

Recruiting without access to DBS checks

Sometimes it isn't possible to access Disclosure and Barring Service (DBS) checks as part of your recruitment process. This might be because the role you want to place a person into is not eligible for a certain level of check. It may be that they are a freelance operator e.g. music tutor, and there is no-one who employs/deployes them to apply for their check. It may also be that they are a new arrival in the UK. If so, there are other good practice steps that you could use to support safer recruitment which can be applied equally across your staff, volunteers and trustees.

Let's just have a quick recap on DBS checks:

Unspent convictions are those which are not yet spent, the rehabilitation period is still in force.

- You can ask all staff and volunteers about unspent convictions.

Basic checks show only unspent convictions.

- Anyone can apply for a basic check, even someone who is self-employed.

Spent convictions are those where the rehabilitation period is past.

- Under the Rehabilitation of Offenders Act (ROA), you can only ask about spent convictions when recruiting people into certain roles, often with contact with vulnerable groups (children or adults at risk). Otherwise, the individual does not have to disclose their spent convictions (see also filtering rules).

Standard checks will disclose any spent and unspent convictions

- Required for professions such as accountancy, security and the law
- NOT appropriate for roles with contact with vulnerable groups (children or adults at risk)

Checks for roles with contact with children or adults at risk (vulnerable groups):

Enhanced checks will disclose cautions, convictions, warnings and reprimands and information relevant to the workforce (children's or adult's workforce or both)

- Recommended for positions where there is opportunity to develop a relationship of trust with a child or adult at risk.

Enhanced checks with barring list check are required by law for roles in regulated activity with children or adults at risk due to age, illness or disability*

- [Regulated activity guidance](#)
- *Regulated activity is work a barred person cannot do, or apply to do.*

Regulated activity and the law

The Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012 introduced and then refined the scope of roles which are regulated activity.

If the role (salaried or voluntary) is in regulated activity, the check against the barring list is required by law. If there's no access to this check, you must not place the person in regulated activity (except when volunteers under continuous supervision are working with children). However, this doesn't mean that the same people can't take on other roles in your organisation!

Recruiting into a role which does not meet eligibility for checks

Risk management

Your common law duty of care as an employer is to minimise risk to your workforce, (either as paid staff or volunteers) to beneficiaries of your services and to anyone else who comes into contact with your organisation.

Dealing with a known risk is easier than trying to address an unknown risk, but some broadly applied good practice measures can help lower risk for everyone.

Examine the job / volunteer role description

Are there any appropriate and additional tasks which, when included in the job description, will support eligibility for checks?

- Look at frequency and opportunity for repeated contact
- Access to targeted groups - known to be vulnerable, not just the general public
- Driving roles (this may be regulated activity*)

Any task of recruiting will be supported by drawing up a job or role description at the beginning of the process. It will:

- Make comparison between candidates easier
- Assist in deciding eligibility for DBS checks
- Clarify the tasks and practices you expect of the successful candidate.

The use of application forms and interviews (however informal) helps to make comparisons and choose between candidates. It also gives you a paper trail of evidence to support your decision-making, should this be challenged.

Steps to help you ascertain who you are employing:

- Application form and interview questions should aim to fill in gaps in life/career story. Where else have they been and what have they been doing? What have they learnt from their experiences that they can bring to the position?
- Take up references. Ask specific questions relating to conduct in roles with children/adults at risk. Remember that references provided must be accurate and fair, do not ask for any supposition on the part of the referee.
- Check the references are genuine through follow up phone calls to the referees, visit company websites etc.

- Check their ID and their legal right to work in UK
- Check all their stated qualifications are genuine, contact training boards, colleges, universities as applicable.

Useful recruitment practices

Probation

It is not unusual to make a job offer based on a 3 or 6 months probationary period. This is so the employer can see whether the new recruit is up to the job in practice, and so the new employee can decide to leave if they are unhappy in the role or with the organisation. Notice required by either side during this period can be very short - sometimes only a week.

However, it should be remembered that some of a new recruit's employment rights start from their first day, including the right not to be wrongfully dismissed.

A job offer letter should say whether any probationary period will have to be completed satisfactorily, and what this means in practice. In terms of minimising risks, this could include adherence to a code of conduct, working within specified boundaries/remits, reporting to a supervisor, undertaking induction and further training, completing logs/reports/reflections satisfactorily.

Induction

Induction need not be a formal process, as long as it is structured, well organised and managed, and completed. In many organisations, it will be carried out informally by the new starter's manager or supervisor on a day-to-day basis. Depending on what the person needs to learn, it may last for several days, even weeks.

- Work out what, when and who in the organisation will be involved. Crucially, it should identify who will greet the new employee on their first day
- Different parts of the induction should be handled by different staff with the relevant expertise.
- Writing a checklist of what should be covered is particularly helpful, especially one that the employee can contribute to, to share ownership in managing their induction.
- Consider all special accommodations or requirements the individual has, or that the workforce need to be aware of, to help people work well together.

Supervision

Supervision is the management of a person's performance in a job or role, and support for the person doing the job. This can be provided on a periodic basis to guide and support the person to deliver their work appropriately, effectively and sustainably. Supervision can be used to:

- set targets and goals,
- support ways to develop skills and knowledge, and
- capitalise on learning from experiences in the workplace.

Supervision should also provide a safe place for the employee to discuss things that they find difficult; professionally, so they may improve, and personally, so that the workplace

may offer support or accommodations that help the employee to perform as well as possible, and, where possible, address their issues.

Disciplinary procedures

Disciplinary procedures are the steps that an organisation can take to address issues in an employee's performance and conduct in the workplace. Expectations of each role and staff member should be clearly described so that everyone knows what they should aim to deliver and how to behave, as a team member and as an ambassador of their organisation.

Dealing with failings is usually through a series of steps which move through levels of severity. Matters of serious misconduct may jump several stages at a time, reflecting the seriousness of the issue. The final step is dismissal from the organisation.

If the matter relates to the safeguarding of vulnerable people, an investigation may take place involving the police and social services, depending on the circumstances. This may have longer term repercussions for the employee regarding future employment.

Good practice in recruitment:

- Consider the use of self-disclosure forms if roles are not eligible for DBS checks (subject to disciplinary process if the individual fails to disclose relevant information)
- DBS considerations should be the last step in the recruitment process. Apply only for the successful candidate. Look for all the positive reasons why you might recruit the individual first
- Discuss criminal history issues separate from the actual interview, but only at the point at which you are planning to appoint the candidate.
- Use and recommend the DBS Update Service, it will save everyone time and money [DBS update service](#)

acas provide lots of useful guidance on recruitment principles: [acas recruitment](#)

Filtering rules (reminder)~

The filtering rules were introduced under a legislative amendment in May 2013 and apply across Standard and Enhanced levels of check. Filtering is not the same as removal; to be filtered, an offence must be a single offence. Any repeat offence will appear on the certificate at next printing, along with the original offence.

For those 18 or over at the time of the offence:

An adult conviction will be removed from a DBS certificate if:

- 11 years have elapsed since the date of conviction; and
- it is the person's only offence, and
- it did not result in a custodial sentence
- An adult caution will be removed after 6 years have elapsed since the date of the caution, and under the same rules.

For those under 18 at the time of the offence:

A conviction will be removed from a DBS certificate if:

- 5.5 years have elapsed since the date of conviction; and
- it is the person's only offence, and
- it did not result in a custodial sentence
- A caution will be removed after 2 years under the same rules.

NB: Certain serious (safeguarding) offences will never be filtered. A list can be found online: [Offences-that-will-never-be-filtered](#)

- The individual does not have to disclose cautions or convictions that are filtered