Disclosure and Barring Service

1.0 POLICY STATEMENT

Birkbeck is committed to ensuring the protection of staff, students and volunteers. In fulfilling this commitment the College will undertake appropriate pre and post employment checks and adhere to the Disclosure and Barring Service (DBS) Code of Practice to use the disclosure information fairly and ensure sensitive personal information is handled and stored correctly.

The College will put in place appropriate processes to identify posts that are subject to a DBS check (including a barred list check), provide staff with guidance on its appropriate use and develop suitable processes to ensure checks are carried out consistently and fairly.

1.1 Scope

The Disclosure and Barring Service Policy applies to all staff groups.

2.0 PROCEDURE

2.1 Criminal Records Check Process

2.1.1 Recruitment and Selection

Applicants will be made aware if the post they are applying for is exempt under the Rehabilitation of Offenders Act 1974. For posts that require the disclosure or a relevant DBS check of criminal records, HR will ensure advertisements and associated literature contain a statement notifying applicants that where an offer of employment is made, the College will also submit a request for a check to the DBS and confirmation of the offer will be subject to satisfactory references and the outcome of the checking process.

Applicants should be made aware that:

- They will be required to provide relevant information to verify their identity.
- If they provide false or misleading information, fail to provide information that is directly relevant to the post or deliberately withhold information, the offer of employment may be withdrawn.
- By completing and signing the self-declaration form they are giving their consent to the College to verify the information through a criminal records check and to be provided with the outcome of any such checks. Once the information has been recorded HR will ensure that the applicant knows who the information will be disclosed to, what it will be used for, the process for handling and storing the information and the length of time it will take.
- Should they seek to input or challenge a DBS check, they must do so in a timely manner so as not to delay the process.
- If requested to do so, they will agree to subscribe to any system of "portable DBS check" which may be introduced and will agree to the College having access to...
the up to-date information provided in that check at any time and in a timely fashion.

- Individuals are reminded that carrying out regulated activity with children or vulnerable adults whilst barred is a criminal offence and they will be expected to sign a declaration form confirming that they are not barred from working with children or vulnerable adults.

- At interview, or in a separate discussion, the College will 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 disclose, by the applicant, any relevant information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

When considering the relevance of the offence and suitability for the post, the following factors may be taken into account:

- The seriousness of the offence and its relevance to the safety of other employees;
- students, children and research subjects etc;
- The length of time since the offence occurred;
- Any relevant information offered by the applicant about the circumstances which led to the offence being committed;
- The nature of the job and any opportunities that may present the applicant to re-offend;
- The country in which the offence was committed e.g. some activities are offences in Scotland and not in England and Wales and vice versa;
- Whether the offence has since been decriminalised by Parliament.

### 2.1.2 Non-UK Residency

Where a post calls for a criminal records check and the applicant is based overseas, a certificate of good conduct or overseas criminal record check will be required. Where the applicant state that they have never lived in the UK before, a check would normally be carried out via the DB overseas database.

### 2.1.3 Contractors & Volunteers

In general, the work or services provided by a contractor or volunteer will not require a check on the basis that responsibilities would not normally include unsupervised access to vulnerable groups including children. Where a check may be necessary, the basis for a criminal record check and the level of check (standard/enhanced) is determined by the duties and responsibilities that the contractor or volunteer will carry out.
2.1.4 Agency Workers

Birkbeck manages its recruitment of agency staff through the preferred supplier process which is managed by the London University Purchasing Consortium. All applicants sourced through agencies are subject to appropriate employment checks through the agency on an ongoing basis in accordance with agreed guidelines.

2.2 Criminal Record Disclosures

In the event that an applicant has been shortlisted for a post and subsequently discloses a criminal record, HR will contact the applicant to request further details. This information should be returned by the applicant under confidential cover for the attention of the relevant HR Manager clearly stating their name, the vacancy number and job title. The applicant will be notified that any personal data disclosed at this stage will only be handled by staff with the delegated authority to do so. Line managers should seek advice from HR and complete a risk assessment checklist to determine the suitability of the applicant in such circumstances. Criminal convictions do not automatically exclude anyone from being considered for a post. An assessment of the circumstances surrounding the conviction and the applicant’s skills and experiences should be reviewed alongside the risk assessment for the post.

2.3 Starting Work Before a DBS Check is Complete

Where a DBS check is required but has not been completed prior to a new recruit commencing work, line managers should consult HR in the first instance so that a risk assessment can be carried out and the following precautions taken to safeguard children and vulnerable adults:

- DBS Disclosure process begun to verify applicant’s status.
- Self-declaration form received from applicant.
- Satisfactory references received from authorised personnel, with one from the most recent employer.
- The applicant will not be assigned to work with children and vulnerable adults.
- Additional relevant safeguards are identified and implemented until the College receives an up to date DBS.

2.4 Accepting Previously Issued CRB/DBS Checks

The College will consider DBS checks from other organisations on a case by case basis. Line managers should consult HR before a decision is made. If relying on a previous DBS check, a self-declaration form should also normally be sought. In any event, once live, applicants may be required to provide a portable DBS check which will contain up-to-date information.

2.5 Unsatisfactory Outcomes of a DBS Check

Where a DBS check results in an unsatisfactory outcome, line managers are advised to liaise with HR to review the best course of action. HR will discuss the findings of the DBS check with the applicant before any consideration is given to withdrawing the conditional offer of employment. If the decision is taken not to proceed with the appointment, the College will forward a letter to the applicant formally withdrawing the offer of employment.
2.6 In-post DBS Checks

Existing staff in posts that require a DBS check will have their status checked/re-checked on a periodic basis. Staff will be expected to notify HR, if during the course of their employment, they become the subject of a police investigation, they are arrested, cautioned, charged or convicted of a criminal offence. Staff are also expected to notify HR if they become barred from working with children or vulnerable adults, have been barred or there are any circumstances (including a referral or investigation) which may lead to them being barred. A deliberate failure to comply with the process may be considered a disciplinary matter and result in disciplinary action including dismissal.

Additional checks may be required where the level of check required for the post changes or there are concerns about a member of staff’s behaviour.

3.0 GUIDANCE

3.1 Background Information

The DBS was established on 1st December 2012 following the merger of the Independent Safeguarding Authority (ISA) which was responsible for issuing ‘barring decisions’ where an individual was deemed ‘unfit’ to work with vulnerable groups and subsequently placed on a disclosable register and the Criminal Records Bureau (CRB). The CRB provided information through criminal records checks on unsuitable applicants for certain roles (involving children and vulnerable adults) to employers. These functions are now the responsibility of the DBS.

3.2 Definitions

3.2.1 Basic Disclosure

Basic disclosures provide information on unspent (current) convictions and should be requested where there is a need to verify information for applicants for posts that are not covered under the terms of the Rehabilitation of Offenders Act (Exceptions) Order, but where the applicant is being considered for a post where a level of trust is required. For example this might include a post where an individual is handling sensitive and/or personal information such as medical records.

3.2.2 Standard Disclosure

Standard disclosures provide information on unspent (current) and spent (prior) convictions which include cautions, reprimands and final warnings registered on the Police National Computer (PNC) in England and Wales. Recent convictions held in Scotland and Northern Ireland may also be included. Standard checks are advisable where the post requires the individual to have direct physical contact with vulnerable adults and children on a day to day basis and excludes people who have no direct contact but may have access to records/information on the groups mentioned above. For example this might include Birkbeck’s Nursery manager and officer posts and security guards.
3.2.3 Enhanced Disclosure

Enhanced disclosures include the same information provided under the standard disclosure with the addition of non-conviction information held by local police and information held on the children and adults barred lists where requested (defined as “approved information”). This information can be accessed where the post includes “regulated activity” (see Section 3.2.6)

3.2.4 Satisfactory Check

A satisfactory check is defined as either having no criminal convictions e.g. cautions, reprimands and final warnings or where criminal convictions have been disclosed they have been risk assessed by the College and reviewed alongside other information and deemed not relevant to the applicant’s suitability for the post.

3.2.5 Spent and Unspent Convictions

3.2.5.1 Spent Conviction

A “spent” conviction under the terms of the Rehabilitation of Offenders Act 1974 can effectively be ignored after a specified rehabilitation time without re-offending. The amount of time for rehabilitation depends on the sentence imposed and not the offence. Rehabilitation periods are as follows:

- A sentence of imprisonment, detention in a young offender’s institution or youth custody or corrective training for a term exceeding 6 months but not exceeding 30 months has a rehabilitation period of 10 years. A sentence of imprisonment, detention in a young offender’s institution or youth custody or corrective training for a term not exceeding 6 months has a rehabilitation period of 7 years.

- A fine or any other sentence not being a sentence to which an order discharging a person absolutely, a conditional charge, binding over to keep the peace, probation, or an order imposing any disqualification, disability, prohibition or other penalty relates has a rehabilitation period of 5 years.

- An order discharging a person absolutely will have a rehabilitation period of 6 months from the date of conviction.

- Conditional discharge, binding over to keep the peace has a rehabilitation period of 1 year from the date of conviction or a period beginning with that date and ending when the order for conditional discharge or the recognisance or be of good behaviour ceases or ceased to have effect, whichever is the longer.

- Probation has a rehabilitation period, in the case of a person aged 18 years or over at the date of their conviction, of 5 years from the date of conviction.

- An order imposing any disqualification, disability, prohibition or other penalty has a rehabilitation period from the date of conviction and ending on the date on which the disqualification, disability, prohibition or penalty ceases or ceased to have effect.

- In general, where more than one sentence is imposed in respect of a conviction and the rehabilitation periods applicable would differ, then the rehabilitation period applicable
shall be longer or longest of those periods. There are certain sentences excluded from the Rehabilitation of Offenders Act which are never considered as “spent”. These are:

• A sentence of life imprisonment,

• A sentence of protective detention,

• A sentence of imprisonment, youth custody or corrective training for a term exceeding 30 months.

There is a list of jobs and professions for which it is lawful to reject a person for employment on the grounds of a “spent” conviction. When making an application for one of the excluded job categories, job applicants are obliged to disclose all convictions, whether or not they are “spent”. The College may also take a view about whether some roles are high risk and a criminal record check may be sought.

3.2.5.2 Unspent Conviction

A conviction is described as “Unspent” if the rehabilitation period associated with it has not yet lapsed and the conviction is current. For the majority of roles during the recruitment process the College will normally only ask about “unspent” convictions as defined within the Rehabilitation of Offenders Act.

3.2.6 Regulated Activity

The definition of regulated activity in this context refers to any activity where an individual engages in work or volunteering with children or vulnerable adults in the following areas:

3.2.6.1 Regulated Activity Relating to Children

The general definition of regulated activity relating to children consists of:

(i) Teaching, training or instruction;

(ii) Caring for or supervising of children;

(iii) Advice or guidance for children;

(iv) Work for certain establishments, with opportunity for contact e.g. schools and childcare premises. (excluding work by supervised volunteers);

Work under (i) or (ii) is regulated activity only if done on a regular basis;

(v) Relevant personal care and;

(vi) Registered childminding.
3.1.6.2 Regulated Activity Relating to Adults

The general definition of regulated activity relating to adults consists of:
(i) The provision of healthcare by, or under the direction or supervision of, a health care professional;
(ii) Providing social care;
(iii) Providing personal care;
(iv) Providing social work;
(v) Assisting with cash, bill and/or bills;
(vi) Assisting an individual to conduct their own affairs and;
(vii) Conveying (transporting adults from their homes or other places to locations to receive health, personal or social care, excludes taxi drivers, family and friends).

3.2.7 Referrals

Please note that the College may make a referral to DBS if it believes that any individual has engaged in any conduct which could endanger or harm a child or vulnerable adult at any time, including if an investigation is ongoing when an individual leaves the College.

4.0 RESPONSIBILITIES

The following have responsibilities under this policy:

- **Employees**
  - Notify HR if you become the subject of a police investigation, are arrested, cautioned, charged or convicted of a criminal offence.
  - Notify HR if you become barred or there are any circumstances which could lead to you being barred.

- **Line Managers**
  - During recruitment process consider the need for a DBS check.
  - Consult HR where a criminal conviction is declared.
  - Liaise with HR to complete a risk assessment checklist where required to assess suitability of applicants disclosing information.

- **Human Resources**
  - Notify applicant if the post is exempt under the Rehabilitation of Offenders Act 1974 and therefore requires a DBS check of criminal records and what the College will do with the information to maintain confidentiality.
  - Ensure advertisements and associated literature contain a statement notifying the applicant that where relevant a DBS check will be carried out and offers of employment withdrawn if misleading or false information is given.
  - Process information where a disclosure has been declared.
  - Liaise with line managers to complete a risk assessment where applicants are being considered for a post and have disclosed information.
• Write and send a letter to the applicant where a decision is taken to not appoint following the disclosure of personal data and a risk assessment.

Birkbeck reserves the right to review, revise, amend or replace the content of this policy and/or introduce new policies from time to time, subject to good practice principles of consultation where applicable, to reflect the changing needs of the College and to take account of changes in legislation.