

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

Introduction

The purpose of this note is to offer guidance to local authorities, NHS organisations, support organisations (including user-led organisations (ULOs)) and individual employers of personal assistants in regard to who can:

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

Supplementary information about DBS can be found in Appendix A.

N.B. The information within this note serves as guidance only. Any individual or organisation requiring further information or unsure of their eligibility to request a DBS check or make a suitability decision should contact the DBS directly¹.

Roles and responsibilities in relation to DBS checks

1. Individual employers

- Individual employers (including anyone receiving a direct payment, personal budget or self-funding their own care) cannot submit an application for a DBS check. Similarly, they cannot make a suitability decision based on the results of a check.
- Individual employers can ask their local authority, NHS organisation or certain support organisations to conduct a DBS check on someone they want to employ or offer a job to² or on someone already in their employment provided that person concerned consents.
- Based on the results of the DBS check, someone employed by the local authority, NHS organisations or support organisation to make the suitability decision must make a decision as to the suitability of an individual for employment as a PA.
- If an individual employer is using a PA supplied by an agency (i.e. the individual employer pays a fee to an agency and that agency is the PAs legal employing organisation) then the agency can carry out a DBS check when recruiting that person.

¹ <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers#applicants-rights>

² If the potential employee is applying for a role which is eligible for a DBS check then the local authority, NHS organisation or support organisation will advise that such a check is required. Individual employers can also ask for guidance on the eligibility of a role for a DBS check from these local organisations.

- In all instances above, the employer cannot be involved in the suitability decision and details of the check cannot be shared with the employer unless they have received permission from the applicant (the PA) to share the certificate.

2. Personal assistants (PAs)

- Individuals cannot request a DBS check on themselves. Instead, they can (for a small fee) request a 'basic disclosure' from Disclosure Scotland: <http://www.disclosurescotland.co.uk/basicdisclosureonline/index.htm>.
- It is important to note that a basic disclosure is not the same as a DBS check; it is a request for details about unspent convictions only.

3. Local authorities, NHS organisations and the use of umbrella bodies

- Local authorities and NHS organisations making direct payments to people employing PAs should always ensure that information is available with regard to how to access DBS checks on potential PAs.
- A local authority or NHS organisation can apply for DBS checks themselves or decide to commission the processing of DBS checks out to an umbrella body (such as a user-led organisation (ULO)). The umbrella body will be responsible for processing a DBS application; however unless the umbrella body employs someone to make the suitability decision in regard to DBS checks the responsibility for the suitability decision remains with the organisation requesting a check.
- The local authority or NHS organisation cannot share the details of a check with the PA's potential employer³ but must share their decision regarding a PA's suitability⁴. However, the PA can show their DBS check to the person intending to employ them if they so wish.
- Organisations that do not conduct the suitability check as part of their role, cannot make an application for a DBS check on behalf of an individual employer but can only make applications on behalf of the local authority or NHS who conduct the subsequent suitability check.
- If the suitability decision maker considers that the information in the DBS response means that the person is not suitable for employment as a PA then the individual employer cannot employ that person, using a personal budget or personal health budget.
- In line with their duties under the Care Act 2014, local authorities and NHS organisations should also inform the direct payment (DP) recipient when using

³ The person making the suitability decision would have a duty to make a Safeguarding Alert to the local authority where an employment decision is made that puts an employer at risk of harm.

⁴ If a DBS certificate indicates that somebody appears on the barred list, then they cannot be employed. The person making the suitability decision will tell an employer they cannot employ that person. If an individual is on the adults barred list, seeking employment in regulated activity with an adult is a criminal offence.

regulated or unregulated services, that while a Disclosure and Barring Service (DBS) check is not mandatory, they may still wish to consider obtaining one as part of their overall risk management plan.

4. Support organisations

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

Agencies acting as an employer

An agency that acts as the legal employer of a PA or care worker in return for a fee from an individual (e.g. a domiciliary care agency or similar) is entitled to request a DBS check when recruiting staff.

N.B. Agencies working in this way, who are not already a registered provider, should contact the Care Quality Commission (CQC) to understand if they should be registered.

5. Agencies or support organisations acting as an introductory service, providing a PA register or a 'pool' of PAs available to work

Local arrangements vary in regard to what a PA needs to provide to join a PA register or a 'pool' of PAs looking for/ready to work (like a staff bank).

DBS checking PAs to join a register or pool

- Some organisations provide a PA register or matching service. The agency takes a PA on to their books solely to provide an introductory service and does not act as their employer.
- The agency can conduct a DBS check, with the relevant individual's consent, to ensure that the individual is suitable to carry out PA duties; this also applies if the PA is joining a 'pool' of suitable individuals. If a check reveals issues that

are considered, as part of the suitability check, to make the PA unsuitable for the role, then an agency must not accept a PA on to their register or books.

- An agency or support organisation applying for DBS checks on behalf of individuals in this way must make a decision about each individual's suitability for employment as a PA before placing them on a PA register. They cannot disclaim or delegate this responsibility.
- An agency or ULO that does not include the function of checking suitability of PAs in its role cannot make an application for a DBS check.

DBS checking PAs once they have been 'matched' with an employer

- Other organisations will advertise a list of PAs looking for work who have not been DBS checked.
- In these instances the employer will need to ask either their local authority, NHS organisation or support organisation to conduct the DBS check and make a suitability decision (as described earlier in this briefing) before proceeding with employment.

An agency can also ask if a PA has a current/recent DBS check which they would like mentioned in their entry on (for example) a PA register. Anyone doing this should note that a DBS certificate is technically out-of-date from the day it is issued and that an employer can request a new check as part of the recruitment process.

6. What should I do if I think my DBS checking service falls outside of this guidance?

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

Appendix one

Supplementary information on the Disclosure and Barring Service and related processes.

About the Disclosure & Barring Service

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

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

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

The DBS process

When a DBS check is carried out:

1. The applicant (the employee or potential employee⁵) is given an application form to complete by the organisation conducting the check on behalf of an employer/potential employer; this form, along with documents proving the applicant's identity, are provided by the applicant (usually in person) or their employer to the organisation registered to validate the applicant's identity and submit the application form to DBS
2. The applicant is sent a certificate detailing the results of their check; they need to share this with the relevant person within the organisation who requested the check who can make a decision on their suitability for employment, based on the contents of the certificate
3. The applicant does not have to share the results of their DBS check with anyone else, but can if they so wish.

Every organisation submitting applications for DBS checks must employ a person to make the suitability for employment decision. They will ordinarily do this as part of their wider responsibilities e.g. an HR or recruitment role. They cannot be the individual employer of the PA and must be a member of the organisation that submitted the application for a DBS check at an individual employer's request. DBS do not advise on what experience the person they appoint to make the suitability decision must have. This is for organisations to determine based on their own safeguarding responsibilities within the sector.

⁵ DBS checks cannot be carried out on family members employed to care for a relative. A definition of a family member is available in the NHS direct payment guidance here: http://www.personalhealthbudgets.england.nhs.uk/library/Resources/Personalhealthbudgets/2014/Guidance_on_Direct_Payments_for_Healthcare_Understanding_the_Regulations_March_2014.pdf

The definition of family and personal relationships in relation to regulated activity is in the Safeguarding Vulnerable Groups Act 2006 at section 58 and can be found here: <http://www.legislation.gov.uk/ukpga/2006/47/section/58>

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

Levels of disclosure

The Rehabilitation of Offenders Act 1974 was passed to protect individuals with minor convictions, and assign a period of time that conviction information would remain on a record, before the individual was classed as rehabilitated. Once the rehabilitation period was reached (and there was no re-offence) the applicant would not need to disclose the information to anyone requesting it. It was also recognised that certain positions or professions should fall outside this protection, due to the nature of the work undertaken. As such the (Exceptions) Order 1975 was passed detailing under what circumstances the employer was eligible to request all spent and unspent criminal information.

Employers have a responsibility to assess whether a DBS certificate at either Standard or Enhanced level is necessary for a specific role in line with the relevant legislation and also taking into account any sector-specific statutory guidance on the matter. It should also be noted that job roles should be assessed individually to confirm whether they meet the eligibility criteria and blanket-checking of all roles should not be implemented without establishing this. DBS checks are not mandatory unless there is specific legislation in place relating to the position being offered that makes a check a legal requirement. A request for a person to reveal their full criminal history including convictions that are 'spent' (when a DBS check is carried out) is known as an 'exempted question'. There are three different levels of Disclosure available:

Standard disclosures

These show details of any spent and unspent convictions, cautions, reprimands and final warnings received by the subject. Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 the Government outlined certain roles/professions where an employer (or other interested party) can ask an individual to disclose any spent and unspent criminal convictions.

Enhanced disclosures

This includes the same as the standard check plus any additional information held by local police that's reasonably considered relevant to the role being applied for (adult, child or other workforce).

Enhanced disclosures with list checks

This is like the enhanced check, but includes a check of the appropriate DBS barred list(s). An employer can only ask for a barred list check for specific roles. It's a criminal offence to ask for a check for any other roles.

For the purpose of conducting a DBS check, organisations submitting 100 or more checks in any 12 month period can register directly with the DBS. Organisations not able to register with DBS will need to conduct checks through a registered 'umbrella body' (an organisation that will do a check on another's behalf).

Other types of check

Basic disclosures

A basic disclosure is not the same as a DBS check. Basic disclosures can be requested by a job applicant, individual employer or an employing organisation; the disclosure certificate is issued to the job applicant only and they can then share the outcome with their employer. A basic disclosure shows details of any unspent convictions. This means that an applicant (the potential employee) would not need to disclose a 'spent' conviction if asked for a self-disclosure by an employer or other interested party (e.g. insurance provider) about unspent criminal convictions. Basic disclosures are supplied by Disclosure Scotland to applicants across the whole of the UK.