

HR POLICIES & PROCEDURES

Disclosure and Barring Service (DBS) Checks

This policy is available on-line at: www.tynecoast.ac.uk

We will consider any request for this policy to be made available in an alternative format or language. Please note the College may charge for this. Please contact: Executive Director of HR

We review our policies regularly to update them and to ensure that they are accessible and fair to all. We welcome suggestions for improving the accessibility or fairness of this policy.

All our policies are subject to equality impact assessments*. We are always keen to hear from anyone who wishes to contribute to these impact assessments. Please contact: Executive Director of HR

Approved by:	Version:	Issue Date:	Review Date:	Contact Person:
Senior Executive Group	3	October 2018	October 2021	Executive Director of HR

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Note: DBS is the new title for Criminal Records Bureau (CRB)

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1.0 Policy

- 1.1** Tyne Coast College is committed and passionate about providing a safe and secure environment in which all learners and employees are enabled to achieve the best they can from working or studying at the College.
- 1.2** The College will ensure, through the appropriate use of DBS checks, that it does not employ or make use of the services of any person who has a criminal conviction or record of conduct that could present a risk to the safety and well-being of Tyne Coast College learners and employees.
- 1.3** Tyne Coast College is a registered body with the DBS and 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 General Data Protection Regulations (GDPR) 2018 and other relevant legislation pertaining with the safe handling, use, storage, retention and disposal of Disclosure information.
- 1.4** The policy is inclusive of and compliant with the College's obligations under the Rehabilitation of Offenders Act 1974.

2.0 Background

- 2.1** The Criminal Records Bureau (CRB) was introduced in April 2002 to provide a 'one stop' service for access to criminal record checks for employment purposes. It replaced the previous system of local police record checks and List 99 (the register of people who are deemed unfit to work with children). Since 2012 this service has been known as 'Disclosure' and is the only available method of carrying out criminal record checks via the Disclosure and Barring Service (previously the CRB).
- 2.2** There are two levels of Disclosure. Standard Disclosures are intended to be used for positions that involve regular contact with those aged under 18 or people of any age who may be vulnerable for other reasons. Enhanced Disclosures are for posts involving regularly caring for, supervising, training or being in sole charge of those aged under 18 or people of any age who may be vulnerable for other reasons. Where people are working or seeking to work in regulated activity with children, or vulnerable adults this allows for an additional check to be made as

to whether the person appears on the children's or vulnerable adults barred list.

- 2.3** As all staff who work at Tyne Coast College have access to learners under the age of 18 or people of any age who may be vulnerable for other reasons. All employees will require an enhanced disclosure check, with the appropriate barred list check.
- 2.4** The Enhanced Disclosure involves an extra level of checking beyond that which is carried out for the Standard. Applications for a Disclosure are made by the College as a Registered Body, which countersigns and pays for the application. The individual receives a Disclosure Certificate at their home address.
- 2.5** It will be a condition of all offers of employment made by the College that a satisfactory DBS disclosure is obtained. Should any prospective employee or learner to whom this applies refuse to complete a DBS Disclosure Application form within a reasonable timescale (i.e. two weeks of the offer date) this will result in the withdrawal of the provisional offer.
- 2.6** All casual, voluntary and agency employees will be required to have a satisfactory enhanced DBS disclosure with the relevant barred list check
- 2.7** All contractors will be assessed to determine the level of access to Tyne Coast College learners and level of supervision on site before DBS disclosure requirements are specified in the contract.
- 2.8** Should any employee be convicted of an offence during the period of their employment, it is their duty to declare this to the Executive Director of Human Resources in order for the risk to be assessed (see Appendix 1). Failure to do so may result in disciplinary action being taken.
- 2.9** Individuals who have lived or worked outside the UK must undergo the same checks as all other staff. In addition, the college will make any further checks they think appropriate so that any relevant events that occurred outside the UK can be considered. These further checks will include a check for information about any teacher sanction or restriction that an European Economic Area (EEA) professional regulating authority has imposed, using the National College for Teaching & Leadership (NCTL) Teacher Services' system. Although restrictions imposed by another EEA regulating authority do not prevent a person from taking up teaching positions in England, the College will consider the circumstances that led to the restriction or sanction being imposed

when considering a candidate's suitability for employment. The College will also follow The Home Office published guidance on criminal record checks for overseas applicants, where it deems it necessary i.e. those engaging in regulated activity.

- 2.10** Teacher prohibition orders prevent a person from carrying out teaching work in schools, sixth form colleges, 16 to 19 academies, relevant youth accommodation and children's homes in England. A person who is prohibited from teaching must not be appointed to work as a teacher in such a setting. Therefore the College will undertake a check for all teaching staff to ensure they are not prohibited from teaching using Teacher Services' system.

3.0 The Rehabilitation of Offenders Act 1974 (ROA)

- 3.1** The main purpose of the ROA is to ensure that a person who has been convicted of a criminal offence in the past and who has not re-offended in a specified period is, so far as possible, treated as if the offence and the conviction for it had never occurred. The ROA achieves this by enabling some convictions to become 'spent', or ignored, after a period of time, so that the offender does not have to declare the conviction when applying for a job. In some instances, however, exemptions are made from the ROA, allowing the employer to ask candidates to declare all convictions, cautions, warnings and so on. Work in a further education institution where the normal duties of that work involve regular contact with children aged under 18 and vulnerable adults is exempted from the ROA.
- 3.2** Applicants are requested to provide information about their criminal background on the application form so that any issues raised can be dealt with at the interview stage (or shortly after) and a decision can be made on that basis, subject to the Disclosure check. Applicants should submit a disclosure under separate cover by writing to the HR Manager at Tyne Coast College. The application form includes a statement to candidates that their appointment is subject to a satisfactory Disclosure check, and that a criminal record will not necessarily prevent an offer of employment.
- 3.3** A copy of the DBS's Code of Practice is available to all candidates on request.

4.0 Regulated Activity Adults

This definition is taken from The Protection of Freedoms Act 2012

This only applies to certain areas within the College such as the Autism Unit, Interface, and other areas of the Foundation Learning department, however, this may apply to other areas that meet this definition.

4.1 The Safeguarding Vulnerable Groups Act 2006 will no longer label adults as vulnerable because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult receiving the activities. The definition of regulated activity for adults from 10 September 2012 identifies the activities provided to any adult which, if any adult requires them will mean that the adult will be considered vulnerable at that particular time.

4.2 There are six categories within the new definition of regulated activity

Providing Health Care

The provision of **health care** by any **health care professional** to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity.

Providing Personal Care

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

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

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

Providing Social Work

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

Assistance with general household matters

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:

- managing the person's cash,
- paying the person's bills, or
- shopping on their behalf.

Assistance in the conduct of a person's own affairs

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

- Lasting power of attorney under the Mental Capacity Act 2005
- Enduring power of attorney within the meaning of the Mental Capacity Act 2005
- Being appointed as the adult's deputy under the Mental Capacity Act 2005
- Being an Independent Mental Health Advocate
- Being an Independent Mental Capacity Advocate
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006
- Receiving payments on behalf of that person under the Social Security Administration Act 1992

Conveying

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

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

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

5.0 Regulated Activity Children

This definition is taken from The Protection of Freedoms Act 2012

- 5.1** Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight.
- 5.2** Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.
- 5.3** Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.
See below re types of care.
Particular types of care as above, which apply to any child, even if done only once:

Relevant personal care

(a) Physical help in connection with eating or drinking, for reasons of illness or disability

(b) Physical help for reasons of age, illness, or disability, in connection with:

- Toileting (including re menstruation)
- Washing, bathing, or dressing

Prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide

Other training or advice in relation to (a)-(b).

- 5.4** All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.
- 5.5** Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.
- 5.6 Definition of Overnight**
In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children.
- 5.7** Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person

frequently (once a week or more often), or on 4 or more days in a 30-day period.

- 5.8** Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.
- 5.9** Work for a limited range of establishments (known as 'specified places', which include schools and colleges), with the opportunity for contact with children, but not including work done by supervised volunteers.

6.0 Scope

- 6.1** The College requires all staff, agency workers, volunteers and work experience placements to have an Enhanced DBS Disclosure with the appropriate barring list check.

7.0 Procedure

- 7.1** Once a provisional offer of employment has been made, Human Resources will issue the necessary Disclosure paperwork and verify the applicant's identification in line with DBS guidance. All applicants must be directed to the DBS privacy policy in line with GDPR regulations. This will explain to applicants how the DBS will use their data. Prior to any DBS application being processed by the College, applicants must sign to confirm that they have read and understand the DBS privacy policy. Original documents are seen and checked, and the Disclosure application form is countersigned and sent to the DBS.
- 7.2** On receipt of the Disclosure certificate the applicant must bring the original certificate to the Human Resources Department, Human Resources check for any recorded convictions, cautions, etc. If the certificate shows no recorded items, the issue date and certificate number are recorded on the central tracking system.
- 7.3** If the Disclosure certificate shows recorded items such as convictions or cautions, Human Resources will pass the certificate together with the relevant paperwork to the Executive Director of HR for consideration. In all situations, where there are any offences relating to children or vulnerable adults, the Executive Director of HR will consult with the Principal (Marine School and/or Professional Vocational College and/or TyneMet College) or SEG. Under no circumstances will an appointment be made if a person is on the Barred List (an

Enhanced check for Regulated Activity) for the area of work which has been checked.

- 7.4** The following will be taken into account when reaching a decision about employing an individual with a criminal conviction or caution.
- Whether the conviction or other matter is relevant to the position
 - The seriousness of the offence or other matter
 - The length of time since the offence or other matter occurred
 - Whether the applicant has a pattern of offending or other relevant behaviour
 - Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters
 - The circumstances surrounding the offence and the explanation(s) offered by the individual via a Safer Recruitment Interview, which is carried out by the appropriate Head of School/Service supported by a member of the HR team.
- 7.5** Where the decision is taken to employ an individual with a criminal conviction or caution, the Executive Director of HR will place a record of the risk assessment using the above criteria on their personal file. No appointment of an individual with criminal convictions or cautions relating to children or vulnerable adults can be confirmed without the agreement from the Principal (Marine School and/or Professional Vocational College and/or TyneMet College) or SEG.
- 7.6** Where the decision is taken not to appoint an applicant because of the information on their Disclosure, the Executive Director of HR will provide SEG with a recorded risk assessment using the criteria stated in clause 7.4. No conditional offer of appointment can be withdrawn without the agreement from a member of SEG.
- 8.0** **Discussing Criminal Records**
- 8.1** If a candidate has given details of their criminal record at the interview, it may be appropriate to discuss this at this stage.
- 8.2** Where an applicant's criminal record was disclosed in their application prior to interview and they are provisionally offered employment, HR will need to discuss this with the applicant prior to them commencing.
- 8.3** Where an applicant's criminal record is not made available prior to interview and there are issues revealed through the DBS Disclosure, which HR feel need to be discussed, the Head of School/Appointing

Manager and a member of HR will meet with the applicant. Such a discussion will also be necessary when the Disclosure contradicts what the applicant has declared. It may be that they have, for example, misunderstood what is meant by a spent conviction or were unaware that cautions would also be included in the Disclosure. Following any discussion, the provisions outlined in paragraphs 7.5 and 7.6 apply.

8.4 If an applicant disputes the information contained on a Disclosure, they can appeal to the DBS. If a mistake has been made a fresh Disclosure will be issued to the applicant. However, the College maintains the right to withdraw a job offer on the basis of the information supplied by the DBS at the time.

8.5 The College cannot accept responsibility where a job offer has been withdrawn due to entry errors on the DBS return.

9.0 Transferring a DBS Check

9.1 A DBS certificate only contains information from a DBS check on a certain date and for a particular purpose.

Employers can accept a previously issued certificate but must:

- Check the applicants identity matches the details on the certificate
- Check the certificate is of the right level and type for the role
- Carry out a free of charge status check to see if new information has come to light since the certificates issue if the applicant has already joined the DBS online update service.
- Employers can accept a previously issued certificate without a status check provided a risk assessment has been completed.

The college will only accept a previously issued DBS if it is less than 12 months old, (or where the individual has been cleared by their employing organisation and has been in continuous employment with that employer since the DBS was issued.)

10.0 Conditional Employment

10.1 DBS checks can take several weeks to be processed. There may be rare occasions where an employee or volunteer is urgently required to start work before the receipt of a satisfactory DBS Disclosure. This can only be authorised by the Executive Director of HR (Principal (Marine School and/or Professional Vocational College and/or TyneMet College) in their absence) subject to the following conditions:

- Where the individual has no declared convictions or cautions in the application process, which may cause concern.
- Where the individual is not on the barred list.
- Written assurance to the Executive Director of HR from the Head of School/Service, that the individual will be appropriately, supervised pending the receipt of the satisfactory DBS Disclosure and that this will be monitored.
- Good reference(s) from current/previous employer, which confirms no safeguarding issues.

A College Risk Assessment must be completed in these circumstances and signed by the Chief Executive.

11.0 Re-checks

- 11.1** All employees in posts subject to a disclosure check will need to be rechecked every three years.
- 11.2** The HR Department will contact employees two months before the expiry of their DBS and advise them they are required to complete a new DBS form and provide the required identity documents to allow the processing of their application, the employee. The employee will be directed to the DBS privacy policy in line with GDPR regulations. This will explain to employees how the DBS will use their data. Prior to any DBS application being processed by the College, employees must sign to confirm that they have read and understand the DBS privacy policy. Original documents are seen and checked, and the Disclosure application form is countersigned and sent to the DBS.
- 11.3** On receipt of the Disclosure certificate the employee must bring the original certificate to the Human Resources Department, Human Resources check for any recorded convictions, cautions, etc. If the certificate shows no recorded items, the issue date and certificate number are recorded on the central tracking system.
- 11.4** If the Disclosure certificate shows recorded items such as convictions or cautions, that were not present on previous DBS checks, Human Resources will pass the certificate together with the relevant paperwork to the Executive Director of HR for consideration. The employee's line manager along with a representative will discuss the recorded items on the Disclosure and provide an explanation. A written record of this conversation must be kept and passed to the Executive Director of Human Resources for consideration with the relevant Principal and SEG. Each case will be considered individually based on the evidence

provided. Where the records are deemed serious the College may take action under the Staff Disciplinary Policy.

12.0 Storage, Use and Disposal of DBS Information

- 12.1** The College will not keep copies of any disclosures, however, in exceptional circumstances, where a risk assessment has been carried out, disclosure information, which is part of this risk assessment will be kept 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. It is an Ofsted requirement that the College keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, and the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken on a Central Tracking system. This is kept electronically on a secure server with access limited to those who are entitled to see it as part of their duties.
- 12.2** 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 it is a criminal offence to pass this information to anyone who is not entitled to receive it.
- 12.3** 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. Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for longer than is 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. It is however an Ofsted requirement that DBS certificates are held for staff working/or family members residing in the Halls of Residence. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail. Once the retention period has elapsed, we will ensure that any Disclosure information is immediately destroyed by secure means, i.e. by confidential shredding. 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, notwithstanding the above, it is an Ofsted requirement that the College 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 on a Central Tracking system.

13.0 Monitoring and Review of the Policy

The effectiveness of this policy will be monitored annually and reviewed every three years in light of experience and best practice. This mechanism recognises that changes as a result of experience and/or to employment legislation may prompt a review of the policy before the end of the three year period.

On considering the effectiveness of this policy, consultation will be undertaken with the Trade Unions, Employees and Managers to assist in the policy review and monitoring of this policy.

Human Resources Disclosure and Barring Service (DBS) Checks

APPROVED/NOT APPROVED

Risk Assessment Form

Name: _____ Department: _____ Date of Start: _____

Does the applicant have a previous DBS certificate? YES/NO Level of Certificate (Enhanced/Standard)

Certificate Number _____ Date of Issue of Certificate _____

Clearing Organisation Details _____

Is the DBS clear of any convictions? YES/NO Has a barred list check been completed? (Attach) _____

Items to Discuss	Risk Identified THIS REQUIRES A FREQUENCY AND LIKELIHOOD SCALE	Outcomes/Actions
Job Role / Level of contact to Learners		
Impact on the business needs delaying start date		
What is the offence?		
What is the candidate’s explanation of the circumstances of the offence? Please include the Date and time of the meeting with candidate, continue on a separate sheet if necessary.		

Did the individual tell Tyne Coast College about the offences when they applied for the job and was their information accurate?		
Is the conviction spent? <i>Please seek guidance if you are unsure.</i>		
How old was the individual at the time?		
How long ago was the most recent offence?		
Did the offence include possession and selling of drugs, burglary or theft or other issues that may carry risk to Tyne Coast College?		
Was the offence violent or sexual? <i>If relating to under 18's or vulnerable adults, seek guidance from Executive Director of HR or Principal (Marine School and/or Professional Vocational College and/or Tyne Metropolitan College) or SEG..</i>		

Signed: Head of School/Service

Signature

Date:

Signed: Principal

Signature:

Date:

Signed: Executive Director of HR

Signature:

Date:

Signed: Chief Executive

Signature:

Date:

Guidance Notes for Completion

A risk assessment will only be used in exceptional circumstances, so as not to cause disruption to critical business needs.

All College employees are subject to DBS enhanced disclosures in line with the College Recruitment and DBS policies.

Employment prior to obtaining a DBS will only be considered in **EXCEPTIONAL** circumstances.

The College will only consider DBS certificates if they are less than 12 months old, or where the individual has been cleared by their employing organisation and has been in continuous employment with that employer since the DBS was issued

The Head of School/Service must have sight of the original DBS certificate and take a copy of both sides of the certificate to attach to the completed risk assessment form.

The Head of School/Service must complete the risk assessment outlining any potential risks they can envisage.

The risk assessment form and DBS certificate are forwarded to the Executive Director of HR for discussion and consideration with the relevant Principal/Director of the Service.

In some circumstances it may be relevant for these forms to be considered by the Senior Executive Group.

The Executive Director of HR will confirm whether approval has/has not been given to use this DBS.

Please be advised all other employment checks must be in place, ie qualifications, references before employment can commence.

The copy of the DBS will be destroyed, however, the risk assessment will be kept on the applicants personal file.

