclosure Manager will monitor and review this policy on a regular basis in order to ensure on-going compliance with legislation and effective operational practice.

HCC reserves the right to alter or amend this policy in accordance with any recommendations resulting from consultation with relevant parties, the monitoring process; any changes in the law; or any other related legislation.

## **PROCEDURE**

### **9. The Disclosure and Barring Service (previously the Criminal Record Bureau)**

#### **9.1 Background to the DBS**

The Criminal Record Bureau (CRB) was an executive agency of the Home Office established under provision of the Police Act 1997 and commenced operation in March 2002. It was established to help employers in the public, private and voluntary sectors identify individuals who may be unsuitable for certain types of work, especially that involving contact with children or other vulnerable members of society, by providing controlled access to criminal records and related information through its Disclosure service.

The Disclosure service is a single focussed process and enables organisations to make safer recruitment decisions by checking the background of applicants to ensure they do not have a history that would make them unsuitable for the position for which they have applied.

#### **9.2 Disclosure Level**

There are currently two levels of Disclosure available, Standard or Enhanced. The level check is dependent on the nature of the role and guidance found on the DBS website [www.homeoffice.gov.uk/agencies-public-bodies/dbs/](http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/). However, the College in seeking to fulfil its duty of care and all disclosure checks are applied for at Enhanced level, as this is the only level that discloses all relevant information.

#### **9.3 Disclosure checking service**

The DBS checks each Disclosure applicant against the Police National Computer (PNC), Local Police Intelligence, List 99 (Department for Children, Schools & Families), the Department of Health Consultancy List; the Protection of Children Act (POCA) list and the Protection of Vulnerable Adults (POVA) list. A comprehensive check can thus be made on those individuals potentially coming into contact with children or vulnerable adults.

It should be stressed that, whilst DBS checks are vital in the consideration of appropriately staffing posts with access to vulnerable people, they are just one in a range of pre-employment checks which must be carried out in order to assess the suitability of candidates. Other checks include thoroughly confirming identities, qualifications, taking up references and examining dates of employment histories on application forms.

#### 9.4 Disclosure Certificate information

An Enhanced Disclosure will contain information regarding;

- Current and spent convictions
- Cautions
- Reprimands
- Warnings which are held on the Police National Computer
- Any relevant information that is held by the police

Any matter of potential concern revealed in a Disclosure must be fully discussed with the person seeking the post before a decision to either withdraw or confirm a conditional offer of employment is taken.

#### 9.5 DBS Code of Practice

The DBS Code of Practice sets out the obligations that must be met by recipients of Disclosure Information. Every subject of a DBS Disclosure will be made aware of the existence of the Code of Practice and a copy of it will be made available to that individual on request or by visiting the DBS website at [www.homeoffice.gov.uk/agencies-public-bodies/dbs/](http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/). In addition, a guide to completing the Disclosure application form can also be found at the above web site.

## **10. Roles and Responsibilities of 'Authorised Officers'**

Authorised Officers play an important role in the DBS process from conducting the ID checks to receiving results of positive disclosures.

### 10.1 Who can be an Authorised Officer?

Anyone can be nominated as an Authorised Officer providing they can meet the following criteria:

- They need to be in a role which requires an enhanced DBS check
- They must hold a current enhanced DBS which is clear. We will require a copy if the check was not processed by Honiton Community College.
- They will need to have the authority to authorise the payment for the check
- Typically, they should be in a more senior role than those being checked, or work in Human Resources or be overseen by a member of the ELT.

Authorised Officers are required to ensure they are fully aware of the application process and have read and understood The DBS Code of Practice.

### 10.2 Key responsibilities for Authorised Officers

#### 10.2.1 Completing the DBS Disclosure Application Form

It is the responsibility of the Authorising Officer to ensure that the DBS application form is completed fully and correctly, taking into consideration common errors, otherwise this can result in delays in the process.

#### 10.2.2 The DBS1 Form

All forms are now completed on-line via <https://devoncc.employmentcheck.org.uk>

#### 10.2.3 ID Checking

The most important feature for Authorised Officers is conducting the identity check required with DBS checks. All the appropriate original documents must be seen and evidenced in section 'W' on the Disclosure Application Form along with completing the Evidence sheet (on the back of the DBS1).

Comprehensive guidance on ID checking and the list of defined documents, along with useful hints and tips on how to identify fraudulent ID documents can be found on the DBS website.

#### 10.2.4 Receiving the Results

The Authorised Officer on the DBS1 form will receive the results of the DBS check. If the Disclosure comes back with no information on, then an email will be sent direct to the Authorised Officer confirming the basic details which can be stored on the personnel file. Should however the disclosure be returned with information on, then the Disclosure certificate will either be posted recorded delivery to the Authorised Officer. Once an employment decision has been made a DBS2 form must be completed and returned to the Records Disclosure Service.

#### 10.2.5 Payment

Invoices are automatically raised by DCC (DBS Department) direct to the college.

### **11. Managing the Disclosure Process**

- 11.1 The disclosure process is managed by a nominated Authorised Officer (who may also be the Appointing Officer) who is a recognised contact with the DBS. As both Appointing and Authorised Officers are given access to sensitive information relating to criminal records they must be of an appropriate level within the organisation.
- 11.2 The Authorised Officer should ensure that the applicant receives adequate support and guidance on completing the Disclosure Application form and that they are made aware of the College's policy on recruitment of Ex-Offenders (see 7.) A detailed breakdown of the Disclosure application process can be found in this policy (see 22.).
- 11.3 The Authorised Officer is responsible for ensuring compliance with The DBS Code of Practice during the Disclosure process.

- 11.4 Once the Records Disclosure Service receives the copy of the Disclosure certificate back from the DBS if the Disclosure contains no information then a confirmation email will be sent to the Authorised Officer.
- 11.5 If there is information contained on the Disclosure certificate, or received by separate cover, the Authorised Officer will be notified either by receipt of the actual certificate or via the agreed Directorate notification procedure.

## **12. Re-checking of Existing Employees**

### **12.1 How long is a Disclosure valid?**

Each Disclosure will contain the date the Disclosure was printed. Disclosures do not carry a pre-determined period of validity because a conviction or other matter could be recorded against the subject of a Disclosure at any time after it is issued.

### **12.2 Employees Changing Post within Honiton Community College**

All employees are subject to an enhanced DBS check.

### **12.3 Existing Employee Re-checks**

Honiton Community College reserves the right to ask existing employees in relevant positions to apply for a Disclosure if their actions or activities give cause for concern. The grounds for this could include allegations of suspicious or inappropriate behaviour made by a child or vulnerable adult, or a colleague, parent, carer or member of the public. In such instances a full investigation will be conducted and Honiton Community College may ask for a new Disclosure to be carried out, only after seeking legal advice.

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

All existing employee re-checks should be undertaken in conjunction with the 'Managing Disclosure Information during Employment' policy. This policy underpins the Honiton Community College contractual requirement for all staff in posts subject to a DBS check to disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, reprimand, bind-over or final warning received during their employment or since their last DBS Disclosure or where a DBS Disclosure has never been carried out, all criminal information must be disclosed.

It should be noted however that schools are not statutorily required to ask existing staff that were recruited prior to the establishment of the CRB in 2002 for a DBS check unless they have concerns about the person's suitability to work with children (see also 13.)

## **13. DBS Checks in Schools**

### **13.1 Central School Record**

In addition to the various staff records which are kept as part of normal business, from 1<sup>st</sup> January 2007 schools' must also keep and maintain a Single Central Record of recruitment and vetting checks. This record must include all employed staff, supply staff, volunteers, governors or any others who work in regular contact with the children.

The Central record must indicate whether or not the following have been completed; identity and qualification checks, checks of permission to work in the UK, DBS Children's Barred List, enhanced DBS Disclosure information and overseas criminal record checks (where appropriate). The record must show the date on which each check was completed and should show who carried out the check.

### **13.2 Volunteers**

Many parents and other volunteers help regularly in the classroom and some will require a DBS Disclosure. This should be determined by the frequency and nature of contact with children i.e. if being left unsupervised with children and/or if having regular contact which is defined as 3 times in a 30 day period or more.

Volunteers who only accompany staff and children on one off outings or trips or who help at one off specific events such as sports days, school fete's etc. do not need to be DBS checked. If however an overnight stay is involved then an enhanced DBS must be obtained.

### **13.3 Supply Staff**

The same vetting checks will be required for those who work as supply staff in schools, including those who are employed via a supply agency (whether college or commercial) and should be recorded on the central school record (see 14.1).

Where supply staff are employed directly by the school or the same process must be followed as for all employed staff and an enhanced DBS Disclosure applied for.

Before taking on supply staff from an agency, the school must obtain written confirmation from the agency that the relevant DBS Disclosure has been received and if it contained any disclosed information. The school does not need to see or carry out a check themselves unless there is information contained in the DBS Disclosure although an identity check must still be carried out. Where there has been disclosed information the school must obtain a copy of the DBS Disclosure from the agency in order to make their own decision on suitability. Regulations under the Police Act authorise passing Disclosure information from agencies to schools where the subject's suitability is under consideration.

### **13.4 Governors**

In line with volunteers, governors in positions that include regular work in the presence of children, or who care for, train, supervise or are in sole charge of children should be asked to obtain an Enhanced DBS Disclosure. In addition, any governor giving cause for concern should also be asked to obtain an

Enhanced Disclosure. All others should be asked to sign the declaration confirming their suitability to fulfil the role.

## **MANAGEMENT GUIDANCE**

### **14. Employing People with Criminal Records**

#### 14.1 Relevancy of Criminal Record

Possessing a criminal record is not necessarily a bar to working for Honiton Community College, 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.

An application to the DBS for Disclosure will be requested only where this is considered relevant to the post and is permitted under the Exceptions order to the Rehabilitation of Offenders Act 1974. For those positions where a Disclosure is required, any recruitment information will contain a statement that candidates will be asked to provide details of their criminal record prior to their interview and that the successful candidate will be required to apply to the DBS for Disclosure.

#### 14.2 Equality of Opportunity

Honiton Community College's commitment to equality of opportunity extends to candidates with criminal records. We seek candidates with the right mix of talent, skills and potential. All candidates must be selected for interview on the basis of their skills, competencies, qualifications and experience and will not be treated differently unless this is appropriate and justified. Furthermore, candidates will not be rejected automatically for having declared criminal background unless those offences are relevant to the job for which they are applying. A full statement on recruiting ex-offenders can be found at 7.

#### 14.3 Validity of DBS Disclosures

It must be established that the post to be filled is exempt under the Exceptions Order of the Rehabilitation of Offenders Act 1974. This makes it possible for questions about the candidate's criminal background to be asked and for an application for Disclosure to be made. Not all positions are subject to DBS checking and, in some cases; it can be an offence under Section 123 (2) of the Police Act 1997 to apply for a Disclosure in respect of a post which is not included in the Exceptions Order of the Rehabilitation of Offenders Act 1974. For example, if an employee has access to sensitive or confidential information such as home addresses, financial details, databases of vulnerable clients or medical information, application for a Disclosure does not, currently fall within legislation; this is because the employee has no direct contact with children and/or vulnerable adults.

### **15. Staff Awaiting DBS Clearance**

Ideally a DBS Disclosure should be obtained before an individual starts work. Where it is necessary to engage a member of staff /voluntary worker where the DBS Disclosure has not yet been received the Manager/appointing officer must undertake a written risk assessment and ensure that the employee is appropriately supervised. In all cases a DBS Disclosure must have been applied for and all other recruitment checks completed. Arrangements should be put in place to ensure the individual will have

no unsupervised contact with children/vulnerable adults until such time as clearance has been obtained via the Disclosure Certificate and confirmed to the line manager.

In order to identify the appropriate supervision arrangements the line manager should consider what is known about the person concerned, their experience, the nature of their duties and the level of responsibility they will carry. For those with limited experience and where references have provided limited information the level of supervision required may be high. For those with more experience and where the references are detailed and provided strong evidence of good conduct in previous work a lower level of supervision could be appropriate. For all staff without completed checks it should be made clear that they are subject to this additional supervision. The nature of the supervision should be specified and the roles of staff undertaking the supervision made clear. The arrangements should be reviewed regularly, at least every two weeks, until the DBS Disclosure is received.

Where the individual is allowed to work whilst awaiting the results of the DBS check, the line manager is responsible for monitoring the progress of the DBS check and must keep a written record of such actions during this period of supervision. Only when a satisfactory DBS clearance has been obtained should the manager remove any special measures that were put in place and allow the employee to take up the full responsibilities of their role recording this on the individual's personnel file.

## **16. Risk Management - Assessing the relevance of Criminal Records**

Assessing and managing the risk of employing a person with a criminal record, or about whom positive information has been revealed following a disclosure, 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.

It has been estimated that a fifth of the working population has a criminal record. Employment is the single most important factor in reducing re-offending and failure to get paid employment is a major reason for re-offending. Having a criminal record will not necessarily bar someone from employment with Honiton Community College; this will depend on the background to the offence(s) and the nature of the position being sought.

### **16.1 Considerations**

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

- the employer's duties in law
- the nature of the crime
- when it happened
- the circumstances involved
- the sentence
- patterns of offending
- efforts to avoid re-offending
- job requirements
- safeguards against offending at work
- possible reactions of employees, customers etc., objectively assessed.

## 16.2 Candidate Awareness

Applicants should be forewarned that Enhanced Disclosures might include non-conviction information such as details of cautions, reprimands, and warnings and may include police intelligence relating to on-going investigations and relationships with any known or suspected criminals.

HCC policy states that failure to reveal criminal history could lead to withdrawal of the conditional offer of employment however since having a criminal record will not necessarily lead to a bar in employment with HCC (see 7.), it is vital that effective use of the recruitment, or separate interview is made to discuss the nature of the criminal record with those short-listed applicants that have 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.

## 16.3 Assessing the Role for Risk

When assessing the position, role or contact, a number of factors need to be taken into consideration, which are:

Issues	Reasons
Exemption status under the Rehabilitation of Offenders Act 1974, duties under the Police and Children's Acts regarding one-to-one contact with children, vulnerable adults or the elderly	It is illegal to employ certain offenders in some occupations.
To what extent are you bound by other legal constraints?	For example, those with motoring convictions employed as drivers.
Does the post involve any direct responsibility for finance or items of value?	What could happen and how serious would that be? What factors would increase or decrease the perceived risk? For example, the nature of the offence and impact of rehabilitation since then. Consider whether the offence would create unacceptable risks for other employees, customers, suppliers, clients, service users, etc.
Does the post involve direct contact with members of the public?	
Will the nature of the job present any realistic opportunities for the post holder to re-offend in the place of work?	

## 16.4 Assessing the Ex-Offender and the Offences

When assessing any disclosure or disclosed information, consideration should be given to the following:



- The availability of assessments and reports from those agencies involved in the applicant's process of rehabilitation. For example, the Probation Service, specialists working in prison, etc.
- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property. Generally speaking, the longer the sentence the more seriously the Courts viewed the offence at the time. Custodial sentences are usually for more serious crimes than non-custodial sentences.
- The length of time since the offence occurred. (How effective has rehabilitation been?)
- Was the offence 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 (e.g. improved personal circumstances, drug addiction therapy).
- The country in which the offence was committed. For example, some activities are offences in Scotland and not in England or Wales, and vice versa.
- Whether the offence has since been decriminalised by Parliament.
- The degree of remorse, or otherwise, expressed by the applicant.

#### 16.5 Implementing Safeguards

It is important to consider any restrictions to the College's fidelity insurance cover that might exclude employment of some ex-offenders in specific positions. Any concerns in this respect should be referred to the College's insurance office before the appointment is made.

It is also useful to assess the level and closeness of supervision which may be needed early on in the employment and the extent to which procedures such as audits and involvement of others in the work process would be a form of indirect supervision.

#### 16.6 Further Guidance

Further support and guidance around employing someone with a criminal record can be found by contacting the HR Helpdesk on 01392 384567

### 17. Overseas Candidates

- 17.1 All persons appointed to a post, or seeking to volunteer with children and/or vulnerable adults who have lived outside the United Kingdom must undergo a DBS check regardless of their length of stay in the UK, or even if they have never been resident.
- 17.2 Although it may be of limited value to ask a person who has little or no previous residence in the UK to apply for a Disclosure, if that person seeks to work in the regulated childcare sector, the employer is required to check the Protection of Children list through the Disclosure process and similarly, if a person seeks to work with vulnerable adults, the employer is required to check the Protection of Vulnerable Adults list.
- 17.3 All foreign nationals including UK citizens who have lived or worked overseas in the previous 5 years must provide a Statement of Good Conduct (SOGC) or overseas criminal record check, in addition to immigration documentation and DBS requirements. The applicant should provide a SOGC or overseas criminal record for every country in which residency or employment is relevant and it should be requested in English otherwise translation costs may be incurred.

- 17.4 The DBS cannot currently access overseas criminal records or other relevant information as part of the Disclosure service. If you wish to obtain a fuller picture of the applicant's background the DBS provides guidance on how to acquire information from certain countries.
- 17.5 The unavailability of an applicants' SOGC or overseas criminal record may give cause for concern about his or her suitability to be offered employment or access to children or vulnerable adults. Although such candidates will not be barred from working for HCC, appointing managers must make their decision with due regard to all the relevant facts, the risk assessment and the overall requirement to safeguard vulnerable groups. Any decision not to appoint the person or allow access must be carefully explained and reassurance given about the reasons for it.

## **18. Volunteers & Students**

### **18.1 Volunteers**

Volunteers who work in positions of trust with children and other vulnerable groups may be subject to a DBS check although there is no legal requirement to vet all volunteers. Your decision to get a DBS check should be based on either:

- A thorough risk assessment of the role to be performed by the volunteer and the extent to which this will bring them into contact with children or vulnerable adults or
- If the voluntary work is to be carried out on someone else's premises, for example a school or care home, whether it is a requirement of that organisation for a check to be done, in order to comply with the legislation that governs their business

Eligible volunteers will be offered a free DBS check, although a handling fee from the Records Disclosure Service may still apply. Not all people who work free of charge are classed as a volunteer with the DBS. To qualify for a free DBS check the role must meet with the DBS's definition of a volunteer which is: 'a person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative'. Therefore students gaining credits towards qualifications, people on work experience, foster parents/carers etc. must pay for their checks.

When applying for a DBS check volunteer roles must be properly described on the application and just the term 'volunteer' is not sufficient. A description of the role must be provided in order for the Records Disclosure Service to ensure it meets the DBS definition of a volunteer e.g. volunteer with elderly in community

### **18.2 Students**

#### **18.2.1 Students working with Children**

For those students undertaking regulated activity it is the responsibility of the training institution to ensure all the required vetting checks have been undertaken including the appropriate DBS Disclosure. Honiton Community College managers must obtain written confirmation from the training institute that a DBS Disclosure has been carried out within the last 3 years and request to see a copy of the

Disclosure. Where the Disclosure is unavailable, confirmation from the training institute can be obtained to confirm there was no information contained. If however there was information contained on the Disclosure, a new DBS must be applied for. This will be valid for all the placements undertaken during the course providing it was unbroken.

Pupils who undertake short periods of work placements that involve contact with children need not be checked, providing that appropriate supervision is in place.

#### 18.2.2 Students working with Vulnerable Adults

For adult settings, students under 18 years of age undertaking placements do not typically require a DBS check, based on the understanding they will be in a supervised position.

For students over 18 years of age undertaking placements in regulated services a DBS check (including a POVA check) is required. A HCC DBS check should be applied for through the Records Disclosure Service and as POVA checks are not portable, a new DBS will need to be sought for each placement.

### 19. **Accepting an Existing DBS Check**

Honiton Community College does not accept existing DBS Disclosures from other authorities or outside organisations. Disclosure certificates are intended to be used on receipt, for a recruitment decision to be made as soon as possible after it has been received.

There are however instances when a Disclosure certificate issued for one position within the College could be used for another job or voluntary position within the authority, provided that there has been no break in service. For example, between schools or day care centres but this will depend on the nature of the duties concerned.

Where casual, temporary or agency staff move frequently between short appointments within HCC, it will not be necessary to apply for a fresh Disclosure each time they move jobs, provided that they remain within the same area of work, have the appropriate level of Disclosure certificate and have been in continuous employment (i.e. with no break in service of 3 months or more) with HCC since the Disclosure certificate was issued.

Similarly, those who take up two positions requiring DBS checks at the same time, for example, a full time job and a weekend or voluntary position, may not be required to make two separate applications to the DBS if the client group is the same and the nature of the role is similar or identical and the level Disclosure required for both position is the same.

### 20. **Agency and Contractors**

It is recommended that Heads of Service or Commissioning/Contract Managers must ensure that where agency or contractor workers are supplied to carry out duties within HCC, that bring them into unsupervised contact with children and or vulnerable adults, an DBS Disclosure check must be carried out before they commence work. Heads of Service or Commissioning/Contract Managers must ensure that relevant clauses are included in any contracts in advance of the work starting. It is essential that these checks are up to date and renewed in accordance with this policy.

## TERMS AND ABBREVIATIONS

Glossary of terms; including those likely to be used on a Disclosure certificate:

A	
Absolute Discharge	An absolute discharge (which is not to be confused with a finding of not guilty) is used where the court, having found the offender guilty of the offence charged, considers that no further action is required on its part beyond the finding of guilt. This may reflect the triviality of the offence, circumstances in which it came to be prosecuted, or factors relating to the offender.
Acquittal	Discharge of defendant following verdict or direction of not guilty
Additional Information (also known as Grey or Soft)	Information which is released by a chief police officer to the registered body under section 115(8) of the Police Act 1997 in the interests of the prevention or detection of crime. The information is not made available to the applicant and does not appear on the Disclosure certificate. As it is a criminal offence to disclose this information, applicants must not be made aware of its existence and registered bodies must not declare that it has been received.
Applicants Referral List	A confidential list of ex-employees and other individuals who Honiton Community College would not routinely employ or re-employ either directly or indirectly, in posts or voluntary positions where individuals would have unsupervised access to children and/or vulnerable adults.
Appeal	Application to a higher Court or authority for review of a decision of a lower Court or authority
Appointing Officer	A person within Honiton Community College who takes responsibility for making an appointment to a particular role. This may either be the Departmental Manager or Head or another suitably qualified person who is designated Appointed Officer by the Departmental Manager or Head.
Approved Information	Information provided at the discretion of the local Police which appears on an Enhanced Disclosure certificate and is therefore made available to both the applicant and the registered body. This information is distinct from <i>additional information</i> which does not appear on the Disclosure certificate.
Assault	An unlawful attack on someone by words or deeds. Physical contact is not essential
Authorised Officer	A person of the appropriate level, who is recognised by the Records Disclosure Service and has the authority to ask for Disclosures to be applied for, can authorise payment and can act on the results of a Disclosure.
B	
Bail	Release of a defendant from custody, until his/her next appearance in Court, subject sometimes to security being given and/or compliance with certain conditions
Battery	The deliberate use of unlawful force on somebody, ranging from touching them to the use of physical violence.
Bind over for sentence	An order that requires the defendant to return to Court on an unspecified date for sentence. Failure to observe this order may result in a forfeit or penalty to be enforced
Breach	Person failing to fulfil the requirements of either a court order or the conditions of a post-release license.

C	
Care Order	The Care order is available both in care proceedings in the juvenile court and in criminal proceedings if a juvenile is prosecuted and found guilty of an offence punishable in the case of an adult with imprisonment. It commits the offender to the care of the local authority who decides on the placement in a residential centre, community home, voluntary home or boarding with foster parents
Caution	<p>A caution can be given when there is sufficient evidence for a conviction and it is not considered to be in the public interest to institute criminal proceedings. For a caution to be issued there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction; the offender must admit the offence; and the offender must understand the significance of a caution and give informed consent to being cautioned</p> <p>Simple Caution - A simple caution should only be given if the public interest justifies it and in accordance with Home Office guidelines. Where it is felt that such a caution is appropriate, Crown Prosecutors must inform the police so they can caution the suspect. If the caution is not administered, because the suspect refuses to accept it, a Crown Prosecutor may review the case again.</p> <p>Conditional Caution - Conditional Cautions are a new disposal introduced in the Criminal Justice Act 2003. A Conditional Caution may be appropriate where a Crown Prosecutor considers that while the public interest justifies a prosecution, the interests of the suspect, victim and community may be better served by the suspect complying with suitable conditions aimed at rehabilitation or reparation. These may include restorative processes.</p>
Conditional Discharge	A discharge of a convicted defendant without sentence on condition that he/she does not re-offend within a specified period of time
Conviction	<p>A conviction is each finding of guilt for every (notifiable) offence considered by a criminal court for each convicted person. A finding of guilt would include a plea of guilty.</p> <p>Convictions are classified by their severity into Category A, B or C. This categorisation will decide the retention policy for such conviction details.</p> <p>Further information can be found using this link <a href="#">ACPO</a> which includes full lists of all convictions</p>
Counter signatory	A registered person with the DBS who is authorised to countersign the Disclosure application form.
D – G	
Damages	An amount of money claimed as compensation for physical/material loss, e.g. personal injury, breach of contract
Defendant	Person standing trial or appearing for sentence
Exempt positions	There are a number of occupations or professions where ex-offenders must disclose information about spent and unspent convictions. Exempted occupations include working with children and vulnerable adults.
Exceptions Order	The Exceptions Order to the Rehabilitation of Offenders Act 1974 lists those professions and occupations whereby ex-offenders have to disclose information about previous convictions, spent or otherwise.
False Accounting	Providing dishonestly, information which is misleading or deceptive with a view to cause loss to another, or the destruction concealment or falsification of information relating to a financial account

Fines	Every criminal offence, except murder, is punishable by a fine, and for many of the less serious offences a fine is the only penalty prescribed by law. Fines are by far the most frequently used power available to the Court. A fine is a principle, not ancillary, sentence and may not be used in conjunction with an order for absolute or conditional discharge, probation or Community Punishment Order. A Magistrate's Court is required to take into account what it knows of an offender's means in fixing the level of a fine. Where a juvenile offender is ordered to pay a fine, damages, compensation or costs the court may – and must if the offender is under the age of 14 – order the sum to be paid by the parent or guardian.
Fixed Penalty Notice (FPN)	FPNs, including the Penalty Notices for Disorder (PND) scheme, have been introduced as a means of dealing with low-level, anti-social and nuisance offending, which does not require a court hearing. Once a penalty notice has been issued, the recipient must either pay the amount shown on the notice or request a court hearing. This must be done within 21 days of the date of issue. Payment of the penalty by the recipient discharges their liability to conviction of the offence for which the notice is issued. Payment involves no admission of guilt and removes both the liability to conviction and a record of criminal conviction.
<b>H</b>	
Hospital/Guardian Order	Similar to the Care Orders, Hospital and Guardianship orders enable a juvenile court, where a juvenile is prosecuted and found guilty of an offence punishable in the case of an adult with imprisonment, to remand the offender in custody or on bail for medical examination and assessment under the Mental Health Act 1959
<b>I – Q</b>	
Imprisonment	The power of the Courts to pass sentences of imprisonment and the maximum for each offence is specified by law. Where an offence is dealt with by the Crown Court, the maximum term of imprisonment that may be imposed is, in nearly all cases, higher than that available to Magistrates' Court.
Indictable Offence	Offences for which an adult defendant must be tried by the Crown Court, e.g. robbery, arson, and rape. The different types of offence are classified 1, 2, 3 or 4. Murder is a class 1 offence
Juvenile	Person under 17 years of age
Licence	If an offender is released from prison under licence, they are placed under the care of the Probation Service. Certain conditions are attached to the release. Breach of these conditions will result in the offender being returned to prison.
List 99	Held by the DfES, this list contains information about teachers whose employment has been barred or restricted on grounds of misconduct or on medical grounds. Access to List 99 is through the DBS Disclosure service.
POCA List	Protection of Children's Act. A list of persons considered to be unsuitable to work with children. The DBS routinely checks Disclosure applicants against this list.
POVA List	Protection of Vulnerable Adults List. A list, maintained by the Department of Health, containing the names of care workers who have harmed vulnerable adults in their care. The DBS routinely checks Disclosure applicants against this list.
Probation Order	Also called a Supervision Order. The aim of a probation order is to leave the offender at liberty in the community but subject to certain conditions regarding his way of life. The order requires the offender to be under the supervision of a probation officer for a specified period of not less than 6 months nor more than 3 years. The court has discretion to include any further requirements that it considers of the case to secure the good conduct of the offender or to prevent him from committing further offences.

R	
Remand	To order an accused person to be kept in custody or placed on bail pending further Court appearance
S	
Spent Convictions	A conviction that, after a period of time, can be treated as if it never existed and no longer needs to be disclosed, unless applying for a post that would warrant an Enhanced Disclosure from the DBS.
Suspended Sentence	A custodial sentence, which will not take effect unless there is a subsequent offence punishable by imprisonment within a specified period, the sentence of imprisonment, cannot exceed 2 years. It is not intended as a substitute for non-custodial penalties or for probation but as an incentive for the offender to avoid trouble in future. This gives the Court the opportunity to distinguish between the gravity of the offence and mitigating circumstances which they mark by the length of the sentence and the needs of the offender.
T – Z	
Youth Custody	Also known as Borstal or Youth Detention. Where a person under the age of 17 is convicted of an offence for which an adult may be sentenced to imprisonment, the Court may, if it is of opinion that none of the other available non-custodial measures such as fining or probation is suitable, sentence the offender to be detained in a Detention Centre. The offender is carefully observed and assessed, usually in a remand centre, and an Institution Board then makes its recommendations to the Secretary of State regarding a suitable allocation. This may vary according to the age of the offender and circumstances of the case but may be a community home, a youth treatment centre, a borstal or a young prisoner's centre.

## 21. New Appointments Flowchart

