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| <b>Policy title:</b>                 | Disclosure and Barring Service checks & Criminal Convictions Policy |                         |            |
| <b>Scope:</b>                        | Group-wide  |                         |            |
| <b>Policy owner &amp; job title:</b> | Ian Gleave – Executive Director of Organisational Development       |                         |            |
| <b>Approved by:</b>                  | Executive Director of Organisational Development                    |                         |            |
| <b>Date:</b>                         | 07/04/2020  | <b>Review Due Date:</b> | 07/04/2023 |

## POLICY SUMMARY:

References to “Aspire” covers the whole company and its subsidiaries from time to time.

- Aspire is committed to safeguarding the welfare of those accessing its services through the effective use of the Disclosure and Barring Service (DBS) Check vetting process for all relevant groups of employees.
- The guidance set out in the DBS Policy Statement relates to employees, volunteers, agency staff and contractors/sub-contractors.
- Aspire will use the DBS Check process as part of a range of checks for assessing the suitability of preferred candidates, volunteers, contractors (and sub-contractors), agency staff, those transferring within the organisation and the continued employment of those in specific roles which require periodic reassessment.
- We will obtain and make decisions based upon the information provided on DBS Check in accordance with the Data Protection Act, the DBS Code of Practice, the Rehabilitation of Offenders Act and the regulations of the Department for Education (DfE) and the Department of Health (as regulated by OFSTED).
- To ensure Aspire complies with its obligations under the GDPR (General Data Protection Regulation (EU) 2016/679) and other relevant legislation in respect of the safe handling, use, storage, retention and disposal of disclosure information.

**Associated Policies & Procedures:** Recruitment and Selection Policy/Procedure, Safeguarding Policy.

## 1. POLICY STATEMENT

This Policy statement provides guidance on the effective use of the Disclosure and Barring process to safeguard vulnerable groups, including children who access our services.

The definitions used to establish eligibility for a Disclosure and Barring check have been developed by the Home Office in consultation with the Disclosure and Barring Service. The legislation which underpins these definitions is the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

**Key points:**

- Aspire is committed to safeguarding the welfare of those accessing its services through the effective use of the DBS Check vetting process for all relevant groups of employees.
- The guidance set out in the DBS Policy Statement relates to employees, volunteers, agency staff and contractors/sub-contractors.
- Throughout this document where a DBS check is referred to, this covers all types of check (standard/enhanced/enhanced plus children and/or adults barred list check).
- Where the term vulnerable is used, this is where a person is in receipt of, or accessing a service which leads that person to being considered vulnerable at that particular time.
- Aspire will use the DBS Check process as part of a range of checks for assessing the suitability of preferred candidates, volunteers, contractors (and sub-contractors), agency staff, those transferring within the organisation and the continued employment of those in specific roles which require periodic reassessment.
- We will obtain and make decisions based upon the information provided on a DBS Check in accordance with the Data Protection Act, the DBS Code of Practice, the Rehabilitation of Offenders Act and the regulations of the Department for Education (DfE) and the Department of Health (as regulated by OFSTED).
- Aspire has a duty to ensure that it does not unnecessarily undertake checks which could result in a breach of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.
- This Policy should be read in conjunction with the Recruitment Policy which incorporates a section on the Employment of Ex-Offenders.
- The definition of a child is: “a person under the age of 18”.
- The definition of an adult is: “a person aged 18 years or over”.

**1.1 DBS Checks and when to use them**

1.1.1 To determine whether a DBS Check is needed or what type of check is needed the manager should risk assess the activity that the individual will be undertaking. This should be done prior to any activity taking place and in the case of recruitment to a vacant post, this should take place prior to the recruitment process commencing.

Managers are also responsible for ongoing reassessment of the post/work to ascertain if the level and type of contact the individual has with vulnerable groups including children has changed and if necessary initiate a new DBS Check.

1.1.2 There are five types of check that are available (see the flowchart attached to assist managers in determining which, if any check is required). The checks which are available are: -

- **Enhanced DBS Check plus Children's Barred Check List check** – this is used when someone is undertaking regulated activity relating to children. This check involves checking the national police computer, police information and the children's barred list.
- **Enhanced DBS Check plus Adults Barred List check** – this is used when someone is undertaking regulated activity relating to adults. This check involves checking the national police computer, police information and the adult's barred list.
- **Enhanced DBS Check plus Children's and Adults Barred List Check** – this is used when someone is undertaking regulated activity relating to both children and adults. This check involves checking the national police computer, police information and the children and adults barred list.
- **Enhanced DBS Check** – This check involves checking the national police computer and police information.
- **Standard DBS Check** – this is used primarily for people entering certain professions such as members of the legal and accountancy professions. Standard DBS checks involve checking the national police computer and do not include checking police information or the children's or adults barred lists.

**N.B. A barred check can only be requested for certain roles. It is a criminal offence to request a barred check for any other roles.**

<https://www.gov.uk/find-out-dbs-check/y>

## 2. EMPLOYEES

2.1.1 If there are concerns about an existing worker's suitability to continue working with vulnerable groups including children we may request to undertake a DBS Check.

2.1.2 The contract of employment states that employees have a responsibility to co-operate in any application made to the Disclosure and Barring Service or any equivalent body (whether upon the commencement of their employment with the Company or at any time subsequently) and that they will further co-operate with the Company in disclosing any further information which may be relevant to any certificate obtained

from the Disclosure and Barring Service or equivalent body. In addition employees must disclose any subsequent convictions or notice of intended prosecution that they may receive during the course of their employment with the Company, irrespective of whether they have been asked to complete an application to the Disclosure and Barring Service or equivalent body. Failure to declare may result in disciplinary action.

### **3. VALIDITY OF DBS CHECK**

3.1.1 There is no period of validity for a DBS Check. A DBS Check is technically out of date on the day that it is issued as a new criminal conviction, caution etc may be recorded against the individual at any time after the date of issue.

### **4. PORTABILITY OF DBS CHECKS**

4.1.1 Portability refers to the re-use of a DBS Check, obtained for use in one organisation and later used for a position in a new organisation.

4.1.2 Aspire may accept portable DBS Checks subject to certain criteria being met in relation to supervision and the length of time elapsed from the previous check. Please seek advice from HR.

4.1.3 In relation to Contractors or Agency staff the “employer” is responsible for obtaining the DBS Check.

### **5. DBS CHECK FOR THOSE MOVING POSITIONS WITHIN THE ORGANISATION**

5.1.1 When an individual has undertaken a DBS Check for a position within a Department and they move to another position within the organisation, the DBS Check will only be acceptable in the following instances: -

- ✓ The type of DBS Check (i.e. enhanced/standard) is the same requirement for the new post, and
- ✓ The individual has not had a break in service of more than 3 months, and
- ✓ The new work does not represent a significant increase in responsibility for, and contact with vulnerable groups including children.

5.1.2 If there is an increase and or change in responsibility a new DBS check may be required.

5.1.3 Employees who have never been DBS checked will undergo the same process as a new employee.

### **6. FREQUENCY OF DBS CHECKING – EMPLOYEES**

6.1.1 Where a DBS Check is required, the individual will complete a DBS form on-line as part of a recruitment and selection process to ascertain their suitability for the post. In

some instances there are no requirements to undertake periodic DBS Checks. However, we will undertake DBS Check Refreshes, tri-annually.

- 6.1.2 HR will monitor the checks for these groups of employees and will contact managers to initiate the process on the 3 year anniversary date.
- 6.1.3 Where a DBS Check or DBS Refresh reveals a criminal background or any cause for concern HR will contact the line manager to discuss and advise on the issues and the process to be followed for both a new recruit and an existing worker.

## **7. COMMENCEMENT OF WORK PRIOR TO RECEIPT OF DBS CHECK**

- 7.1.1 Every effort will be made to ensure a DBS Check is obtained prior to the individual commencing work. Only in “exceptional” circumstances with the express permission of the Head of Service and/or Director can an individual commence work without the full results of the DBS Check being known. In addition the following must also be in place: -
  - ✓ All other pre-employment checks are satisfactory.
  - ✓ A correctly completed DBS Check has been submitted and sent off.
  - ✓ The line manager has undertaken a thorough risk assessment to determine and ensure that sufficient safeguarding measures are in place and the individual will not have ANY unsupervised contact/access to vulnerable groups including children.

## **8. RECEIPT OF DBS CHECK (CURRENT PROCESS)**

- 8.1.1 DBS issue a copy of the DBS Check result online to Aspire and a certificate is sent to the applicant (prospective employee, volunteer etc.).
- 8.1.2 HR will be responsible for recording the sending of and receipt of the DBS Check, the type of Disclosure (i.e. Enhanced), the Disclosure reference number and the issue date.
- 8.1.3 If a “positive” disclosure is received, i.e. one that reveals a criminal background or details of concern HR will contact the line manager and advise on next steps. The Head of Service and/or Director must approve a positive DBS Check for an individual to commence/continue in employment.
- 8.1.4 In these circumstances a risk assessment is required to determine the risk of employing the person or continuing to employ the person and what safeguards would need to be introduced to manage that risk.
- 8.1.5 In accordance with the Rehabilitation of Offenders Act a criminal conviction may not automatically prevent an individual from working within Aspire.

8.1.6 Amongst other factors, managers should consider: -

- ✓ The requirements of the role and the level of supervision the individual will receive.
- ✓ The seriousness of the offence/issue raised and its relevance to the safety of employees, service users, clients and property.
- ✓ How relevant the offence is to the role to be undertaken.
- ✓ How much time has elapsed since the offence was committed and whether it was a one-off incident or part of a history/pattern of offending.
- ✓ Whether the individual's circumstances have changed since the offence was committed making re-offending less likely.
- ✓ Whether the individual was open and transparent about their past and declared their criminal background prior to the offer of employment (dependent upon the requirements of the role) and/or prior to the DBS Check being received.
- ✓ Whether the offence/offences are classed as "spent" under the Rehabilitation of Offenders Act.

## **9. RECRUITING FROM OVERSEAS**

9.1.1 DBS Checks do not record convictions that were committed abroad. When recruiting candidates who have spent time living or working abroad a DBS Check must be obtained in the normal way and a police certificate or certificate of good conduct from the country(s) concerned may also be required. HR will provide further advice on this.

## **10. DBS CHECKS FOR AGENCY WORKERS/CONTRACTORS/SUBCONTRACTORS/ VOLUNTEERS**

10.1.1 Agency workers, contractors, sub-contractors and volunteers must be assessed against the same criteria as those working directly for Aspire to see if a DBS Check is required.

10.1.2 If a DBS Check is deemed necessary then a standard clause should be included in the contract when the work involves work with or in establishments where vulnerable groups including children may be present.

10.1.3 It is the responsibility of the contracting manager to ensure that appropriate measures are in place to validate and ensure contract compliance.

10.1.4 Staff employed via an Agency should have their DBS Check refreshed on an annual basis. Managers must liaise with HR.

10.1.5 Contractors must ensure that their employees and sub-contractors have their DBS Check refreshed every three years.

10.1.6 For Agency workers, the agency must provide a certificate of completion which will confirm in writing that a standard/enhanced DBS check has been completed.

**11. Equality Impact Assessment: -**

An Equality Impact Assessment has been completed. HR will support managers with the recruitment and DBS process by ensuring that training, coaching, advice and support is provided and are readily accessible to mitigate against potential direct or indirect discrimination.

**12. RESPONSIBILITIES OF EMPLOYEE**

To comply with the Policy, to attend training and seek advice where necessary.

Please refer to the main body of the Policy for details.

**13. RESPONSIBILITY OF ASPIRE**

To ensure that the Policy is kept up to date and relevant training, guidance and support is provided.

Please refer to the main body of the Policy for details.

## **APPENDIX 1 - POLICY STATEMENT ON THE SECURE STORAGE, HANDLING, USE, RETENTION AND DISPOSAL OF DISCLOSURES AND DISCLOSURE INFORMATION**

### **1. GENERAL PRINCIPLES**

Aspire uses the Disclosure and Barring Service to help assess the suitability of applicants for positions of trust. We comply fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. We also comply fully with our obligations under the Data Protection Act and other relevant legislation pertaining to Disclosure information.

### **2. STORAGE AND ACCESS**

Disclosure information is never kept on an applicant's HR file and it is always kept separately and securely, on-line.

### **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 Disclosure 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 is requested and for which the applicant's full consent has been given.

### **5. RETENTION**

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is absolutely necessary. Throughout this period the usual conditions regarding safe storage and strictly controlled access will prevail.

### **6. DISPOSAL**

Copies of disclosure certificates are not retained. However; we may keep a record of a decision, any associated risk assessment and the reasons why that decision has been made in relation to recruitment (or other relevant decision). However, we will keep a record of:

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- ✓ the date of issue of a Disclosure,
- ✓ the name of the person,
- ✓ 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.

## APPENDIX 2 – HOW TO DETERMINE IF A DBS CHECK IS REQUIRED

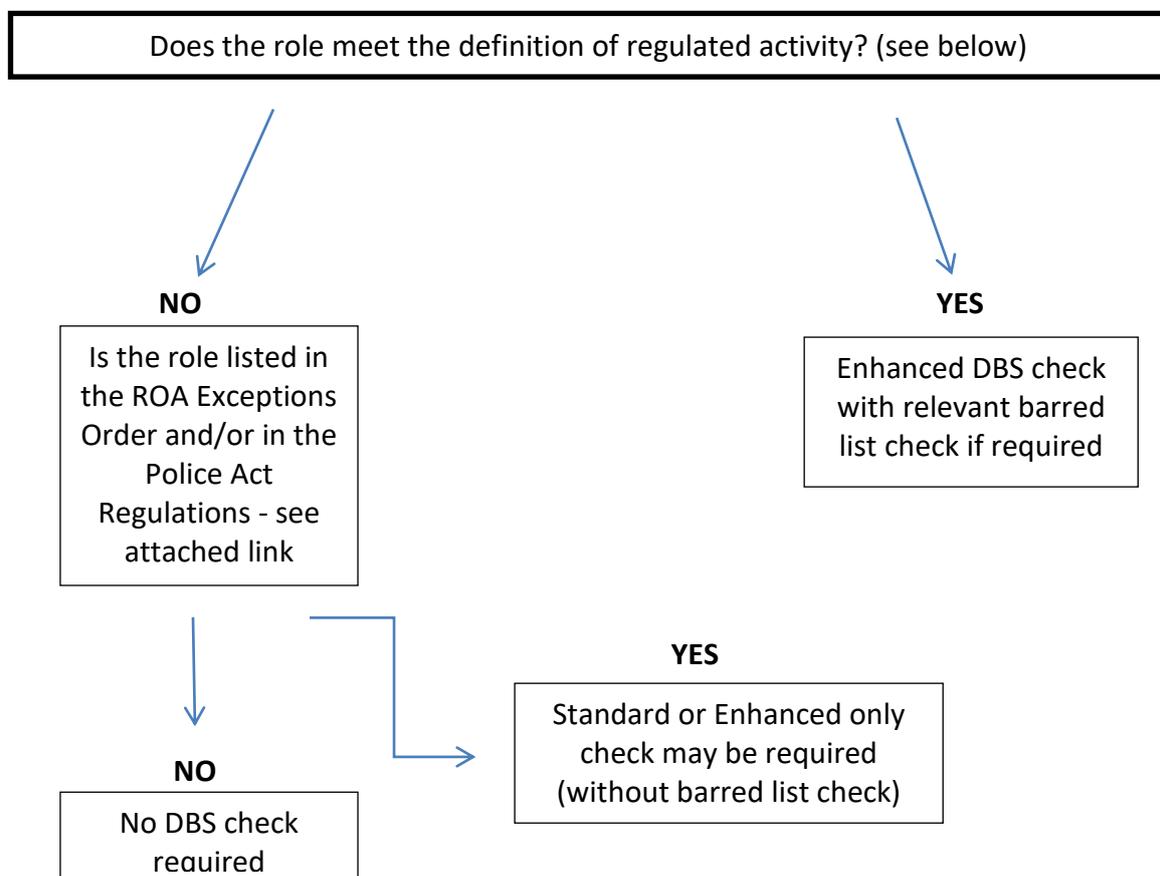
### Who is eligible for a DBS check?

Below you will find the definition of regulated activity to help you determine if a DBS check is required.

### What is 'regulated activity'?

Regulated activity is a statutory term used to describe working or volunteering with children or any adult which may be considered vulnerable.

Follow the flow chart below to identify which, if any DBS check is relevant:



### Regulated activity

If a person engages in one of the following activities, regardless of frequency (a person could engage in the activity only once), then a DBS enhanced and barred list check is required:

#### Relating to adults (an adult is a person aged 18 years or over)

- a) **Providing health Care** - healthcare for adults provided by, or under the direction or supervision of a regulated health care professional.
- b) **Providing personal care** - personal care for adults involving hand-on physical assistance with washing and dressing, eating, drinking and toileting; prompting and supervising an adult with any of these tasks because of their age, illness or disability; or teaching someone to do one of these tasks.
- c) **Providing social work** - provision by a social care worker of social work which is required in connection with any health services or social services.
- d) **Assistance with cash, bills and or shopping** - assistance with an adult's cash, bills or shopping because of their age, illness or disability arranged via a third party.
- e) **Assistance in the conduct of a person's own affairs** - Anyone who provides certain forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney.
- f) **Conveying** - conveying adults for reasons of age, illness or disability to, from, or between places, where they receive healthcare, personal care or social work arranged via a third party.

#### **Relating to children (a child is a person under 18 years of age)**

- a) **Unsupervised activities** - These activities are teaching, training, instructing, caring for or supervising children or providing advice/guidance on wellbeing or driving a vehicle solely for children.
- b) **Working for a limited range of establishments (specified places)** - Work for a limited range of establishments ('specified places'), with the opportunity for contact: for example schools, children's homes, childcare premises.

Work carried out by volunteers supervised to a reasonable level, in accordance with the statutory guidance on supervision (the volunteer must be in eyesight of the supervisor at all times whilst undertaking the work), in these establishments is not regulated activity. However, a supervised paid employee working for a specified establishment does come under regulated activity.

- a) **Health care** - Health care for children provided by, or under the direction or supervision of a regulated health care professional
- b) **Personal Care** - Personal care for children involving hands-on physical assistance with washing and dressing, eating, drinking and toileting; prompting and supervising a child with any of these tasks because of their age, illness or disability; or teaching someone to do one of these tasks.

<http://www.legislation.gov.uk/uksi/2006/2143/> made the positions listed in this represent the professions, offices, employments, work and occupations that are known as the exceptions to the Rehabilitation of Offenders Act 1974 and are also eligible for an enhanced DBS.

NB – A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550197/Regulated\\_activity\\_in\\_relation\\_to\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf)

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