

DISCLOSURE AND BARRING SERVICE, EMPLOYMENT OF OFFENDERS AND RISK ASSESSMENT

INTRODUCTION

The Disclosure and Barring Service (DBS) was formed on 1 December 2012 combining the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

DBS checks offer employers with safeguards when appointing people who work or volunteer with vulnerable groups in England and Wales.

The DBS covers two main functions:

- Checking and maintaining the list of barred individuals
- Checking criminal records in varying levels of detail

There are mandatory requirements in the NHS to complete DBS checks and the failure to do so could result in substantial fines as regulated by the Safeguarding Vulnerable Groups Act.

As of 10th March 2015, it is a criminal offence for employers to require an employee or applicant to provide results of a criminal records check which they have made themselves through a subject access request. Suitability of employment should be decided through the official; DBS or PVG scheme where appropriate.

Definitions

Barred lists

There are two barred lists which individuals may be placed on: The Children's Barred List and the Adults' Barred List.

Any individuals working or volunteering in a regulated activity should be checked against the list.

- A person who is barred from working with children or vulnerable adults will be breaking the law if they work, volunteer or try to work or volunteer with those groups.



- An organisation which knowingly employs someone who is barred to work with those groups will also be guilty of breaking the law.
- If your organisation dismisses a member of staff because they have harmed a child or vulnerable adult they have worked with, or if they resigned before you could dismiss them then you must inform the DBS.

Regulated activities refer to any activities that could place an individual in a vulnerable position. The following are examples of regulated activities.

Children:

- Unsupervised activities: teaching, training, caring for or supervising children; driving a vehicle solely for children; providing advice/guidance on well-being
- Work for a limited range of establishments where there is opportunity for contact (for example children's homes, schools, childcare premises.)
- Relevant personal care, for example washing, dressing, health care supervised by a professional.
- Registered child minding and foster caring.

Adults carrying out or supervising:

- Those providing health care.
- Those providing personal care (for example help with washing and feeding).
- Those providing social care.
- Those providing assistance with handling cash, paying bills or shopping.
- Those assisting a person in his/her personal management of his/her affairs.
- Those who transport an adult because of their age, illness or disability from their place of residence to a place where they are receiving health or social care. This does not include taxi drivers or family and friends.

Criminal Records

If an individual is to engage with a regulated activity an enhanced disclosure (criminal record check) will be required along with a check of the barred list.

The DBS's current price guide states:

- | • Standard check - £23

- Enhanced DBS criminal record check and barred list check (both child and adult) - £40

The Practice uses a third party - GP Systems - to process DBS checks.

The DBS provides a free, online tracking service that allows you to follow the progress of applications.

The correct storage of information from a DBS certificate is important. The DBS code of practice requires that the information revealed is considered only for the purpose for which it was obtained (It should be destroyed after a suitable period has passed - usually not more than 6 months) and should be stored in line with the Data Protection Act 2018.

DBS certificates are issued to the individual concerned rather than be sent to registered body or employer. This allows the individual to challenge the check before the certificate is released to the employer.

The DBS has an online service to enable individuals to keep their criminal record checks up to date and allow employers and registered bodies to check the status of certificates. This means that a request does not have to be made each time a person changes a role or indeed volunteers to a post where a criminal records check would be required.

An annual subscription to the service is available at a cost but is free for volunteers. Individuals subscribe to the service which provides the following benefits.

- The DBS certificate will be kept up to date. Regular searches will be conducted for any changes to the information on a certificate. The frequency of the searches will depend on the level of subscriptions, e.g. basic, standard or enhanced; the type of work; and the probability of changes.
- The DBS certificate will be transferrable which means the individual can take the certificate with them wherever they go provided that the same level and type of check are required.
- The DBS certificate will only be sent to the individual subject to the check. The individual will then have the opportunity to review and challenge any of the certificates content before it is released to the employer.

Employers that require a DBS certificate for an employee must now make them aware of this change and the requirement for them to subscribe to the service.

Further information is available at <https://www.gov.uk/find-out-dbs-check>

Applicability

Where an employee meets the requirements for a criminal or barred list checks, failure to cooperate or provide the certificates could result in the termination of the contract of employment.

Where delays occur, employee will be prevented from working in situations which would meet the criteria previously mentioned.

Role Examples

The below are examples of which roles may require checks. As practices vary, this should be used as guidance only and consider conducting risk assessments for roles.

Role	DBS Check
GP (Salaried/Partner), Nurses or Health Care Assistants	Enhanced check with barred lists
Practice Manager	Enhanced check with barred lists
Account/Finance Administrator or Receptionist	Basic check for fraud related convictions
Receptionist	Basic check
Receptionist with chaperone duties	Enhanced check with barred lists
Administrators	Basic check
Cleaners	No checks

Locum DBS checks should be verified with the appropriate agency.

Recruitment

The first step is to state clearly in job application information that a DBS check will be required prior to a job offer, and that the position is an exception to the Act, therefore all convictions, both spent and unspent must be disclosed on the application papers.

A specific question will be included on the job application. There should also be a clear statement to the effect that the practice will require a DBS or PVG check prior to the offer of employment. This in itself may well discourage some unsuitable applicants.

In dealing with applicants where a record is disclosed it is important that each case is considered individually, weighing up the merits of the applicant with the risk faced by the practice. This will allow a fair and reasoned decision to be made. The creation of a DBS policy with guidelines to follow in the recruitment process will help to prevent individual recruiters from making subjective decisions based on personal bias. In addition, clear guidelines will prevent potentially excellent candidates from being blanket - excluded from shortlists without a proper and reasoned assessment of their personal circumstances and suitability.

Previously Issued DBS Checks

Where a previously issued DBS is provided at recruitment stage, it is to the Practice's discretion as whether to accept this. However, in the majority of cases, applicants will be asked to apply for a new DBS check due to the access to children and vulnerable adults.

Where a certificate is accepted for lower risk positions, authenticity will be verified with the appropriate authority.

England and Wales DBS helpline: 03000 200 190.

EXISTING STAFF DBS POLICY

Any DBS check is only valid on the day of the check. It is not practical to re-check staff on a regular basis. The practice policy is to ask staff to complete an annual self declaration DBS check and will repeat a DBS check if the Manager or Partners have a specific reason for doing so. Reasons for a re-check may include a significant change of role, or serious allegations of misconduct against a staff member in relation to children or vulnerable adults.

Existing staff are required to report criminal offences to the Practice manager (excluding minor traffic offences).

DBS checks will be arranged through GP Systems.

Where employees change roles within the Practice into ones which may require DBS checks, satisfactory completion and provision will be a condition of the change in position.

OFFENCE CONSIDERATION

When considering offences and how to deal with them the following applies both to existing staff and potential recruits (described as "jobholder" below).

The practice will consider the nature of the offence relevant to the role of the jobholder.

Employees will not necessarily be dismissed as a result of a relevant offence as each case will be individually considered in a fair and reasonable manner, taking into account the following factors:

- Assess the level of one-to-one contact with patients
- Assess the level of access to children or vulnerable adults
- Assess the level of supervision the jobholder will have in carrying out their duties
- Assess the nature of the offence, and whether the nature of the role presents an opportunity for the jobholder to re-offend given the nature of the previous offence(s).

- Consider the level of access to sensitive information, personal data or health records, cash or financial records, members of the public, and other aspects of the role in relation to the offence.
- Consider whether the offence has been disclosed by the jobholder or whether this was “discovered”, and assess the attitude and responses of the jobholder.
- Carry out an employment risk assessment, discuss your findings with the senior team, and document the discussions and the decisions.

Discuss the issues with the job holder, and have the discussion witnessed and documented. Allow the jobholder to explain the issues and account for discrepancies in the information.

Where the information in the disclosure is disputed by the jobholder there is a mechanism whereby they may refer the matter to the DBS for correction. Where the circumstances are indeed incorrect a further DBS disclosure will be issued which will confirm that the discrepancy has been eradicated.

Where a disclosure reveals a serious offence not previously declared by the jobholder they may become unsuitable for the role. The matter should be discussed in interview, witnessed and recorded, and it is possible that the offences are no longer relevant, e.g. committed as a teenager, or clearly not likely to recur. The interviewer should take into account;

- The offence
- The context in which it occurred
- Whether it is old (e.g. teenage) or recent
- Whether it is a caution or a conviction
- Whether it is a single offence or repeat / multiple
- Juvenile or adult
- Related to the job
- Sexual / Violence / Drug or alcohol related, and the precise circumstances under which it was committed
- Attitude or mitigating circumstances.

Dismissal will not be automatic. Prior to taking any action in relation to existing staff, it is important to discuss the matter with the practice legal advisors or indemnity insurers – this will include disciplinary procedures or significant changes to role or contract.

Investigate what action is justified given the employee's role and consider whether it affects their suitability to carry on. Use the normal practice disciplinary procedure.

IMPRISONMENT

If the staff member is absent due to imprisonment or awaiting trial, or similar, decide using the above criteria whether employment is able to be continued, and whether you can keep their job open during any period of absence.

If the staff member is to remain in custody for a short time, it may be that the absence can be accounted for by the use of holiday allocation or leave of absence. If the nature of the

offence or the sentence imposed is such that it is considered that the contract of employment is essentially frustrated, and that employment has effectively ended, it is essential that legal advice be obtained before taking action or evoking disciplinary steps.

DATA PROTECTION

The practice treats special categories of personal data collected during risk assessments in accordance with its Data Protection Policy. Information about how data is used and the basis for processing the data is provided in the practice's employee privacy notice.

RESOURCES

Please refer to the Safeguarding Vulnerable Groups Act (2006) for full definitions. A copy of this can be downloaded from the governments [legislation](#) website. It is advisable that the Act is read in conjunction with the Explanatory Note also found on the Legislation website.

General Information from:

England and Wales: <https://www.gov.uk/disclosure-barring-service-check/arranging-checks-as-an-employer>

NHS Employers: <http://www.nhsemployers.org/your-workforce/recruit/employment-checks/nhs-employment-check-standards/criminal-record-and-barring-checks>

Appendix 1 - DBS RISK ASSESSMENT GUIDELINES AND FORM AND TOOLKIT

Deciding on whether a DBS check is required for a clinical position is easy and is essential in all cases.

Deciding in a non-clinical role is a little more complex and open to interpretation.

For example a receptionist on the front desk not dealing with patients in private would be different to a receptionist taking on a new patient where the registration is carried out in a private room.

Disclosure details may take more than four weeks to be processed but it is always advisable, from a risk management point of view, not to start someone in post until clearance is received.

DBS clearance may only occur when the employer has completed this risk assessment.

What does working under supervision mean?

Close supervision is defined as:

- Being attached to a named mentor/buddy/supervisor with prior experience of the role that is able to ensure the new member of staff is given appropriate guidance through shadowing, prior to taking on the role as a sole practitioner.
- Not taking on individual responsibility for casework but still contributing to a multi disciplinary team.
- Not undertaking any lone working,

A risk assessment must be undertaken by the employer in respect of the above prior to any decisions being made to start a candidate.

If there are any doubts on the part of the employer that this may not be achievable, then it is essential to await DBS clearance before agreeing a start date.

Which Type of Disclosure has been requested?

Standard Disclosure	Enhanced Disclosure	Enhanced Disclosure
Can start without clearance received provided the form has been completed and sent to the DBS for clearance	Conviction/caution was disclosed at interview Use Form 2- positive disclosure form to assess the risk.	No conviction disclosed at interview Complete Form 1 below

Form 1: Risk assessment for non disclosure of conviction at interview

Name:	Job Ref:
Interviewer	Job Location:

a. Will the employee be working with young people?	Yes/No	
b. Will the employee be working with vulnerable adults?	Yes/No	
c. Is there a likelihood of lone working?	Yes/No	
d. Does the post involve responsibility for finance, items of value or other high risk areas?	Yes/No	
e. Does the post involve giving personal care?	Yes/No	
f. Is contact with service users regular, but infrequent?	Yes/No	
g. What is the normal level of supervision?	High/low	

Actions to be taken to minimise risk to service users and staff:

The completed risk assessment must be discussed and counter-signed by a partner before any decision to start an appointment is made. Any applicant who starts prior to clearance must be subject to the supervision guidelines.

Declaration: I have undertaken a thorough risk assessment of the candidate prior to agreeing a start date.

<p><u>Recruiting Manager</u> Signature:</p> <p>Print Name:</p> <p>Designation:</p> <p>Date:</p>	<p><u>Counter-signed Partner</u> Signature:</p> <p>Print Name</p> <p>Designation:</p> <p>Date:</p>
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POSITIVE DISCLOSURE DECISION SHEET

A positive disclosure is a certificate that shows cautions, warnings or convictions. They may show spent convictions and also unspent convictions, and for Enhanced checks, they will also show information that a police force deems relevant to disclose based on the nature of the job that the individual will be employed to do.

Before a decision is reached on whether to offer or confirm employment to an individual, the individual should be offered the opportunity to discuss the content of the disclosure with the recruiting manager, except where this is prohibited.

Using this decision sheet, the manager will make a balanced decision on whether they are satisfied to employ the person / service provider.

Name:

Position applied for:

Current/Prospective employee: Question	Yes	No	Notes / Manager comments
Does the DBS result bar the appointment?		If "yes", do not employ.	
Is the conviction relevant to the position?			
Are you satisfied with the circumstances of the offence, and the candidates' explanation?			
How do you regard the seriousness of the offence?	Please indicate Minor / Average / Major		
Did the offence occur recently?		How long ago:	
At what age were the offences committed			
What age is the applicant now			
Does the disclosure show a pattern of offending behaviour, or was the offence a one-off?	Please indicate Pattern / One-off		
Have the circumstances that led the applicant to commit the offence changed for the better?			
Did the applicant disclose the conviction(s) / cautions, warnings or reprimands when asked?		If they did not disclose, it may constitute gross misconduct	
Does the role allow the opportunity to re-offend?			
What level of supervision will the person receive?	Please indicate None / Some / A lot		
Does the post involve responsibility for finance, items of value, drugs or other high risk areas?			

Decision: Employ* / Do not employ* / Employ with adjustments to role* (*circle)

Responsible Manager Name:

Signature:

Date: