Safe and fair recruitment
A guide to employing people with convictions in social care

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1. Foreword

The Care Quality Commission (CQC) is the independent regulator of health and adult social care in England. We make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage them to improve. We do this by registering, monitoring, inspecting and regulating services to make sure they meet fundamental standards of quality and safety. We publish what we find, including performance ratings, to help people choose care for themselves or their loved ones.

As the Chief Inspector for adult social care I recognise how vital the people working in adult social care services are to ensuring people experience care that is safe, effective, caring, responsive to their needs, and well-led. The people who work in this sector – including care workers, registered managers, catering, facilities and administration staff, as well as many others – play a huge part in making a difference to people’s lives. They are our greatest asset and should be encouraged to enter the care sector, where they should be supported and developed to do the best job they can. Overwhelmingly, people come into this line of work because they care and want to make a real difference. Providers need to recruit and support a diverse and vibrant workforce to achieve this.

I’ve been known for the ‘Mum Test’ – asking whether this a service I would be happy for my Mum or anyone I love to use. I think it’s now time for the ‘Son or Daughter Test’. Is this a service I would be happy for my son, daughter or anyone I love to work in?

I welcome this guide from Skills for Care, which I hope will assist providers in passing the ‘Son or Daughter Test’ with flying colours. The guide helps providers to identify, and make use of, the wealth of guidance and resources available for them to meet the standards expected, and to encourage considerate, inclusive, and safe recruitment practices. We all want the same outcome – for the right people, with the right values and skills, to want to work in social care and see it as a long-term career choice.

A skilled and confident workforce should feel recognised for the important work they do, and feel empowered to provide the high quality, compassionate care that those people who use services, their families and carers have every right to expect. This guide will help providers do just that.

Employers tell us all the time they’re facing significant recruitment and retention challenges. At any one time there’s a national vacancy rate of 110,000, and that pressure will continue as we are estimating we will need to fill another 650,000 job roles by 2035. The number one priority for all employers will be making absolutely sure their recruitment practices are robust and fair when they’re looking to fill those roles working with people who need care and support.

Meeting this recruitment challenge isn’t going to be easy and requires us all to consider the widest pool of applicants and think about potential. This includes looking at people our sector may have not considered previously, including those with criminal records and of course continuing to exclude those with particular forms of criminal record. Employers already carry out disclosure and barring checks as part of pre-employment vetting, but with 11 million people in the UK having a criminal record it’s important they know that this isn’t an automatic barrier to working in the social care sector.

I know from my own experience as an employer that making decisions balancing safety and fairness is a complex process. That’s why we’ve developed this guide to help employers understand and navigate those complexities to make the best decisions for their organisations and the people they serve.

Every organisation will make their own decisions about who they hire; it’s important that when doing so they have access to all the information contained in this guide so their recruitment policies can be both safe and fair.
The social care sector faces vast recruitment and retention challenges. Social care faces vast recruitment and retention challenges. The sector has a national vacancy rate of 110,000 (8.0%) at any one time, with 390,000 (30.7%) staff leaving their job in the last 12 months¹.

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).

It’s essential that recruitment practices are fair, effective and robust and focus on the need to safeguard people who need care and support. Skills for Care has tools to support employers recruit and retain a suitable workforce, including our ‘Good and outstanding care: Safe staffing guide’.

Social care employers are required to carry out criminal record checks as part of their pre-employment vetting. It’s important to know that having a criminal record isn’t an automatic barrier to working with children or adults at risk. Many people with criminal records have successful and rewarding careers working in the sector.

But employers may have recruitment policies or practices in place that inadvertently exclude people with criminal records creating a barrier to open recruitment.

There may be concern 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.

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.

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 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 to ensure that young people who made minor mistakes in their past could move on with their lives.

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¹ The state of the adult social care sector and workforce in England, Skills for Care, September 2018
² Home Office, 2017
3. 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 Clinical Commissioning Groups as well as organisations who advise and support individuals into employment.

It will help social care employers to understand their legal rights and responsibilities when carrying out criminal record checks and 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) 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 criminal convictions (see acknowledgments). Specific queries should be directed to HR teams or legal experts.

Terms in bold are defined in the glossary at the end.
4. 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, 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.

- Once the record is considered spent, the law treats the person as if they’d never committed an 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.

Full guidance on the ROA can be found on the Nacro website.

Applicants or existing staff and volunteers should be signposted to Nacro or Unlock if they need advice or guidance on if their criminal record is spent.

Who is Nacro?
Nacro is a social justice charity providing free support for employers on managing criminal record matters. See ‘useful contacts and resources’ (pg. 41) for further information.

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 covers the law in England and Wales.

There are significant differences in the way in which the ROA operates in Scotland. The relevant Northern Irish legislation is the Rehabilitation of Offenders (Northern Ireland) Order 1978. 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 criminal convictions to take the differences into account.

Further details on the different rehabilitation periods in Scotland or Northern Ireland can be found on the Nacro website.

Jobs in social care exempt from ROA
Unsurprisingly, 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.

In the past, roles included in the ROA Exceptions Order required the applicant or employee to disclose to the employer all convictions, cautions, reprimands and final warnings including those regarded as spent. But this is no longer the case.

Does the ROA apply to jobs in social care?
Not all roles in the social care and health sector are exempt from the ROA. Roles that are covered by the ROA typically don’t involve delivering care and may have only incidental contact with children or adults at risk, 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. Employers must apply a consistent approach to all applicants.

An overseas applicant would need to apply the disclosure law as applicable in England and Wales when applying for a job in England and Wales - not the law in their country of origin or where they were convicted.

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 a court 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 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.

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 only if the applicant has been charged with an offence.

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).
DBS filtering
In May 2013, important changes to the ROA Exceptions Order and Part V of the Police Act 1997 removed the requirement for applicants or existing employees to disclose certain minor convictions, cautions, reprimands and final warnings that are deemed ‘protected’ when applying for roles in social care that are subject to standard or enhanced Disclosure and Barring Service (DBS) checks.

‘Protected’ convictions, cautions, reprimands and final warnings aren’t disclosed on standard or enhanced DBS certificates because they’re filtered (removed) from the certificate before it is issued. This system is commonly known as the DBS filtering rules.

How do the DBS Filtering rules work?

If the person is under 18 when convicted
A conviction will be filtered from a standard or enhanced DBS certificate only if:
1. Five and a half years have elapsed since the date of conviction.
2. It’s the person’s only conviction.
3. Conviction didn’t result in a custodial or suspended sentence.

A youth caution, reprimand or final warning received when aged under 18 will be filtered after two years have elapsed since the date of the caution was issued, but only if it doesn’t appear on the List of specified offences. There’s no limit to the amount of youth cautions, reprimands or final warnings that can be filtered.

If the person is over 18 when convicted
A conviction will be filtered from a standard or enhanced DBS certificate only if:
1. 11 years have elapsed since the date of conviction.
2. It’s the person’s only conviction.
3. Conviction didn’t result in a custodial or suspended sentence.

A caution received when aged 18 or over will be filtered from a standard or enhanced DBS certificate after six years of the date the caution was issued, but only if it doesn’t appear on the List of specified offences. There’s no limit to the amount of cautions that can be filtered.

Important note - The DBS filtering rules may be subject to change due a Supreme Court challenge to the current regime that was heard in June 2018.
Maria’s story

Maria is a care worker in a care home – she’s 35 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 final warning for common assault.
- At 21 she received a 12-month conditional discharge order for one count (conviction) of fraud by misrepresentation.
- At 25 she received a caution for possession of Class A drugs (cocaine).

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 13 she received a reprimand for actual bodily harm (ABH).
- At 16 she received a six-month conditional discharge order for two counts (convictions) of shoplifting in a single court appearance (the incident involved her stealing a lipstick and a pair of earrings).

None of Donna’s offences would be filtered.

<table>
<thead>
<tr>
<th>Offence</th>
<th>Would it be filtered?</th>
<th>Why?</th>
</tr>
</thead>
<tbody>
<tr>
<td>At 17 Maria received a final warning for common assault.</td>
<td>Yes</td>
<td>The final warning for common assault is filtered after two years as Maria was under 18 when she received the warning and it isn’t included on the List of specified offences that aren’t filtered.</td>
</tr>
<tr>
<td>At 21 Maria received a 12-month conditional discharge order for one count (conviction) of fraud by misrepresentation.</td>
<td>Yes</td>
<td>The conviction of fraud would be filtered after 11 years as Maria only has one conviction and it isn’t included on the List of specified offences.</td>
</tr>
<tr>
<td>At 25 Maria received a caution for possession of Class A drugs (cocaine).</td>
<td>Yes</td>
<td>The caution for possession of Class A drugs is filtered after six years as it isn’t included on the List of specified offences that are not filtered and there is no limit to the number of cautions that can be filtered.</td>
</tr>
<tr>
<td>At 13 Donna received a reprimand for actual bodily harm (ABH).</td>
<td>No</td>
<td>The reprimand for actual bodily harm (ABH) wouldn’t be filtered as ABH is an offence that’s included on the List of specified offences that are never filtered.</td>
</tr>
<tr>
<td>At 16 Donna received a six-month conditional discharge order for two counts (convictions) of shoplifting in a single court appearance (the incident involved her stealing a lipstick and a pair of earrings).</td>
<td>No</td>
<td>The conditional discharge order for shoplifting wouldn’t be filtered due to Donna having more than one conviction. Donna has two convictions for shoplifting despite the fact she was convicted in a single court appearance.</td>
</tr>
</tbody>
</table>
Further information on filtering rules

Practical guidance on the current DBS filtering rules has been developed by Nacro. For further information about filtering, either visit the DBS website or contact Nacro.

Adapting recruitment forms to account for the filtering rules

It’s against the law for a social care employer to take into account a ‘protected’ caution or conviction (i.e. cautions or convictions that would be filtered) that wouldn’t be disclosed on a standard or enhanced DBS check when making a decision to employ a person or dismiss an existing employee.

Employers must ensure their recruitment processes are amended to consider the filtering rules and 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.

Lauren’s story

Lauren is a single parent and care leaver who works in a permanent care position. Lauren took part in Skills for Care’s ‘Recruiting for potential pilot programme’, specifically the pilot project delivered by Care Plus Group. Lauren completed relevant work-based learning and a work placement at a day care centre for older people. During this time, it was clear that Lauren had all the right values and behaviours to work in social care.

However, Lauren’s journey could’ve been so much different. She’d received a caution as a teenager (which was eligible for filtering after two years). Lauren, unaware of the DBS filtering rules, disclosed the caution to every single care provider that she applied to and was routinely rejected due to having a criminal record. It was only when her values and behaviours were assessed through a different provider that Lauren was able to secure a job in care.

When her DBS certificate was issued, both Lauren and the employer were shocked to see that the caution wasn’t included – as it was filtered.
5. Safer recruitment checklist

This safer recruitment checklist is designed to help employers follow a clear process when recruiting for a role. It covers the whole process including recruitment, job applications, interviewing and the post-application follow-up. This checklist is aimed at roles which involve safeguarding adults or children. *A word version of this checklist is available for you to download separately as part of the appendices (appendix 1).*

<table>
<thead>
<tr>
<th>Activity</th>
<th>Currently in place</th>
<th>Recommended action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure job descriptions, person specifications and application forms are clear, use plain English where possible and reflect the requirements of the role and the organisation's commitment to safeguarding.</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>If the role requires the person to work in regulated activity, include a statement in job adverts that it's a criminal offence for people who are barred from working in regulated activity to apply for roles that require them to work unsupervised with that particular group (i.e. adults at risk, children or both).</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Send candidates information about the values of the organisation and the associated expected behaviours.</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Send candidates information on the level of criminal record check required and at what point in the recruitment process the disclosure is required. This may include signposting to Nacro services for further advice and guidance.</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Identify and train all staff involved in the selection process.</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Ensure that at least two people are involved in shortlisting applications and use agreed criteria and identify any gaps.</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Develop clear interview questions and selection tools.</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Assess candidates using a range of selection methods where possible – including values-based recruitment. Probe their attitudes and values towards people who need care and support.</td>
<td>Yes/No</td>
<td></td>
</tr>
</tbody>
</table>

**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).
<table>
<thead>
<tr>
<th>Activity</th>
<th>Currently in place</th>
<th>Recommended action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ask shortlisted candidates to complete a <strong>criminal record self-declaration</strong> stating any <strong>cautions</strong> and/or <strong>convictions</strong> appropriate for the role applied for, in-line with ROA 1974 or <strong>ROA Exceptions Order</strong> (as amended in 2013).</td>
<td>Yes/No</td>
<td></td>
</tr>
<tr>
<td>Apply for the appropriate level of criminal record check after a conditional job offer has been made.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Check the identification and right to work documents and qualifications, if relevant, of every applicant. Only accept originals.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Take up all available references on short-listed applicants. Check for gaps and any inconsistencies between information given on the application form, and that provided by the references. Telephone to confirm reference receipt and follow up any queries.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carry out a risk assessment on an applicant, if concerns arise from criminal record or allegation information contained on a criminal record certificate. Store a copy of the risk assessment, which should include any recommended safeguards to minimise risk, securely together with copy of the self-declaration and the certificate in line with <strong>General Data Protection Regulation (GDPR)/ Data Protection Act (DPA) 2018</strong> requirements.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Make all appointments subject to a probationary period.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Highlight safeguarding responsibilities and set clear expectations of acceptable behaviour and boundaries of their role during staff induction.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ensure staff have the relevant induction and training required to be safe and effective in their role (e.g. Care Certificate if applicable).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carry out regular one-to-one supervision meetings with staff and focus on their attitudes, values and behaviours as well as what they do.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ensure a culture of vigilance and have clear policies and procedures in place which explain what staff, and people who need care and support, should do if they have concerns about the behaviour of another member of staff.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Respond quickly and appropriately to any allegations about the behaviour of a member of staff, in particular concerning behaviour towards a child or adult at risk.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. Criminal record checks

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions. 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).

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.

| Basic DBS checks:               | can be carried out for any role covered by the ROA |
|                                | will only contain details of unspent cautions or convictions recorded on the Police National Computer (PNC) in the UK |
|                                | are available from DBS for employers in England and Wales. With the individual’s consent, 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. |
|                                | Important note - A basic DBS check should not be confused with a standard DBS check, which can only be carried out on roles exempt from the ROA. |
| Standard DBS checks:           | contain details of all cautions, convictions, reprimands and final warnings that are not ‘protected’ (i.e. filtered) under the DBS filtering rules |
|                                | 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. |
| 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 (Criminal Records) Regulations. |
| 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). |

See the eligibility scenarios section of the guide for the level of checks typical roles are eligible for.
Applications for standard and enhanced DBS checks must be made by the employer either directly (if they are a registered body) or through an umbrella body. The disclosure certificate is sent directly to the individual who must then hand it to the employer.

### The differences between each level of DBS check

<table>
<thead>
<tr>
<th></th>
<th>Basic</th>
<th>Standard</th>
<th>Enhanced</th>
<th>Enhanced + barred</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unspent convictions</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Spent convictions (subject to filtering)</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Cautions (subject to filtering)</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Police intelligence</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Inclusion on children’s barred list</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Inclusion on adults’ barred list</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✓</td>
</tr>
</tbody>
</table>
How to work out what level of DBS check the role is eligible for

Employers can use the DBS eligibility decision tool and eligibility guidance.

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

Determining what level of DBS check a role is eligible for

It’s a criminal offence for an organisation to carry out standard or enhanced DBS checks on roles that aren’t eligible.³

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.

Tip

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.

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³ Employers that carry out illegal checks are in breach of Part V of the Police Act 1997, the ROA and also the General Data Protection Regulations (GDPR)/Data Protection Act 2018 (DPA) which requires that data be processed fairly and lawfully.
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.

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.

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.

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.

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.

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.

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.
Important note

It’s rare for other relevant information (police intelligence) to be disclosed on enhanced DBS checks. DBS figures suggest less than 10,000 out of 4 million enhanced DBS certificates contain police intelligence – which is roughly 0.25%.  

However, it’s extremely important to carry out the correct level DBS check for the role in question. If the role is eligible for an enhanced DBS check, the employer must apply for an enhanced DBS check. Conversely, if the role is eligible for a standard DBS check then the employer must apply for a standard DBS check.

In addition to their legal responsibility to carry out the correct level check, employers should also understand:

Standard DBS checks cost £26. They are free for volunteers (plus any applicable administrative fees);

Whereas…
■ Enhanced and the enhanced and barred list DBS checks cost £44. They are free for volunteers (plus any applicable administrative fees).
■ Standard DBS checks can take considerably less time to be processed than enhanced or enhanced and barred list DBS checks.

And so, employers conducting enhanced or enhanced and barred list DBS checks for roles that only qualify for standard DBS checks may cause delays to their recruitment process and incur significant costs for other relevant information (police intelligence) that they are highly unlikely to receive.

NB: Basic DBS checks cost £25 (plus any applicable administrative fees), but they are not free for volunteers.

For further advice or support on DBS eligibility contact the DBS customer services on 03000 200 190 or email customerservices@DBS.gov.uk, or Nacro’s Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk.

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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, personal budget or self-funding their own care) cannot submit an application for a standard, enhanced or enhanced DBS with barred list check. In addition, they cannot make a suitability decision based on the results of the DBS check.

Individual employers can instead ask their local authority, NHS organisation or certain support organisations to conduct the 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 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 Skills for Care advice note.

Skills for Care has also developed other useful resources on employing personal assistants which can be accessed here.

Overseas criminal record checks

DBS checks may list criminal convictions of UK nationals convicted overseas, but they will not detail criminal convictions of non-UK nationals convicted overseas.

Employers should review their vetting policies and procedures to ensure they’re applying a consistent and non-discriminatory approach to all applicants when assessing risk.

Important note - All tier 1 and tier 2 (general) visa applicants over 18 years old who want to work in social care roles must provide a criminal record certificate from any country they’ve lived in for 12 months or more in the previous 10 years. This requirement will also apply to the partner of the applicant and a partner applying to join an existing tier 2 migrant in one of these work sectors.

Employers should consider asking applicants from overseas to conduct criminal record checks or Certificates of Good Character in the countries where they’ve been living or visiting.

The application process for criminal record checks or Certificates of Good Character for someone from overseas varies from country to country. The Home Office provides useful guidance which can be accessed here.

Additional time to receive criminal record checks must be factored in to the recruitment process. Employers should also advise any applicants to retain an original copy of their criminal record certificate as it should be presented as part of the recruitment process.

Overseas police certificates and Certificates of Good Character should be checked in the same way as all other documentary evidence to verify that it's genuine and relates to the individual who has applied for the role.
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 the Health and Social Care Act 2008 and the Regulated Activities Regulations 2010.

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 full guidance on DBS checks for work placements in adult social care settings. It clearly acknowledges 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 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 consent to the person's involvement
- ensure the person carrying out the placement does not observe personal care when consent 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 is 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 is eligible for an enhanced DBS check without adults barred list check.

Important note - Employers or providers that seek to carry out enhanced DBS checks on work placements that are eligible for basic or standard DBS checks should note the earlier advice in this guidance regarding their legal responsibilities, time and cost implications.

Use the DBS eligibility decision tool to work out what level of check the work placement is eligible for.
The DBS adult first check is exclusive for the care sector. It can be obtained before the DBS certificate has been returned and is used if it is necessary to start a new employee because of a real danger to safe staffing levels or the running of the service, as long as the new employee is supervised during this time. It allows someone to be checked against the DBS adults barred list, but only in exceptional cases where a person will engage in regulated activity.

The criteria for carrying out an adult first check is the:
- position must require a criminal record check by law
- position must be eligible for access to the DBS adults’ barred list
- organisation must have requested a check of the DBS adults’ barred list on the DBS application form.

What will the DBS adult first check show?
The DBS will reply to the employer via email within 72 hours 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 DBS adults barred list.

Important note - To knowingly employ a person who is barred by the DBS to work in regulated activity is a criminal offence.
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 certificate was first issued.

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

- The applicant 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.

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

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**Alpa’s story**

**Example**

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.
Some applicants from disadvantaged or marginalised groups can experience practical barriers and challenges to getting a job that many would take for granted.

This might include:

- struggling to obtain ID
- gaps in career or address history
- having no bank account
- lack or references or lack of work experience.

Identity checks

This is an essential pre-employment check and the first that should be carried out as all other checks are deemed invalid if a person’s identity cannot be proved.

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 a face to face 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 NHS Employers identity check standards provide guidance on the pre-employment checks that apply to the NHS when considering making appointments. As a matter of good practice, social care organisations may wish to consider these standards as the basis for good recruitment practice. Any queries about check requirements that apply to social care organisations should be directed to the DBS.
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.

Bank accounts

Those in receipt of benefits should in most instances have a bank account in place already. If they don’t, the local jobcentre plus may be able to provide advice or assistance with obtaining one.

If an applicant doesn’t meet the normal ID or address verification requirements, they could open a basic bank account which may accept alternative methods of identification.

The following may be appropriate for opening a basic bank account:

- People claiming benefits - entitlement letter issued by DWP, HMRC or the local authority, or an identity confirmation letter issued by the DWP or local authority.
- People in care homes/sheltered accommodation/refuge - letter from care home manager/warden of the sheltered accommodation or refuge.
- Homeless people - a letter from the warden of a homeless shelter, or from an employer if the customer is in work, should be sufficient evidence.
- People on probation - letter from the customer’s probation officer, or a hostel manager, would normally be sufficient. (Source: Moneyfacts).
- If the person cannot obtain a basic bank account, there are some pre-paid account cards that could be used to pay wages into.

Whilst there is no legal requirement for an employer to provide a reference and a large number of employers now only provide factual references/information, NHS employers employment history and reference checks, which social care employers may wish to consider as the basis for good recruitment practice, advises that employers should seek necessary references to validate a minimum of three consecutive years of continuous employment or training prior to any application made.
Collecting references

Employers and providers should ensure that references provide details of:

- Where the individual has been employed/volunteered or studied.
- The dates of employment/volunteering, or duration of study.
- The position held, or course undertaken.
- Any recent or ongoing disciplinary actions or referrals.
- The reasons for leaving employment, training or study (if known).

If it’s not possible to validate three years of consecutive employment or training, then it’s recommended that a reference is obtained from the last known employer and an additional character reference or personal reference should be obtained to validate the required three-year period.

NB: Periods of unemployment where the applicant has been claiming benefits can be confirmed via a Jobcentre Plus summary letter or other government source.

If an 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.

References can sometimes prove difficult to obtain. It is recommended that employers document all efforts made to secure references from all sources and demonstrate a clear approach to how they address such challenges.

Tip

To find out more about CQC requirements of providers to operate robust recruitment procedures and undertake relevant checks, see: Regulation 19: Fit and proper persons employed.\(^5\)

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\(^5\) Regulation 19(3)(a) of the Health and Social Care Act (Regulated Activities) Regulations 2014
8. Managing criminal record disclosure

This section shows employers how they can manage criminal record disclosures in a safe and fair way, including assessing the relevance and risk of past offences.

Gathering criminal records information

1. Use the DBS and/or NHS employers eligibility decision tool(s) to work out what level of DBS check the role is eligible for.

2. Contact DBS or Nacro for advice if you are still uncertain whether the role is covered by the ROA or exempt.

3. Issue a policy statement expressing your organisation’s commitment to open recruitment and willingness to consider people with convictions. Include a copy of the policy statement on your online portal and with job information sent to applicants.

4. Make it clear in any advertisement (or briefing to recruitment agency) whether a basic, standard, enhanced or enhanced DBS with barred list check is required.

5. If the role is exempt explain how ROA Exception Order applies. Include a statement that it is an offence to apply for a role if barred (only if the role is regulated activity and subject to an enhanced DBS with barred list check).

6. Details about applicants’ criminal record history should be requested only from those invited to interview. This information should be obtained separately and confidentially in the form of a self-declaration or disclosure statement, not as part of the initial application form.

7. Applicants should be signposted to Nacro’s ROA guidance, or Nacro filtering guidance (whichever is appropriate for the role applied for), and Nacro disclosing criminal records guidance.

8. Gather all information you need to make an informed recruitment decision. Obtain the correct DBS check for the role (i.e basic, standard, enhanced, enhanced with barred list check or overseas check). Carry out a risk assessment. Contact Nacro Employer Advice Service for free support (if necessary).

9. Document rationale behind the final recruitment decision. Retain criminal record information (self-declaration, DBS certificate and risk assessment) securely with access strictly controlled - if appointment is confirmed.
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.

Employers that carry out standard, enhanced or enhanced DBS with barred list checks should also ensure that they have a recruitment of people with criminal records’ policy which can be shared with applicants upon request. This is a requirement listed in the DBS Code of Practice.

Some employers 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 new data protection laws and minimise any risks of discrimination. With the introduction of the General Data Protection Regulation (GDPR) and the Data Protection Act (DPA) 2018, employers may struggle to justify obtaining information about an applicant’s criminal record - which is personal and sensitive information - on an initial paper or online application form. This may be viewed by the Information Commissioners Office (ICO) as 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, and they can verify any information disclosed by the applicant when they are presented with a criminal record certificate (or Certificate of Good Character if the applicant is from overseas).

Further information on the use of criminal record information for employment purposes is contained in the GDPR/DPA 2018 legal briefing developed by Nacro and Dominic Headley & Associates (DHA) with input from the ICO.
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 Nacro’s practical guidance on disclosing criminal records, so they can present their criminal record in a way to better inform the employer’s risk assessment. They can also get further information, advice or support on disclosure from Nacro Resettlement Advice Service.

Appendix 2 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 3 is a sample criminal record self-declaration form for roles exempt from the ROA so is eligible for a standard or enhanced DBS check which requires the applicant to disclose all convictions, cautions, reprimands or final warnings that aren’t 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 convictions, cautions, reprimands or final warnings that have not been filtered - as the role involves regulated activity with adults.

Sandra’s criminal record

Date of birth: 21/06/1993

<table>
<thead>
<tr>
<th>Date</th>
<th>Offence</th>
<th>Sentence/disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>20/10/07</td>
<td>Actual bodily harm</td>
<td>Reprimand</td>
</tr>
<tr>
<td>21/09/09</td>
<td>Shoplifting</td>
<td>Absolute discharge order</td>
</tr>
<tr>
<td>16/07/13</td>
<td>Possession of Class A drugs (cocaine)</td>
<td>Community order 12 months, 50 hours unpaid work</td>
</tr>
</tbody>
</table>

None of Sandra’s offences would be filtered from an enhanced DBS with adults barred list certificate.

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 criminal record risk assessment. The employer could be at risk of a discrimination claim under section 19 of the equality act if they were to simply reject Sandra due to her criminal record.

As Sandra is applying for a role that involves working in regulated activity with adults, she is required to fill out the self-declaration form contained in Appendix 3.
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 a reprimand for actual bodily harm (ABH) at age 14. I got into a fight with a child who had been bullying me at one of my foster homes. My foster parent took us both to the local police station to deal with the incident and I accepted a reprimand unaware it would have consequences for the rest of my life.

At age 16, I was caught stealing food from a supermarket. I was hungry and homeless at the time. The magistrate took into account my mitigating circumstances and gave me an absolute 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 a criminal record

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.

If a shortlisted applicant has disclosed a criminal record that had given an employer concerns regarding their suitability for the role, before making a final decision the employer should conduct a risk assessment and meet with the applicant (if necessary) to give them the opportunity to respond to any concerns.

The risk assessment should include relevant information such a self-declaration/disclosure statement, work references, personal or character references and a supporting statement from probation officer etc.

Appendix 4 is a criminal record risk assessment form which can be adapted to the employer’s needs.

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 offence 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 offence(s)**
What type of offence or offences 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 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?
**Offence 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 offence 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 offence. Questions asked could include:

- What's their attitude now?
- How do they feel about what happened?
- How do they feel about their part in what happened?
- Do they show remorse?
- Do they blame others?
- Do they feel a victim of injustice?
- How genuine is their expression?
- What efforts have they made not to re-offend?
- Have they taken part in any remedial programmes?
- Can a reference be sought from their probation/responsible officer or support worker (if applicable)?

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 offence, 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 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?

If significant discrepancies exist between the information on the DBS certificate and the information provided by the applicant, the employer should give the applicant the opportunity to address any new concerns before a final decision is made.

It's not unusual for discrepancies to occur. Quite often this isn’t because the individual is trying to deceive, but simply because he or she has a limited understanding of how the criminal record disclosure system works, or for how long the disclosure of cautions or convictions is needed. Individuals are rarely given accurate advice about what they need to disclose to employers.

In addition, while the DBS makes every effort to ensure that DBS certificates are accurate, mistakes can occur. If the discrepancy arising from an apparent mistake on a certificate is serious enough to end the recruitment process, then the decision should be deferred until the applicant has had an opportunity to dispute the information through the DBS disputes channel.

<table>
<thead>
<tr>
<th>Date</th>
<th>Offence</th>
<th>Sentence/disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>20/10/07</td>
<td>Actual bodily harm</td>
<td>Reprimand</td>
</tr>
<tr>
<td>21/09/09</td>
<td>Shoplifting</td>
<td>Absolute discharge order</td>
</tr>
<tr>
<td>16/07/13</td>
<td>Possession of Class A drugs (cocaine)</td>
<td>Community order 12 months, 50 hours unpaid work</td>
</tr>
</tbody>
</table>

Sandra Outis
Date of birth: 21/06/1993

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, theft and possession of drugs.
- Sandra was age 14 when she received an out-of-court disposal for ABH. There are no other violent offences on the DBS certificate.
- Sandra was age 16 when she received an absolute discharge order for shoplifting which is the lowest form of sentence. There are no other theft or fraud offences on the DBS certificate.
- Sandra was age 20 when she received a community order for possession of cocaine. There are no further drug offences on 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 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 regard the code of practice.

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

1. If necessary, seek disclosure information in relation to an existing employee who has failed to disclose an unspent conviction (if role covered by the ROA) or a caution or conviction that is not protected if the roles is included in the ROA Exceptions Order.

2. Establish whether the offences or allegation are relevant to the job.

3. If relevant or serious, consider dismissal, or movement to another job and/or the introduction of safeguards.

4. Do not use information as an excuse to dismiss a poor performance.
When should an employer refer someone to the DBS?

Social care employers have a legal duty to refer to the DBS any person who they have removed (or would have been removed had the person not resigned, retired or left the workplace) from working (or volunteering) in regulated activity because they:

- harmed or posed a risk of harm to an adult at risk or a child

OR...

- satisfied the harm test

OR...

- received a caution or conviction for a relevant offence.

The DBS has produced useful guidance on making barring referrals which includes a referral flowchart.

The employer shouldn’t make a referral to the DBS when an allegation is first made. The DBS will quickly close down any referral which does not contain adequate evidence or any substance to an allegation as they will have no foundation upon which they can proceed.

The employer must follow their safeguarding, investigation and disciplinary procedures (even if the person has left their employment) to establish facts and gather evidence.

After the employer has completed this process, they should refer the person to the DBS only if they have found the concerns or allegations to be true.

How does an employer make a DBS referral?

The DBS accept referrals made using their online referral form which employers can use after they registered for a DBS online services account.

Alternatively, employers can complete the DBS paper referral form which should be posted to the DBS, with all of the information that has been requested on the form.

Important note - It’s an offence for an employer to knowingly allow a barred person to work (or volunteer) in regulated activity with the group with which they are barred from working (i.e. adults, children or both). It’s also an offence for a barred person to seek work with the group with which they have been barred from working.

If a employer needs further support on risk assessment they can contact Nacro’s Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk or visit the Nacro website.
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.

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:

- 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.
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 19/07/87) 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 2015. 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 29/12/2015 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 30/12/2015 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.

Police intelligence included on an enhanced DBS certificate

Example

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.

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: Nacro’s Employer Advice on 0845 600 3194 or employeradvice@nacro.org.uk
9. Data protection/record keeping

Who can receive criminal record information?

An applicant’s criminal record is considered personal and sensitive information. This information (including self-declaration form/disclosure statement, risk assessment and 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 should information be stored

Criminal record information (including the self-declaration, risk assessment and a copy of the certificate) should be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

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 record 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 Data Protection Act 2018, Human Rights Act 1998, General Data Protection Regulation (GDPR). The policy should include review and retention periods.

Once the retention period 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.
10. 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 over 11 million people in the UK 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 children, adults 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 check. What should I do?
The recent changes to the criminal record system are extremely complex. Many applicants and employers struggle to understand how and when a caution or conviction becomes spent (for jobs covered by the ROA), or filtered (if the job is eligible for a standard or enhanced DBS check). This often leads to applicants over-disclosing or under-disclosing their criminal record.

If there’s a discrepancy 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 who does not have a clear/clean DBS certificate?
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 registered bodies and those in receipt of DBS update service information to have a recruitment of ex-offenders 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 personal sensitive information that 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 any robust safe recruitment exercise.

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 the ‘Ban the box’ campaign ever apply to the social care sector?

Yes. The ‘Ban the box’ initiative doesn’t prevent employers from asking about criminal records, it simply moves questions about an applicant’s criminal record to a later more appropriate stage of the recruitment process. As a result of recent changes to data protection laws, it may be harder for an employer to justify obtaining data about an applicant’s criminal record at the initial application stage. It may be viewed by the Information Commissioner’s Office (ICO) as excessive, unduly intrusive and unfair to applicants.

An applicant for a role in social care will be subject to a criminal record check at the appropriate level and other safer recruitment checks before commencing employment so there is no real need or benefit to the employer to gather criminal record information from applicants who are not shortlisted for interview.

When do fit and proper person requirement checks (FPPR) 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?

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.

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.

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.

Are basic DBS checks free for volunteers?

No. There’s no legal provision that allows for free-of-charge basic DBS checks.
11. Useful contacts and resources

**Disclosure and Barring Service (DBS)**
For customer services  
PO Box 3961, Wootton Bassett SN4 4HF  
Tel: 03000 200 190  
Email: customerservices@dbs.gov.uk

For DBS barring  
PO Box 3963, Wootton Bassett SN4 4HH  
Tel: 03000 200 190

DBS has a range of information about their services to help employers make safer recruitment decisions available on their [website](https://www.gov.uk).

**Care Quality Commission (CQC)**
CQC National Customer Service Centre  
Citygate  
Gallowgate  
Newcastle upon Tyne  
NE1 4PA  
Tel: 03000 616 161  
[Online contact form](https://www.cqc.org.uk/contact)

CQC has useful guidance for providers on criminal record checks which is available on their [website](https://www.cqc.org.uk).

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**Dominic Headley & Associates (DHA)**
Dominic Headley  
Mobile: 07739 814 199  
Tel: 0207 828 3038  
Email: dominic@dominicheadleyassociates.co.uk  
[www.dominicheadleyassociates.co.uk](https://www.dominicheadleyassociates.co.uk)

DHA is a specialist consultancy practice that provides expert advice, 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.

DHA worked with Skills for Care to develop this guide.

**Nacro Employer Advice Service**
First Floor, 46 Loman Street, London SE1 0EH  
Tel: 0845 600 3194  
Email: employeradvice@nacro.org.uk  
[www.nacro.org.uk](https://www.nacro.org.uk)

Nacro provides free operational support for employers on managing criminal record matters. They also provide safer recruitment training and consultancy services.

Nacro has developed a range of free resources to support employers which are available on Nacro [website](https://www.nacro.org.uk) including Recruiting safely and fairly: a practical guide to employing ex-offenders.

**Skills for Care**
West Gate  
Grace Street  
Leeds  
LS1 2RP  
Tel: 0113 241 1275  
Email: information.team@skillsforcare.org.uk  
[www.skillsforcare.org.uk](https://www.skillsforcare.org.uk)

Skills for Care has tools and resources to help social care and health employers recruit and retain staff with the right values, which are available on our [website](https://www.skillsforcare.org.uk).

**Unlock**
Maidstone Community Support Centre  
39-48 Marsham Street  
Maidstone  
Kent  
ME14 1HH  
Tel: 01634 247350  
Email: recruit@unlock.org.uk  
[www.unlock.org.uk](https://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.

Recruit is a website managed by Unlock that supports employers in the fair treatment of people with criminal records.
12. Glossary of terms

Adults at risk
(See discharge)

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) and cautioned (simple caution)
A simple 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.

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 GDPR)
The Data Protection Act 2018 replaces the Data Protection Act 1998 and should be read alongside the General Data Protection Regulations (GDPR). 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.
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.

**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**.

**Filtering/filtered**

The **DBS filtering** system is an automatic process managed by the **DBS** to remove ‘protected’ **cautions, reprimands, final warnings 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.

**General Data Protection Regulation (GDPR)**

(also see **DPA 2018**)

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

**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.

**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 standard or enhanced **DBS** check must always disclose any **conviction, caution, reprimand or final warning** 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 includes information about allegations, arrests, matters that resulted in no further action or not guilty verdicts.

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 conviction, reprimand, warning 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, convictions, final warnings and reprimands that are eligible for filtering from standard or enhanced DBS certificates.

Recruiting for potential pilot programme

During 2017 and 2018, funded by the Department of Health and Social Care (DHSC), Skills for Care led a project seeking to address ‘recruiting for potential from under-represented groups’ into the social care and health sector. Four pilot projects were commissioned which tested different pre-employment approaches to recruiting talented individuals who may experience barriers to employment. This included, for example, people with disabilities, people from a looked-after background, people who have experienced homelessness, military veterans, people with convictions and people who were long-term unemployed.

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. Further information about regulated activity with children can be found here.

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.
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. 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; usually when someone is applying for a job or role that’s exempt from the ROA. Until a caution or conviction becomes spent, it is known as unspent and will appear on DBS criminal record checks.

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 cautions)
13. Acknowledgements

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14. Appendices

Appendix 1: Safer recruitment checklist
Appendix 2: Criminal record self-declaration form for jobs covered by the ROA
Appendix 3: Criminal record self-declaration form for jobs exempt from the ROA
Appendix 4: Pre-employment checks and criminal record risk assessment