
Disclosure and Barring Service: Making Checks and Use of DBS Disclosure Information (England) Policy

Introduction

This care service recognises that to provide care and treatment to the standards required, it must have rigorous selection and recruitment procedures that comply with Regulation 19 “Fit and Proper Persons Employed” of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Regulation 19 requires care providers to ensure that staff employed to carry out regulated activity must:

- be of good character
- have the necessary qualifications, competence, skills and experience for their roles
- be in a satisfactory state of health to carry out their work
- be subject to recruitment procedures that meet all “fitness” tests (which are detailed in Schedule 3 of the regulations)
- provide evidence that individuals can meet their professional registration requirements if relevant.
- provide evidence of continuing “fitness” during the course of their appointment
- be subject to the appropriate disciplinary procedures and decisions if they do not continue to meet the fitness tests, which might include referral to one or both DBS barring lists.

Paragraph 2 of Schedule 3 requires care providers to check if any prospective employee might have a criminal record through the issuing of a certificate. Paragraph 3 then requires designated staff, who are employed to deliver “regulated activity” to have an enhanced criminal record certificate and a check to ensure that they are not legally prevented from working in a role delivering “regulated activity” (ie “barring list” check).

The service makes the required criminal records and, where appropriate, barring list checks through the government’s Disclosure and Barring Service, which was established under the Protection of Freedoms Act 2012, and which, to protect human rights, requires a proportionate response by employers to the making of criminal records and barring list checks, and a similarly proportionate consideration of the information obtained from the checks.

Scope and Purpose of Policy

This policy outlines this care service's approach to the handling and security of information obtained from Disclosure and Barring Service (DBS) criminal records, and where appropriate, barring list checks. The policy applies to all staff groups for whom criminal records checks are made in line with the above care regulations and the Protection of Freedoms Act 2012.

Related policies are:

- Employing People with a Criminal Record
- Making DBS Checks and Disclosure of Information
- Safer Recruitment and Selection of Staff.

As the law stands, the service is required to make criminal records checks for successful applicants of all care-related positions, particularly those that fall within the description of "regulated activity" (as defined by the Protection of Freedoms Act 2012). These are made by carrying out DBS checks in line with its procedures.

All care worker roles are defined as regulated activity and therefore the service is required to carry out enhanced criminal records checks of all successful applicants for these posts. The service is required to "handle" the information received from these checks with great care and sensitivity in line with data protection laws and the DBS's Code of Practice.

The service will therefore:

- comply with the law and use the DBS to obtain information to enable it to assess the suitability of applicants for employment in positions of trust
- comply with the DBS Code of Practice and not discriminate unfairly against any subject of a DBS disclosure of a conviction or other significant information. Having a criminal record does not necessarily bar an applicant from working for the service, as the nature of a disclosed conviction and its relevance to the post in question will be considered first
- use the information it receives from the checks only for confirming an applicant's eligibility and suitability for the post to which the person has been appointed
- comply with DBS guidance and Code of Practice regarding the secure storage, handling, use, retention and disposal of DBS disclosures and disclosure information, and with its obligations under the Data Protection Act.

Principles for Making DBS Checks

The service works to the following principles.

- The service recognises that having a criminal record does not automatically prevent individuals from being appointed. However, as a responsible care provider, we know

we must carry out stringent checks of a prospective employee's possible criminal past to safeguard the people who use our service. We do this by asking the person's permission to carry out the appropriate criminal records' checks from the DBS.

- The service knows that if a person it wishes to appoint to a role involving "regulated activity" (personal care) has been placed on a DBS barring list, it will be breaking the law if it continues with the appointment.
- The service recognises that under the Protection of Freedoms Act 2012, employees in non-care roles are not eligible for barring list checks, but they will still need a DBS check for any unspent convictions as set out in the Rehabilitation of Offenders Act 1974.
- The service recognises that, as an employer, it has the responsibility to decide to appoint or not someone with a criminal record to any post. It will do this by carrying out a risk assessment, which will predict if people who use the services (or the service in general) are likely to be harmed if the person is employed. The service will decide the level and nature of the risks, by considering the nature and circumstances of the disclosed offences.
- If the appointee subject to the check is a registered professional (nurse, social worker, etc), who has applied for a post requiring registration, and the application form and/or DBS check shows up an unspent conviction, further checks will be carried out to find out if the registration body is already aware of the conviction, and, if not, to determine if the body's code of conduct requires it to be notified so that it can investigate (or has investigated) any potential breach of its code. This process will be carried out in a transparent way with the involvement of the applicant.

Procedures for Making Criminal Records Disclosures and Barred List Checks

- Before confirming someone's appointment, the service is required to carry out checks with the DBS. Requests for checks in an adult service can be made against one of the following.
 - Basic Check (which is requested by the subject)
 - Standard check
 - Enhanced check
 - Enhanced check and barred list check (adult)
 - Enhanced check and barred list check (child and adult, eg in a domiciliary care service providing support to children as well as adults).
- For staff who work in regulated activity as defined by the Protection of Freedoms Act 2012, the organisation must apply for an enhanced criminal records check *and* barring list check.

- For staff in non-care roles, who have only limited or infrequent contact with people who use the services, the service will generally apply for a standard criminal records check. However, it might seek the person's permission to make an enhanced check if the post requires frequent or regular contact with people who use the services, though still outside the definition of regulated activity. Where the staff member, volunteer, or contractor has no contact with people who use the services, and, say, only occasional involvement in the service a basic check might be sufficient.
- The service is committed to following the current guidance on criminal records and barring list checks issued by the DBS, and reviews its policies in line with any new guidance that it issues.
- In a domiciliary care service it is also unlikely for anyone on a barred list to be accepted for employment, though the service might consider employing a barred person in a non – care role, which did not involve contact with people who use the services, depending on their suitability and risk factors.
- A person who has applied for either a care or a non-care role, who has an unspent criminal conviction as shown by the DBS check (but in the case of care role applicants is not on a barred list) will not automatically be rejected for the post for which they have applied. A decision to appoint or not will take into account the details of their conviction and the outcomes of a risk assessment, which will ensure that no-one is put at risk from any decision to make an appointment.
- In cases where it is not possible to obtain a full DBS check before a person is due to start work and to maintain adequate staffing levels, the service obtains an Adult First clearance and makes sure that the person is properly monitored and supervised in line with official guidance until full clearance is obtained. Employees are made aware of the provisional nature of their appointment until all checks have been completed.
- The service retains any information held manually or electronically on criminal records checks in secure conditions, observing access to records and data protection protocols like any other personal information it holds on its staff members.
- In line with CQC guidance, available on its website, the service keeps information held manually until its next inspection after which the information is destroyed; though it will still be recorded that the checks have been carried out together with the recording of any information subsequently obtained using the DBS online updating service.

As described in the CQC guidance, the service keeps the following confidential details having seen a person's certificate.

- The date of issue of the check.
- The full name and date of birth of the subject.
- The type of check requested.
- Whether the applicable barred list(s) was checked and the outcome.

- The position for which the check was requested.
- The unique reference number of the check.
- The details of the employment decision taken, and
- Any additional information that may require periodic checks to be made or the results of any specific decisions relating to these procedures.

Volunteers

The service seeks enhanced or standard criminal records' checks on volunteers providing services to people using the service or the service; which depending on what service they provide. Volunteers do not carry out regulated activity and are not subject to barring lists' checks.

Student Placements, Trainees and Work Experience

The service follows DBS and CQC guidelines in working out the checks needed on students and trainees. It understands that the minimum age for a DBS check is 16, and students under that age will be allowed to visit the service only after careful preparation and a risk assessment and will always receive close support and supervision.

Students and trainees over the age of 16 years will be eligible for a DBS check, and might have received one by way of their educational institution or sponsoring agency; in which cases the service will ensure that it has been made at the right level for the purposes of the work/learning experiences planned.

Anyone engaged to practise in regulated activity will usually require an enhanced DBS and barring list check, particularly with longer placements. The service will assess on a case by case basis the level of check required for the purpose of the placement by making a risk assessment and carefully recording the reasons for every decision.

Foreign Workers

The service employs foreign workers only after confirming their legal status and entitlement to work in this country and after making equivalent checks on their criminal records and fitness to work with vulnerable people. This is done in line with current government DBS guidance found on the GOV.UK website.

Agency Staff

The service recognises that it is the responsibility of any employment agency who supplies staff to the home to have carried out all the required DBS checks. The service always seeks confirmation from the agency that it has carried out these checks and can verify that it has done so. It regularly reviews the practices of any agency that supplies staff to the service to make sure that all required checks are being carried out.

Contractors

The service will seek confirmation from any contractors and employers of service personnel, who are likely to have contact with people receiving care, when carrying out their work, that they have been subject to the appropriate level of criminal records checks and are fit persons to be engaged in the care service.

Criminal Records Disclosures and Data Protection Procedures

1. DBS disclosure information will not be stored on an employee's personnel file but will be stored separately in lockable storage or secure computer files with access limited to those who are entitled to see it as part of their duties.
2. 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.
3. DBS certificates are sent only to the individual applicant. An annual fee is required to keep registration up to date, otherwise further renewals will not be necessary. Employers are able to check employees' DBS certificates by registering with the DBS online updating service. They can check the individual employee's current DBS status at any time by using the updating service.
4. The service checks employees' DBS certificates, wherever possible, through the DBS online updating service.
5. We would also expect any staff member who, when in our employment, is convicted of a criminal offence that could affect the safety of people receiving care to inform the service so that the appropriate action can be taken e.g. a risk assessment and further checks or, where applicable, referral to a professional registration body.

The service will amend its policy in line with any changes made to the CQC guidance, the DBS Code of Practice and any other changes to the relevant legislation and DBS procedures.

Reference: GOV.UK.

Review

Signed: _____

Date: _____

Policy review date: _____