

# Safe and fair recruitment

## A guide to carrying out effective pre-employment checks in social care

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# About this guide

**This practical guide is aimed at social care employers in England and Wales, including individuals who employ their own care and support staff. It may also be of interest to policy makers and commissioners, including local authorities and Integrated care boards (ICBs) as well as organisations who advise and support individuals into employment.**

It will help social care employers to understand their legal and safeguarding rights and responsibilities when carrying out criminal record checks and other required pre-employment checks to implement safe and fair recruitment policies and procedures.

It will help employers to implement safe and fair recruitment policies and procedures, giving them the confidence and tools to strike the balance between safeguarding people and addressing any barriers that may prevent them accessing a vast potential talent pool.

It will also help employers carry out effective risk assessments on applicants who have criminal records or have been subject to allegations or safeguarding related conduct concerns so that they can make informed decisions about their suitability for the job.

Please note: This guidance had been created with expert input from specialist advisors in safer recruitment and employment, criminal convictions and dealing with safeguarding related conduct concerns (see acknowledgments). Specific queries should be directed to HR teams or legal experts.

Terms in **bold** are defined in the glossary at the end.

## Introduction

The sector has a national vacancy rate of 152,000 (9.9%) at any one time, with 390,000 (28.3%) staff leaving their job in the last 12 months.<sup>1</sup>

Employers are seeking ways to become more innovative in their recruitment and retention practices to attract people with the right values to deliver high-quality, person-centred care, and fill skills gaps that exist throughout the whole workforce (including ancillary roles that don't involve direct care e.g., admin, facilities management, finance, and catering).

At the same time, social care employers have both legal obligations and safeguarding responsibilities to ensure all individuals employed by the organisation are 'fit and proper' persons.

Employers need to conduct a safe and fair recruitment process and ensure that their pre-employment checks are sufficiently robust, so that the organisation safeguards the people being supported and deters unsuitable people who may present a risk of harm to those in receipt of care services gaining access to them through their work or volunteering.

Safeguarding and Inclusion should not be competing interests. It involves informed decision making. It's important to know that having a criminal record isn't an automatic barrier to working with **adults at risk** or children, yet some employers still have recruitment policies or practices in place that inadvertently exclude people with criminal records creating a barrier to open recruitment.

<sup>1</sup> Source: The state of the adult social care sector and workforce in England, October 2023

Some employers may have concerns that people with criminal records are more likely to present a risk, but the reality is many people who have abused in positions of trust don't tend to have criminal records. Approx. 97% of standard or enhanced **DBS** checks also known as higher-level **DBS** checks contain no information relating to **cautions**, convictions, **police intelligence** or barred list information.

Many people who have a criminal record come from disadvantaged or marginalised backgrounds. Some of these individuals may have committed minor offences but have moved on from their past mistakes and have a wide range of skills and abilities to offer. In fact, many have successful and rewarding careers working in the sector.

## Jane's story

Jane was aged 14 when her father committed suicide. Several months later her uncle also died. Whilst she was in a state of grief she ended up falling in with the wrong crowd and received a **youth caution** for shoplifting - stealing lipstick from a supermarket.

After receiving counselling and support, Jane was able to rebuild her life successfully. She managed to achieve good grades at school and her heart was set on working in social care. Her desire to help people was instilled by some of her family (mum, aunts and grandparents) who all worked in the care sector, but Jane faced immense barriers finding a work placement due to having the **youth caution** for shoplifting.

Jane's case (and others who faced similar barriers) eventually led to major changes to the laws requiring people to disclose criminal records to employers. These changes were introduced on 28 November 2020 to ensure that people who made minor mistakes in their past could move on with their lives.

However, as a result of these changes significantly less criminal record information is shared with employers (see page 9). In the past many employers have over relied on criminal checks when determining suitability of the applicant, but now more than ever, they will be reliant upon all the information gathered within the recruitment process to determine suitability of the applicant and their fitness to do the role.

Criminal record checks remain a vital tool, but an effective, safe and fair recruitment process will now include a range of robust vetting checks, including a focused comprehensive [application form](#) or online-process, [values-based recruitment](#), **criminal record self-declaration**, and [sharing detailed effective references](#) which include **evidence of the applicant's conduct** in all previous employment where they worked with **adults at risk** or children.

This ensures that as much relevant information as possible is gathered about **conduct and suitability** from as many sources as possible about prospective employees.

Ensuring staff involved in the recruitment and vetting process are adequately trained will also help organisations to make the safest and fairest and most informed recruitment decisions.



## Legal responsibilities

### Regulation 19 Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

The intention of Regulation 19 is to make sure that providers only employ 'fit and proper' staff who are able to provide care and treatment appropriate to their role and to enable them to provide the **regulated activity**.

To ensure organisations can meet this regulation, the following information must be gathered and kept.

- Proof of identity including a recent photograph
- **Criminal record self-declaration** + criminal record check at appropriate level (i.e., standard, or enhanced **DBS** checks; or enhanced **DBS** check with barred list checks)
- Satisfactory **evidence of conduct** in any previous employment involving healthcare, social care, children, or vulnerable adults. This includes a written reference from a former employer(s) or written evidence from another person. This must include information regarding an individual's conduct.
- If an applicant was employed in a position where their duties involved working with children or vulnerable adults. This record must include satisfactory reasons for why that employment ended.
- Satisfactory documentary evidence of any relevant qualification(s).
- A full employment history with a satisfactory written explanation of any gaps in employment.
- Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the **regulated activity**.





# PRISIM Model of safer employment

Safer recruitment and robust vetting provide organisations with the first opportunity to deter and prevent those who may be unsuitable for work with vulnerable people from securing a role with them.

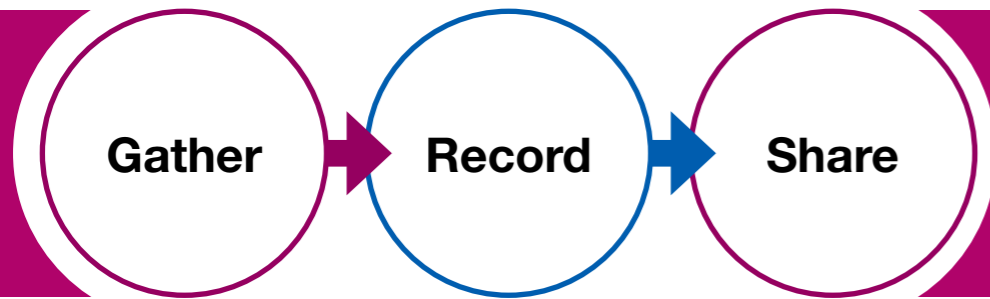
However, it is just one of many barriers organisations can and must put in place as part of their commitment to a safeguarding culture. It is equally important to embed a culture that applies a 360° approach to safeguarding in employment. This makes best use of the induction, probationary period, and effective supervision as part of an ongoing culture of safeguarding and vigilance to identify for all staff or volunteers any behaviours or attitudes which may cause concern, and which may not have been shared in criminal record checks or references.

The PRISIM model of safer employment is a framework that encompasses this 360° approach to safeguarding in employment.

It supports employers to embed a safeguarding mindset at every stage of the employment journey – from planning recruitment through to managing leavers.



**PRISIM also supports employers move beyond compliance, encouraging organisations to be ‘curious’ about their own organisational culture and their approach to gathering, recording, and sharing conduct information in order to fulfil their responsibilities to keep everyone safe.**



## What is a safeguarding mindset?

A safeguarding mindset is the difference between compliance and curiosity.

**Compliance** means meeting minimum standards and ticking the right boxes, but not exploring or considering anything sitting outside of that process.

**Curiosity** means going beyond minimum standards and being actively curious about information we do and don't have.

We know from many inquiries and serious case reviews that a culture of compliance alone does not keep people safe. For curious recruiters, when something does not seem right they seek additional information to validate or challenge that mindset. This means they will have the evidence they need to make the right decision.

## Safer recruitment and employment checklist

This best practice [safer recruitment and employment checklist](#) is designed to help employers follow a clear process when recruiting for a role and embed a safeguarding mindset at every stage of the employment journey - from planning recruitment through to managing leavers.

It is suitable for use by organisations that are subject to Regulation 19 and other social care organisations that want to demonstrate safer recruitment and employment practice.

More information on PRISIM and gathering, recording and sharing conduct information is available in the [Sharing effective references and conduction information toolkit](#) (see references page 25).

# What the law says on recruiting people with convictions

The [Rehabilitation of Offenders Act 1974 \(ROA\)](#) allows **cautions** and convictions to be considered **spent** ('legally ignored') after a specified period of time, legally referred to as the rehabilitation period, but in practice it is a disclosure period.

The length of the disclosure period is determined by the sentence or out-of-court disposal received. If the person is reconvicted within this disclosure period, the general rule (there are limited exceptions) is that none of their **unspent** convictions will become spent until they all are.

- Once the record is considered **spent**, the law treats the person as if they'd never been convicted of the offence. They no longer have to disclose the **caution** or conviction when applying for a job (or self-employment), education or training courses unless the role applied for is exempt from the ROA.
- If someone's **caution** or conviction is **spent**, it's unlawful for employers to consider it when making a decision about their suitability for a job.

The Ministry of Justice (MoJ) has developed a [Disclosure Checker](#) which helps individuals work out if/when their **cautions** or convictions may become **spent**. We advise that all relevant recruitment materials include a link to the MoJ Disclosure Checker.

Individuals can get confidential advice and support on what they need to disclose and how to disclose, by contacting the charities [Nacro](#) or [Unlock](#). Nacro has also developed comprehensive guidance on the ROA available [here](#).

## Does the ROA apply throughout the whole of the UK?

The ROA exists throughout the whole UK, including people serving in the armed forces who are subject to military law, but it's important to note that there are differences between the individual countries.

This guidance only covers the law in England and Wales. The length of time it takes for a **caution** or conviction to become **spent** in Scotland or Northern Ireland may be different to England and Wales. Employers with staff in these regions should review their policies on the recruitment of people with convictions to take the differences into account.

## Does the ROA apply to any jobs in social care?

Some roles in the social care sector are covered by the ROA. These are roles that don't typically involve delivering care and may have only incidental contact with adults at risk or children, for example catering, facilities, administrative staff, and other ancillary roles. These roles require the applicant to disclose only unspent **cautions** or convictions. We look at some of these roles in the DBS eligibility scenarios section.



## Does the ROA apply to people convicted overseas?

The ROA applies to a person with a criminal record regardless of where they were convicted. If someone has been convicted of a criminal offence overseas which has an equivalent (or similar) offence in England and Wales, they're still legally required to disclose their criminal record when applying for roles in the social care sector in England and Wales.

### Tom's story

Tom is 20 years old. He was convicted of shoplifting in a court in England and Wales and received a **£100 fine**. Under the ROA, the fine may become **spent** after 12 months in England and Wales. If Tom applies for a job covered by the ROA, he will need to disclose the conviction to his employer for 12 months - if he isn't reconvicted during this time.

### Martina's story

Martina is 24 years old. She was convicted of theft in Spain and received a **€100 fine**. If Martina applies for a job in England or Wales which is covered by the ROA, she will also need to disclose the conviction to her employer for 12 months - if she isn't reconvicted during this time.

### Golden rule

Regardless of which country they were convicted in, a person from overseas (or a UK national convicted overseas) applying for a role in social care covered by the ROA would need to disclose the conviction to an employer for the same length of time as if they'd been convicted in England and Wales.

Important note: **DBS** certificates do not generally detail the criminal record of applicants convicted overseas, so it is vital for employers to ensure that all applicants complete a **criminal record self-declaration** form or **disclosure statement**. (See overseas checks page 20).

## Ask the right questions

If the role is covered by the ROA, employers should ask applicants at the appropriate point in the recruitment process:

### Do you have any unspent cautions or convictions?

Best practice is to ask this question of those shortlisted for interview. An employer is also allowed to ask about **pending prosecutions**, but the applicant is only legally required to declare if they have been charged with the offence(s).

When asking this question, employers should remind applicants they're required by law to disclose all **unspent cautions or convictions**, regardless of whether they're convicted in the UK or abroad; and **unspent** criminal convictions or relevant service discipline convictions received within the **Service Justice System** (e.g., through Summary Hearing or Court Martial).



## Changes to the ROA Exceptions Order

A large number of jobs in social care and health are exempt from the ROA as they are considered more sensitive roles and/or positions that require a higher-level of trust. These roles are subject to the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975 – more commonly known as the ROA Exceptions Order.

These roles may be eligible for **higher-level DBS checks** (standard, enhanced or enhanced **DBS** with barred list checks).

## Changes to self-disclosure rules

On 28 November 2020, significant changes to the ROA Exceptions Order came into force affecting both what an employer can ask an individual to disclose, and the criminal record information that the individual needs to share.

The new self-disclosure rules are extremely complex. In order to reduce the potential for over disclosure or under-disclosure, we strongly recommend that you include a link to this [self-disclosure rules flowchart](#) (Appendix 6) in all relevant recruitment materials. It will help the individual to work out which offence(s) they may/may not need to self-disclose when applying for roles subject to the ROA Exceptions Order.



**Important note** - The individual no longer needs to self-disclose any **reprimands, final warnings, and youth cautions** but [Ministry of Justice \(MoJ\) guidance](#) makes it clear they must still disclose all **unspent cautions** and convictions; as well as all adult **cautions** and **spent** convictions that are not 'protected' (See **DBS filtering** rules)

## What is a specified offence?

A **specified offence**, is a serious offence (mainly sexual or violent offences, or relevant to safeguarding) which is contained on the [DBS list of specified offences](#).

Examples of **specified offences** include actual bodily harm (abh), grievous bodily harm (gbh), affray, burglary, robbery, supply of Class A, B or C drugs and sexual offences.

The applicant must always self-disclose any **caution** or convictions for **specified offences** when applying for higher-level **DBS** checks, except any **reprimand, final warning, or youth caution** that are for **specified offences**.

## DBS filtering rules

On 28 October 2023, additional changes to Part V of the Police Act 1997 also came into force. As a result, **reprimands, final warnings, and youth cautions** are no longer subject to automatic disclosure on higher-level **DBS** certificates. In addition, 'Protected' adult **cautions** and **spent** convictions are removed (**filtered**) from the certificate before it is issued. This system is commonly known as the [DBS filtering rules](#).

Nacro has developed guidance on the filtering rules [here](#).



## Maria's story

Maria is a care worker in a care home – she's 37 years old. Growing up, she had a troubled relationship with her parents and left home at 16 spending periods of time homeless and rough sleeping. She was able to access support to help turn her life around during her twenties.

**At 17** she received a **reprimand** for actual bodily harm.

Would it be **filtered**? **Yes**

Why? - The **reprimand** for abh is **filtered** immediately even though the offence is a **specified offence**, as Maria was under 18 when she received the **reprimand** and they are no longer subject to automatic disclosure.

**At 21** she received £200 fine for possession of Class A drugs (cocaine).

Would it be **filtered**? **Yes**

Why? - The conviction would be **filtered** after **11 years** as the offence is not a **specified offence**. (**Note: This conviction is spent under ROA 1974 after 12 months**).

**At 25** she received a 24-month **conditional discharge** order for two counts (convictions) of fraud by misrepresentation.

Would it be **filtered**? **Yes**

Why? - The convictions would be **filtered** after **11 years** as the offence is not a **specified offence**. (**Note: These convictions are spent under ROA 1974 after 24 months**).

**All of Maria's offences would be filtered.**





## Donna's story

Donna is a personal assistant – she's 35 years old. Donna grew up in the care system and moved around regularly between foster parents and care homes. She struggled to settle in new places and experienced difficulties at school. Donna was diagnosed with dyslexia when she went to an adult learning college aged 18.

**At 14** she received an **absolute discharge** order for affray.

Would it be **filtered**? **No**

Why? - The conviction would never be **filtered** as the offence is a **specified offence**. (**Note: This conviction is spent under ROA 1974 immediately**)

**At 16** she received a six-month **conditional discharge** order for supply of Class B drugs (cannabis).

Would it be **filtered**? **No**

Why? - The conviction would never be **filtered** as the offence is a **specified offence**. (**Note: This conviction is spent under ROA 1974 after six months**).

**At 21** she received a 12 month ban and £150 fine for drink driving.

Would it be **filtered**? **Yes**

Why? - The conviction would be **filtered** after 11 years as the offence is not a **specified offence**. (**Note: This conviction is spent under ROA 1974 after 5 years**).

**Only one of Donna's offences would be filtered.**



**Important note** - It's against the law for an employer to take into account a 'protected' **caution** or conviction when making a decision to employ a person or dismiss an existing employee. However, a **caution** or conviction cannot legally become 'protected' unless/until it becomes **'spent'**.

## Ensuring recruitment forms account for the self-disclosure rules

Employers must adapt their recruitment policies and processes to reflect the ROA Exceptions Order self-disclosure rules and must ensure:

- they ask applicants/employees the right questions about their criminal record
- applicants/employees give the legally correct answer to any questions about their criminal record.

When applying for roles subject to higher-level **DBS** checks, applicants should be asked **BOTH** the following questions:

1. **Do you have any unspent cautions or convictions under the Rehabilitation of Offenders Act 1974? (Y/N)?**
2. **Do you have any adult cautions or spent convictions that are not protected as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020? (Y/N)?**

The new disclosure laws are extremely complex and widely misunderstood. Now more than ever, employers will be reliant upon all of the information gathered within a safer recruitment and robust vetting exercise, to determine the suitability of the applicant and their fitness to do the role – including [sharing effective references and conduct information](#).

It is also important for employers to give applicants the opportunity to discuss any discrepancies and concerns that may arise about their criminal record and/or any conduct information that has been obtained. The employer should carry out a risk assessment (if necessary) before making any final decisions about the applicant's suitability for the role (See page 35).






# Criminal record checks

The **Disclosure and Barring Service (DBS)** exists to help employers make safer recruitment and employment decisions, through issuing criminal record certificates and making barring decisions (See **DBS Barring** page 40)

Some employers mistakenly think that all roles in their organisation need enhanced **DBS** with barred list checks, even if a role only involves **incidental contact** with the public (e.g. visiting public areas in residential care homes or medical centres).

However, employers must carry out the correct level of criminal record check that the role is eligible for. The main types of criminal record checks available are listed below.

<b>Basic DBS checks:</b>	<ul style="list-style-type: none"> <li>■ can be carried out for any role covered by the ROA</li> <li>■ will only contain details of <b>unspent cautions</b> or <b>convictions</b> recorded on the <b>Police National Computer (PNC)</b> in the UK</li> <li>■ are available from <a href="#">DBS</a> for employers in England and Wales. An employer can apply for a basic <b>DBS</b> check through a <b>responsible organisation</b> registered to submit them. Individuals can also apply directly for a basic <b>DBS</b> check.</li> </ul> <div style="border: 1px solid #ccc; padding: 5px; margin-top: 10px;">  <p><b>Important note</b> - A basic <b>DBS</b> check should not be confused with a standard <b>DBS</b> check, which can only be carried out on roles exempt from the ROA.</p> </div>
<b>Standard DBS checks:</b>	<ul style="list-style-type: none"> <li>■ contain details of all <b>unspent cautions and convictions, adult cautions, and spent convictions</b> that are not ‘protected’ (i.e. <b>filtered</b>) in accordance with the <b>filtering</b> rules applied by the <b>DBS</b></li> <li>■ are available for social care jobs and activities listed in the <b>ROA Exceptions Order</b> that involve providing health care or social care services, where the individual carrying out the role has access (i.e. more than <b>incidental contact</b>) to people in receipt of health care or social care services during their normal duties</li> <li>■ are available for anyone who is eligible for an enhanced <b>DBS</b> check.</li> </ul>
<b>Enhanced DBS checks:</b>	<ul style="list-style-type: none"> <li>■ contain the same criminal record information as the standard <b>DBS</b> check, and might also include <b>other relevant information (police intelligence)</b> held by the police that the chief officer believes should be disclosed to the employer to consider when making their recruitment decision (see the section of this guide on dealing with <b>other relevant information</b>)</li> <li>■ are available for jobs in social care and activities listed in both the <a href="#">ROA Exceptions Order</a> and also the Police Act 1997 (Criminal Records) Regulations e.g. ancillary staff working in a care home, non-health care advice to adults receiving health or social care services.</li> </ul>
<b>Enhanced DBS with children’s and/or adults’ barred list check(s):</b>	<ul style="list-style-type: none"> <li>■ include the same criminal record information as enhanced <b>DBS</b> checks, but also detail whether the person is barred from working in <b>regulated activity</b> with children, adults or both. To be eligible to request a check of the children’s or adults’ barred list, the position must be eligible for an enhanced <b>DBS</b> check and specifically listed in the <b>Police Act 1997 (Criminal Records) Regulations</b> as eligible to check against the appropriate barred list(s) e.g. Personal care providers, healthcare professionals, managers of those in <b>regulated activity</b>.</li> </ul>



**Important note** - Unless otherwise stated all references to **regulated activity** in this guide related to engaging in **regulated activity** with children or adults under the Safeguarding Vulnerable Groups Acts 2006 not the term regulated activities applied to the regulation of care services under the Health and Social Care Act 2008 (HSCA).

See the **eligibility** scenarios section of this guide for the level of checks typical roles are eligible for.

Criminal record checks can be conducted by the organisation itself or through an outsourced provider (**umbrella body**). [The Criminal Records Trade Body \(CRTB\)](#) is a group of UK-based criminal record check professionals. Where outsourcing, it is advisable to consider using a CRTB member because of the role they play in industry to promote safeguarding. The CRTB also encourage the adoption of enhanced identity verification processes, support candidates in understanding **eligibility** of checks, and highlight the work of SAFER jobs in preventing employment screening scams.

## The differences between each level of DBS check

	Basic	Standard	Enhanced	Enhanced + barred
<b>Unspent cautions</b>	✓	✓	✓	✓
<b>Unspent convictions</b>	✓	✓	✓	✓
<b>Adult cautions which cannot be filtered</b>	✗	✓	✓	✓
<b>Spent Convictions which cannot be filtered</b>	✗	✓	✓	✓
<b>Police intelligence</b>	✗	✗	✓	✓
<b>Inclusion on adult's barred list</b>	✗	✗	✗	✓

## How to work out what level of DBS check the role is eligible for

Employers can use the [DBS eligibility guidance](#) and [DBS eligibility decision tool](#).

There's also an [NHS DBS eligibility tool](#), designed with NHS organisations in mind but which social care organisations may also find useful.

If an employer is still unsure what level of check they should carry out after using these tools they should contact **DBS** customer services on 03000 200 190 or email [customerservices@dbs.gov.uk](mailto:customerservices@dbs.gov.uk)

## Determining what level of DBS check a role is eligible for

It's a criminal offence for an organisation to carry out **higher-level DBS checks** on roles that aren't eligible.

Guidance issued by the Care Quality Commission (CQC) is clear that social care employers should only undertake criminal record checks at the appropriate level and consider the **eligibility** for every role in the organisation.

In all settings, the **eligibility** for a criminal record check and the level of that check depends on the roles and responsibilities of the job. CQC expects providers to demonstrate they've risk assessed each role, especially where they have decided not to request a criminal record check.

It's good practice for risk assessments to include the specific responsibilities and activities attached to each role to easily establish if staff are eligible for a **DBS** check and the level of check required.

## Eligibility scenarios

The scenarios below show that having **incidental contact** with people who need care and support does not in itself establish **eligibility** for a standard or enhanced **DBS** check.

For further advice or support on **DBS eligibility** contact the **DBS** customer services on 03000 200 190 or email [customerservices@DBS.gov.uk](mailto:customerservices@DBS.gov.uk)

### Mohammed's story

Mohammed is a finance officer working in a community-based centre. His duties include preparing invoices, purchase and sales tasks and managing payroll.

Mohammed could be asked for a **basic DBS check**.

### Harvey's story

Harvey is a general maintenance worker for a community-based centre. His role involves gardening, painting and decorating, electrical repairs, plumbing, repairing fixtures and fittings. He works only in public areas.

Harvey could be asked for a **basic DBS check**.

If Harvey were employed in a day care centre with access to service users, he'd be eligible for a **standard DBS check**.

### Anita's story

Anita is a housekeeper in a sheltered housing scheme. Her role involves making beds and doing laundry, keeping records of housekeeping stocks, ordering supplies, and general upkeep of communal areas and bedrooms.

Anita could be asked for a **basic DBS check**.

If Anita were employed in a care home she'd be eligible for an **enhanced DBS without barred list check**.



## Thomas' story

Thomas is a driver for a care home. His role involves transporting people to and from day care centres, hospital appointments and outings. He also supports people to get on and off the vehicle.

Thomas is eligible for an **enhanced DBS with adults barred list check**.

## Luna's story

Luna is a cook in a day care centre. Her role involves developing healthy and balanced meals in consultation with residents and staff, monitoring kitchen stocks and ordering supplies. Luna is eligible for a **standard DBS check**.

If Luna worked in a care home, she'd be eligible for an **enhanced DBS without barred list check**.

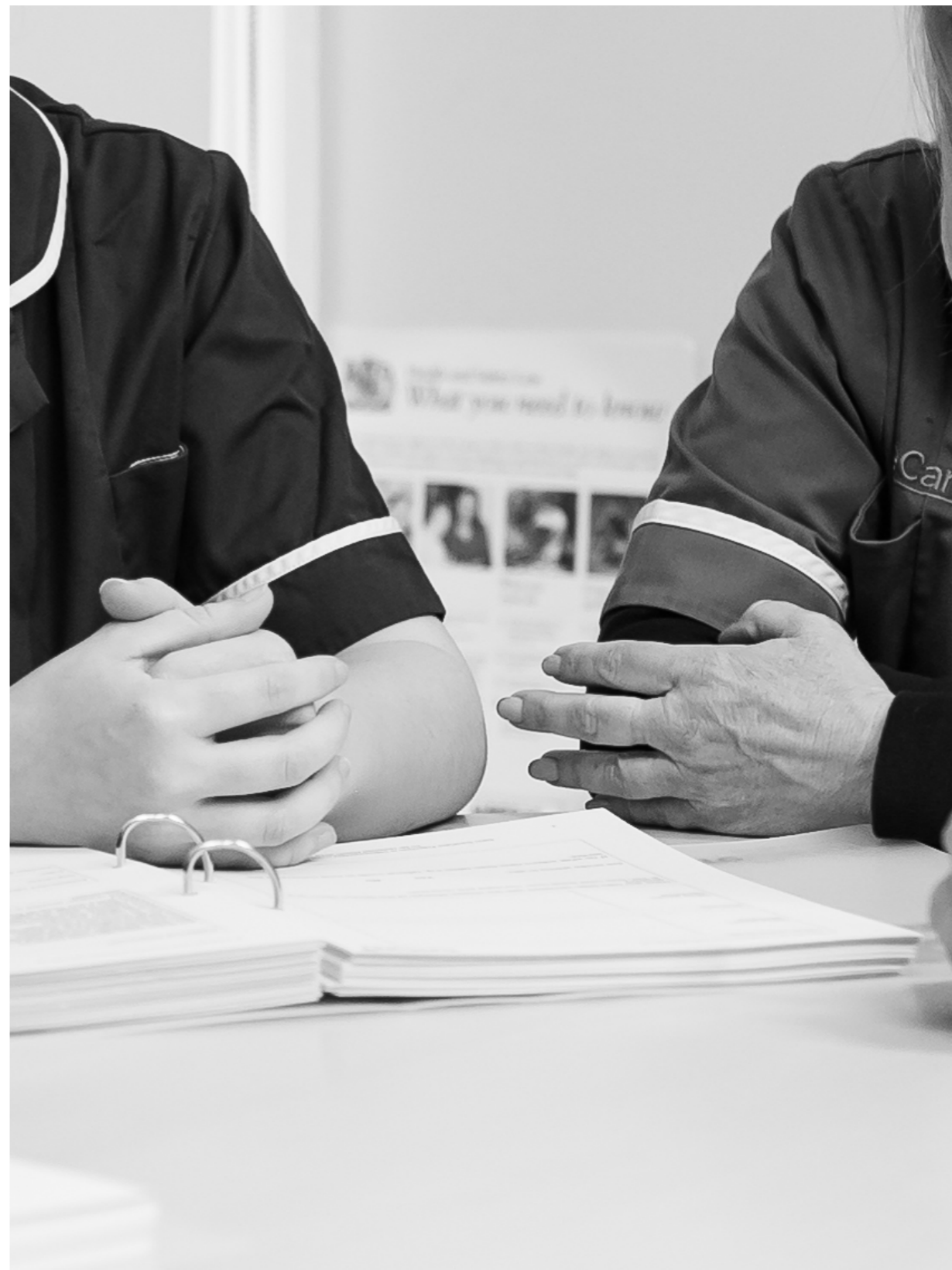
## Michaela's story

Michaela is employed by a care home as a receptionist. Her duties include telephone and email enquiries, welcoming visitors and showing customers around, helping people who need care and support to find the right care services for them, managing the diary of management staff and arranging and supporting meetings, including preparing agendas and writing minutes.

Michaela is eligible for an **enhanced DBS without barred list check**.

If Michaela were employed as a receptionist in a medical centre, then she's eligible for a **standard DBS check**.

However, if Michaela were employed in a medical centre and the help she provides to people who need care and support to find the right care services is providing advice and guidance wholly or mainly to adults in receipt of health services then she's eligible for an **enhanced DBS without barred list check**.





## The DBS update service

The [DBS update service](#) is an online subscription service that allows applicants to keep their **DBS** certificate up to date if they're moving to a new role(s) within the same workforce.

An employer (with the applicant's permission) can check the person's **DBS** certificate status online for free. The status check will let the employer know if there have been any changes since the existing certificate was first issued. However, it is important to note, a status change is only prompted when there is new information to be added, i.e., the individual has been **cautioned** or convicted for a new offence, or the police have additional information which may be relevant to share with the employer.

The update service does not notify employers as to whether a **caution** or conviction that shows on an existing **DBS** certificate is eligible to be **filtered**, nor does it advise an employer to get a new certificate in the event that the existing certificate discloses information which is now **spent** and protected.

If an applicant has produced an existing **DBS** certificate which discloses **cautions** or convictions which are both **spent** and protected and would otherwise be **filtered**, employers should consider applying for a new **DBS** certificate.

### What are the benefits of using the update service?

- An applicant who has no criminal record should only ever need one **DBS** check which is therefore faster and more efficient, helping to avoid delays to the recruitment process, and saving money.
- Individuals have more control over who has access to their **DBS** disclosure certificate and the information held on the update service.
- For paid roles, the subscription is just £13 per year, which is separate to the cost of the initial **DBS** check (and any applicable administrative fees).
- For volunteer roles, the fee for a **DBS** disclosure certificate and subscription to the update service is free of charge (plus any applicable administrative fees).
- Individuals can re-use their **DBS** certificate when applying for another position or wish to take up a volunteering activity, but only where the new role doesn't change the level of **DBS** check required and/or the type of access they will have with children and adults.

### Alpa's story

Alpa is a care worker in a care home. The role involves **regulated activity** with adults and is eligible for an enhanced **DBS** check with adults barred list check. Alpa applies for a new role as a care worker in an adult day centre. This role also involves **regulated activity** with adults and is also eligible for an enhanced **DBS** check with adults barred list check. Alpa would not need to carry out a new check if she is subscribed to the **DBS update service**.

But if Alpa had instead applied for a new role as a support worker at an NHS Trust which involves **regulated activity** with children and adults, she would need to carry out a new **DBS** check as the role is eligible for enhanced **DBS** with both children and adults barred list check.

Further guidance for employers on using the update service is available from the **DBS**.

# Disclosure and Barring Service (DBS) Adult First check

The [DBS adult first check](#) is exclusive to the care sector. It is a supplementary check which costs £6 in addition to the full cost of the Enhanced DBS certificate. It allows someone to be checked against the DBS adults barred list, but only in exceptional circumstances and where a person will engage in regulated activity.

The DBS adult first check can be obtained before the DBS certificate has been returned but can only be used if it is necessary to start a new employee where there is a real danger to safe staffing levels or the running of the service. It is not a substitute for a DBS certificate and providers must take care when making recruitment decisions before receiving a full DBS certificate.

The strict criteria for carrying out an adult first check are:

- the position must require a criminal record check by law;
- the position must be eligible for access to the DBS adults' barred list;
- the provider must have requested a check of the DBS adults' barred list on the DBS application form.

The DBS adult first check can't be used for roles where the person works with children, or both children and adults. For example, if Daniel was a social worker working in regulated activity with children and adults, Daniel's role would not be suitable for an adult first check.

However, if Daniel was a care worker in a care home, the role involved regulated activity with adults and was eligible for an enhanced DBS check with adults barred list check, Daniel's role may be suitable for an adult first check, if the strict criteria for carrying out the check has been met.

## What will the DBS adult first check show?

The DBS will reply to the employer via email, usually within two days, with two possible responses.

1. Please wait for the DBS certificate before making a recruitment decision regarding this applicant.
2. No match exists for this person on the current DBS adults' barred list.

The employer may choose to commence the individual's employment before receipt of the enhanced DBS certificate, but only if:

- there is no match on the adults' barred list check; and
- the employer makes it clear to the individual that any appointment remains conditional until the full enhanced DBS certificate has been received as it may contain additional information which may need to be considered before any unconditional offer can be made.

All costs quoted correct as of January 2024



## What the Care Quality Commission (CQC) says

The CQC recognises the DBS adult first check can be an important option for providers that need to fast-track applications due to challenging circumstances such as staffing shortages or other urgent needs.

Safer recruitment remains important to the CQC, and **providers should carefully assess any risks** involved in appointing a new employee before a DBS certificate is received.

The CQC will expect additional safeguards to be in place to manage individuals. Depending on the type of service or setting and the role the employee will have, this might include:

- closer supervision
- on-shift access to a senior member of staff
- not escorting people away from the setting unaccompanied, and
- paying particular attention to feedback from people drawing on care and support.

Providers should also inform people drawing on care and support, or their representative, about outstanding information, and tell them when it is received.

Carrying out an adult first check **won't** result in any notification being sent to the CQC, but if this issue is raised with providers, for example through monitoring or inspection activities, the CQC may ask to explore any pressures and challenges that led to using the service.

Providers **won't** be penalised for carrying out adult first checks that meet the criteria if the provider can demonstrate any potential risks have been mitigated and managed effectively.

Read the full CQC guidelines about using Adult First and risk mitigation on the [CQC website](#).

## Important to know

- Many people who may pose a risk of harm to adults at risk are not included on the adults' barred list. Only approx. 0.02% enhanced with barred list(s) DBS certificates issued each year state the person is on a barred list.
- The Adult First check cannot generally access barring information or criminal records held overseas.
- It can take a long time for DBS to make a Barring decision and unless/until a person is barred, they may still apply for roles engaging in regulated activity.
- It is a criminal offence to knowingly employ a person who is barred by the DBS from working with adults in a role which involves regulated activity with adults.

## What providers can do

- Take reasonable steps to gather all the required information to determine suitability of the individual and their fitness to do the role per [Regulation 19 Fit and proper persons employed requirements](#) (i.e. proof of identity, criminal record checks, detailed effective references, full employment history, reasons for leaving previous employment, satisfactory explanation of any gaps in employment history, evidence of relevant qualifications and satisfactory information about any physical health or mental conditions);
- Ask shortlisted candidates to complete a criminal record self-declaration; see [Appendix 4: Criminal record self-declaration form for jobs exempt from the ROA](#) and [Appendix 5: Criminal record self-declaration form for jobs covered by the ROA](#).
- Complete a pre-employment risk assessment (if necessary) using all the information gathered in the recruitment exercise;
- Consider implementing a system to ensure easy identification of staff records for those recruited using the DBS adult first check. For example, adding a code such as **DBS ADULT FIRST** to the record. This may help for future safeguarding audits and any follow up procedures that might be required (e.g., review of the pre-employment risk assessment).

Find out more about the Disclosure and Barring Service (DBS) here: [About us - Disclosure and Barring Service - GOV.UK \(www.gov.uk\)](#)

## Overseas criminal record checks

It is important to note that **DBS** certificates do not generally show overseas **cautions** or convictions unless 1) the offence(s) involved a **UK national convicted overseas**, and 2) The UK has robust arrangements in place with the country in question to place the **cautions** or convictions on the **Police National Computer (PNC)**.

Therefore, employers must ensure that all overseas applicants (including displaced people) complete a **criminal record self-declaration** in line with the legal requirements for roles in England and Wales. They should also review their vetting policies and procedures to ensure that they are sufficiently robust and apply a consistent and non-discriminatory approach to all applicants when assessing risk.

Employers should also consider asking overseas applicants to conduct [overseas criminal record checks](#) or Certificates of Good Character in the countries where they've been living or visiting. However, they should be mindful that the application process for criminal record checks or Certificates of Good Character for someone from overseas varies from country to country. In addition, overseas criminal record checks and Certificates of Good Character may not detail the applicant's criminal record in line with the **DBS filtering** rules in England and Wales. The overseas check may reveal more information – or it may reveal less information.

## Overseas convictions scenario

Elena is a Spanish national who was convicted of murder in Spain as a juvenile. As she is an overseas applicant, her conviction would not be disclosed on a **DBS** certificate, and it may not even be disclosed on a Spanish criminal record certificate, because under Spanish law, all crimes committed by juveniles can be expunged after 10 years once the individual reaches the age of 18.

In spite of this, in England and Wales, a conviction for murder is never considered **spent**; and so, the individual must always disclose the conviction when applying for a job in England or Wales if the employer asks them to declare their criminal record.



Skills for Care has developed a comprehensive overseas applicants' [safer recruitment checklist](#) and other useful resources on International Recruitment which are available [here](#).



## Carrying out DBS checks on personal assistants

Personal assistants (PAs), as part of their duties, may support their employer with personal care in their home or when they are out and about. This is considered a **regulated activity** with adults which means a request can be made for an enhanced **DBS** with adults barred list check.

However, individual employers (including anyone receiving a direct payment from a local authority, personal health budget from the NHS, self-funding their own care, or a combination) cannot submit an application for a higher-level **DBS** check. In addition, they cannot make a suitability decision based on the results of the higher-level **DBS** check.

Individual employers can instead ask their local authority, NHS organisation or certain support organisations to conduct the higher-level **DBS** check on someone they want to employ, or offer a job to, or on someone already in their employment.

The organisation carrying out the higher-level **DBS** check will be responsible for carrying out any risk assessment required, and making the decision as to the suitability of the person applying to be a PA.

Further information on **DBS** checks for personal assistants is contained in this [advice note](#).

Skills for Care has also developed [other useful resources](#) on support for individual employers and supporting organisations.



## Carrying out DBS checks on people doing work experience

Employers and training providers that offer pre-employment training and work experience opportunities need to ensure that any scheme they run protects and promotes the care and welfare of the people using their services and ensures that they continue to comply with legal requirements under the Health and Social Care Act 2008

Some employers and providers struggle to determine:

- whether they need to carry out **DBS** checks on the individual if the placement will only last a couple of weeks
- what level of **DBS** check should be carried out.

The Department for Work and Pensions (DWP) and CQC developed guidance on [DBS checks for work placements](#) in adult social care settings, which recognises that placements can happen very quickly and last only a short period, so it's not always practical or proportionate to seek a **DBS** check, but the provider or employer should document any reason(s) for not carrying out a **DBS** check.

Regardless of whether or not a **DBS** check has been carried out it is extremely important that:

- the person on work placement must complete a **criminal record self-declaration** form stating any **cautions** and/or convictions they may have under the ROA or the ROA Exceptions Order (as appropriate)
- the person must be supervised throughout their work placement by suitably trained staff, and they should only undertake suitable activities and tasks
- the person on work placement must not be left alone with people who use the services
- the person on work placement should only carry out tasks which are limited to a supporting role. They must not deliver any aspect of personal care.

Employers interested in providing work experience can find out more in the [Offering meaningful work experience guide](#) which includes practical information and templates.

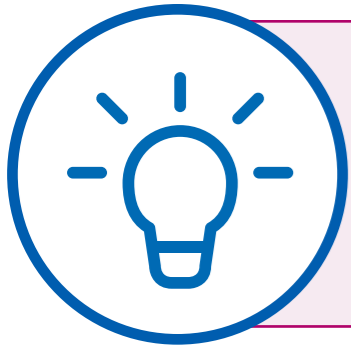
For all work placements providers must also:

- inform people using their services that they have a person undertaking a work placement and obtain their permission for the person's involvement
- ensure the person carrying out the placement does not observe personal care when permission cannot be obtained
- carry out a risk assessment to ensure that any risks are identified and managed effectively with any necessary additional safeguards put in place.

CQC guidance is clear that any **DBS** check carried out on a person taking part in a work placement should be carried out at the appropriate level.

### For example

- A person doing an administrative role in a day care centre with no access to service users could be asked for a basic **DBS** check.
- A person in a facilities management role in a day care centre with access to service users may be eligible for a standard **DBS** check.
- A person in a supporting role in a care home with access to service users but is not involved in **regulated activity** may be eligible for an enhanced **DBS** check without adults barred list check.



### Top Tips

- Ensure the person on work placement completes a **criminal record self-declaration** which is appropriate for the work placement's requirements.
- Use the **DBS eligibility** guidance and **DBS eligibility** decision tool to work out what level of check the work placement is eligible for.

### Case study example

A local authority participated in a Skills for Care programme by providing work experience opportunities for people who had challenges finding employment. One of the participants was unable to provide appropriate ID to obtain a DBS check, so the local authority ensured the person on placement completed a criminal record self-declaration relevant to the work placement's requirements, and the organisation completed a risk assessment to facilitate the work placement in a non-clinical role, ensuring they had all the necessary safeguards in place. The participant was supervised throughout the placement and only carried out tasks limited to a supporting role. The placement was a success and the individual gained great confidence and experience from their work placement.



# Other essential vetting and pre-employment checks

## Identity Checks

Identity checks are the first checks that should be carried out as all other checks are deemed invalid if a person's identity cannot be proved. They must be performed on all candidates whether they are UK resident or an overseas candidate seeking work in the UK. This is to confirm that the candidate is who they claim to be and are not impersonating another individual or forging an identity.

NHS Employers [Identity checks standard](#) outlines four steps to validate an applicant's identity.

1. request original identity documents,
2. check the authenticity of the original documents,
3. conduct an in-person meeting,
4. validate personal details against external reliable sources.

The range of documentary evidence gathered should aim to verify the individual's:

- ✓ appearance (i.e., photo ID)
- ✓ full name (including forenames, last name, and any other name they legally wish to be known by)
- ✓ signature
- ✓ date and place of birth
- ✓ current residing address
- ✓ other biographical and social history information which may be cross-referenced.

The [Good Practice Guide \(GPG\) 45](#) for identity proofing and verification issued by Cabinet Office and Government Digital will also be a helpful resource,

## Right to Work checks

The employer must check if the candidate has the right to work in the UK before they can be employed. By carrying out right to work checks, employers prevent illegal working and avoid civil penalties.

Useful information is contained in [An employer's guide to right to work checks](#) and the [Right to Work checklist](#)

## Document checks

As part of the robust recruitment process, organisations collect copies of original documents to verify candidate details such as identity and proof of address. There are a large number of fake documents in circulation and websites offering to create fake documents, therefore vigilance is required. The [UK Identity Fraud Advisory \(UKIFA\)](#), provides free help and advice for organisations. If the employer is using an employee screening company, it is worth ensuring they are using UKIFA on their behalf.

## Qualification checks

The employer should always check the candidate's qualifications but especially when the qualification is essential to the role. When checking qualifications, they must obtain a copy of the original certificate(s) of Professional / Degree qualifications. If it is not in English, then it must be translated into English by an official translator.

A copy of a Social Work England Certificate (if the Candidate has this) and a Social Work England web check should be completed and evidenced prior to employment.

Paper documents can easily be falsified so they should check the authenticity of any certificates with the awarding body or use a secure online checking service.

For further information visit [Search the Register - Social Work England](#)

[Hedd](#) may be able to verify UK university qualifications.

[Qualification Check](#) may be able to verify other qualifications.

## Application form/online process

A focused application form that demonstrates the organisational commitment to safe practice can help to attract candidates with values that align to the organisation, while deterring those people who know their practice is unsafe.

A template effective application form which includes all of the relevant ways to gather information about an applicant's conduct is available [here](#).

For organisations that already have an application form, the [application forms checklist](#) support organisations to review existing application templates and identify where changes may be required.

## Full employment history

Regulation 19 requires organisations regulated by CQC to obtain a full employment history dating back to compulsory education. A full employment history means no gaps in employment of over four weeks. Any gaps that exceed four weeks need to be verified.

When dealing with gaps in employment history, it is essential to ensure that the candidate provides sufficient evidence to determine what they have been doing in that gap period. Examples of evidence to support gaps in employment history include:

- A reference from a person of standing. The individual is referred to as a gap referee.
- Travel documents to evidence periods of travel
- Job centre letter or other evidence of claiming benefits for periods of unemployment.



## Professional Membership Checks

A professional member check validates an applicants' membership of professional or technical bodies, their dates of membership and any qualification gained.

For qualified social workers, a copy of Social Work England Certificate is required, and a SWE web check should be completed and evidenced prior to employment.

For membership checking service visit [Search the Register - Social Work England](#)

## Occupational Health Checks

An occupational health check is a number of health screenings carried out by an appropriate or appointed occupation health screening nurse to assess whether candidates are capable and fit for a particular role with or without reasonable adjustments.

If the candidate is supplied by a recruitment agency it is the agencies responsibility to carry out by a Safe Effective Quality Occupational Health Service (SEQOHS) accredited occupational health provider.

The agency is required to provide the employer with a written confirmation that they have carried the appropriate assessment, that the worker is fit to start work, and what if any, adjustment need to be considered.

## Values based recruitment

Values based recruitment supports organisations to gather information about the values, behaviours, and attitude of potential employees, so that employers can assess whether they will be suitable to work for the organisation. This information can be compared to information gathered in criminal record checks, references, and other vetting checks, which helps make sure employers have a full picture of the person's character before employing them.

Find out more about values-based recruitment [here](#).

## Sharing effective references and conduct information

[The Sharing effective references and conduct information toolkit](#) provides best practice guidance, as well as user-friendly editable templates and checklists, and FAQs that help social care employers to both obtain and provide effective references and conduct information.

The toolkit was published by the Better Hiring Institute (BHI) and compiled as a collaboration between Skills for Care, Disclosure & Barring Service (DBS), Reed Screening, Dominic Headley & Associates (DHA), VBA Consulting and BHI.

## Sharing references – key considerations

Detailed effective references are an important yet undervalued part of any robust safe and fair recruitment exercise. Regulated social care roles are the type of employment where it is essential to share effective references which must go beyond standard employment verification (basic references). Obtaining evidence of the applicant's conduct and reasons for leaving are a legal requirement within Regulation 19, and so they are an essential element of any social care reference.

Those responsible for providing references may be failing in their duty of care (to applicant and prospective employer), legal and/or safeguarding responsibilities if they do not provide an effective reference which includes relevant conduct information.

The Referee also has a responsibility to ensure that any reference provided is accurate, dependable and does not contain any material misstatement or omission.

If they are not satisfied the person is suitable to work with **adults at risk** and/or children, they should provide specific details of their concerns.

## Gathering references – best practice

- The employer should take up at least two references for each appointment – one of which should be the applicant's current employer.
- The employer should ensure that references are always obtained directly from the referee and that reliance is not placed on references or testimonials provided by the applicant, or on open references and testimonials, i.e. "To Whom It May Concern"?
- If previous employer reference cannot be obtained, it's recommended that employers seek suitable character or personal references, volunteer-activity references, training history references or self-employment references.
- Periods of unemployment where the applicant has been claiming benefits can be confirmed via a Jobcentre Plus summary letter or other government source.
- The employer should ensure that once a reference has been received it is scrutinised, and any concerns are resolved satisfactorily by carrying out a risk assessment (where necessary) before the person's appointment is confirmed.
- Where it has genuinely proved impossible for a reference to be obtained, the employer should base the recruitment decision on what information can be reasonably obtained as part of the interview and checking stages.
- A pre-employment risk assessment form should be completed detailing:
  - the rationale for the recruitment decision
  - all efforts made to obtain a reference
  - the reasons why information could not be obtained
  - and any additional measures put in place to ensure new staff are adequately supported and sufficiently supervised to carry out their role safely and effectively.



**Important note** - If a reference is marked as [confidential](#), UKGDPR creates an exemption enabling both the company who issued it and the company receiving it not to share a copy of the reference with the applicant, but it is recommended to only use this exemption on a case-by-case basis.

# Addressing applicants' practical barriers

## What if the applicant cannot provide photographic ID?

If a person cannot genuinely provide photographic personal identification, then in addition to providing the acceptable documentary evidence (e.g. evidence of benefits letter, official statements from banks or utility providers, council tax statement, local council rent card or tenancy agreement) the employer may consider accepting a passport-sized photograph of the applicant which has been countersigned by a [person of some standing in the community](#) who has known the applicant personally for at least two years.

The person countersigning the photograph must also provide a statement outlining how they know the applicant and the length of time they have known them for; as well as providing their full name, signature, and contact details.

## What if the person cannot provide proof of address?

If a person cannot genuinely provide proof of address in their own name, then a check of the electoral register can be carried out with the local authority where the applicant is residing.

If the person is officially recognised as homeless and of no fixed abode, they should be referred to the homelessness charity [Crisis](#) who may be able to support with obtaining a copy of the person's birth certificate or apply for a driving licence as a suitable form of identity.

## What documentary evidence can young people present?

When considering young people (aged 16 – 19) who cannot provide the suggested documents, employers can accept the following:

### Photo ID:

- A valid and in-date identity card carrying 'PASS' accreditation logo e.g., UK CitizenCard.
- A photograph countersigned by a person of some standing in the community.

### Documentary evidence:

- a grant or student loan agreement
- a qualification certificate
- a full birth certificate
- National Insurance card or a letter from HMRC, JCP or Employment Services evidencing an NI number
- a letter from headteacher, tutor of college principal verifying their name, address, date of birth etc.





## ID checking for DBS checks

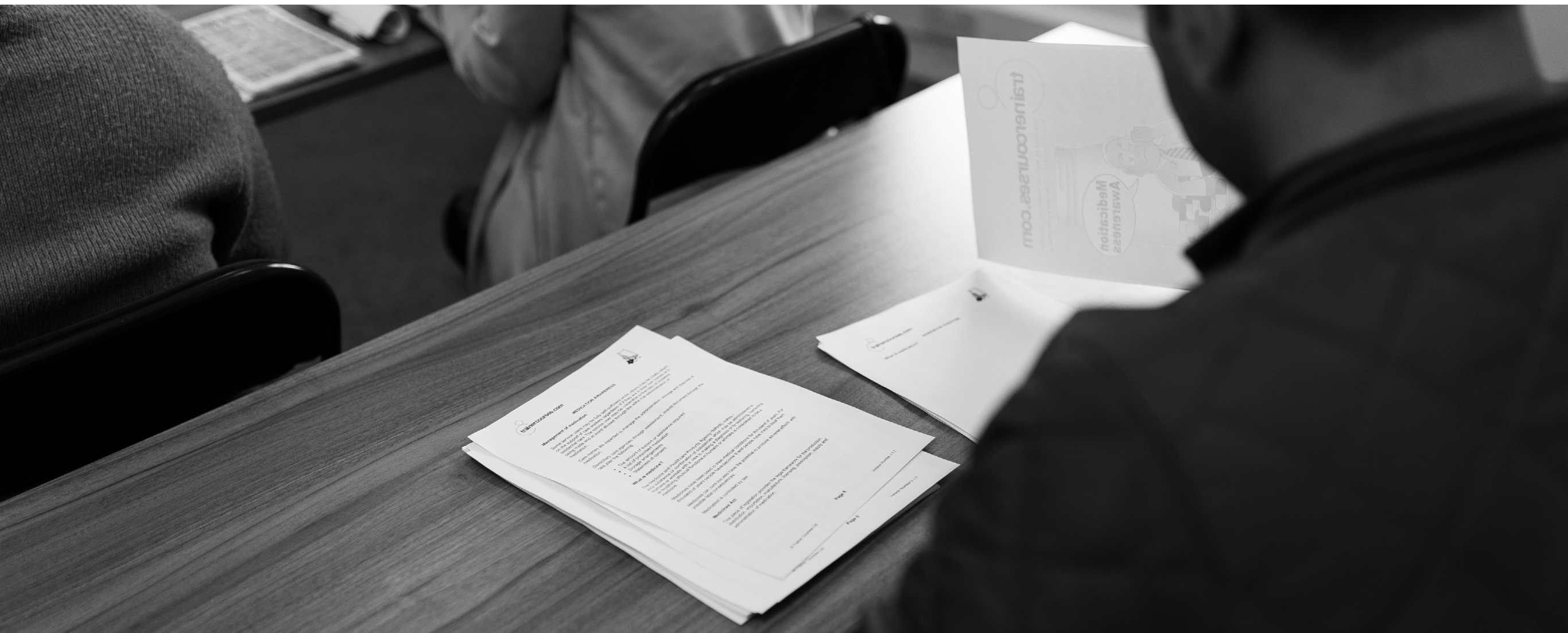
The **DBS** has developed [ID checking guidance](#) to help employers validate the identity of an applicant for a **DBS** check.

If the applicant can't provide the required documentation to verify their identity through one of the three acceptable routes, they will be asked to give their consent to have their fingerprints taken at a police station at an agreed date and time.

Employers should note this often delays the application process.

## Unusual address history for DBS checks

**DBS** check application forms require the applicant to provide a five-year address history. If the applicant doesn't have a straightforward address history (e.g. due to being in prison, the armed forces, being of no fixed abode or living in a refuge or sheltered accommodation), they should follow the advice outlined in the [DBS unusual address history guidance](#).



# Gathering relevant criminal record and conduct information – Top tips

- 1 Ensure the organisation's recruitment and selection policy and all recruitment information incorporates an **explicit statement** about your commitment to inclusion, safeguarding and promoting the welfare of **adults at risk** and/or children.
- 2 Send applicants information about the **values of the organisation** and the associated expected behaviours.
- 3 Ensure the [application form](#) is used to gather full employment history, details of relevant academic or vocational qualifications, reasons for leaving employment, details of disciplinary offences or safeguarding concerns relating to **adults at risk** and/children.
- 4 The applicant should also provide details of [at least two referees](#) – at least one should be professional, the applicant's current or most recent employer.
- 5 Determine what **level of criminal record check** the role is eligible for using [DBS eligibility guidance](#) and [DBS eligibility tool](#). Contact [DBS](#) or Nacro if you are still unsure whether role is covered by ROA 1974 or exempt.
- 6 Details of criminal offences should be requested only from short-listed applicants. This should be gathered separately and confidentially in the form of **criminal record self-declaration** or **disclosure statement** – not as part of the application form.
- 7 Using a values-based approach, probe sensitively any gaps in employment history and other questions not answered in the application form at the interview.
- 8 Carry out all required pre-employment checks including criminal record checks, effective (detailed) references, Right to work checks, qualification, and health checks. Complete a [pre-employment risk assessment](#) form if any concerns arise from information received/not received.
- 9 Document the rationale behind the final recruitment decision. Retain criminal record information (self-declaration, copy of criminal record certificate and pre-employment risk assessment (if appointment is confirmed) – in line with [DBS handling certificate information guidance](#).

Detailed steps on how to gather relevant conduct during the recruitment process and throughout the employment relationship is contained in the [Sharing effective reference and conduct information checklist](#)



# When should an employer ask about criminal records?

Applicants should be told at the start of any recruitment process exactly what criminal record information will be requested from them, why it's being gathered, and at which stage of the recruitment process it will be requested. This will provide a basis for the applicant to decide whether or not to apply.

It is a condition of the [DBS Code of Practice](#) that organisations that carry out **higher-level DBS checks** must have a recruitment of people with convictions policy in place which can be shared with applicants upon request. A sample Safe and fair recruitment policy (which also incorporates gathering conduct information) is available [here](#).

Employers should not include questions about criminal records on the initial application form. This can lead to suitable applicants being sifted out of the recruitment process as they have to declare a criminal record without being given an opportunity to provide any context or mitigating circumstances relating to their offences or show any progress they have made since their offence.

Doing this can also lead to otherwise suitable people not applying at all as they fear being automatically rejected or not having a fair opportunity to compete for the role because of their criminal record.

Employers should amend their policies and processes to ensure they don't exclude people who have the right skills, abilities, and values for the job. They also need to ensure their policies and processes comply with data protection laws and minimise any risks of discrimination.

Employers may struggle to justify obtaining information about an applicant's criminal record on an initial paper or online application form, as the ICO considers gathering [criminal offence data](#) (see page 44) at such an early stage in a recruitment exercise to be excessive, overly intrusive and unfair to applicants.

It's also unlikely that an employer would have an adequate system in place at the initial application stage to establish the relevance or accuracy of any **caution** or conviction that an applicant may disclose.

Employers should follow the best practice recommendations in the [ICO's Employment Practices Code](#). They should move any questions about criminal records to a later, more appropriate stage in the recruitment process – usually where applicants have been shortlisted for interview.

This process, known as '**Ban the box**', ensures that applicants are first considered on their skills, abilities, and qualifications to do the job. The employer is still able to gather the criminal record information about an applicant who is genuinely being considered for employment by obtaining a self-declaration, and they can verify any information disclosed by the applicant when they are presented with criminal record certificates at the appropriate level (or **Certificate of Good Character** if the applicant is from overseas).



## How should an employer ask about criminal records?

Employers should ensure they do so in a way that encourages honesty, providing the applicant plenty of opportunity to explain the context and any mitigation surrounding their offences.

Employers should point out that the information will be used only to assess the applicant's suitability for employment where it's relevant.

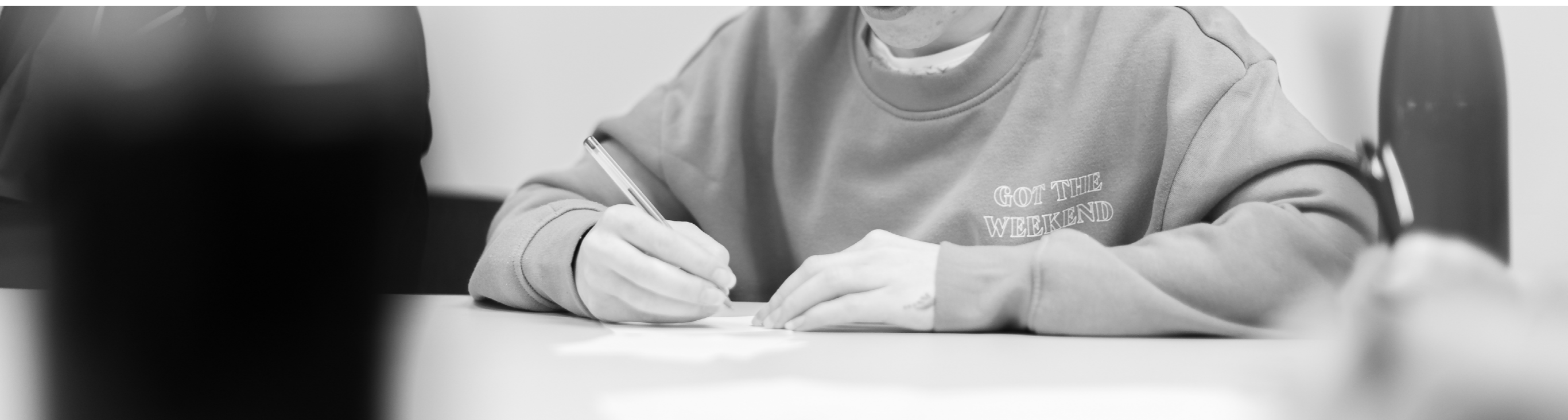
It's recommended that applicants complete a **criminal record self-declaration** form or provide a written **disclosure statement** giving them the opportunity to provide sufficient information.

Employers should signpost applicants to the social justice [Nacro](#) as they can provide confidential advice and support on disclosure and how to present their criminal record in a way to better inform the employer's risk assessment.

Appendix 5 is a sample **criminal record self-declaration** form for roles covered by the ROA so is suitable for a basic **DBS** check which requires the applicant to disclose **unspent cautions** and convictions.

Appendix 4 is a sample **criminal record self-declaration** form for roles exempt from the ROA so is eligible for higher-level **DBS** checks which requires the applicant to disclose all **unspent cautions** and convictions; as well as all adult **cautions** and **spent** convictions that aren't 'protected' (i.e., **filtered**).

We will follow the story of Sandra Outis (fictional name), who has successfully been a care worker for many years and can provide excellent references from her previous employers.



## Sandra's story

### Sandra's background

Sandra is a care leaver from a black, Asian and minority ethnic (BAME) community, has served a couple of years in the armed forces and is a single parent raising young twins. She also has a mortgage.

Sandra is applying for a new job as a care worker with another employer. She has a criminal record and is required to disclose any **unspent cautions** and convictions, as well as all adult **cautions** and **spent** convictions that aren't protected - as the role involves **regulated activity** with adults.

### Sandra's criminal record

Date of birth: 21/06/1995

- **At 14** she received **absolute discharge** order for actual body harm (abh)
- **At 16** she received **conditional discharge** order 12 months for burglary
- **At 20** she received community order 12 months, 50 hours unpaid work for possession of Class A drugs (cocaine)

All of Sandra's offences are **spent**, but none of the offences are **filtered** from an enhanced **DBS** with adults barred list. The actual bodily harm and burglary convictions are for **specified offences** so will never be **filtered**. The possession of drugs offence will be **filtered** after 11 years.

Sandra may have the necessary skills and experience and values for the job, but some employers are risk averse and may be reluctant to consider employing her. Some may not even shortlist her for interview.

Rather than discount Sandra entirely, an employer should explore Sandra's criminal record with her further. They should request a **disclosure statement** or **criminal record self-declaration** from Sandra and complete a pre-employment risk assessment.

As Sandra is applying for a role that involves working in **regulated activity** with adults, she is required to fill out the **criminal record self-declaration** form contained in Appendix 5.

Sandra has decided to use Option B in the form and include a written **disclosure statement** which she has attached with the self-declaration form.

## Sandra's disclosure statement

To whom it may concern,

I am writing in support of my application for the role of care worker with your organisation. I believe that I possess all of the relevant skills, experience and values required for the job as I have been working successfully for a leading care provider for a number of years.

As my references will show, my previous employer considered me to be extremely reliable and trustworthy. I also have a natural ability to get on very well with my colleagues and the people who use our services. I have never once shied away from any task no matter how routine or difficult it might be.

However, I must make you aware that I have a number of criminal offences from my past that will appear on my enhanced **DBS** certificate. I understand that without any explanation these offences may cause you some concern, so I would like to provide you with additional information which I hope will give you more of an understanding of the circumstances in my life at the time I committed these offences.

I grew up in the care system as I left home as a child due to suffering neglect and abuse at hands of my parents who were addicts. I ran away from many of my foster homes and **spent** some time sofa-surfing and sleeping on the streets. During this painful time, I fell in with the wrong crowd and often used drugs and alcohol to block out my feelings.

I received an **absolute discharge** order for actual bodily harm (ABH) at age 14, due to fighting with a child who had been bullying me at one of my foster homes.

At age 16, at a time that I was homeless; I searched for somewhere to sleep during one particularly cold winter night. I came across an old, derelict house and sought shelter for the night. A neighbour called the police and I was convicted of burglary. The magistrate took into account my mitigating circumstances and gave me a 12 month **conditional discharge** order.

I worked hard to turn my life around and joined the army at age 18, but my army career did not go as I hoped. As a young black woman, I found it very hard to fit in with the culture. It was not as exciting as I hoped it would be and my drinking got completely out of hand. In hindsight I realise that I had not dealt with any of the issues I had prior to joining the military.

I became quite depressed and left after two years. A few months later as my drug use also got out of hand, I was convicted of being in possession of cocaine and received a 12 month community order.

I received amazing support from my probation officer who referred me onto substance misuse and employability programmes in my local area. I also received counselling which enabled me to address many of the issues from my past that I had clearly buried deep inside. I developed the strength to make something positive of my life

I started volunteering with a local charity providing activities support at a day centre for elderly people. It was through my time as a volunteer that I gathered the skills, experience and desire to support others - which eventually led to me working as a care worker.

I now have two beautiful children who make me extremely proud. I no longer take any form of drugs or drink alcohol. In fact, I live a completely different life to the one that I lived at the time of my offences. When I am not working, I love spending quality time with my family, I am also studying social work part-time.

I would like to reassure you that I've never once presented my employer with any issues or been subject to any complaints. I am more than willing to meet with you, to discuss any concerns that you may have about my past offences and am happy to undertake any risk assessment that you may feel necessary.

As I explained earlier, I can provide you with exemplary work and personal references, all of which I hope you will take into account when making your final recruitment decision.

**Sandra Outis** (fictional name created for this case study)



# How to deal with an applicant with an offending history

Even though an employer can take into account an applicant's criminal record when determining their suitability for a role, they should be able to show that they've applied a reasonable consideration of the applicant's criminal record rather than judging them as unsuitable - just because they have a criminal record.

In light of the changes to disclosure laws (see page 9), in order to make an informed decision regarding the applicant's suitability and fitness for the role, the employer should consider the criminal record alongside all other relevant recruitment information gathered within the recruitment process (e.g. employment history, professional registration where relevant, gathering effective references from previous employers and evidence of their conduct in previous employment in health or social care with **adults at risk** or children, and the reasons why that employment ended).

The employer should compare and be curious about the different sources of information received and gathered to ensure it gives a full and accurate picture of the applicant's conduct and suitability. Where necessary, they may need to seek additional references.

If necessary, the employer should carry out a risk assessment to determine all relevant information is present, or if there are any areas of concern, before allowing the person to start in post.

They should complete a [pre-employment risk assessment form](#) and make an informed recruitment decision based on all of the information as part of the application, interview and checking stages.

They should ensure the applicant has an opportunity to share their views and perspective before reaching a final decision.

If there are concerns but the employer wants to give the person an opportunity, as part of the risk assessment the employer can consider putting in place additional measures, including:

- higher-levels of supervision,
- a probationary period with a focus on the areas of concern, extending the probationary period (if required),
- additional induction and training.

## Assessing the risk and relevance of criminal records

Whether the person with a criminal record is suitable for employment may vary depending on the nature of the job and the details and circumstances of their offences.

Employers shouldn't apply a one-size-fits-all approach when determining the suitability of an applicant with a criminal record as there are a wide variety of roles across the social care sector.

A person's criminal record may indicate they're less suited to working in **regulated activity** with adults. However, they could be more suited to work



in an ancillary role such as administration, facilities management, etc.

An assessment of an applicant's skills, qualifications, experience, and offending circumstances should be considered alongside:

- ✓ the environment they will be working in
- ✓ the nature of the work to be carried out
- ✓ the tasks the person will perform
- ✓ the level of supervision they will receive

**When considering the applicant's criminal record, employers will need to consider the principles below.**

### **Nature of conduct or offence(s)**

What type of offending did the individual commit e.g., theft, fraud, violence, possession of drugs, supply of drugs, sexual offences, public order, or other offences? Did the person commit one type of offence or a range of different offences?

### **Relevance**

Employers should consider whether the offence(s) or information disclosed are relevant to the position applied for.

Supply of drug offences are generally relevant to working unsupervised with children as they are more at risk of being involved with drugs. Minor drug offences may be less relevant to working with older people as they may be less prone to illegal drug use.

Offences of dishonesty such as fraud may be more relevant to working unsupervised with older people as they may have money and valuables, but it's important to distinguish between offences. An offence of shoplifting, for instance, might not be a particular cause for concern, though an offence of theft from an individual very likely would be.

Drink-driving offences are relevant if the job itself involves driving e.g., a driver for a care home.

A conviction for a serious violent or sexual offence may not be particularly relevant if the position applied for does not involve contact with any people in the normal course of duties.

Employers should take into consideration the following points when deciding if the conduct or offence is relevant to a particular post.

- Does the post involve one-to-one contact with employees, people who need care and support or carers or families?
- What's the nature of the one-to-one contact? For example, in respect of **adults at risk**, one-to-one contact is especially relevant if it occurs on a regular basis, it can take place separately from other adults, or in the person's own home when they are alone.
- What level of supervision will the post-holder receive? Is it unsupervised? Does it involve working in an isolated situation?
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct, regular, and unsupervised contact with the public?
- Will the nature of the job present any opportunities for the post-holder to reoffend in the course of work?
- Are there any safeguards which can be put in place to minimise any potential risks?

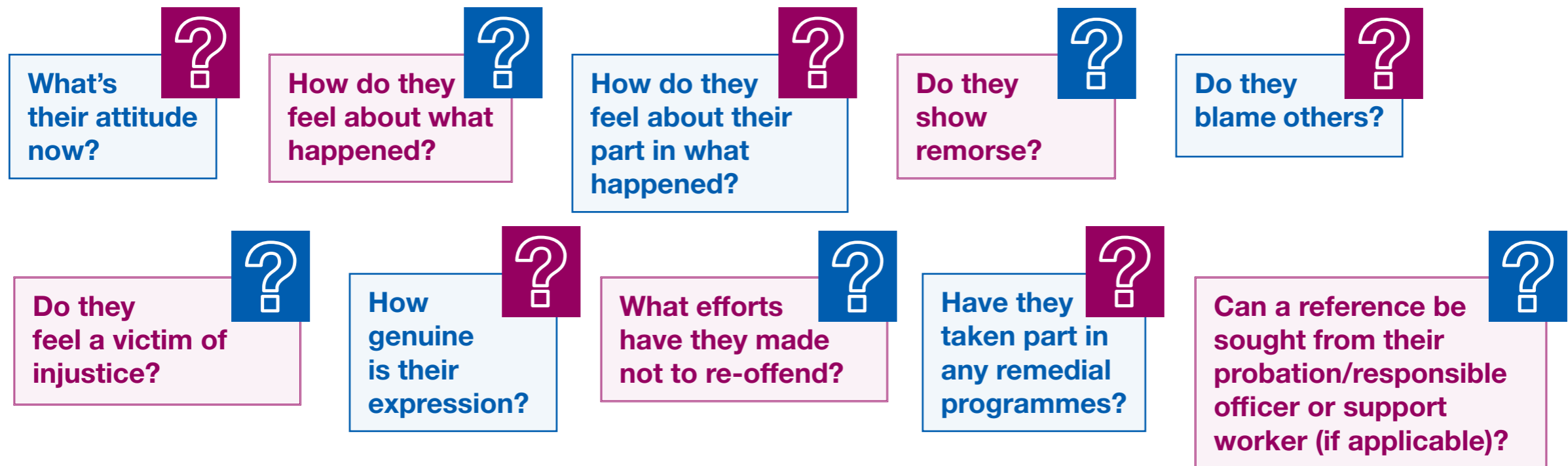
## Offending circumstances

Who was involved? What happened? Where did it happen? When did it happen? Why did it happen? How did it happen?

Employers should consider the applicant's circumstances at the time of the offending including whether there were any previous issues with housing, education, employment, managing their finances and income, lifestyle and associates, relationships, drugs and alcohol, emotional wellbeing, or health.

They should consider whether there were any aggravating or mitigating circumstances.

As part of the risk assessment process, an employer should try to establish the applicant's attitude at the time of the offending. Questions asked could include:



Employers should look for the applicant to be open and honest, rather than denying or minimising what they have done. They should consider whether the applicant has shown any insight into their own behaviour, any indication of changed thinking, changes in their circumstances and, where relevant, victim empathy and not victim blame.

Once the employer has reviewed the circumstances surrounding the conduct or offending, the applicant's circumstances should then be compared with those at the time of them applying for the role. The applicant may be able to provide reassurance that past issues have been resolved.

Many people with recent convictions may have reached the point where they want to put their offending behind them. If the offence/conduct isn't work-related or if the applicant does not pose a risk to the level of the post, the employer could consider recruiting them if, in all other respects, they are suitable for the job.

## Seriousness

Employers should consider the actual seriousness of any offence disclosed, and not solely rely upon the title of the offence which is known as an offence code e.g. actual bodily harm (ABH). Offence codes cover a very wide range of offences that vary in terms of seriousness. A sexual offence, for instance, covers everything from young men sleeping with an underage girlfriend to indecent assault and rape.

Violence covers everything from slaps and smacks, often recorded as battery or common assault, to grievous bodily harm (GBH) and murder. Drug offences cover everything from possession of small amounts of cannabis for personal use to possession of Class A drugs with intent to supply. Burglary covers everything from taking goods from shop storerooms to entering the homes of elderly people, leaving them in fear. Arson ranges from a person setting fire to litter bins to a person destroying property and endangering lives.

Offence codes can often make the incident sound more serious, which is why it's extremely important to gain further details from the applicant as to what actually took place. A Crown Court would normally deal with more serious offences than a magistrates' court, but some individuals elect for their case to be heard in a Crown Court if it's a triable either way offence.

## Age of offences

Employers should consider the age of the individual at the time they committed the offence(s) and the length of time that has passed since the offence(s). Criminal offences that haven't qualified for **filtering** would be disclosed on a standard or enhanced **DBS** certificate until the person is aged 100. The offences disclosed on the certificate may be irrelevant in many instances. Employers should consider how the applicant has matured and how their circumstances have changed since the offence.

## Pattern of offending

Employers should consider whether the applicant committed a single offence or whether there has been a pattern of offending behaviour or allegations. Is there a large gap between offences or is there a string of similar offences? People who have a pattern of offending up to the present day may not have put their offending behind them. Those people with a number of gambling, drink or drug-related **convictions**, in particular, may remain a risk unless there is evidence of a clear break in the pattern of their offending. Nevertheless, many offenders, including repeat offenders, do eventually move away from crime and often there will be evidence demonstrated in the other aspects of the recruitment process to aid the risk assessment.

## Changed circumstances

Have the applicant's circumstances changed since the offending took place? For instance, those convicted as young people often don't reoffend once they mature and have family or accommodation responsibilities (e.g. rent or mortgage) because they've too much to lose by getting into trouble. As previously mentioned, many offenders, even those with long and serious records, can eventually change as they simply grow out of a period of offending or seek help to address related problems.

Obtaining a home and a job have been established as two of the most significant factors in reducing the likelihood of a person reoffending.



## The risk assessment interview

It's only once the full risk assessment is completed that a final decision should be made. The employer should conduct any interview with the applicant with sensitivity and empathy, as discussing past offences may cause anxiety and embarrassment to the person concerned.

The purpose of the interview is to help the employer to gather the necessary information to assess whether the individual may pose a risk in the position applied for. The employer should think carefully about the questions asked and focus discussion on the individual, their feelings and attitudes. Wherever possible, a colleague who was involved in the recruitment process should attend the meeting to provide support and take notes, as the assessment and final decision should be made by a minimum of two people. It's also important to remember it's not the employer's responsibility to decide whether the court's decision or police course of action was the right or fair one.



## What if there are differences between the information provided by applicant and the criminal record certificate?

It is important to remember that overseas convictions are not generally disclosed on **DBS** certificates (see page 17), and the recent changes to self-disclosure and **DBS filtering** rules are extremely complex (see page 9). As a result, **cautions** or convictions which an applicant is legally obliged to disclose under the self-disclosure rules may not necessarily appear on the **DBS** certificate – so there may be significant discrepancies.

Therefore, it is extremely important for the employer to give the applicant the opportunity to discuss any discrepancies in information disclosed/not disclosed and address any concerns they may have about their suitability for the role.

If necessary, the employer should carry out a risk assessment (see guidance on page 33).

### Sandra's criminal record risk assessment

**Sandra Outis - Date of birth: 21/06/1995**

- **At 14** she received **absolute discharge** order for actual body harm (ABH)
- **At 16** she received **conditional discharge** order 12 months for burglary
- **At 20** she received community order 12 months, 50 hours unpaid work for possession of Class A drugs (cocaine)

**An employer carrying out an objective risk assessment on Sandra using all of the information available to them should be able to establish the following:**

- Sandra's offences may be relevant to the role she applied for as they concern violence, burglary and possession of Class A drugs.
- Sandra was age 14 when she was convicted of ABH. She received an **absolute discharge** order which is a sentence where no punishment was imposed by the court. There are no other violent offences contained in her self-disclosure, or the **DBS** certificate.
- Sandra was age 16 when she was convicted for burglary. She received a **conditional discharge** which is a sentence where no punishment is imposed by the court unless a further offence is committed within the stated period (12 months). There are no other burglary, theft or fraud offences contained in her self-disclosure, or the **DBS** certificate.
- Sandra was age 20 when she received a community order for possession of cocaine. There are no further drug offences contained in her self-disclosure, or the **DBS** certificate.
- Sandra's last conviction occurred five years ago.
- Sandra isn't barred from working in **regulated activity** with adults or children.
- Sandra has mitigating circumstances in relation to her offences and she's taken responsibility for the mistakes that she's made in her past.
- Sandra has managed to turn her life around and no longer drinks or uses drugs.
- Sandra's circumstances have changed for the better. She has a family to support and financial responsibilities.
- Sandra has provided excellent references and she has the relevant skills, experience, qualifications and values for the role applied for.
- Sandra will be working in a care home with other people working in **regulated activity**. She will be subject to regular supervision and a probationary period. She will also receive training on how to be safe and effective in her role.



# Dealing with cautions or convictions relating to existing staff

Employers should consider the [ACAS code of practice](#) on discipline and grievance procedures when dealing with existing members of staff who have been charged or convicted during employment.

## Paragraph 31 of the code of practice states:

If an employee is charged with or convicted of a criminal offence this is not normally in itself a reason for disciplinary action.

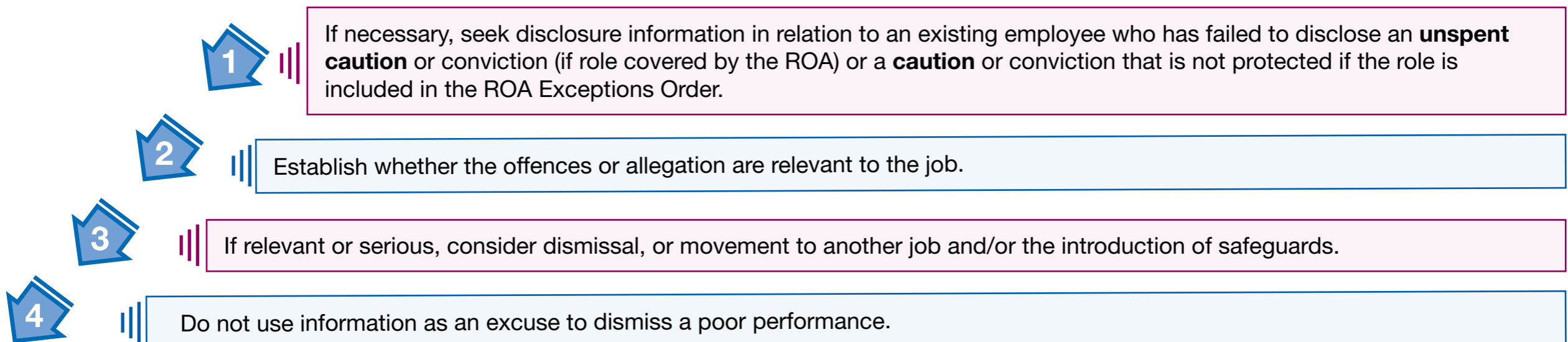
Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

An employer that has concerns about an existing member of staff failing to disclose that they've been charged or convicted of an offence – acquired either before employment commenced or during the employment relationship – should first review their disciplinary or code of conduct policy to ascertain whether a requirement to disclose a charge or conviction is contained within the policy.

If there's no provision requiring disclosure contained in the policy, in most instances, there is no legal obligation for the member of staff to disclose.

If there is a requirement to disclose contained within the policy, then an employer can consider the steps outlined below in the flowchart – as long as they have regard to the ACAS code of practice.

## What to do if a criminal record or allegation concerning an existing member of staff comes to light



# When to make a barring referral to DBS

Barring referrals should be made to **DBS** when an employer or organisation believes an individual has caused harm **or poses a future risk of harm to adults at risk** and/or children. A referral might be the last layer of defence if there are no criminal offences that would show on a **DBS** check if the individual attempted to gain further employment in [regulated activity](#).

The following two stages need to be considered when making a [DBS barring referral](#) and if both conditions are met, organisations have a legal duty to refer.

## Step 1

The organisation withdraws permission for an individual to engage in **regulated activity** with **adults at risk** and/or children or the organisation moves the individual to another area of work that isn't **regulated activity**.

Being removed from **regulated activity** can include:

- dismissal
- redeployment- moving someone to a non-**regulated activity** but keeping them within employment in the organisation
- retirement
- redundancy
- resignation.

If an individual has retired, been made redundant or resigned before an investigation has been completed the employer should continue with the investigation and decide on whether or not they would have kept the individual in **regulated activity**.

## Step 2

The organisation thinks the individual has carried out one of the following.

- Engaged in **relevant conduct** in relation to **adults at risk** and/or children. An action or inaction has harmed an adult at risk and/or child or put them at risk of harm. Relevant conduct is an action or inaction that has harmed or placed an adult at risk or child at risk of harm. This is a legal term which is defined for both vulnerable adults (**adults at risk**) and children under Schedule 3 of the Safeguarding Vulnerable Group Act 2006.
- Satisfied the **harm test** in relation to **adults at risk** and/or children e.g., there has been no relevant conduct but a risk of harm to a child or vulnerable adult still exists.
- For a case to be considered as a risk of harm, relevant conduct would not have occurred but there must be tangible evidence rather than a “feeling” that a person represents a risk to **adults at risk** and/or children. For example, a teacher who confides in their head teacher that they are sexually attracted to children (but who had not engaged in ‘relevant conduct’) would satisfy the **harm test**.
- Been **cautioned or convicted of a relevant** offence.

The [DBS referrals flowchart](#) may help the organisation to decide if it is appropriate to refer someone to **DBS**. A person who is under a duty to refer and fails to refer to **DBS** without reasonable justification is committing an offence. If convicted, they may be subject to a fine.

## What makes a good quality referral?

Including all the right information as early as possible means that **DBS** can make a more accurate and timely decision. The more information the organisation can supply – the more information **DBS** have to make an appropriate decision.

For further information see [How to make a Good Quality Barring Referral](#)

## Where can we get support to make a referral?

For information about anything related to barring, including how to make a referral organisation can contact:

**Helpline:** 03000 200 190

**Email:** [contactus@dbb.gov.uk](mailto:contactus@dbb.gov.uk)

### **DBS Regional Safeguarding Outreach service**

**DBS** has a [Regional Safeguarding Outreach service](#), which focuses on working collaboratively with safeguarding organisations, and organisations that are recruiting. Their aim is to work more closely with organisations to build and develop relationships, and to act as a single point of contact for all **DBS**-related enquiries within their region.

For further information contact [DBSRegionaloutreach@dbb.gov.uk](mailto:DBSRegionaloutreach@dbb.gov.uk)

## Dealing with police intelligence

### What is other relevant information (police intelligence)?

For roles subject to an enhanced **DBS** check or enhanced **DBS** with barred list check, the police can disclose additional information which may be relevant to share with an employer to inform their recruitment decision.

This information would be disclosed in the ‘**other relevant information**’ section within the enhanced criminal record certificate. This is formally known as ‘**approved information**’. It’s often more commonly referred to as ‘**police intelligence**’.

The police apply a rigorous test before deciding whether to disclose **police intelligence** on an enhanced **DBS** certificate and they must explain the rationale to include this information.

The police apply a rigorous test before deciding whether to disclose **police intelligence** on an enhanced **DBS** certificate and they must explain the rationale to include this information.

### Does an applicant need to disclose police intelligence to an employer beforehand?

No. The police would normally write to the person before issuing the **DBS** certificate giving them the opportunity to make representations against the police disclosing the information.

Applicants can ask the ‘**Independent Monitor**’ to review the proposed disclosure text if they’re not happy with the decision to share the information with the employer. The ‘**Independent Monitor**’ can ask the **DBS** to issue a new certificate either without that information or with amendments to it.

## What type of information can be disclosed as police intelligence?



The type of information that can be disclosed at Chief Officer's discretion include:

- a conviction or **caution** which has been automatically **filtered** – including **reprimands**, diversionary **cautions**, **final warnings**, **youth cautions** or youth conditional **cautions**
- information about a **caution** or conviction which the police felt required expansion e.g. a care worker who received a **caution** for ABH and the incident involved them assaulting their own parent
- not guilty verdicts
- allegations which may/may not have involved the individual being arrested or charged
- the applicant having children subject to social services involvement e.g. child protection order
- concerning behaviour such as a large number of domestic violence incidents which did not involve charges
- information about a person's barred status. Note: this can be disclosed on an enhanced **DBS** certificate where the organisation isn't allowed to carry out a barred check
- work-based allegations e.g. care worker stealing from elderly person, but they did not have capacity to provide evidence; teacher alleged to have harmed a pupil; taxi driver alleged to have sexually assaulted a passenger
- mental health concerns that involved a potential risk to the public
- third party disclosure e.g. information that a registered child sex offender was living in the property of a child minder, or a foster parent who has a member of the household involved in supply of Class A drugs
- information about a **caution** or **conviction** which police felt required expansion e.g. a care worker who received a **caution** for ABH and the incident involved them assaulting their own parent
- Any other information of serious significance which the police reasonably believe to be relevant to the position sought and therefore ought to be included.



## Police intelligence included on an enhanced DBS certificate

### Other relevant information disclosed at the Chief Police Officer's discretion (fictional example)

West Midlands Police hold the following information which might be relevant to the application of Miss Jane Doe (DOB 19/07/89) for a post of a support worker in the adult social care workforce.

The information relates to an allegation of theft from a person in Miss Doe's care whilst employed as a care worker at Daytona Care Homes in 2017. West Midlands Police believe that this might be relevant to an employer's risk and suitability assessment when considering Miss Doe's current application as a support worker with adults. The information held by police is:

On 29/12/2017 West Midlands Police were contacted by the registered manager at Daytona Care Homes. The manager had received a complaint from family members of a resident at the care home alleging Miss Doe had stolen money and valuables from their relative.

Police interviewed Miss Doe on 30/12/2017 during which she denied the allegations. The resident was also interviewed, and an internal investigation carried out by the employer, but the allegations made by the resident's relatives could not be substantiated, and local police had insufficient evidence to proceed with an investigation. They therefore took no further action.

After careful consideration, West Midlands Police believe this information should be disclosed because it's deemed relevant to the post applied for which involves dealing with adults and is a position of significant trust and authority. It's a serious allegation which is relatively recent as the incident occurred within the last three years. If offences of the alleged nature were to be committed in the post applied for then people could be caused serious harm. The potential risk to any adults, from potential financial abuse by Miss Doe, must in this particular case outweigh any prejudicial impact, however regrettable, to her.

## How should employers deal with police intelligence disclosed on an enhanced DBS certificate?

It's important for employers to understand information being disclosed on an enhanced criminal record certificate does not mean that the employer cannot employ the applicant. The information disclosed is not a finding of guilt and is not proof that the applicant carried out the actions that are disclosed - unless the information provided by the police relates to a **caution** or conviction.

**In the above example, the information provided by the police does not mention that Miss Doe had not been subject to any safeguarding concerns at any time in her career prior to or after the alleged incident.**

**The information by the police also fails to mention that Miss Doe remained in the employment of the Daytona Care Homes for a number of years after this allegation was made.**

**If an employer has any concerns about information disclosed in the other relevant information section, they should have a meeting with the applicant and provide them with a reasonable opportunity to discuss these concerns and present any information they feel relevant to aid the employer's risk assessment.**

For further information, advice and free operational support on assessing and managing risk contact:  
[Dominic Headley & Associates](#) or email [info@dominicheadleyassociates.co.uk](mailto:info@dominicheadleyassociates.co.uk)



# Data protection/record keeping

## Who can receive criminal record information?

The **UK General Data Protection Regulation (UKGDPR)** and the **Data Protection Act 2018 (DPA 2018)** gives extra protection to [criminal offence data](#) which includes **cautions**, convictions, and allegations relating to criminal conduct/behaviour. This type of data is likely to be high risk to individuals, and so the organisation should have in place an appropriate policy document, [identify a lawful basis](#), and complete a data protection impact assessment (DPIA) when processing this information.

An applicant's criminal record information (including self-declaration form/**disclosure statement**, risk assessment and criminal record certificate) mustn't be shared with anyone in the organisation apart from those who have a genuine 'need to know' as part of their duties – to do so is a criminal offence. This may include people directly responsible for making the final recruitment decision or the applicant's line manager, but only if the offence is relevant to the applicant's role.

It's good practice to maintain a record of who the criminal record information has been shared with. The applicant should also be told who knows about their record.

## How long can criminal record information be kept?

Registered care homes which are inspected by the Care Quality Commission (CQC), and other social care organisations that need to retain certificates and criminal offence information in order to demonstrate 'safer recruitment' practice for the purpose of safeguarding inspections/audits, are legally entitled to retain the certificate and other criminal record information for as long as practicable.

The organisation will need to ensure its policy on the correct handling and safekeeping of **DBS** certificate information is compliant with the UKGDPR/DPA 2018 and the Human Rights Act 1998, and the policy should include review and retention periods.

Once the retention period determined by the organisation has elapsed, the organisation should ensure any **DBS** certificate and criminal record information is immediately and securely destroyed. While awaiting destruction, certificate information should be saved securely.

Further information and a sample policy for handling **DBS** information are available [here](#).

Further information on UKGDPR/DPA 2018 considerations is contained in the [ICO Data sharing information hub](#) and [Guide to Data Protection](#).

# Frequently asked questions

## Can an individual with a criminal record be employed in social care?

Yes. A criminal record isn't an automatic barrier to working in social care. There are more than 12 million people in England and Wales with a criminal record. Many people with criminal records have moved on from their past mistakes to work in significant positions of trust including doctors, nurses, and other healthcare professionals.

## Are there certain offences (e.g., theft, violence, drugs) that automatically exclude a person from working in social care?

Unless the person has been **cautioned** or convicted of a relevant offence that has led to them being barred from working in **regulated activity** with adults, children, or both - it's completely down to the discretion of the employer to make a sensible recruitment decision based on all of the information available to them gathered through the recruitment process.

## There are discrepancies between the information provided by the applicant and the information on their criminal record certificate. What should I do?

Overseas convictions are not generally disclosed on criminal record certificates and, the recent changes to criminal record disclosure laws are complex. Many applicants and employers struggle to understand how and when a **caution** or conviction becomes **spent** (for jobs covered by the ROA), or both **spent** and protected (if the job is subject to the ROA Exceptions Order). This often leads to applicants over-disclosing or under-disclosing their criminal record.

There may be discrepancies between the information provided by the applicant and the information on their criminal record certificate. The **DBS code of practice** states the employer should request a meeting with the applicant to discuss these discrepancies before making a final decision about their suitability for the role.

## Can I refuse to employ anyone with a criminal record?

An employer can take into account a criminal record when making a decision about an applicant's suitability, but employers should avoid blanket exclusion policies. It's a condition of the **DBS Code of Practice** for organisations that carry out **higher-level DBS checks** to have a recruitment of people with convictions policy. Employers should also ensure that their policies comply with data protection laws which require data to be processed fairly and minimise risks of discriminating against applicants.



### If I employ someone with a criminal record, do I have a responsibility to declare this to the service user?

No. A criminal record is afforded extra protection under UKGDPR and DPA 2018.

It shouldn't be disclosed to anyone who doesn't have a genuine need to know without the consent of the individual whom the information relates to.

Having a criminal record in itself doesn't mean the person will present a risk to service users; and the absence of a criminal record doesn't mean a person doesn't present a risk. Criminal record checks are a vital tool to support employers make safer recruitment decisions but form just one part of [safe and fair recruitment and employment](#).

It's the employer's duty to ensure they've assessed and managed any risks identified during a recruitment process and put in place any adequate safeguards deemed necessary to protect service users regardless of whether or not the person has a criminal record.

### Can people on work experience count as volunteers for free DBS checks?

No. The definition of a volunteer is set out in the Police Act 1997 (Criminal Records) Regulations 2002. For a role to be eligible for a free-of-charge standard or enhanced **DBS** check, the **registered body** or employer should check if it meets the criteria set out in this definition:

A volunteer is a person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit some third party other than, or in addition to, a close relative.

### Are basic DBS checks free for volunteers?

No. There's no legal provision that allows for free-of-charge basic **DBS** checks.

### What if the checks under Regulation 19 have not been completed?

A failure to evidence safe recruitment practice is likely to result in a breach of Regulation 19 which could affect a provider's rating under 'Safe', 'Effective' and/or 'Well-led'.

Where a provider has not been able to gain appropriate **evidence of conduct**, they should complete a risk assessment detailing their rationale for the recruitment decision, all efforts made to access the information, reasons as to why the information could not be obtained, and any additional measures they have put in place to make sure new staff are adequately supported and sufficiently supervised to carry out their role safely and effectively.

## When do fit and proper person requirement checks (FPPR) under Regulation 5 need to be carried out?

CQC guidance states fit and proper person requirement checks (FPPR) need to be undertaken on all 'directors or equivalent'. Where a provider has a board, this means board members. Where a provider doesn't have a board, this means the equivalent of board members.

## Do providers need to undertake DBS checks on directors?

The CQC guidance states providers are expected to undertake a **DBS** check on directors where the position and role meet the **eligibility** criteria for a **DBS** check. Providers should consider on a case-by-case basis whether their directors meet the criteria.

Further information on FPPR checks is available on the CQC [website](#).

## Are the DWP able to fund DBS checks for people on work experience programmes?

There's no requirement for DWP to fund **DBS** checks for people on work experience programmes and guidance developed with CQC is clear that it's not always practical or proportionate to seek a **DBS** check for short periods of work experience. Read the guidance in full [here](#).

## Can organisations include information about cautions or convictions in a reference?

Any decision by the organisation to share **cautions** or convictions in a reference should be made on a case-by-case basis, taking into account UKGDPR/DPA 2018 considerations.

Any prospective social care provider should require shortlisted applicants to complete a **criminal record self-declaration** and will carry out their own criminal record checks as part of any robust, safe, and fair recruitment process. Therefore, it would be extremely difficult for a referee to justify the routine sharing of criminal offences in a reference.

However, if the former worker committed offence(s) that resulted in a **caution** or criminal conviction during their employment relationship, and the referee believes the conduct surrounding the offence(s) is relevant to safeguarding **adults at risk** and/or children (e.g., theft from an adult at risk), then they should consider sharing the specific information relating to the conduct in question. The referee needs to be able to justify any decision it makes and document the decision.



### Can an organisation include information about allegations or DBS barring referrals in a reference?

There is nothing in UKGDPR/DPA 2018 that prohibits the sharing of allegations or barring referrals in a reference or with other organisations. When completing/ responding to reference requests this is a form of processing criminal record data whether the person has a criminal record or been subject to safeguarding related concerns or allegations.

When dealing with this type of data (Article 10 under UKGDPR) the organisation must identify both a legal basis and a schedule 1 condition in UKGDPR/DPA 2018 that they are relying upon to disclose. It is imperative that the organisation clearly document and record its justification and how they would respond to a complaint.

### Can an organisation ever share information with external agencies that led to a sanction that has been disposed of?

There is nothing in UKGDPR/DPA 2018 that explicitly prohibits the sharing of sanctions that have been disposed of. Decisions should be made on a case-by-case basis and any decisions recorded. It is imperative that the organisation clearly document and record its justification and how they would respond to a complaint.

### What happens when someone is under consideration for barring - who can share the information?

There is nothing in UKGDPR/DPA 2018 that prohibits an organisation from sharing that they have referred an individual to **DBS** for barring consideration in a reference, or with other organisations. However, it is essential that the organisation adheres to data protection principles and clearly documents and record its justification for sharing.

To be safe – the organisation should consider how they would document their decision making and how they would respond to a complaint.

### Can we share information with others on a reference to say we have made a referral to the DBS or the Local Authority?

Yes. You can state that a referral has been made to the **DBS** or the Local Authority in relation to safeguarding as this is a statement of fact.

More FAQs covering Regulation 19 requirements are available in the [Sharing effective references and conduct information toolkit](#).





# Useful contacts

## Disclosure and Barring Service (DBS)

For customer services:

Tel: 03000 200 190

Email: [customerservices@dbs.gov.uk](mailto:customerservices@dbs.gov.uk)

DBS has a range of information about their services to help employers make safer recruitment decisions available on their website.

## DBS regional outreach

DBS regional outreach advisers are available to organisations support with any questions and queries they have about DBS processes, procedures, and legislation, including how and when to make a barring referral. For more information, please visit [DBS regional outreach](#) or email [dbsregionaloutreach@dbs.gov.uk](mailto:dbsregionaloutreach@dbs.gov.uk)

## Dominic Headley & Associates (DHA)

Email: [info@dominicheadleyassociates.co.uk](mailto:info@dominicheadleyassociates.co.uk)

Mobile: 07739 814 199

[www.dominicheadleyassociates.co.uk](http://www.dominicheadleyassociates.co.uk)

DHA is a specialist consultancy practice that provides expert advice, operational support, training, and consultancy services to employers on safe and inclusive recruitment and dealing with safeguarding concerns effectively. DHA also provides capacity building support for organisations that work with excluded groups.

## Nacro

Tel: 0300 123 1999

Email: [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk)

[www.nacro.org.uk](http://www.nacro.org.uk)

Nacro Criminal Record Support Service provides confidential advice and support for people with convictions on disclosing criminal records.



**Skills for Care****Tel:** 0113 241 1275[www.skillsforcare.org.uk](http://www.skillsforcare.org.uk)

Skills for Care has resources to help social care and health employers recruit and retain staff with the right values, which are available on their [website](#).

**Unlock****Tel:** 01634 247350[www.unlock.org.uk](http://www.unlock.org.uk)

Unlock is a charity that works to achieve a fair and inclusive society where people with convictions can move on positively in their lives. Unlock provides confidential advice and support for people with convictions on disclosing criminal records.

**VBA Consulting****Email:** [kerrycleary.vbaconsulting@gmail.com](mailto:kerrycleary.vbaconsulting@gmail.com)**Mobile:** 07793956613

VBA Consulting is a specialist Values Based Leadership and Culture consultancy that provides expert coaching, advisory and training services to leaders and organisations in the public, voluntary and private sector on developing values based, safeguarding cultures, values-based recruitment, and values-based leadership practices.

**Care Quality Commission (CQC)****Tel:** 03000 616 161Online contact form [www.cqc.org.uk](http://www.cqc.org.uk)

# Glossary of Terms

## **Adults at risk**

An adult at risk is any person who is aged 18 years or over and at risk of abuse or neglect because of their needs for care and or support.

## **Approved information**

See **other relevant information**.

## **‘Ban the box’**

‘Ban the box’ is an initiative that aims to give people with criminal records a fair opportunity to compete for jobs based on their skills, abilities, and qualifications. Employers are encouraged to remove questions about criminal records from initial application forms and instead ask at a later more appropriate stage in the recruitment process. The Civil Service has implemented ‘Ban the box’ for the vast majority of roles (97%).

## **Caution(s)**

A caution is an out-of-court disposal that may be issued by the police where there is evidence that the person has committed a low-level criminal offence, but it is not in the public interest to prosecute. The caution forms part of the person’s criminal record. in another version.

## **Certificate(s) of Good Character**

A Certificate of Good Character is an official document issued by a country overseas that states whether or not a person has a record of previous criminal convictions in that country.

## **Criminal record self-declaration**

The process that enables a person to provide details of their criminal record history to an employer in a written format. It also enables them to provide the context and any mitigation behind their offending.

## **Data Protection Act 2018 (DPA 2018)**

(also see UKGDPR)

The Data Protection Act 2018 replaces the Data Protection Act 1998 and is the UK’s implementation of the General Data Protection Regulation (GDPR). It should be read alongside the UK General Data Protection Regulations (UKGDPR). It deals with the data protection provisions in the UK that do not fall within EU law.

## **DBS**

(See **Disclosure and Barring Service**)

## **Discharge**

Discharge - when a court decides that, given the character of the offender and the nature of the crime, punishment would not be appropriate.

**Absolute discharge** means no further action is taken, since either the offence was very minor, or the court considers that the experience has been enough of a deterrent. The offender will however receive a criminal record.

**Conditional discharge** means the offender is released and the offence registered on their criminal record. No further action is taken unless they commit a further offence within a time decided by the court (no more than three years).

### **Disclosure and Barring Service (DBS)**

A non-departmental public body of the Home Office that is responsible for processing and issuing criminal record checks for organisations in England and Wales. The DBS also makes decisions regarding whether a person should be barred from working or volunteering in regulated activity with adults or children, or both.

### **DBS adult first check**

The DBS adult first check is a specific service for the care sector that permits a person to start work with adults before an enhanced DBS Certificate has been issued. It can be used only in exceptional cases and in accordance with the terms of Department of Health and Social Care guidance.

### **DBS barring**

A person who has been cautioned or convicted of a relevant criminal offence or has behaved in a way that indicates they may pose a risk of harm towards a child or adults at risk can be referred to the DBS for consideration to be barred from working in regulated activity with children or adults, or both.

If the DBS decides to include the person on the children's or adult's barred lists, or both, it will be a criminal offence for the person to apply to work in regulated activity with the group from which they are barred.

### **DBS barred list**

There are two DBS barred lists; one for those barred from working with children and the other for those barred from working with adults at risk. Individuals can be listed on one or both of the lists – barred list checks form part of the application for enhanced DBS checks. In some roles, it is a legal requirement of the employer to ensure that an individual they are looking to employ is not barred from working with one or either of these groups. Eligibility is dependent on the nature of their role with children and/or adults at risk. Those engaging in what is termed as regulated activity with either group would be eligible for a check against the barred list(s).

### **DBS code of practice**

The DBS code of practice provides guidance to help registered bodies and recipients of DBS update service information comply with the specific legal requirements for carrying out standard or enhanced DBS checks. Failure to comply with the code of practice can result in the suspension or cancellation of registration.

### **DBS update service**

The DBS update service is an online subscription service that allows portability of DBS certificates between employers within the same workforce. There is an annual subscription fee that needs to be paid by the person in order for it to be portable, and the certificate will remain portable for as long as the person continues the subscription.

### **Disclosure statement**

See **criminal record self-declaration**.

## **Eligibility**

The process of establishing what level of criminal record check can legally be carried out on a role.

## **Evidence of conduct**

This is a term used by the CQC. To ensure providers meet Regulation 19, inspectors look for types of information, including satisfactory evidence of the individual's conduct in previous employment concerned with the provision of services relating to (a) health and social care, or (b) children or adults at risk .

Providers only need to obtain evidence of conduct for the roles which relate to Health and Social Care, or where the applicant worked with adults at risk or children.

## **Final warning**

A **final warning** was an out-of-court disposal issued by the police where there was evidence that a child (under 18) had committed a low-level criminal offence, but it wasn't in the public interest to prosecute. A final warning formed part of the person's criminal record. Final warnings were abolished in April 2013 and replaced by youth cautions. They are no longer subject to automatic disclosure for roles subject to the ROA Exceptions Order that are eligible for standard or enhanced DBS checks.

## **Filtering/filtered**

The **DBS filtering** system is an automatic process managed by the DBS to remove 'protected' cautions and convictions - that are eligible in law for removal - from standard and enhanced DBS certificates. Applicants are not required to disclose offences that are filtered when applying for posts that require standard or enhanced DBS checks, unless the cautions or convictions are unspent under the Rehabilitation of Offenders Act 1974.

## **UK General Data Protection Regulation (UKGDPR)**

(also see DPA 2018)

The **UK General Data Protection Regulation (UKGDPR)** is the new legal framework for data protection laws that sets guidelines for the collection and processing of personal information of individuals within the UK now that it has left the European Union (EU).

## **Harm test**

A person satisfies the 'harm test' if they harm or pose a risk of harm to a child or adult at risk. The person should be referred to the DBS to be considered for inclusion on the children's or adult's barred list, or both. Those on these lists are barred from working in regulated activity with these groups.

## **Higher-level DBS checks**

A term used to describe standard, enhanced, or enhanced DBS with barred list checks.

## **Incidental contact**

Contact that happens by chance or is unforeseen or unintended - for example passing a child or adult at risk in a hallway.



## **Independent Monitor**

The independent monitor was established in September 2012. Part of their role provides applicants with the right of appeal against the inclusion of other relevant information (police intelligence) on an enhanced DBS certificate.

## **List of specified offences**

A list of offences (mainly sexual and violent offences) maintained by the DBS that can never be filtered from standard or enhanced DBS certificates as they are deemed relevant to safeguarding.

An applicant for a role which is eligible for a higher-level DBS check must always disclose any adult caution or conviction for an offence that appears on the list of specified offences.

## **Other relevant information**

Other relevant information (police intelligence) is information that may be disclosed on an enhanced DBS certificate at the discretion of the chief police officer of the force that holds the information, if they believe it to be relevant to the role applied for. It can include information about allegations, arrests, matters that resulted in no further action or not guilty verdicts. It can also include information about cautions or convictions which have been automatically filtered; as well as reprimands, final warnings, youth cautions – which are not subject to automatic disclosure.

On applications for enhanced DBS checks, the DBS will ask Local Police Forces (LPFs) if they hold any additional information relating to the applicant being checked that may be relevant to the employer's decision about the applicant's suitability. This information may include details relating to an investigation which did not result in a sentence or out-of-court disposal – or a record on the Police National Computer.

## **Out-of-court disposals (disposals)**

Out-of-court disposals allow the police to deal quickly and proportionately with low-level, often first-time offending which does not merit prosecution at court. Community resolution orders, cannabis warnings, penalty notices for disorder, cautions, reprimands, and final warnings are all out-of-court disposals.

## **Pending prosecution**

A pending prosecution is when a person has been charged and is awaiting the outcome of a prosecution for a criminal offence brought against them by the police or the Crown Prosecution Service (CPS).

## **Police intelligence**

See **Other relevant information**.

## **Police National Computer (PNC)**

A police database which holds criminal record information.

## **'Protected' cautions/convictions**

(Also see **filtering**)

'Protected' cautions or convictions is the legal terminology for cautions and convictions that are eligible for filtering from standard or enhanced DBS certificates. Applicants are not required to disclose offences that are filtered when applying for posts that require standard or enhanced DBS checks, unless the cautions or convictions are unspent under the Rehabilitation of Offenders Act 1974

**Registered body**

An organisation which has registered with the DBS to carry out standard and enhanced checks and has the right to ask an exempted question.

**Regulated activity**

Work (paid or voluntary) which involves close and unsupervised activity with children or adults at risk. Someone who is barred from working with children or adults at risk cannot carry out regulated activity with these groups.

Unless otherwise stated, all references to regulated activity in this guide relate to engaging in regulated activity with children or adults under the Safeguarding Vulnerable Groups Acts 2006 not the term regulated activities applied to the regulation of care services under the Health and Social Care Act 2008 (HSCA).

Further information about regulated activity with adults can be found [here](#).

**Regulation 19 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014**

The intention of Regulation 19 is to make sure that providers regulated by the CQC only employ ‘fit and proper’ staff who are able to provide care and treatment appropriate to their role and to enable them to provide the activity (see page 4).

**Rehabilitation period**

The specified period of time that a person is required to disclose a caution or conviction for an offence to an employer until it becomes spent under the Rehabilitation of Offenders Act 1974 (ROA). The rehabilitation period depends on the sentence or out-of-court disposal received.

**Reprimand**

A reprimand was an out-of-court disposal issued by the police where there was evidence that a child (under 18) had committed a low-level criminal offence, but it wasn't in the public interest to prosecute. A reprimand formed part of the person's criminal record. Reprimands were abolished in April 2013 and replaced by youth cautions. They are no longer subject to automatic disclosure for roles subject to the ROA Exceptions Order that are eligible for standard or enhanced DBS checks.

**Responsible Organisation (RO)**

A responsible Organisation (RO) is an organisation registered with the DBS to submit basic DBS checks through a web service.

**Service Justice System**

The legal framework that covers people serving in the UK armed forces. Service personnel who are accused of criminal offences or certain disciplinary offences that can be disclosed on criminal record checks may be sentenced in either a Summary Hearing or Court Martial.

## **Spent/unspent**

Once a caution or conviction becomes spent, it doesn't need to be disclosed to most employers, or when applying for most courses, insurance, or other purposes. Until a caution or conviction becomes spent, it is known as unspent and must always be self-disclosed by the applicant when they apply for jobs under the ROA or jobs subject to the ROA Exceptions Order.

It is against the law for an organisation to obtain information about an individual's spent cautions or convictions unless the law specifically states that they can ask an exempted question.

## **Specified offence?**

A specified offence is a serious offence (mainly sexual or violent offences, or relevant to safeguarding) which is contained on the DBS list of specified offences and must always be disclosed when applying for positions under the ROA Exceptions Order.

## **Umbrella body**

An organisation which has registered with the DBS to carry out standard and enhanced DBS checks on behalf of other organisations which have the right to ask an exempted question.

## **Warnings**

(See **final warning**)

## **Youth caution**

A youth caution is an out-of-court disposal issued by the police where there is evidence that a child (under 18) has committed a low-level criminal offence, but it isn't in the public interest to prosecute. A youth caution forms part of the person's criminal record. Youth cautions replaced reprimands and final warnings in April 2013. They are no longer subject to automatic disclosure for roles subject to the ROA Exceptions Order that are eligible for standard or enhanced DBS checks.

## **Acknowledgements**

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## **Appendices**

Appendix 1: [Safe and fair recruitment policy](#)

Appendix 2: [Pre-employment checks risk assessment](#)

Appendix 3: [Safer recruitment and employment checklist](#)

Appendix 4: [Criminal record self-declaration form for jobs exempt from the ROA](#)

Appendix 5: [Criminal record self-declaration form for jobs covered by the ROA](#)

Appendix 6: [Self-disclosure rules flowchart](#)