

## BIRMINGHAM CITY COUNCIL – POLICY STATEMENT

### **PERMITTING WORK WITH VULNERABLE GROUPS: FULFILLING BCC’S DISCLOSURE AND BARRING SERVICE CHECKING RESPONSIBILITIES**

Safer recruitment and employment is an essential element of safeguarding children and vulnerable adults. Birmingham City Council (“BCC”) is committed to safeguarding and promoting the welfare of vulnerable groups. BCC’s commitment is underpinned by robust processes and products that aim to maximise opportunity, minimise risk and continuously promote embracing the ethics of safeguarding in our workplace in both paid and voluntary work.

#### **When are DISCLOSURE AND BARRING SERVICE (DBS) checks required?**

The DBS provides guidance on the levels of checks required - <https://www.gov.uk/find-out-dbs-check>

#### **Who has a legal right to carry out safeguarding checks against people who do not work for BCC?**

BCC expects organisations who supply services to its vulnerable service users, to comply with current legal requirements for any safeguarding checks as are required from time to time ( including any DBS checks), to help ensure that people they permit to work with vulnerable BCC service users will do so safely.

If people employed or volunteering to provide services, under a BCC contract for services, need DBS checks, then ***the organisation has the legal right to carry out the checks, and the primary responsibility for doing so.***

However, ***BCC still has a duty to ensure suitable people work with its vulnerable service users with adequate DBS checks***, and require confirmations of suitability from the organisation providing the staff.

#### **Who is responsible for fulfilling BCC’s responsibilities?**

Each Director, is directly responsible for arrangements within their own Directorate and will be accountable to the Chief Executive for the satisfactory performance of this duty.

Each Director is directly responsible for providing, and distributing directorate, departmental or service policies for the monitoring of organisations in line with this policy, which will identify named people with responsibility for monitoring, throughout the directorate and service area. The policy must contain clear

guidance regarding the arrangements for administering and reporting the monitoring of organisations. The Director, Service Director and Assistant Directors will ensure, so far as is reasonable practicable, that all staff are made aware of the contents of this policy.

### **What does this mean for BCC managers who are responsible for monitoring BCC's contracts for this sort of service?**

Where the law requires organisations to carry out a DBS check against an individual whom BCC intends to permit to work with BCC vulnerable service users, the BCC manager responsible for the contract for those services must take "reasonable steps" to ensure that BCC does not permit any such individual to work with vulnerable groups or their records, unless and until the organisation has properly assessed them, and found them to be suitable for this type of work, following a completed DBS check. This should be clearly set out in the relevant procurement contract for the service being provided.

### **What are the "reasonable steps" which a BCC manager should take?**

1. To satisfy themselves that the third party organisation operates a reasonable **policy and procedure for assessing the suitability for work** with vulnerable groups. The Organisation should have a written DBS policy and use senior staff, with sufficient skills and knowledge of the Rehabilitation of Offenders Act, DBS codes of practice and associated safeguarding requirements of the specific work, to make the decision.
2. To require the organisation to **confirm in writing that each individual which the organisation provides has been properly assessed by them, and found them to be suitable for this type of work, following a DBS check completed within the last 3 years**. A quarterly report should be provided to the BCC manager confirming that all individuals undertaking regulated activity on behalf of BCC have been DBS checked in the last 3 years and the third party organisation has cleared them to undertake the role. Any reporting requirements of this nature must be included in the contract and reviewed regularly to ensure the control measures are fit for purpose.
3. The quarterly report must also include the number of individuals whose DBS clearance has expired or is about to expire. It is recommended that DBS clearances are completed 3 months prior to expiration. Where there are individuals whose DBS clearance has expired the third party organisation must **urgently assess the risk presented** by permitting any such individual to work with vulnerable groups or their sensitive records, and then **promptly put in place control measures** to reduce that risk to a reasonable minimum. The control measures may include, for example, constant supervision, removal from certain duties, or a refusal to permit the individual to carry on with their work. If the control measures **cannot be implemented effectively** the person concerned should be removed from the regulated activity until the

situation is resolved. The control measures adopted to mitigate the risk should be reported in the quarterly report.

### What is not a reasonable step?

**BCC managers insisting on seeing the DBS disclosure** – it is illegal for the organisation who obtained a DBS disclosure certificate to show it to another person, breaching GDPR and DBS code of practice. Where a third party provider's employee has a positive DBS disclosure, this should be provided as a genuine business reason directly to the BCC Safer Recruitment Panel for their review. In doing so, the third party contractor should obtain the consent of their employee to release this information to BCC.

**Requiring organisations to DBS check their staff and/or volunteers when they are not legally entitled to do so** –The law behind the DBS rules requires that checks must only be carried out where they meet strict criteria.

1. **Expecting organisations to copy or scan documents about the DBS disclosures contents for us** – all copying or scanning of disclosures is illegal. However, where a positive DBS disclosure must be considered as a genuine business reason by BCC Safer Recruitment Panel all documents will be destroyed in accordance with BCC's Handling DBS Certificates Information Policy.
2. **Expecting organisations to tell us what (if anything) is in the disclosure** - The Data Protection Act 2018 applies to all data obtained during the DBS checking process and it prevents anyone from giving the confidential information in a disclosure to anyone who does not have a "genuine business reason" for receiving it. BCC has no genuine business reason except where a direct referral to the BCC Safer Recruitment Panel is required, for receiving detailed information about DBS disclosure contents, because BCC is entitled to expect the organisation to deal with the disclosure appropriately. All BCC and organisations' staff and volunteers must make strenuous efforts to keep any intrusion into the individual's personal life caused by DBS checking, to a reasonable minimum. The Information Commissioner's Office has power to issue substantial fines against any person, or organisation, responsible for a breach of the rules.

### Expert support for decision making

HR is a source of expert guidance, advice and support to managers making such decisions. However, in providing this service, HR will always rely on managers to determine what safeguarding risk is presented by the relevant work.