



EDUCATION SOUTH WEST

Disclosure & Barring Checks Policy & Procedure

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(This policy supersedes all previous Disclosure & Barring Checks policies)

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Amendments

Policy Date	New Version Number	Summary of change	Comments
11/02/19	V1.0	Two yearly review of policy	Minor changes, addition statutory act dates
11/03/21	V1.1	Annual review	Minor changes only
March 2022	V1.2	Annual review	

Union Consultation

Date	Action (meeting, email etc)	Comments	Attendance
10/07/17	Meeting with Union Reps		UNISON, GMB, NASUWT, ATL, NUT

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Policy

1. Introduction

- 1.1 Education South West (ESW) through its leaders and staff, has a duty of care to protect the well-being of the children at the school and others with whom the school comes into contact.
- 1.2 The Disclosure and Barring Service (referred to as 'DBS' for the remainder of this policy) helps employers make safer recruitment decisions about employees and volunteers. It also prevents unsuitable people from working with vulnerable groups, including children, through its criminal record checking and barring functions.
- 1.3 This policy sets out how Education South West manages DBS criminal records checks. The policy applies to employees, casual staff, agency workers, volunteers and contractors.
- 1.4 The policy has been implemented following consultation with staff and recognised trade unions. It has been formally adopted by the Trust.
- 1.5 This policy is contractual and forms part of any employee's contract of employment.

2. Legislative Influences

- 2.1 This policy has been written with regards to the Human Rights Act 1998, the Data Protection Act 2018, the Police Act 1997, the Safeguarding Vulnerable Groups Act 2006; and the Protection of Freedoms Act 2012.

The following is also relevant to this policy:

- 2.2 Section 11 of the Children's Act 2004, Section 175 Education Act 2002 (schools), Section 157 Education Act 2002 (Academies/Free Schools).
- 2.3 This policy complies with requirements under the Working Together to Safeguard Children Document and the Safer Recruitment in Education Guidance produced by the DfE.

3. Disclosure and Barring Service (DBS) lists

- 3.1 The DBS has a legal responsibility to:
 - (a) maintain a list of individuals barred from engaging in *regulated activity* with children;

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- (b) maintain a list of individuals barred from engaging in *regulated activity* with vulnerable adults;
- (c) reach decisions as to whether a person should be included in one or both barred lists; and
- (d) reach decisions as to whether to remove an individual from a barred list.

4. DBS Code of Practice

- 4.1 Education South West will comply with the DBS' Code of Practice. This is to ensure that the information released will be used fairly and handled and stored appropriately.

5. Disclosure Level

- 5.1 Education South West will process all disclosure checks at Enhanced level, with Barred List checks for those roles that meet the criteria for Regulated Activity. A section 128 check will also be requested for all Governors / Trustees / Directors and those whose roles relate to the management of the school, including but not limited to the Headteacher/Principal.

6. Authorised Officers

The disclosure process will be managed by a nominated Authorised Officer.

7. Rehabilitation of Offenders Act

- 7.1 Once a conviction is 'spent' as defined by the Rehabilitation of Offenders Act (ROA) 1974, the convicted person does not have to reveal it or admit its existence in most circumstances, including, for example, when applying for a job. However, the two main exceptions to this relate to positions working with children or vulnerable adults. In these circumstances people may be required to reveal both spent and unspent convictions although certain specified old and minor offences will be removed from criminal record certificates issued from 29 May 2013 onwards.
- 7.2 Education South West requires all applicants into posts which are eligible for a DBS disclosure, to declare information on all convictions and cautions that are not "protected" as defined by the ROA (Exceptions) Order 1975 (as amended in 2020) and any prosecutions that are pending.

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- 7.3 Education South West will treat applicants who have a criminal record fairly and will not discriminate because of a conviction or other information revealed. Possession of a criminal record will not automatically prevent applicants from working with the school.
- 7.4 As part of the recruitment process such information will only be considered in light of its relevance to the post for which the applicant is applying. All appointments into posts subject to a DBS check will be made only on condition of a satisfactory DBS certificate. If a candidate is successful in their application for employment, the failure to disclose previous criminal history which is not protected under the filtering rules could result in withdrawal of the conditional offer of employment. In circumstances where the DBS certificate contains a disclosure, all applicants will be required to show their DBS certificate to the Appointing Officer prior to confirmation of employment.

8. Recruitment Administration

- 8.1 All job advertisements and supporting information sent to prospective candidates for posts being recruited to Education South West will clearly state the requirement for an Enhanced DBS check.
- 8.2 If there are any criminal declarations declared on the application form, these will be discussed either at interview or at a separate meeting (see 'Procedure').
- 8.3 A DBS check will only be requested for the successful candidate(s) at recruitment.

9. Staff Awaiting DBS Clearance

- 9.1 A DBS Disclosure will be obtained before an individual starts work with Education South West. In exceptional circumstances an individual may be able to start work subject to appropriate risk assessment and a check against the barred list, and approved by the CEO.

10. Existing DBS checks for Employees joining from another Employer

- 10.1 Education South West does, on occasion, accept existing DBS certificates from other authorities or outside organisations within our locality. This can apply if the existing check has been completed within the last 2 years in the Devon locality and meets the required level of checks. The original certificate must be supplied to the authorised officer to confirm suitability and run a check on the update service, where applicable.

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- 10.2 Anybody joining Education South West that does not have a suitable existing DBS check will be required to undertake a new DBS check unless otherwise confirmed by the authorised officer.

11. Re-checking of Existing Employees

- 11.1 Each certificate will contain the date it was printed. Certificates do not carry a pre-determined period of validity because a conviction or other matter could be recorded against the subject of a certificate at any time after it is issued.
- 11.2 Existing employees who have not previously been subject to a DBS check may be required to undertake one during the course of their employment with Education South West. All employees will be expected to comply and any employee refusing to comply with the request for a DBS check will be advised that their unreasonable refusal to carry out may lead to disciplinary action being taken.
- 11.3 Education South West reserves the right to ask existing employees in relevant positions to apply for a DBS check if their actions or activities give cause for concern.
- 11.4 All employee re-checks will be undertaken in conjunction with the provisions of this policy.

12. Volunteers

- 12.1 Education South West occasionally uses volunteers. The requirement to undertake a DBS check will be determined by the frequency and nature of contact with children i.e. if being left unsupervised with children and/or if having regular contact, which is defined as once a week or more on an ongoing basis or 4 or more occasions in a 30 day period or more. This will be based on a thorough risk assessment of the role to be performed by the volunteer.
- 12.2 Volunteers who only accompany staff and children on one off outings or trips or who help at one off specific events such as sports days, school fetes etc do not need to be DBS checked but they must be supervised in compliance with the statutory guidance. If however an overnight stay is involved then an enhanced DBS will be obtained.
- 12.3 Statutory guidance on supervision arrangements can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280881/supervision_of_activity_with_children_which_is_regulated_activity_when_unsupervised.pdf

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13. Supply Staff

- 13.1 Vetting checks will be required for those who work as supply staff, including those who are employed via a supply agency. The details will be recorded on the single central record (see s.17).
- 13.2 Where supply staff are recruited directly by Education South West the same process will be followed as for all employed staff and an enhanced DBS certificate applied for.
- 13.3 Before taking on supply staff from an agency, Schools will obtain written confirmation from the agency that the relevant DBS Disclosure has been seen, checked and confirmation on whether it contained any disclosed information. The school will not need to see or carry out a check unless there is information contained in the DBS Disclosure.

14. School Governors

- 14.1 The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016 which came into force in March 2016 make enhanced DBS checks mandatory for school governors in maintained, independent, academy and/or free schools. In accordance with these regulations Education South West will, within 21 days of appointment or election, apply for an enhanced DBS check with a check against the DBS Children's Barred List for all governors. An obligatory section 128 check will also be requested for all Governors / Trustees / Directors.

15. Overseas candidates

- 15.1 All persons who have lived outside the United Kingdom and who are appointed to a post, or seeking to volunteer at Education South West must undergo a DBS check, and where appropriate a DBS Barred List check, regardless of their length of stay in the UK, or even if they have never been resident.
- 15.2 All foreign nationals including UK citizens who have lived or worked overseas in the previous 5 years (in a fixed permanent overseas address for a continuous period of 6 months or more) must provide a Certificate of Good Conduct (CGC) or overseas criminal record check, in addition to immigration documentation. The applicant will need to provide a CGC or overseas criminal record for every country

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in which residency or employment is relevant and it should be requested in English otherwise translation costs may be incurred.

- 15.3 The DBS cannot currently access overseas criminal records or other relevant information as part of the Disclosure service.
- 15.4 The unavailability of applicant's CGC or overseas criminal record may give cause for concern about their suitability to be offered employment or access to children. Although such candidates will not automatically be barred from working Education South West, the Appointing Officer will make a decision with due regard to all the relevant facts, the risk assessment and the overall requirement to safeguard vulnerable groups. Any decision not to appoint the person or allow access will be carefully explained and reassurance given about the reasons for it. In all cases Appointing Officers will ensure that if a CGC or Police Check is not available a reference is sought from someone in the country of residence i.e. an overseas employer or professional person.

16. Agency & Contractor Staff

- 16.1 Education South West will ensure that where agency or contract workers are supplied to carry out duties within the school that brings them into contact with children, an Enhanced DBS check has been undertaken by the agency or contractor before they commence work. Education South West will ensure that relevant clauses are included in any contracts in advance of the work starting. Education South West will also obtain written confirmation from the agency or contractor that they have carried out all relevant safer recruitment checks. Additionally, they will provide names of the staff who will be coming onto the school site to fulfil the contract. Trust Schools will check the ID of the contractors when they arrive at the school and confirm that these checks have been carried out on the SCR.

17. Single Central Record

- 17.1 In addition to the various staff records which are kept as part of normal business, from 1 January 2007 Schools must also keep and maintain a single central record of recruitment and vetting checks. Education South West upholds this requirement. This record will include all employed staff, supply staff, volunteers, governors or any others who work in regular contact with the children. However, this is not a requirement for supply staff provided by an Agency.

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- 17.2 The central record will indicate whether or not the following have been completed - identity and qualification checks, checks of right to work in the UK, checks of the DBS Barred list, enhanced DBS Disclosure information and overseas criminal record checks (where appropriate). The record will also show the date on which each check was completed and who carried out the check.

Procedure

The following procedure will be followed by Education South West when processing DBS checks.

18. Identity checks

- 18.1 All appropriate original documents will be sought and evidence taken in accordance with the DBS Code of Practice.
- 18.2 If an applicant is unable to produce one of the key primary documents, Education South West will contact our DBS provider to arrange an external ID Verification check.

19. Validating the DBS Certificate

- 19.1 Once the DBS check has been completed, the DBS certificate will be sent directly to the candidate. Education South West will be informed via automated response whether the certificate is clear or contains positive information, but not what that positive information is. Copies of the certificate are not sent to the school. In circumstances where the check contains positive information, the Appointing Officer will ensure that they see the candidate's certificate and check it correctly.

20. Further action once the DBS certificate has been validated

- 20.1 Where a clear (i.e. without any positive criminal information) DBS **certificate** is returned a conditional offer of employment will be made, subject to the other relevant pre-employment checks.
- 20.2 Where a conviction, caution or sanction was declared on the application form, this will be fully discussed with the candidate seeking the post before a decision to either withdraw or confirm a conditional offer of employment is taken. A risk assessment (see 4) will be carried out to help determine if the criminal history is relevant to the role before any decision is made.

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20.3 If the DBS certificate contains information which was not revealed by the candidate, or additional information is received by the police, a further discussion will be held with the candidate and a further review against the risk assessment carried out to determine whether to confirm or withdraw the conditional offer of employment.

21. Risk Management – Assessing the relevance of a criminal record

21.1 Assessing and managing the risk of employing a person with a criminal record, or about whom positive information has been revealed following a disclosure, means comparing the candidate's skills, experience and conviction circumstances against the risk criteria identified for the job and deciding on the relevance of the conviction or other information.

21.2 Having a criminal record will not necessarily bar someone from employment with Education South West; this will depend on the background to the offence(s) and the nature of the position being sought.

22. Considerations

22.1 An objective common sense approach will be taken by Education South West in assessing the information which will take into account the school's responsibilities for safeguarding, and:

- (a) the school's duties in law
- (b) the nature of the crime, when it happened and the circumstances involved
- (c) the sentence, if any
- (d) patterns of offending
- (e) efforts to avoid re-offending
- (f) job requirements
- (g) safeguards against offending at work
- (h) possible reactions of employees.

23. Candidate Awareness

23.1 Applicants will be made aware that Enhanced Disclosures might include non-conviction information such as details of cautions, reprimands and warnings and may include other relevant non-conviction information held by the Police.

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23.2 During a risk assessment discussion, the applicant will be able to give a full account of the circumstances of the offence(s), any extenuating circumstances and of their efforts to avoid re-offending.

23.3 Where assessment against the risk criteria indicates that the applicant could be employed on a conditional basis provided that extra safeguards are put into place, the Appointing Officer will discuss these with the applicant and explain the reasons.

24. Assessing the Role for Risk

When assessing the position, role or contact, a number of factors will be taken into consideration as follows:

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

25. Assessing the Ex-Offender and the Offences

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

- (a) The availability of assessments and reports from those agencies involved in the applicant's process of rehabilitation
- (b) The seriousness of the offence and its relevance to the safety of other employees, clients and property.
- (c) The length of time since the offence occurred.
- (d) Whether the offence was a one-off, or part of a history of offending?

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- (e) Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely
- (f) The country in which the offence was committed. For example, some activities are offences in some countries but may not be in others.
- (g) Whether the offence has since been decriminalised by Parliament.
- (h) The degree of remorse, or otherwise, expressed by the applicant.

26. Insurance Safeguards

- 26.1 Education South West will consider any insurance cover restrictions that might exclude employment of some ex-offenders in specific positions. Any concerns in this respect will be referred to the school's insurance office before the appointment is made.

27. Other pre-employment checks

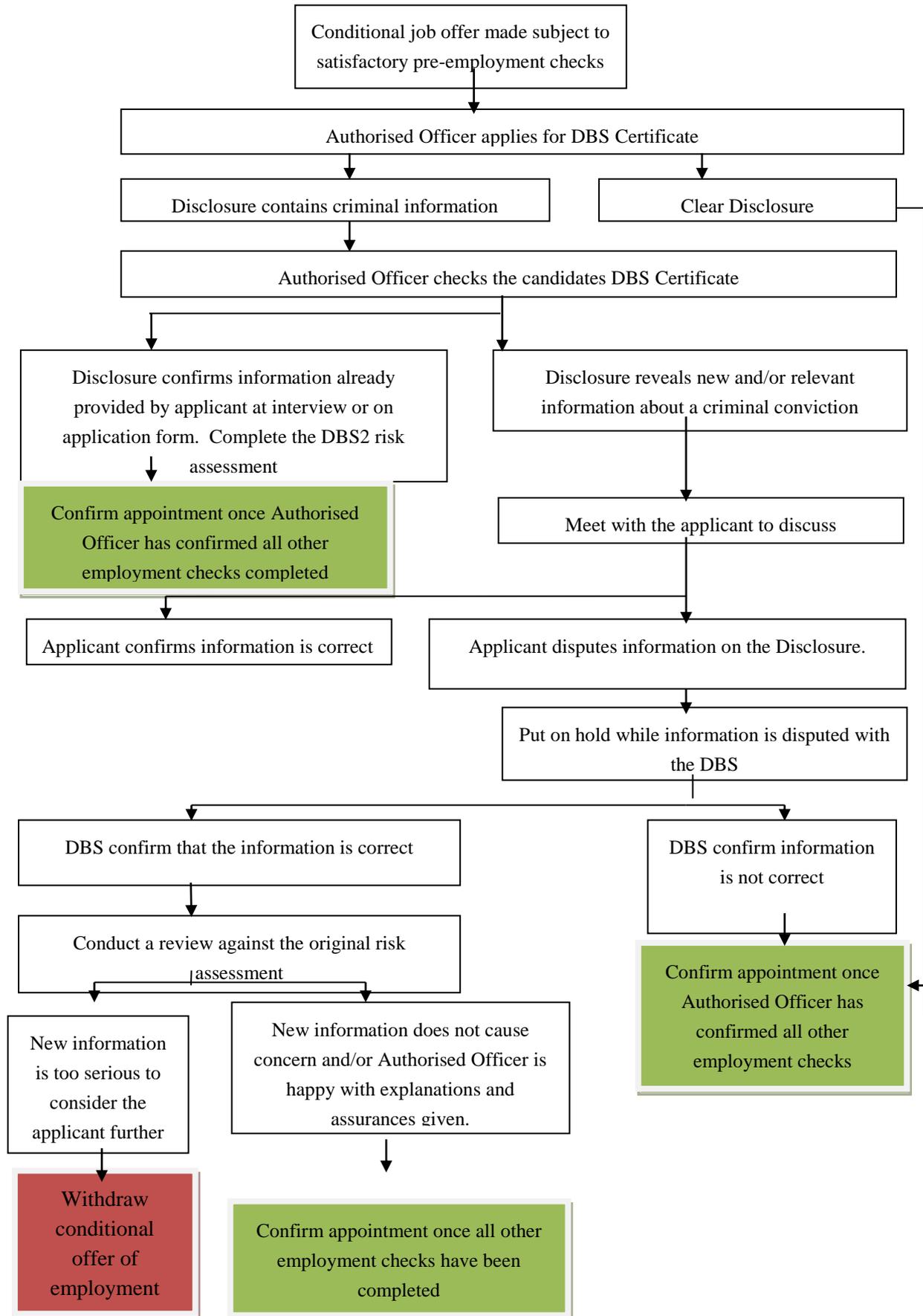
- 27.1 Whilst DBS checks are vital in the consideration of appropriately staffing posts with access to children and vulnerable people, they are just one in a range of pre-employment checks which will be carried out in order to assess the suitability of candidates.

28. Review of policy

- 28.1 This policy is reviewed every three years or upon change of relevant legislation. We will monitor the application and outcomes of this policy to ensure it is working effectively.

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Appendix 1 New Appointments Flowchart



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Appendix 2

Policy Statement on the secure storage, handling, use, retention and disposal of

Disclosures and Disclosure information these statements include electronic disclosure information.

1 **General principles** - As an organisation using the Disclosure & Barring Service (DBS) to help assess the suitability of applicants for positions of trust, Education South West complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters, which is available to those who wish to see it on request.

2 **Storage and Access** - Disclosure information is never kept on an applicant's personnel file and is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

3 **Handling** - In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

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

5 **Retention** - Once a recruitment (or other relevant) decision has been made Education South West does not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six-months, we will consult the DBS about this and will give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

6 **Disposal** - Once the retention period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle. We will not keep any photocopy or other image of the Disclosure or any copy or representation of

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the contents of a Disclosure. However, we will keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

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Appendix 3

Policy Statement – Recruitment of Ex-Offenders

1. Education South West complies fully with the DBS Code of Practice and undertakes to treat all candidates for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
2. Education South West is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, sex, religion or belief, sexual orientation, gender re-assignment, pregnancy and maternity, responsibilities for dependants, marriage and civil partnership, age, disability or offending background.
3. This policy on the recruitment of ex-offenders will be made available to all successful applicants upon request.
4. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience.
5. Application forms, job adverts and recruitment briefs will contain a statement that an enhanced disclosure will be requested in the event of the individual being offered the position.
6. Where a DBS check is to form part of the recruitment process, we encourage all candidates called for interview to provide details of their unspent convictions at an early stage in the application process.
7. Unless the nature of the position allows Education South West to ask questions about a candidate's entire criminal record we only ask about "unspent" convictions as defined in the Rehabilitation of Offenders Act 1974.
8. We ensure that all those in Education South West who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
9. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

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10. We make every subject of a DBS check aware of the existence of the DBS Code of Practice and make a copy available on request.

11. We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

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