CYNGOR SIR *POWYS* COUNTY COUNCIL

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Disclosure and Barring Service (DBS) Policy

	Enw / Name	**Llofnod** / Signature	**Dyddiad** / Date
Cadeirydd / Chair of Governors	Cllr Gareth Jones	Gareth D Jones	4.7.23
Pennaeth / Headteacher	Huw Lloyd-Jones	H. Lloyd-Jones	4.7.23
Adolygwyd a Chadarnhawyd Reviewed and Accepted	4.7.23	**Dyddiad Adolygu** Date of Review	Summer Term 2024
Polisi Statudol i'w Adolygu pob blwyddyn / Statutory Policy to be reviewed annually **Canllawiau**: Guidance:			

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1. Introduction

1.1 Following the murders of Jessica Chapman and Holly Wells by Ian Huntley (a school caretaker) in 2002, the Bichard Inquiry was commissioned. One of the issues this Inquiry looked at was the way employers recruit people to work with children and adults at risk. It asked whether the way employers check the background of job applicants is reliable enough. It also asked whether employers should be responsible for deciding whether a job applicant can be safely employed.

1.2 The Inquiry's recommendations led to the Safeguarding Vulnerable Groups Act 2006, which recognised the need for a single agency to vet all individuals who want to work or volunteer with vulnerable people.

2. Principles

2.1 Powys County Council (the Council) is a Registered Body with the DBS and will at all times comply with the DBS's Code of Practice and guidelines for Registered Bodies. The Council has a duty to ensure that organisations are equipped with the relevant information required to protect their service users. As a result, this policy is about reducing risk by putting in place clear standards and robust practices to protect children and adults at risk. This means deterring and preventing unsuitable people being put into positions where they can cause harm, and on the occasions that unsuitable people are found in the organisation, that they are removed effectively.

2.3 This policy should therefore be used in conjunction with the wider policies and procedures relating to recruitment and selection to ensure safe and best practice is maintained and that the statutory obligations of the Council have been met. Even the most careful selection process cannot identify all those who pose a risk to children or adults at risk. Therefore, employees at all levels should be alert to untoward behaviour. The emphasis should be on the creation of an 'offender aware' culture which gives the people we work with the confidence to raise any concerns they may have.

2.3 Further information and guidance about the Disclosure and Barring Service can be found at www.homeoffice.gov.uk/agencies-public-bodies/DBS/

3. Scope

3.1 This policy is applicable to all employees. DBS checks are most commonly applicable to appointees to posts/roles that undertake what is known as a 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 excludes family arrangements, and personal, non-commercial arrangements.

3.2 Basic Checks are ***only*** undertaken on those individuals within the ICT Department that have access to PSN (Public Services Network) Services. Baseline Personnel Security Standard (BPSS) has mandatory pre-employment controls that are required before individuals can have access to some secure ICT systems. A Basic Disclosure will only be required for those ICT staff whose position within the Council does not have any other DBS requirement. Eligibility for this check is determined by the Principal ICT Security Officer.

3.3 Standard level DBS checks are undertaken on those individuals who have access to sensitive information relating to children or adults at risk. Someone who is aged under 16 is not eligible to apply for a DBS check.

4. What is "Regulated Activity"?

4.1 Regulated activity relating to children

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

(i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;

(ii) Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) above is regulated activity only if done regularly. Regular means carried out by the same person frequently (once a week or more), or on 4 or more days in a 30 day period or overnight.

(iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;

(iv) Registered child minding; and foster-carers.

4.2 Regulated activity relating to adults

The definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people):

- Providing health care;

- Providing personal care;
- Providing social work;
- Assistance with cash, bills and/or shopping;
- Assistance in the conduct of a person's own affairs; and
- Conveying.

5. What are DBS checks for?

5.1 A DBS check is a checking mechanism managed by the Disclosure and Barring Service which provides registered bodies/employers with a report on the criminal record of an individual, subject to eligibility criteria described throughout this policy. The process is a formal one and involves a standard application procedure. DBS checks will provide information required by statute that has been recorded via Police records and other statutory lists; they do not give all the answers to an individual's suitability. During the recruitment process, appointing officers must ensure that due attention is given to other recruitment checks as a whole.

5.2 The Disclosure and Barring Service have two levels of checks, depending on the nature of the post in question: Standard and Enhanced.

5.3 The standard certificate shows current and spent convictions, cautions, reprimands and warnings held on the Police National Computer (PNC). Standard checks do not include checks on the Children and adults at risk' barred lists therefore should not be used for individuals or posts working in direct contact with these groups.

5.4 Enhanced certificates are available to anyone engaged in regulated activity. It is also available for certain licensing purposes and judicial appointments. This is for posts that involve a far greater degree of contact with children or adults at risk. In general, the type of work will involve regularly caring for, supervising, training or being in sole charge of such people. Examples in the Council would include, but not be limited to, teachers, social workers, corporate parents, youth workers or care assistants. This level of certificate involves an additional level of check to those carried out for the Standard certificate. An Enhanced certificate includes a check on local police records. Where local police records contain additional information that might be relevant to the post the applicant is being considered for, the Chief Officer of Police may release information for inclusion in an Enhanced certificate.

5.5 The Basic Disclosure check contains only convictions considered unspent under The Rehabilitation of Offenders Act 1974. The Council undertakes Basic level checks only on those ICT staff requiring the check under the Baseline Personnel Security Standard (BPSS).

6. Determining the Right Level of Check for a Post

6.1 It is a criminal offence to request a DBS check for an individual appointed to a post (either paid or unpaid) which is not covered by the Rehabilitation of Offenders Act (Exemptions) 1975. This enables the Council to request information regarding

both spent and unspent convictions which will then be taken into account when assessing their suitability to the post applied for.

6.2 Each Head of Service will need to determine and is responsible for defining which posts in their service area require a DBS check and at what level the check should be and the renewal period. This information is recorded on iTrent and accessed by the DBS Unit and Recruitment service for reference and consistency.

7. Service Area Responsibilities

7.1 Where there is a requirement to use DBS checks for any appointments, each Head of Service should:

- Accept responsibility for the DBS requirements within their service area;
- Ensure they manage their recruitment planning and lead-in times effectively as it will not be possible to commence new employees prior to receipt of DBS check information. In exceptional circumstances where commencement in post is unavoidable, a Risk Assessment must be carried out by the Head of Service in conjunction with the Lead Signatory and in accordance with the flow chart at Appendix 1.

7.2 Heads of Service need to ensure that verification officers, within their service area, comply with the DBS Code of Practice when verifying applicant's identification. Areas of concern or the repeated processing of invalid applications by individual verification officers will be escalated to the relevant Head of Service by the DBS Unit.

7.3 Designated Verification Officers are not permitted to undertake the checking of identification for DBS purposes for family members or themselves.

8. Dealing with an Adverse Disclosure

8.1 Having past convictions does not automatically bar an applicant from employment, and indeed, the Council has certain responsibilities under the Rehabilitation of Offenders Act 1974, where appropriate, to avoid discrimination against ex-offenders.

8.2 If someone fails to disclose some or all of their convictions when reasonably requested, and these then come to light through a DBS check, it could be seen as a deliberate attempt to gain employment by deception, thus destroying the relationship of trust between a reasonable employer and employee. In such circumstances, the Council may reserve its right to disqualify the applicant from the recruitment process or withdraw any offer of employment. The decision to disqualify an applicant in this way should be objective and based on an assessment of the facts presented and should always include advice from Human Resources. Where cautions/convictions are declared at interview, consideration should be given to the nature of the offence and its relevance to the post applied for.

8.3 Where the conviction disclosed is considered serious, the DBS unit must divulge the details immediately to a Head of Service or Lead Signatory to allow the Manager or Director to make an informed decision whether to remove the employee from employment with immediate effect. Once the relevant Manager (or Head Teacher in

schools) has interviewed the applicant, seen the original certificate, obtained a photocopy and asked the applicant to complete a consent form; then the interview, copy of certificate and consent form should be sent to the DBS Unit.

8.4 The DBS Unit will meet with the Lead Signatory for a final decision about that appointment (on occasions, consultation with the respective Head of Service will be required and/or further information will be requested from the individual). Head of Adult's Services (Operational) will be notified and will make a recommendation on all adverse disclosures received for Adult's Services. Head of Children's Services will make decisions on adverse certificates for Foster Carers and Adopters. In making a decision about whether or not to continue with the appointment, the Lead Signatory should weigh up the facts based on the following considerations:

- What is the nature of the conviction?
- Is the conviction a one-off or are there a number listed (are these of a related/similar nature)?
- How long ago was the sentence enforced, e.g. is it a juvenile or adult conviction?
- What was the context of the offence?
- Were there particular circumstances at the time that led to the offence which have now changed, e.g. peer pressure, dysfunctional family circumstances?
- Is the behaviour that constituted the offence a cause for concern?
- What is the person's attitude to the offence?
- What risk does the conviction pose to the Council, i.e. will it compromise the person's position within the Council?

8.5 A risk assessment pro-forma to establish the employment decision can be found at Appendix 2 and will be forwarded with DBS2 letter (see accompanying documentation) requesting that a manager interviews the candidate to discuss the disclosure within 10 working days of the date of the letter. In the letter to line managers, it will **not** state what the caution/conviction is. The risk assessment must be sent to the DBS Unit within 3 working days of the interview.

8.6 Any matters revealed by the DBS or Basic certificate that will affect a recruitment decision must be discussed with the candidate prior to a decision about their appointment being made. Managers are encouraged to seek support and advice from the Human Resources Department in such matters.

8.7 Where Services are undertaking a planned programme of DBS checks for existing employees, and an adverse certificate is returned for an individual already employed by the Council, the Head of Service should apply the procedure above. Please note that an employee does not need to be re-interviewed for offences which they have previously been interviewed for in respect of an earlier check. In addition, if it is decided that the individual should not continue in their post, the Head of Service should consider the following action, which must involve consultation with the individual and their representative:

- Immediate removal of the employee from relevant duties, i.e. unsupervised contact with children and adults at risk;
- A decision should be made as to whether or not the individual should remain in their post in the longer term, and whether additional safeguards could be put in place;
- Effort made to redeploy the individual to suitable alternative employment where the nature of the conviction does not compromise their employment.

8.8 If it is the case that the employee has not declared any conviction, caution, reprimand, warning or decision from DBS to add to the list of those individuals barred from working with adults at risk or children that has arisen since the last DBS check, this may result in separate disciplinary action in accordance with the Council's Disciplinary Policy and Procedure. This may include dismissal. Referral may also need to be made to the relevant Professional bodies such as Education Workforce Council and Social Care Wales and should be referred to your Service Area Human Resource Business Partner or for outside Contractors and Agencies via your Service Area contact.

8.9 For external umbrella organisations within Powys who complete their DBS checks through the Council, the same process for internal applications will be followed, however, the Lead Signatory will make a recruitment recommendation and not a final recruitment decision.

8.10 For external umbrella organisations outside of Powys who complete their DBS checks through the Council's DBS Unit will notify the organisation that there is additional information on the certificate via email or through the E-bulk System. The Council will not make any recruitment recommendations for those external umbrella organisations outside of Powys.

9. Adverse Disclosures not approved by the Lead Signatory

9.1 Disclosure and Barring Checks not approved by the Lead Signatory due to adverse disclosures where an applicant has been made a conditional offer of employment will result in the offer being withdrawn and there is no right of appeal.

9.2 Disclosure and Barring Checks not approved by the Lead Signatory due to adverse disclosures where an applicant has undergone a renewal check will result in the employee being redeployed if appropriate and/or the disciplinary policy and procedures being implemented.

9.3 Disclosure and Barring Checks not approved by the Lead Signatory due to adverse disclosures where an applicant has commenced employment prior to receipt of the DBS check working under the conditions of an approved DBS Risk Assessment, may result in the termination of employment with notice utilising the Council's Disciplinary policy and procedures. In such cases, the employee must be restricted from their place of work without undue delay.

10. Secure Handling of Disclosure Information and Data Protection

10.1 The DBS has a Code of Practice which all registered bodies must follow. This Code refers to the safe and appropriate management of personal information gathered

during the DBS checking process. This includes the correct handling, usage, storage, retention and disposal of certificates and DBS information. The Council is a Registered Body with the DBS and will at all times comply with the DBS's Code of Practice and guidelines for Registered Bodies.

10.2 Detailed DBS certificate information should not be stored on an applicant's personal file. Rather, evidence of a DBS check having been undertaken should be kept by the DBS Unit. Any sensitive information pertaining to an individual's DBS check, for example, decision-making regarding an appointment against an adverse certificate, or regarding declaration of a conviction by an individual, should be 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. The same restrictions apply for accessing electronic information in the E-bulk System.

10.3 The Police Act 1997 requires that certificate information is passed only to those who are authorised to receive it in the course of their duties. Services should ensure they have taken steps to only use certificate information for the specific purpose that it was requested and for which the applicant's consent has been given.

10.4 Once a recruitment decision has been made, certificate information should not be retained for longer than is necessary to fulfil its proper purpose. In most cases, this should not need to be for longer than 6 months, and this should allow for any resolution of disputes or complaints. If, for any reason, it is considered necessary to retain certificate information for longer than 6 months, advice should be sought from the DBS Unit and consideration given to data protection legislation, as well as the human rights of the individual. For example, care providers are allowed to keep evidence of DBS processes between each inspection so that the service is following correct recruitment procedures.

10.5 On the expiry of the retention period, certificate information should be destroyed securely, e.g. by shredding. No further record, such as a copy or scan of the certificate, should be retained, except for a record of the date of the disclosure request, the name of the individual, the level of disclosure requested, the disclosure reference number and the details of the recruitment decision.

11. Disputed DBS Reports

11.1 Disputes may arise where an applicant claims that the content of the information released on the DBS certificate does not relate to the applicant or there are elements of it that are incorrect, including some of the personal information printed on the DBS Certificate.

11.2 Disputes must be raised with the Disclosure and Barring Service within 3 months of the date of the issue of the certificate. The DBS has its own procedure for dealing with disputes which it will invoke under such circumstances.

11.3 If an applicant wishes to raise a dispute, they should notify the Disclosure and Barring Service disputes team (by contacting them on 03000 200 190 or in Welsh, 03000 200

191) and inform them of the disputed information. They should also inform the person who asked them to apply for the DBS check (the counter-signatory) about the error *at the earliest opportunity*. Because the certificate will present information that will affect an employment decision, the individual must lodge the dispute as soon as possible in order to prevent a misinformed decision before the dispute is resolved. The DBS may contact the Council to confirm the facts of the dispute. The DBS will seek to correct the information as quickly as possible, and if it is found that the DBS is in error, they will issue a replacement certificate free of charge.

11.4 If the original certificate was based on incorrect information provided by the applicant or the Council (e.g. a misspelt name or address), a fresh application will be required, for which the DBS will make a charge.

11.5 It is recognised by the DBS that there may be a small number of cases where applicants may have similar or identical personal details to someone with a criminal record. In such cases, the DBS may consider that the only way to disassociate the applicant from the criminal record is by fingerprinting. In such cases, the DBS will write to the applicant requesting their consent to have their fingerprints taken at a local police station.

12. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 2013

12.1 The Rehabilitation of Offenders Act 1974 protects rehabilitated offenders from having to reveal certain past convictions and seeks to aid the reintegration and resettlement of offenders into employment by not requiring them or any person to answer questions regarding their spent convictions.

12.2 The Exceptions Order 2013 creates exceptions to the Act with the effect that, in some circumstances, all convictions and cautions must be disclosed and may be taken into account when assessing a person's suitability for certain positions. It defines activities requiring a high degree of trust, often involving vulnerable people as those where it would be appropriate for an employer to know a person's full criminal history before an offer of employment is made and for consideration to be given for putting in place necessary safeguards.

12.3 The Exception Order 2013 allows for the filtering of certain cautions and convictions which are sufficiently old and minor to have no bearing on an employment decision. However in order to maintain public protection the Exception Order does list offences which must always be disclosed and these refer to serious, violent and sexual offences and others of specific relevance for posts concerned with safeguarding children and adults at risk. In addition no conviction resulting in a custodial sentence will be filtered.

12.4 The revised legislation impacts on what an employer can ask an individual in relation to cautions and convictions (for example a self-declaration on an application form "do you have any convictions") and what is released on a Standard and Enhanced DBS Certificate. If an employer takes into account a caution or conviction that would not have been disclosed on the DBS certificate they will have acted unlawfully under the Rehabilitation of Offenders Act 1974. To ensure compliance with the Act, the DBS has amended its application form and has advised Registered Bodies to ensure that applicants are aware when responding to the question on existing forms that they should respond on the basis on any unspent convictions. An employer can only ask an

individual to provide details of convictions and cautions that they are legally entitled to know.

12.5 Where a Standard or Enhanced certificate can legally be requested (this is where the position is one that is listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975), an employer can only ask an individual about convictions and cautions that would fall under the rules described below. That means only those convictions and cautions that would be disclosed on a DBS certificate. When completing the DBS application form, the applicant will be asked whether they have ever been convicted of a criminal offence. The response to this question should only be in relation to convictions which would not be subject to filtering.

An adult conviction will be removed from a DBS criminal record certificate if:

- 11 years have elapsed since the date of conviction; and
- it is the person's only offence, and
- it did not result in a custodial sentence.

An adult caution will be removed after 6 years have elapsed since the date of the caution – and if it does not appear on the list of offences relevant to safeguarding.

12.6 For those under 18 at the time of the caution:

- The same rules apply as for adult convictions, except that the elapsed time period is 5.5 years
- The same rules apply as for adult cautions, except that the elapsed time period is 2 years.

13. Referral to the Disclosure and Barring Service

13.1 It is an offence for any organisation to knowingly allow a barred person to work in regulated activity. If an employer dismisses or removes someone from regulated activity (or you would have done so had they not already left or if they leave while under investigation) because they harmed or posed a risk of harm to vulnerable groups including children, an employer is legally required to make a referral about that person to the DBS. It is a criminal offence not to do so. Further guidance on the duty to refer on the DBS website https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance

13.2 The Council's HR department will take responsibility for any referrals that need to be made to the DBS for employees of the Council.

13.3 The Council has the power to refer when not acting as a regulated activity provider (the employer) but when undertaking their safeguarding role.

13.4 The Children's Safeguarding Lead Manager is responsible for any Child Protection referrals that need to be made in respect of residents of Powys and for employees who work outside of the Council.

13.5 The Adult Safeguarding Lead Manager is responsible for any referrals to the DBS as a result of Adult Protection Investigations in respect of residents of Powys and for employees who work outside of the Authority.

13.6 The DBS Unit should be informed of all referrals made to the DBS. The Council's DBS Unit will collate the number of referrals and this information will be reported back to the Safe Recruitment Forum.

13.7 Those organisations that are contracted to undertake work on behalf of the Council are responsible for investigating and making any referrals in respect of their employees direct to the DBS. Any referrals that are made should be reported to the Service Area by which they are contracted by.

Appendix 1

RISK ASSESSMENT - APPOINTMENT OF APPLICANTS PRIOR TO RECEIPT OF DISCLOSURE and BARRING SERVICE (DBS) DISCLOSURE

Line Manager / Service Manager discuss urgency of appointment prior to return of DBS and confirm adequate and appropriate supervision arrangements and adjustments to the individual's duties to prevent their unsupervised contact with children or adults at risk until a satisfactory DBS check is received.

↓

Line Manager / Service Manager complete questions 1 to 7 on the Risk Assessment Form (Appendix 1) and send through to DBS Unit with full details of exceptional circumstances and planned supervision arrangements and adjustments within 24 hours

↓

Head of Service to make recommendation/sign Risk Assessment form (Appendix 1) and scan and email to DBS Unit / discuss recommendation for approval / non approval with the Lead Signatory. Risk Assessment will only be considered once DBS application form has been completed and returned to the DBS Unit.

↓

Lead Signatory to consider Risk Assessment and sign as Approved or Not Approved – Risk assessment to be valid for one month, then to be reviewed

↓

Decision communicated to Head of Service / Service Manager / Line Manager / Recruitment Administration service.

↓ Not agreed – Await outcome of normal DBS process.

↓ Agreed – Line Manager /Service Manager to arrange start date and inform applicant that appointment remains subject to receipt of satisfactory DBS clearance and that offer of employment could be withdrawn in the event of an adverse disclosure. Recruitment Service confirms these terms in writing.

This risk assessment procedure is for use in ***exceptional*** circumstances only, where there is an imperative to commence in post at an earlier point (normally for reasons of service provision/continuity). This procedure must be supported by a clear Risk Assessment using the pro-forma at Appendix 1. (Please note exceptions where risk assessments are not allowed)

It is expected that in the majority of cases, employees and volunteers would commence work **after** receipt of all satisfactory pre-employment checks, including a DBS check (where these are an occupational requirement).

CYNGOR SIR *POWYS* COUNTY COUNCIL
RISK ASSESSMENT: APPOINTMENT OF APPLICANTS PRIOR TO RECEIPT OF Disclosure and Barring Service (DBS) CHECK

It is recommended that, employees and volunteers may commence work only after receipt of all pre-employment checks, including a DBS check where these are an occupational requirement as the risks of potential abuse from unsuitable workers out weighs the risks to service provision from the longer time it would take to employ someone.

Some legislation states that an employee is not able to start in post until the relevant checks have been completed. For example, Domiciliary Care Agency (Wales) Regulations 2004 do not allow a worker to be employed by a Domiciliary Care Agency in a new care position temporarily under risk assessment. Please contact Powys DBS Unit for further guidance if necessary.

In *exceptional* circumstances, where there is an imperative to commence in post prior to receipt of a DBS Check, the following Risk Assessment pro-forma below MUST be completed and submitted for authorisation by the Strategic Director prior to commencement in post.

N.B. This DBS Risk Assessment does not cover or negate the requirement of any other pre-employment check(s) that may be required.

Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act 1974 exists to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law. Under the Act, following a specified period of time which varies according to the disposal administered or sentence passed, all cautions and convictions (except those resulting in prison sentences of over 30 months) are regarded as 'spent'. As a result the offender is regarded as rehabilitated.

For most purposes the Act treats a rehabilitated person as if he or she had never committed an offence and, as such, they are not obliged to declare their caution(s) or conviction(s), for example, when applying for employment or insurance.

There are certain exceptions, **where you do have to disclose your caution or conviction (even if it is spent)**. These are listed on the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and subsequent amendments. The positions listed in the Exceptions Order primarily relate to particularly sensitive areas such as **work with children and vulnerable adults**, work in law enforcement and the legal system, and high level financial positions. Where an exception to the Rehabilitation of Offenders Act exists then you **must list all cautions and convictions**, **even if they are spent**. Where an exception exists the employer or licensing body will be eligible for Disclosure and Barring Service checks containing your **full criminal record**.

Full Name of APPLICANT:	
Date of Birth:	
Post Applied for:	
Establishment/Base:	
Reason for Requirement to Start Prior to DBS Clearance	
Date of Risk Assessment:	

Requirement	**Response**	**Explanation/Comment(s)**	**DBS OFFICE Use**
1. Please provide the date the DBS Application was completed and sent off to the DBS Unit.			
2. Please state Disclosure application form Reference Number			
3. Has the applicant declared any convictions/cautions on their DBS application form?	Yes / No		
4. Has the applicant declared any convictions/cautions on their Powys County Council Job application form?	Yes / No		
5. If Yes answered to Q3 or Q4, are the convictions of a nature to pose a risk or compromise the applicant's suitability for the job applied for?	Yes / No		
5b. Please give details?	(Please give details)		
6. Have <u>all</u> other Powys County Council Pre-employment checks been received satisfactorily? (e.g. References, Occupational Health, Registration) Please provide registration	Yes / No		

number if applicable.			
7. If the applicant is employed in a position that involves working with children, young people and/or vulnerable adults can you confirm; a) that you are completely satisfied of suitability b) whether you have had cause to refer the applicant to the barred lists on the grounds of misconduct which has caused harm or risk of harm	Yes / No Yes / No (If yes please give details)		
8. Have you ever had cause to refer the applicant to a registered body?	Yes / No		
9. What measures can be put into place to ensure the applicant will have no unsupervised access with children or vulnerable adults until receipt of a satisfactory DBS report?	The applicant will have no unsupervised access with children or vulnerable adults.		

RECOMMENDATION

INTERVIEWING OFFICER DECLARATION/RECOMMENDATION*:* *(Please delete* as applicable)*

I have considered the questions outlined above and confirm that **I am satisfied** that it is safe to allow the above named individual to commence work before the Disclosure clearance is received, subject to the safety measures detailed above being in place.

I confirm that:

- Appropriate measures are in place to ensure that the applicant does not have unsupervised access to children or vulnerable adults until a satisfactory DBS check has been received.
- Satisfactory references have been completed and received and I am satisfied that the individual is suitable for the position applied for.
- That I have notified all relevant managers that the individual is still subject to clearance and of the need to ensure the above measures are implemented.
- That I have explained to the individual concerned the implications of commencing work prior to clearance being received and that the appointment remains subject to receipt of satisfactory DBS clearance and that the offer of employment could be withdrawn in the event of an adverse Disclosure.
- This Risk Assessment will be reviewed on _____ (Date)

Additional comments*:*

Print Name:
Designation:

Signed: Date:

HEAD OF SERVICE RECOMMENDATION*:* *(Please delete* as applicable)*

*I have considered details above and recommend that t*he applicant named is * **approved / NOT approved** for commencement in post prior to receipt of satisfactory DBS clearance.

Additional comments*:*

Print Name:

Signed: Date:

* * * When completed, please fax to DBS Unit: 01597 826855 * * *

DECISION

TO BE COMPLETED BY LEAD SIGNATORY:

RISK ASSESSMENT CONFIRMED: *YES / NO*

Additional comment(s):

Print Name:
Designation: Lead Signatory

Signed: Date:

PCC DBS UNIT - OFFICE USE

	Date	Initial & Date
Date Received:		
Initial Check Completed:		
Submitted to Lead Signatory:		
Outcome Received:		
Notification of Outcome Sent:		
DBS Certificate Received:		

Extension of Risk Assessment:

4 Week Review Date: ……..

Date Confirmed by Line Manager: ……..

Lead Signatory Authorisation: …….. Date: ……..

DBS Use Only
DBS Ref No':

APPENDIX 2 -
CONFIDENTIAL

RISK ASSESSMENT: REVIEW OF ADVERSE INFORMATION DISCLOSED OR RECEIVED THROUGH A DISCLOSURE AND BARRING SERVICE (DBS) CHECK

Please ensure that this form is completed in full and that a full account is given to any matters which have been disclosed. Applicants are required to bring the original copy of the Disclosure Certificate. Consent needs to be given in writing and a photocopy made which should be returned with this form.

Any queries with regards to the DBS process should in the first instance be directed to Powys County Council DBS Unit on 01597 826894. **Once completed, please return this form with the copy of the DBS certificate and completed consent form in the envelope enclosed to Powys County Council, DBS Unit, 3rd Floor, Gwalia, Ithon Road, Llandrindod Wells, Powys LD1 6AA for Decision.**

Full Name of APPLICANT:	
D.O.B.:	
Job Title:	
Establishment/Base:	
Date Of Interview:	

Question	**Response** (delete as app.)	**Explanation/Comments**
1. Did the applicant declare cautions or convictions on the Powys County Council job application form? (Please refer to letter sent from DBS Unit)	Yes / No	if no please explain
2. Did the applicant declare cautions or conviction on the DBS application form? (Please refer to letter sent from DBS Unit)	Yes / No	if no please explain
3. How many cautions/convictions/warnings appear on the certificate? What are the nature of the offence(s)? e.g. violence to the person, theft, drugs etc		
4. What is the length of time since the offence(s) occurred?		

5. What penalty did the offence(s) incur? e.g. fine, imprisonment etc.		
6. Please give full details of all offence(s) provided by the Applicant. *(please use continuation sheet if necessary)*		
7. Is there any additional information included in the DBS Children's Barred List section?	Yes / No	*Please note that if this is a Standard Check this is not applicable*
8. Is there any additional information included in the DBS Adults Barred List section?	Yes / No	*Please note that if this is a Standard Check this is not applicable*
9. Was the offence a one-off or part of a history of offending?		
10. Provide any relevant information offered by the applicant about the circumstances which led to the offence being committed. (E.g. influence of domestic or financial difficulties, peer pressure etc.)		
11. Could the caution/conviction prevent the employee from working in the role for which they have applied / been appointed? *Please specify*	Yes / No	
12. Does the applicant hold any other position within the Authority that may/may not require a DBS? *Please include voluntary roles.*	Yes / No	
13. Have the applicant's circumstances changed since the offence(s) were committed, making re-offending less likely? *Please explain.*	Yes / No	

14. Will the nature of the job present any opportunities for the post holder to re-offend in the work place?	Yes / No	
15. What is the seriousness of the offence and its relevance to the safety of other employees, customers, clients and property?		
16. Does the post involve one to one contact with children or other vulnerable groups as employees, customers and clients?	Yes / No	
17. What level of supervision will the post holder receive?		
18. Does the post involve any direct responsibility for finance or items or value?	Yes / No	
19. Does the post involve direct contact with the public?	Yes / No	
Additional information, comments or observations (*please use continuation sheet if necessary*):		
Was the interview completed within 10 working days? If no, please give reason.		

APPLICANT DECLARATION: *:*

- *I declare to the best of my knowledge that the certificate received is a full and accurate record.*
- *I declare that this is a true record of the discussion that took place and I am aware that this information will be obtained by the DBS Unit in line with the DBS Code of Practice.*

Signature:

WITNESS DECLARATION

If applicable, please ensure witness declaration completed/signed for each witness present.

WITNESS DECLARATION: *I declare that this is a true record of the discussion that took place.*

Print Name:

Designation:

Signature: **Date:**

INTERVIEWING OFFICER DECLARATION / RECOMMENDATION:

I have interviewed the applicant and recommend that Powys County Council

Should / Should NOT *(please delete as applicable)*

continue with the appointment.

Recruitment recommendation reasons:

Print Name:

Designation:

Signature: **Date:**

*********** Once above completed, please return to the DBS Unit ***********

HEAD OF SERVICE :

DBS check APPROVED? YES / NO *(please delete as applicable)*

Additional comments to include reasons for decision:

Print Name:

Designation:

Signature:

Date:

LEAD SIGNATORY DECISION:

DBS check APPROVED? YES / NO *(please delete as applicable)*

Additional comments including decision reasons:

Print Name:

Designation:	**Lead Signatory**		
Signature:		**Date:**	

Appendix 3 - **Schedule 3 GDPR**

The following definitions are inserted in place of any existing definitions of the same terms (if applicable):

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy.

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

"Controller, **Processor**, **Data Subject** , **Personal Data** , **Personal Data Breach** , **Data Protection Officer"** take the meaning given in the GDPR.

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by PCC under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

"Data Subject Access Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

"DPA 2018" means the Data Protection Act 2018.

"GDPR" means the General Data Protection Regulation *(Regulation (EU) 2016/679).*

"Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply.

"LED" means Law Enforcement Directive *(Directive (EU) 2016/680).*

"PCC' Personnel" means all directors, officers, employees, agents, consultants and contractors of PCC and/or of any sub-contractor engaged in the performance of its obligations under this Agreement.

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to

Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

"Sub-processor" means any third Party appointed to process Personal Data on behalf of PCC related to this Agreement.

1. DATA PROTECTION

1.1 Powys County Council (PCC) shall comply with all Data Protection Legislation.

1.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and PCC is the Processor. The processing that PCC is authorised to do is outlined by the Client and may not be determined by PCC.

1.3 PCC shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.

1.4 PCC shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:

1.4.1 A systematic description of the envisaged processing operations and the purpose of the processing;

1.4.2 An assessment of the necessity and proportionality of the processing operations in relation to the Service;

1.4.3 An assessment of the risks to the rights and freedoms of Data Subjects; and

1.4.4 The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.5 PCC shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

1.5.1 Process that Personal Data only in accordance with Schedule A, unless PCC is required to do otherwise by Law. If it is so required PCC shall promptly notify the Client before processing the Personal Data unless prohibited by Law;

1.5.2 Ensure that it has in place Protective Measures to protect against a Data Loss Event having taken account of the:
(i) Nature of the data to be protected;
(ii) Harm that might result from a Data Loss Event;
(iii) State of technological development; and
(iv) Cost of implementing any measures;

1.5.3 Ensure that:
(i) PCC' Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);

(ii) It takes all reasonable steps to ensure the reliability and integrity of any of PCC' Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with PCC duties under this clause;

(B) Are subject to appropriate confidentiality undertakings with PCC or any Sub-processor.

(C) Are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Agreement; and

(D) Have undergone adequate training in the use, care, protection and handling of Personal Data; and

(E) Not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(i) PCC has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;

(ii) The Data Subject has enforceable rights and effective legal remedies;

(iii) PCC complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and

(iv) PCC complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

1.5.4 At the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Agreement unless PCC is required by Law to retain the Personal Data.

1.6 Subject to clause 1.7, PCC shall notify the Client immediately if it:

1.6.1 Receives a Data Subject Access Request (or purported Data Subject Access Request);

1.6.2 Receives a request to rectify, block or erase any Personal Data;

1.6.3 Receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

1.6.4 Receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

1.6.5 Receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

1.6.6 becomes aware of a Data Loss Event.

1.7 PCC obligation to notify under clause 1.6 shall include the provision of further information to the Client in phases, as details become available.

1.8 Taking into account the nature of the processing, PCC shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.6 (and insofar as possible) within the timescales reasonably required by the Client including by promptly providing:

1.8.1 The Client with full details and copies of the complaint, communication or request;

1.8.2 Such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

1.8.3 The Client, at its request, with any Personal Data it holds in relation to a Data Subject;

1.8.4 Assistance as requested by the Client following any Data Loss Event;

1.8.5 Assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.

1.9 PCC shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

1.10 PCC shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.

1.11 PCC shall designate a data protection officer if required by the Data Protection Legislation.

1.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, PCC must:

1.12.1 Notify the Client in writing of the intended Sub-processor and processing;

1.12.2 Obtain the written consent of the Client;

1.12.3 Enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.12 such that they apply to the Sub-processor; and

1.12.4 Provide the Client with such information regarding the Sub-processor as the Client may reasonably require.

1.13 PCC shall remain fully liable for all acts or omissions of any Sub-processor.

1.14 The Client may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

1.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than thirty (30) Working Days' notice to PCC amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

SCHEDULE A – Data Processing

1. DATA PROCESSING SERVICES:

Data relating to DBS check applicants, Data relating to Disclosure Scotland check applicants, ID verifiers and system users will be processed under the proposed agreement. This data will be input by the Clients' system users and their customers onto the employment check system.

Both Powys and Kent County Council will provide data processing services including:

- Hosting the employment check application (via a third-party provider)
- Application maintenance and development
- Secure transfer of data to the DBS and Disclosure Scotland (as required)
- Purging of personal and sensitive data six months after a check has been archived by the Clients' admin users in line with the systems specification
- Reporting for the purposes of billing for services provided
- Reporting for the purposes of providing Key Performance Indicator reports for the customer.

In order to facilitate the maintenance, development and investigation of system issues, identified PCC and KCC staff may access data stored within the system database to perform tasks in the interests of the Client for the purposes of:

- Data Analysis and report generation
- Insertion and alteration of data to facilitate client requests
- Correction of system issues
- Extraction of data to facilitate client requests
- Research facilitating system development

In all cases, only the minimum of data required will be accessed and no data will be altered, inserted, or removed without the express written permission from the data controller. All staff accessing the data are trained and vetted in line with PCC and KCC policies.

NB - KCC enlist the help of a third party provider to assist in maintenance, development, and investigation of the issues for the system. This provider is contractually required to adhere to KCC policy in respect of any data held within the system and has a standing Non-Disclosure Agreement with regards to any data accessed. The third party may only access data under the express written permission of the relevant KCC technical staff in each instance, only the minimum of access required to perform the necessary task is given and is only given where it is required to assist in the maintenance, development, and investigation of system issues in the interests of the client.

2. DURATION OF THE PROCESSING:

The data shall be processed during the Contract period as outlined in Section 3 Term of the contract document.

The Council shall ensure that the data is returned to the Client in accordance with the recovery and handover provisions in the original agreement (the Contract).

3. TYPE OF PERSONAL DATA:

- Name, address and contact details
- Employment and/or educational details
- Licences or permits held
- ID document details
- Criminal record

4. CATEGORIES OF DATA SUBJECTS:

Employees (including volunteers, Agency, Contractors), potential or actual service users and customers of the Client.

5. PROCESSING INSTRUCTIONS

The Employment check solution uses a SSL certificate for secure transmission of data between client terminals and the dedicated servers which are utilised for no other purpose than for the Employment check system. The system is fully hosted on a dedicated server with an ISO27001 certified datacentre who were procured in line with the requirements set out by the DBS and MOJ and specific security data related to system access is encrypted at rest via MD5 encryption. Our hosting provider is ISO 9001, 2000 and 27001 certified and are audited on an annual basis by both external independent quality assessors and by Vendor partners and undergo regular penetration testing in line with ISO 27001 compliance. Access to data on the system is tightly controlled and only authorised personnel have access to the minimum data/information required to perform their designated tasks. The database itself is password protected to prevent any unauthorised access. When data is processed and transmitted to the DBS the Employment check system complies with and where possible exceeds all MOJ and DBS approved cryptographic requirements to ensure secure transmission of data between itself and the authorities. All data is transferred over the FTPS protocol and an element of the transmission is encrypted using an AES-256 algorithm to ensure message integrity.