

Leamington Vineyard Learning Centre

DBS and Recruitment of Ex-Offenders Policy

Introduction

The code of practice published under section 122 of the Police Act 1997 advises that it is a requirement that all registered bodies must treat DBS applicants who have a criminal record fairly and not discriminate automatically because of a conviction or other information revealed.

The code also obliges registered bodies to have a written policy on the recruitment of ex-offenders; a copy of which can be given to DBS applicants at the outset of the recruitment process.

Background

LVLC has a legal obligation to protect vulnerable customer and client groups (such as the students who attend LVLC) from people who have committed serious offences, and as such meets the requirements in respect of exempted questions under the Rehabilitation of Offenders Act 1974.

In accordance with Keeping Children Safe in Education (2016), and LVLC's Safer Recruitment Policy, LVLC carries out Enhanced DBS checks and Children's Barred List checks prior to the appointment of new staff and/or volunteers. This will include details of cautions, reprimands or final warnings, as well as convictions, including "spent" convictions and where the post is subject to Enhanced Disclosure, other relevant non-conviction information, such as police enquiries and pending prosecutions will be included.

Therefore it is important that LVLC has a policy and procedure in place to deal with disclosures that may arise, and consequently the recruitment of ex-offenders. This written policy on the recruitment of ex-offenders is made available to all DBS applicants at the start of the recruitment process.

Further Information about Conviction Information

On the 29 May 2013, legislation came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure.

In addition, employers will no longer be able to take an individual's spent and minor cautions and convictions into account when making decisions. Under the Rehabilitation of Offenders Act 1974, a conviction will become "spent" (ie. treated as if it had not occurred) where the individual has not, after a specified period of time, committed another serious offence. Such offences are filtered as part of the DBS.

All cautions and convictions for specified serious violent and sexual offences, and other specified offences of relevance for posts concerned with safeguarding children/vulnerable adults, will remain subject to disclosure. In addition, all convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.

Applicants can view this guidance and criteria, which explains the filtering of old and minor cautions and convictions which are now 'protected' so not subject to disclosure to employers, on the [gov.uk website](http://gov.uk).

Equality Statement

LVLC undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed. LVLC 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. LVLC actively promotes 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. LVLC select all candidates for interview based on their skills, qualifications and experience.

Policy Statement

As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), LVLC complies fully with the code of practice and undertakes to treat all applicants for positions fairly.

LVLC can only ask an individual to provide details of convictions and cautions that LVLC are legally entitled to know about. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended) LVLC can only ask an individual about convictions and cautions that are not protected.

Job applicants will be asked to disclose any convictions, cautions, reprimands or final warnings that are not deemed to be 'filtered' as defined by the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(as amended in 2013\)](#). At interview, or in a separate discussion, LVLC ensures 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.

An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.

LVLC ensures that all those in LVLC who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences.

LVLC undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

Rechecking of Existing Employees

Enhanced DBS checks will be repeated as follows

- for volunteers and agency staff on an annual basis
- for employees on a 3 yearly basis
- for casual staff or other interim staff, following a break of 3 months or more

Three months after the three year anniversary of the previous check if the re-check process (including risk assessment if necessary) remains incomplete the relevant individual cannot continue to undertake work which requires the check.

Completion means either:

- confirmation of "no trace" has been confirmed; or
- following receipt of a trace, the DBS Quality Assurance Panel has endorsed a risk assessment which enables the individual to continue in employment.

DBS Update Service and Portability of DBS Checks

Any DBS applicant can now apply to join the update service. If the applicant/employee is subscribed to the Update Service, employers can undertake a status check on their DBS certificate free of charge to establish whether the individual's current certificate remains valid or if there is new information present which will make it necessary to request a new Disclosure certificate.

Applicants can [register online](#) as soon as they have an application form reference number when submitting a DBS online application or applicants can wait and register within 19 days of their DBS certificate being issued.

Criminal convictions are immediately added to the DBS record. "Soft information" from police intelligence is updated every 9 months.

Employees and volunteers requiring an enhanced check are strongly encouraged to register to join the Update Service to avoid the requirement for future DBS applications; information is provided direct to applicants. There is an annual charge for membership of this service (currently £13), which is payable by the individual applicant/employee. Membership of this scheme is free of charge for volunteers.

Employees should inform LVLC's Business Manager that they have joined the update service when they are notified that a DBS check is required. If responsibilities have changed and a higher level of check is required the full process will need to be followed.

If an external applicant informs LVLC's Business Manager that they belong to the Update Service, if the level of check is appropriate to the role and the current certificate remains valid, it will be accepted as a portable check. However, LVLC's Business Manager will undertake a further status check after 9 months so that any soft intelligence which has been added can be picked up.

Declaration of Criminal Convictions

A DBS Disclosure is only valid on the day on which it is issued. In addition to periodic re-checking to ensure that individuals in relevant roles are continuously assessed for their suitability, it is a requirement that employees and other types of worker inform their manager of any cautions, charges or convictions at the earliest opportunity. Failure to do so may result in disciplinary action.

Responding to Positive Disclosures

Having a criminal record alone should not automatically bar an individual from a role. Whether the information is received at recruitment or as part of a recheck of an existing employee, the disclosed information should be fully risk assessed by managers in a timely manner to identify and consider any potential risks of hiring or continuing the employment of an individual.

Positive disclosures are reviewed on a case-by-case basis.

Risk assessments will be carried out using LVLC's Risk Assessment Form, as used for all activity. There are a number of factors that should be considered when undertaking the risk assessment before a final decision can be made. These include:

- The seriousness of the offence/concern raised and the subsequent impact for those who use LVLC's services;
- The relevance of the offence to the individual's role;
- Statutory requirements, for example, complying with the Barred Lists;
- When the offence was committed/time elapsed since;
- Any further explanation regarding the offence provided by the individual;
- Whether the individual declared the offence on their self-declaration.

Appendix 1 outlines the process to be followed, in conjunction with WCC.

Concerns During Employment

If there are concerns about an individual's suitability to continue working with children or vulnerable adults then there is the discretion to undertake a further DBS Disclosure. Due to the requirements of the DBS Disclosure process, the individual concerned must give their consent for the DBS Disclosure to be obtained. LVLC's Principal should be contacted in this situation.

If the DBS Disclosure identifies a concern, the manager should adopt the same process as that outlined above, undertaking a thorough risk assessment of the situation.

Roles and Responsibilities

Set out below is the roles and responsibilities of staff involved in processing DBS criminal record checks and safeguarding staff and customers.

Responsibilities of LVLC's Principal

- It is noted that LVLC's Lead Recruiter is Brian Nash (Principal). This role is supported by LVLC's Business Manager (Hannah Jacobs), who coordinates the recruitment process.
- Manage the online DBS processing system and DBS application process, countersigning eligible applications and ensuring compliance with the Police Act 1997.
- Ensure staff do not continue to work in regulated activity if three months after the three year anniversary of the previous check the re-check process remains incomplete.
- Not to discriminate unfairly against the subject of a Disclosure, on the basis of conviction or other information revealed.

Responsibilities of LVLC's Business Manager

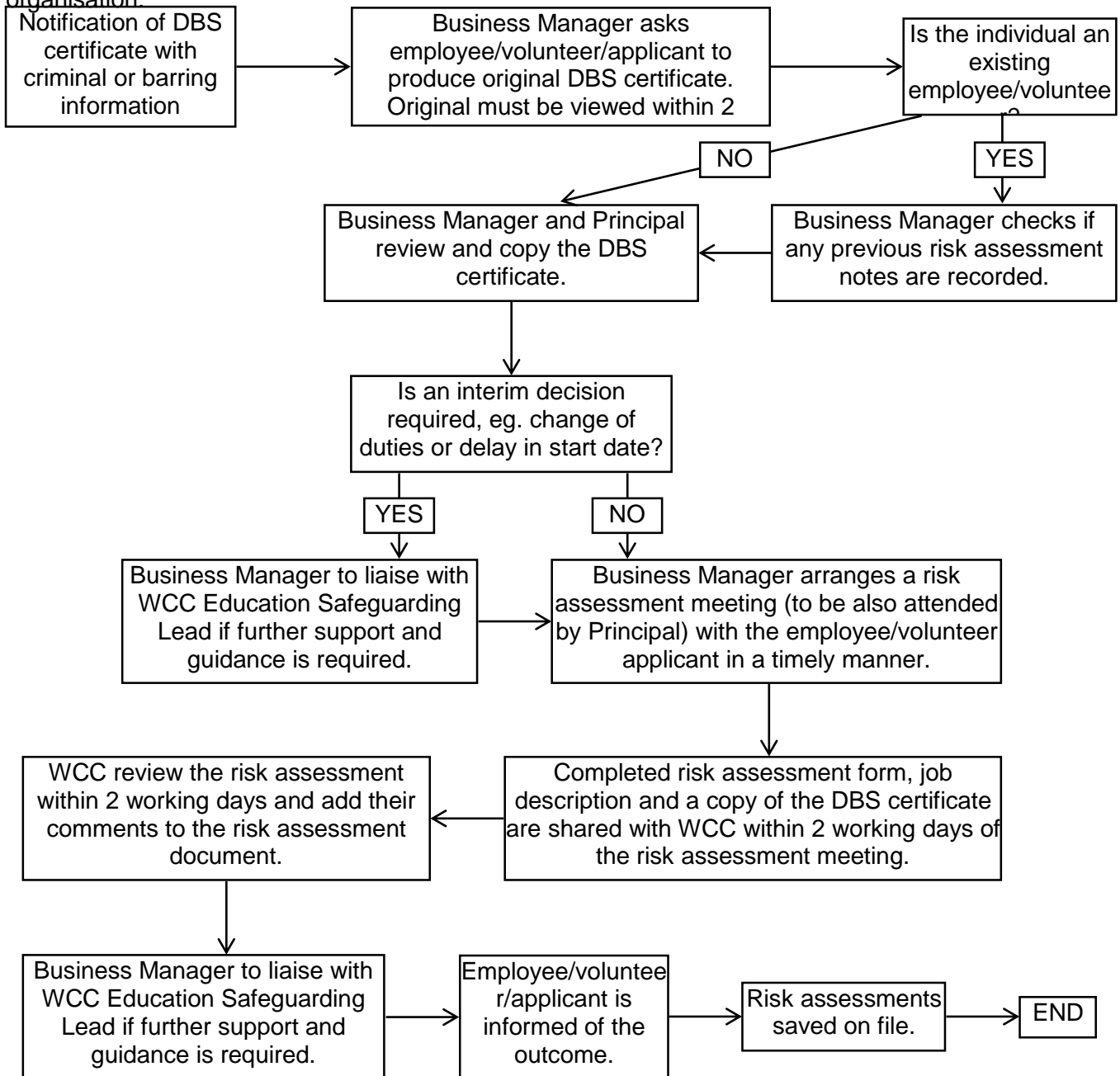
- Manage DBS Update Service checks and ensure they are carried out during the recruitment of all staff/volunteers.
- Advise managers on the eligibility of posts for criminal record checks.
- Ensure that recruitment campaigns for posts requiring DBS checks include notification of this on the advert and Person Specification.
- Within the limitations of the Rehabilitation of Offenders Act (1974), require all applicants to provide details of their criminal record as at an early stage and ensure that this information is only seen by those that need to see it as part of the recruitment process.
- Ensure that new contracts with third party providers of agency staff include the requirement for the appropriate level of DBS checking as required.
- Obtain and keep written confirmation that interims and agency staff, from wherever they are sourced, have had appropriate vetting checks and that re-checks are undertaken as determined in this policy.
- Ensure that when a positive trace is received, the risk assessment process is undertaken and recorded in an appropriate and timely manner, submitted to the Quality Assurance Panel and subsequently uploaded to HR-ER.
- Notify managers about DBS applicants with DBS certificates that contain information (also known as a positive trace) and provide guidance and template forms in relation to the risk assessment process.
- Ensure that the frequency of DBS checks is maintained as prescribed in this policy and to take remedial action as required if the requirements are not met.
- Notify managers of employees who require re-checks and prompt employees to initiate applications. Ensure the ongoing reassessment of posts as work changes to ascertain if the level and type of contact the individual has with children and/or vulnerable adults has changed and, if necessary, initiate a new DBS Disclosure.
- Check ID documents of individuals requiring re-checks and record on the online DBS processing system in line with instructions which will be provided when notification is given of checks that are due.
- Ensure that applications for repeat checks for staff/volunteers are processed in a timely way.
- Follow up outstanding DBS re-checks and risk assessments by reminding managers and employees of outstanding checks, applications and risk assessments.

Responsibilities of staff and volunteers for whom a DBS check is required

- When they are notified that a DBS check is required, inform LVLC's Business Manager that they have joined the Update Service if this is the case and consider joining if they are not.
- Bring in required documentation and work with LVLC's Business Manager to submit application for DBS re-checks in a timely manner.
- If a positive trace comes back from a re-check, submit the certificate to their manager for consideration within 2 working days.
- Inform their manager of any police caution, criminal charge or conviction of a criminal offence that occurs during their employment. This includes all motoring offences other than those dealt with by fixed penalty notices.

Appendix 1: Assessing Positive Disclosures Process

The DBS Assurance Panel are a group of senior representatives from each WCC Group who review and endorse risk assessment judgements to ensure consistent safeguarding decisions are made across the organisation.



Note: it is important to make full notes of the investigators interview and reasons for the decision/s made. This information will be used to approve the final decision. Managers are responsible for ensuring this record is saved. The document may be referred to following a future DBS check, allegation, or external audit.