


# DISCLOSURE AND BARRING SERVICE (DBS)

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## Policy Statement

*This policy outlines the organisation's approach to the use of Disclosure and Barring Service (DBS) checks, and the storage and use of information on convictions disclosed by the DBS. The policy applies to all staff groups and should be given to applicants at the outset of the recruitment process where an Enhanced DBS disclosure of their criminal record will be required as part of the application process for working in a Regulated Activity.*

## Overview

An employer may request a DBS check as part of its recruitment process, only where it is lawful to do so. For certain checks this includes a barred list check and police held information that is reasonably considered to be relevant for the post. The information is used as part of a safer recruitment and selection process, considering a variety of information gathered during the recruitment stage.

In Adult Social Care employers are legally required to undertake DBS check for all prospective employees by the Health and Social Care Act 2008 (and as amended 2014). A prospective employee cannot commence work without having DBS check.

## Exempted Questions

For DBS purposes an "Exempted Question" is a valid request for a person to reveal their full criminal record history, which excludes protected cautions and convictions that are filtered from a criminal record.

## The Policy

Access to the DBS Checking Service is restricted to those registered employers for entitlement by law to ask an individual to reveal their full criminal history, including spent convictions, also known as asking "An Exempted Question". The Exempted Question applies only in specific occupations, for certain licenses and specified positions covered by the Rehabilitation of Offenders Act 1974 (Exceptions Order 1975). Due to Case Law decisions, including those of the EU Courts, and the introduction of the GDPR into data protection legislation criminal records data is viewed as sensitive data and should be handled as such.

## Applicants Rights

Usually, a job applicant has no legal obligation to disclose. If an applicant has a conviction that is spent the employer must treat the applicant as if the conviction had not happened, to do otherwise is unlawful.

For clarity, certain areas of employment such as Regulated Activities are exempt from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 for which employers can ask about spent convictions. This is known as asking "Exempted Questions"

## Transgender Process

DBS offers a confidential checking process for these applications where they do not wish to reveal details of their previous identity to their prospective employer. Further information can be obtained by email to: [sensitive@dbsgsi.gov.uk](mailto:sensitive@dbsgsi.gov.uk) where the process will be explained. This information must be held in accordance with the latest data protection legislation re: sensitive personal data

## Self – employed workers

A self-employed person, who is eligible for a Standard or Enhanced check can ask the organisation who wishes to contract their services to apply for their DBS check. A self – employed worker can apply through the DBS online Application route, if they live or work in England or Wales, for a Basic disclosure only.

## Posts requiring a Disclosure

An applicant will be requested to submit to a DBS disclosure request only where lawful. Before considering asking a person to apply for a criminal record check through DBS, the organisation is legally responsible for ensuring that they are entitled to submit an application for the job role. A countersigning officer must satisfy themselves that the position is eligible under the current legal provisions before countersigning each application form. The DBS are continually updating their eligibility for DBS checks.

All subjects of a DBS disclosure request will be made aware of the DBS Code of Practice. Any information revealed in a disclosure that is likely to lead to the withdrawal of a job offer will be discussed with the applicant before the offer is withdrawn.

Where a conviction has been disclosed in an individual's application for a post with the organisation, a discussion will take place at the end of the interview regarding the offence and its relevance to the position.

Failure to reveal information relating to unspent convictions could lead to the withdrawal of an offer of employment.







## Risk-based decision making in relation to disclosures

Where a prospective employee has a DBS returned detailing criminal offences which have not been disclosed a risk assessment will be undertaken in respect to their recruitment. This must be based on the information to hand and a balanced view should be maintained throughout the process. It is this organisation's responsibility to ensure the safeguarding of residents and the decision to employ will be taken in the context of risk to residents, staff and the business. The decision will be recorded and held on file.

The Rehabilitation of Offenders Act 1974 provides that ex-offenders are not required to disclose to prospective employer's convictions defined as 'spent' under the Act. However, because our employees work in a Regulated Activity the updated list applies as defined in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

## Disclosures and Data Protection

In this organisation:

-  DBS disclosure information will not be stored safely in lockable storage with access limited to those who are entitled to see it as part of their duties.
-  The DBS reference number will be the means used to investigate any queries regarding the disclosure.
-  DBS disclosure information will only be used for the specific purpose for which it was requested and for which the applicant's full consent will have been obtained.
-  Any information disclosed during the DBS process will be dealt with sensitively and appropriately
-  We follow the guidance issued by CQC "Disclosure and Barring Service (DBS) checks (formerly criminal record (CRB) and barring checks)" issued December 2017
-  There is further guidance available from CQC with regard to work placements which we follow as required.

## The Code of Practice

The home using the DBS checking service comply with the above Code, which is issued under Section 122(2) of the Police Act 1997. The Code also ensures that sensitive personal information disclosed by the DBS is stored and handled appropriately and is kept for only as long as necessary <https://www.gov.uk/government/publications/dbs-code-of-practice>

## Storing Information

The correct storage of the information from a DBS certificate is important. The Code requires that the information revealed is considered only for the purpose for which it was obtained and is destroyed when no longer needed. More information on the storage and handling of DBS information can be found: [www.gov.uk/government/publications/handling-of-dbs-certificate-information](http://www.gov.uk/government/publications/handling-of-dbs-certificate-information). DBS can refuse to issue a disclosure certificate if they believe the Code is not being

followed

### **DBS Process**

The DBS disclosure can only be processed by the completion of all documentation and the ID validation process for all applicants. This means strict adherence to the Code, including the 3-route identity process to validate the Name, Date of Birth and the Address of the applicant. Failure to validate because of a lack of the required documentation means the applicant will be asked to attend for fingerprinting at their local police station, which could lead to delays in the application process.

Any discrepancy between the information provided on the DBS application form and the identity documents supplied and where fraud is not suspected, further clarification should be sought from the applicant.

Any suspected fraud e.g. false ID or documents should be reported to the Action Fraud website. [www.actionfraud.org.uk/report\\_fraud](http://www.actionfraud.org.uk/report_fraud)

### **DBS Update Service**

This service lets employers check the status of an existing DBS certificate if it is for the same workforce where the same type and level of DBS is required and where you have permission of the individual. The limit to the consent that the individual gives includes:

- they can show their own certificate to anyone because it is their own information
- can give consent to an employer so they can view their status on the update service

The employer can only make the status check if they can also legally request a new DBS application for the role the individual will be working in. Full guidance on the update service can be found [www.gov.uk/government/publications/dbs-update-service-employer-guide](http://www.gov.uk/government/publications/dbs-update-service-employer-guide)

### **Making a Referral**

To fulfil the company's legal obligations and procedures for referring to the Disclosure and Barring Service (DBS) the referral system is set out below.

The form is accessed on [www.homeoffice.gov.uk/dbs](http://www.homeoffice.gov.uk/dbs) and when completed is sent to the address on page 7 of the referral form.

### **When to Refer**

The *Safeguarding Vulnerable Groups Act (SVGA) 2006* and the *Safeguarding Vulnerable Groups (Northern Ireland) Order (SGVO) 2007*, place a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

- ! Been cautioned or convicted for a relevant offence; or,
- ! Engaged in relevant conduct in relation to children and/or vulnerable adults (i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm); or,
- ! Satisfied the Harm Test in relation to children and/or vulnerable adults. (i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists).

### **How to Refer**

- ! After an incident has been reported or an allegation made that a resident has been abused a discussion with the resident will take place to discuss what they wish to happen and there will be a thorough investigation that follows the company's own disciplinary procedures.
- ! The local authority safeguarding will be informed, and, in some cases, there may be a police investigation.
- ! During such an investigation this organisation will take all possible steps to ensure that the residents in question are kept safe and well-protected from any possible further incidents.
- ! In most instances the employee(s) in question will be suspended or, if there is clear evidence of misconduct, they may already be dismissed.
- ! Once it is clear that misconduct resulting in harm or possible harm has occurred and the worker(s) involved remains a risk to vulnerable people the company's manager must by law refer that person to the DBS.

- ⚠ However, it is important to note that a DBS referral might be made at any stage in the procedures used for establishing whether misconduct causing harm to a resident has taken place; the company does not have to complete the investigation before making a referral the paramount principle is the protection and safety of the vulnerable person.
- ⚠ The DBS team will decide based on the information made available if the worker should be investigated. If after assessment the person is not placed on the list, then the person is not barred from current or future employment in a Regulated Activity. This does not necessarily mean that the company will re-employ the person if she/he has been dismissed.
- ⚠ If the person is provisionally placed on the DBS list, he/she will no longer be able to work in a Regulated Activity. A person can appeal against both provisional placement and confirmation on the DBS list following the established procedures that are not the concern of this company as an employer.
- ⚠ The DBS referral and assessment process are separate from the company's own disciplinary and appeal procedures. The only obligation this company has is to make a referral if it considers vulnerable people have been harmed or are at risk of being harmed if the individual continues to work in a Regulated Activity. The DBS team will communicate all decisions to the individual once the referral has been made, and investigations complete.
- ⚠ A statutory notification should be made within the appropriate timescale to CQC.

*This policy will be read in conjunction with the Recruitment and Selection Policy*

### **Training Statement**

All counter signatories will be familiar with the Code of Practice and the update service guidance. The post-holder will also be required to ensure that all guidance in use by the organisation is current.

*Related Policies*  
*Adult Safeguarding*  
*Data Protection Legislative Framework (GDPR)*  
*Duty of Candour*  
*Good Governance*  
*Recruitment and Selection*

### **Related Guidance**

- 🟢 Disclosure and Barring Service (DBS) checks (formerly criminal record (CRB) and barring checks) issued December 2017  
[www.cqc.org.uk/sites/default/files/20171218\\_100646\\_disclosure\\_and\\_barring\\_service\\_DBS\\_checks\\_v6%282%29.pdf](http://www.cqc.org.uk/sites/default/files/20171218_100646_disclosure_and_barring_service_DBS_checks_v6%282%29.pdf)
- 🟢 DBS Update service <https://www.gov.uk/dbs-update-service>
- 🟢 DBS official Site <https://www.gov.uk/government/organisations/disclosure-and-barring-service>
- 🟢 DBS Check: guidance for employers <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers>
- 🟢 Guidance on the handling of DBS certificate information  
<https://www.gov.uk/government/publications/handling-of-dbs-certificate-information/handling-of-dbs-certificate-information>
- 🟢 Making barring referrals to the DBS <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>
- 🟢 DBS Barring referral form guidance <https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>
- 🟢 Disclosure and Barring Service Gov.UK [www.homeoffice.gov.uk/dbs](http://www.homeoffice.gov.uk/dbs)
- 🟢 CPNI - How to obtain an Overseas Criminal record Check (Guidance for Employers and Employees) <https://www.cpni.gov.uk/system/files/documents/42/ca/how-to-obtain-an-overseas-criminal-records-check.pdf>
- 🟢 DBS Retention Policy May 2018 <https://www.gov.uk/government/publications/dbs-data-retention-policy>
- 🟢 DBS ID checking guidelines <https://www.gov.uk/government/publications/dbs-identity-checking-guidelines>

- Data Portability Request template. *These can only be processed by using the appropriate template from the DBS website:* <https://www.gov.uk/government/publications/data-portability>
- Deletion of Data request template. *These can only be processed by using the appropriate template from the DBS website:* <https://www.gov.uk/government/publications/deletion-of-data>