

## Disclosure and Barring Service (DBS) checking personal assistants (PAs): advice note

In addition to carrying out criminal record checks at the appropriate level before starting employment, it's good practice and strongly recommended that PAs are asked to complete a criminal record self-declaration.<sup>1</sup>

This note offers guidance to local authorities, NHS organisations, support organisations and individual employers of personal assistants (PAs) in regard to who can:

- request a Disclosure and Barring Service (DBS) check
- make the decision on someone's suitability for employment using the results of the self-declaration and the DBS check
- share the outcome of a check.

In the majority of cases the work PAs perform will be classified as regulated activity<sup>2</sup> under the Safeguarding Vulnerable Groups Act. This makes them eligible for enhanced DBS checks and a check against the adults' barred list.

Individual employers cannot submit an application for a standard or enhanced DBS check themselves. Similarly, they cannot make a suitability decision based on the results of a check.

**The information within this note serves as guidance only. Any individual or organisation requiring further information or unsure of their eligibility to request a standard or enhanced DBS check or make a suitability decision should contact the DBS directly<sup>3</sup>. Additional information about DBS can be found in Appendix A.**

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<sup>1</sup> [Appendix 2](#) and [Appendix 3](#) to support [Safe and Fair recruitment: A guide to employing people with convictions in social care](#).

<sup>2</sup> [Regulated activity \(adults\). The definition of 'regulated activity' \(adults\) as defined by the Safeguarding Vulnerable Groups Act 2006 from 10th September 2012](#).

<sup>3</sup> DBS checks: guidance for employers – [applicants rights](#).

This advice note is split into sections providing details of what different stakeholders in the checking process can and cannot do.

Everyone should read these parts first:

- [Individual employers](#)
- [Personal assistants](#)

Then read the sections relevant for your role:

- [Local authorities and NHS organisations](#)
- [Support organisations](#)
- [Agencies acting as an employer](#)
- [Agencies or support organisations acting as an introductory service](#)
- [What should I do if I think my DBS checking processes fall outside of this guidance?](#)

## Individual employers

- Individual employers (including anyone receiving a direct payment, personal health budget or self-funding their own care) cannot submit an application for a standard or enhanced DBS check. Similarly, they cannot make a suitability decision based on the results of a check.
- Individual employers can ask their local authority, NHS organisation or certain support organisations to request a criminal record self-declaration and conduct a standard or enhanced DBS check on someone they want to employ or offer a job to<sup>4</sup> or on someone already in their employment.
- Best practice in the Information Commissioner's Office (ICO) [Employment Practices Code](#) recommends asking questions relating to criminal records at an appropriate stage of the recruitment process – usually where applicants have been shortlisted for interview. Any sooner (e.g. on the application form) can lead to suitable candidates not applying for roles for fear of being automatically rejected or not having a fair opportunity to compete for the role because of their criminal record.
- Based on the results of the self-declaration and DBS check, someone employed by the local authority, NHS organisations or support organisation to make the suitability decision must make a decision as to the suitability of an individual for employment as a PA.<sup>5</sup>
- If an individual employer is using a PA supplied by an agency (i.e. the individual employer pays a fee to an agency and that agency is the PAs legal employing organisation) then the agency can carry out a standard or enhanced DBS check when recruiting that person.
- In all instances above, the employer cannot be involved in the suitability decision and details of the self-declaration and DBS check cannot be shared with the employer unless they have received permission from the applicant (the PA) to share the self-disclosure and certificate information.

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<sup>4</sup> If the potential employee is applying for a role which is eligible for a standard or enhanced DBS check then the local authority, NHS organisation or support organisation will advise that such a check is required. Individual employers can also ask for guidance on the eligibility of a role for a DBS check from these local organisations.

<sup>5</sup> Decision to employ should be based on all of the information gathered throughout the recruitment exercise to determine suitability for the role.

## Personal assistants (PAs)

- Individuals cannot request a standard or enhanced DBS check on themselves. Instead, they can (for a small fee) [request a 'basic disclosure'](#) from DBS:
- A basic disclosure more commonly known as a basic DBS check is not the same as a standard DBS check; it is a request for details about unspent conditional cautions and convictions only.
- Individuals may be asked to complete a criminal records self-declaration form or provide a declaration statement. If they have any cautions or convictions which need to be disclosed, this is their opportunity to provide further information about the circumstances surrounding offences. Suitable applicants should not be refused posts because of offences which are not relevant to, and do not place them at or make them a risk in, the role for which they are applying.
- Individuals can obtain further advice and guidance on disclosing criminal records from [Nacro](#).

## Local authorities and NHS organisations

- Local authorities and NHS organisations responsible for issuing personal budgets to people employing PAs should always ensure that information and support is available with regard to accessing DBS checks. In addition to carrying out criminal record checks at the appropriate level, it is good practice and strongly recommended that PAs complete a criminal record self-declaration.
- A local authority or NHS organisation can apply for DBS checks themselves or decide to commission the processing of DBS checks out to an umbrella body (such as a user-led organisation (ULO)). The umbrella body will be responsible for processing a DBS application; however unless the umbrella body employs someone to make the suitability decision in regard to DBS checks the responsibility for a suitability decision remains with the local authority or NHS organisation requesting a check.
- The local authority or NHS organisation cannot share the details of a self-declaration or DBS check with a PA's potential employer<sup>6</sup> but must share their decision regarding a PA's suitability<sup>7</sup>. However, the PA can show their self-declaration and DBS check to the person intending to employ them if they so wish.
- Organisations that do not conduct the suitability check as part of their role, cannot make an application for a DBS check on behalf of an individual employer but can make applications on behalf of the local authority or NHS who conduct the subsequent suitability check.
- If the suitability decision maker considers that the information in the DBS response means that the person is not suitable for employment as a PA then the individual employer cannot employ that person, using a personal budget or personal health budget.
- Candidates can be signposted to obtain further advice and guidance on disclosing criminal records from [Nacro](#).

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<sup>6</sup> The person making the suitability decision would have a duty to make a Safeguarding Alert to the local authority where an employment decision is made that puts an employer at risk of harm.

<sup>7</sup> If a DBS certificate indicates that somebody appears on the barred list, then they cannot be employed. The person making the suitability decision will tell an employer they cannot employ that person. If an individual is on the adults barred list, seeking employment in regulated activity with an adult is a criminal offence.

## Support organisations

- Where a support organisation is registered to conduct standard or enhanced DBS checks and employs someone to make the suitability decision in regard to these (usually as part of their wider responsibilities e.g. an HR or recruitment role), they can carry out a standard or enhanced DBS check on behalf of an individual employer. The suitability decision must be made by the appropriate individual within the support organisation; it cannot be made by the individual employer.
- Some support organisations might offer support to local statutory organisations and individual employers with an element of the process, in these circumstances they will not be involved in the suitability decision. For instance, support organisations might:
  - process standard or enhanced DBS checks on behalf of the NHS or local authority as a registered DBS umbrella organisation but without anyone employed to make the suitability decision
  - be commissioned to carry out an ID check on applicants (PAs)
  - offer support completing forms or making sure all of the information an applicant is providing to the organisation doing the check is correct.

## Agencies acting as an employer

- An agency that acts as the legal employer of a PA or care worker in return for a fee from an individual (e.g. a domiciliary care agency or similar) is entitled to request a standard or enhanced DBS check when recruiting staff.
- N.B. Agencies working in this way, who are not already a registered provider, should contact the Care Quality Commission (CQC) to understand if they should be registered.

## Agencies or support organisations acting as an introductory service, providing a PA register or a ‘pool’ of PAs available to work<sup>8</sup>

### DBS checking PAs to join a register or pool

- Some organisations provide a PA register or matching service. The agency takes a PA on to their books solely to provide an introductory service and does not act as their employer.
- The agency can conduct a standard or enhanced DBS check, with the relevant individual’s consent, to ensure that the individual is suitable to carry out PA duties; this also applies if the PA is joining a ‘pool’ of suitable individuals. If a self-declaration or criminal record certificate reveals issues that are considered, as part of the suitability check, to make the PA unsuitable for the role, then an agency must not accept a PA on to their register or books.
- An agency or support organisation applying for standard or enhanced DBS checks on behalf of individuals in this way must make a decision about each individual’s suitability for employment as a PA before placing them on a PA register. They cannot disclaim or delegate this responsibility.
- An agency or support organisation that does not include the function of checking suitability of PAs in its role cannot make an application for a DBS check.

### DBS checking PAs once they have been ‘matched’ with an employer

- Other organisations will advertise a list of PAs looking for work who have not been subject to DBS check at the appropriate level.
- In these instances, the employer will need to ask either their local authority, NHS organisation or support organisation to conduct the DBS check and make a suitability decision before proceeding with employment.

An agency can also ask if a PA has a current or recent DBS check at the appropriate level which they would like mentioned in their entry on (for example) a PA register. A DBS certificate is technically out-of-date from the day it is issued, and an employer can request a new check as part of the recruitment process.

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<sup>8</sup> Information needed to join a register or ‘pool’ may vary.

## What should I do if I think my DBS checking processes fall outside of this guidance?

- In the first instance any organisation unsure of their eligibility to request a standard or enhanced DBS check and make a suitability decision should contact the DBS to confirm that they are operating within the law.
- If an agency or support organisation is providing a DBS service and are unsure of their eligibility to request a standard or enhanced DBS check and make a suitability decision, they should speak to their local authority and NHS organisation to identify services they can signpost to while any uncertainty is resolved.
- A local authority or NHS organisation that does not have a process in place to support individual employers (using a personal budget or their own funding) to DBS check the PAs they are recruiting should look to establish this, as part of their wider safeguarding responsibilities.
- Whilst the NHS [Employment Check Standards](#) are for NHS recruitment, rather than the recruitment of a PA by someone using a personal budget, these may contain helpful information to refer to in other employment situations.
- Skills for Care's [Safe and fair recruitment guide](#) may also be helpful.



## Appendix one

### About the Disclosure & Barring Service

The DBS is an executive non-departmental public body, sponsored by the Home Office and they are responsible for:

- processing requests for DBS checks
- deciding whether it is appropriate for a person to be placed on or removed from the barred list
- placing or removing people from the DBS barred lists (adults' and children's).

These duties are carried out according to policy and legislation developed by the Home Office.

### The DBS process

When a standard or enhanced DBS check is carried out:

1. The applicant (the employee or potential employee<sup>9</sup>) is given an application form to complete by the organisation conducting the check on behalf of an employer/potential employer; this form, along with documents proving the applicant's identity, are provided by the applicant (usually in person) or their employer to the organisation registered to validate the applicant's identity and submit the application form to DBS
2. The applicant is sent a certificate detailing the results of their check; they need to share this with the relevant person within the organisation who requested the check who can make a decision on their suitability for employment, based on the contents of the certificate and any criminal record self-declaration that they have completed.
3. The applicant does not have to share the results of their self-declaration or DBS check with anyone else but can if they so wish.

Every organisation submitting applications for standard or enhanced DBS checks must employ a person to make the suitability for employment decision. They will ordinarily do this as part of their wider responsibilities e.g. an HR or recruitment role. They cannot be the individual employer of the PA and must be a member of the organisation that submitted the application for a standard or enhanced DBS check at an individual employer's request. DBS

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<sup>9</sup> DBS checks cannot be carried out on family members employed to care for a relative. A definition of a family member is available in the [NHS direct payment guidance](#). The definition of family and personal relationships in relation to regulated activity is in the [Safeguarding Vulnerable Groups Act 2006 at section 58](#).

do not advise on what experience the person they appoint to make the suitability decision must have. This is for organisations to determine based on their own safeguarding responsibilities within the sector.

For the purpose of conducting a standard or enhanced DBS check, organisations submitting 100 or more checks in any 12 month period can register directly with the DBS. Organisations not able to register with DBS will need to conduct checks through a registered 'umbrella body' (an organisation that will do a check on another's behalf). An umbrella body is responsible for processing a DBS application; the responsibility for the suitability decision remains with the organisation requesting a check.

### Levels of disclosure

The Rehabilitation of Offenders Act 1974 (ROA) allows cautions and convictions to be considered spent ('legally ignored') after a specified period of time, known as the rehabilitation period. The length of the rehabilitation period is determined by the sentence or out-of-court disposal received. If the person is reconvicted within this rehabilitation period, none of their convictions will become spent until they all are.

A large number of jobs in social care and health are exempt from the ROA due to the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, more commonly known as the ROA Exceptions Order.

As detailed in the Ministry of Justice (MoJ) guidance, applicants for jobs, roles and activities that are subject to the ROA Exceptions Order and eligible for standard or enhanced DBS checks, are required by law to self-disclose all unspent conditional cautions and convictions; and also all adult cautions (simple or conditional) and spent convictions that are not protected.

Employers have a responsibility to assess whether a DBS certificate at either Standard or Enhanced level is necessary for a specific role in line with the relevant legislation and also taking into account any sector-specific statutory guidance such as [Safe and fair recruitment: A guide to employing people with convictions in social care](#).

Job roles should be assessed individually to confirm whether they meet the eligibility criteria and blanket-checking of all roles should not be implemented without establishing this. DBS checks are not mandatory unless there is specific legislation in place relating to the position being offered that makes a check a legal requirement. A request for a person to reveal their full criminal history including spent convictions that are not protected (when a standard or enhanced DBS check is carried out) is known as an 'exempted question'.

## The main types of criminal record checks:

### Basic DBS checks

- can be carried out for any role covered by the ROA 1974
- will only contain details of unspent conditional cautions or convictions recorded on the Police National Computer (PNC) in the UK
- are available from DBS for employers in England and Wales. An employer can apply for a basic DBS check through a responsible organisation registered to submit them. Individuals can also apply directly for a basic DBS check.

### Standard DBS checks

- contain details of all adult cautions (simple and conditional), juvenile and adult convictions that are not 'protected' (i.e. filtered) in accordance with the filtering rules applied by the DBS
- are available for social care jobs and activities listed in the ROA Exceptions Order that involve providing health care or social care services, where the individual carrying out the role has access (i.e. more than incidental contact) to people in receipt of health care or social care services during their normal duties
- are available for anyone who is eligible for an enhanced DBS check.

### Enhanced DBS checks

- contain the same criminal record information as the standard DBS check, and might also include other relevant information (police intelligence) 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 other relevant information)
- are available for jobs in social care and activities listed in both the ROA Exceptions Order and also the Police Act 1997

### Enhanced DBS with children's and/or adults' barred list check(s):

- include the same criminal record information as enhanced DBS checks, but also detail whether the person is barred from working in regulated activity 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 DBS check and specifically listed in the Police Act 1997 (Criminal Records) Regulations as eligible to check against the appropriate barred list(s) e.g. Personal care providers, healthcare professionals, managers of those in regulated activity.