My right to work with children and vulnerable adults

Explains what a DBS check is and what you can do if you are unhappy with the information held about you by the police. Applies to England and Wales.
Contents
Overview.................................................................3
Quick facts.............................................................3
Please note............................................................3
Terms you need to know ........................................4
What is a DBS check?............................................6
Jobs that require DBS checks....................................7
  What jobs require a DBS check? .............................7
  What if I’ve been asked to have a DBS check but I disagree?.................................7
  When is a DBS check carried out?........................8
  What if I’m a volunteer?........................................8
  What if I change jobs?...........................................8
What is the process?................................................9
  What is the process?.............................................9
  How long does it take?.........................................11
  How much does it cost?.......................................11
What will show up?................................................12
  What will show up on a DBS check? ........................12
  Will it include information about my mental health problem?.................................12
  How do the police decide what information to include?........................................12
  Can I find out what it would contain in advance?.................................................14
  What if the information is wrong or irrelevant?......................................................14
What if my job offer is withdrawn because of a DBS check? ...................................16
Useful contacts........................................................17
  Mind Legal Line....................................................17
  Disclosure and Barring Service.................................17
  Independent Monitor...............................................17
  The Law Society....................................................17
  Local Mind..........................................................17
  Find an advocate..................................................18
Overview

If you want to get a job which involves working with children or vulnerable adults, you may be asked to get a DBS check.

Quick facts

- A DBS check is a check of your criminal record which is used by an employer to decide whether you are a suitable person to work with children or vulnerable adults.

- Depending on what kind of job you are applying for, there are three different types of DBS checks: standard DBS check, enhanced DBS check and enhanced DBS with list check.

- A standard DBS check won’t include information about your mental health problem, but an enhanced DBS check could include details of any non-conviction information held about you on local police records which the police consider relevant.

- If you are not happy about the information disclosed on your DBS certificate, you can ask the Disclosure and Barring Service to carry out a review.

- If your job offer is withdrawn because of a DBS check, you may be able to challenge it on the grounds of disability discrimination.

Please note

- This guide only covers DBS checks from the point of view of a person with a mental health problem.
- This is not a guide to the jobs that require a DBS check.
- This guide applies to England and Wales.
- This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your individual situation and needs. See Useful contacts for more information.
Terms you need to know

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caution</td>
<td>This is a formal warning about future conduct given by a senior police officer, usually in a police station, after a person has committed an offence. It is used as an alternative to a charge and possible prosecution.</td>
</tr>
<tr>
<td>Certificate dispute form</td>
<td>This is the form you use if you are unhappy about the content of a DBS Certificate.</td>
</tr>
<tr>
<td>Children</td>
<td>A child is a person under the age of 18.</td>
</tr>
<tr>
<td>Criminal record</td>
<td>A record of convictions held on the Police National Computer (PNC) for individuals convicted of crimes.</td>
</tr>
<tr>
<td>DBS certificate</td>
<td>The document issued following an application to the DBS for a criminal records check. It will contain the personal information you have provided and the result of the checks undertaken.</td>
</tr>
<tr>
<td>DBS check</td>
<td>A check of your criminal record carried out by the Disclosure and Barring Service. This used to be called a ‘CRB check’.</td>
</tr>
<tr>
<td>Disclosure and Barring Service</td>
<td>The agency responsible for processing requests for:</td>
</tr>
<tr>
<td></td>
<td>• criminal records checks</td>
</tr>
<tr>
<td></td>
<td>• deciding whether it is appropriate for a person to be placed on or removed from a barred list</td>
</tr>
<tr>
<td></td>
<td>• placing or removing people from the DBS children’s barred list and adults’ barred list for England, Wales and Northern Ireland</td>
</tr>
<tr>
<td></td>
<td>The Disclosure and Barring Service replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).</td>
</tr>
<tr>
<td>Enhanced DBS check</td>
<td>A check of your criminal record which will show details of all spent and unspent convictions, cautions, reprimands and final warnings held on central police records, plus additional information held on local police records that is reasonably considered relevant to the job in question.</td>
</tr>
<tr>
<td>Enhanced DBS with list check</td>
<td>A check of your criminal record which will show the same as an Enhanced DBS, but will also include a check of the Disclosure and Barring Service children and adults barred lists – a list of individuals who are barred from working with children or vulnerable adults.</td>
</tr>
<tr>
<td>Final warning</td>
<td>These no longer exist, but were given to young people under the age of 18 if the police decided not to prosecute them and they had already received a reprimand for a previous offence.</td>
</tr>
<tr>
<td></td>
<td>They were also given for first offences that were too serious for a reprimand.</td>
</tr>
<tr>
<td><strong>Independent Monitor</strong></td>
<td>An independent body responsible for reviewing disputes from applicants regarding local police information disclosed on Enhanced DBS Certificates.</td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Local police records</strong></td>
<td>Police records, not held on the Police National Computer, containing non-conviction information.</td>
</tr>
</tbody>
</table>
| **Mental Health Act 1983** | This is a law that applies to England and Wales which allows people to be detained in hospital (sectioned) if they have a mental illness and need treatment. You can only be kept in hospital if certain conditions are met.  
See our information on the Mental Health Act. |
| **Place of safety** | A locally agreed place where the police may take you to be assessed, usually a hospital. A police station should normally only be used in an emergency. |
| **Reprimand** | The equivalent of a caution for young people aged under 18. These no longer exist. See also, final warning. |
| **Spent convictions** | A conviction that, after a period of time, can be treated as if it never existed and no longer needs to be disclosed (except for the purposes of DBS checks). |
| **Standard DBS check** | A check of your criminal record which will show details of all spent and unspent convictions, cautions, reprimands and final warnings held on central police records. |
| **Subject access request** | A written request to an organisation asking for details of the personal information they hold about you.  
See our information on accessing your personal information. |
| **Unspent conviction** | Except in very limited circumstances, when a person is convicted of a crime, that conviction is considered to be irrelevant after a set amount of time (the rehabilitation period) and it is then referred to as “spent”. This period of time varies according to the sentence received.  
A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed. |
| **Vulnerable adult** | A person aged 18 or over, who receives or may need community care services because of a disability, age or illness, and who is or may be unable to take care of themselves or protect themselves against significant harm or exploitation. |
What is a DBS check?

It is a check of your criminal record which is used by an employer to decide whether you are a suitable person to work with children or vulnerable adults. DBS checks used to be called Criminal Records Bureau (CRB) checks and you may still see or hear them referred to as this. DBS checks are carried out by the Disclosure and Barring Service.

Depending on what kind of job you are applying for, there are three different types of DBS checks:

- **Standard DBS check**
- **Enhanced DBS check**
- **Enhanced DBS with list check**
Jobs that require DBS checks

- What jobs require a DBS check?
- What if I’ve been asked to have a DBS check but I disagree?
- When is a DBS check carried out?
- What if I’m a volunteer?
- What if I change jobs?

What jobs require a DBS check?

Jobs that involve regular work with children or vulnerable adults. An organisation cannot decide to just DBS check everyone it employs – the decision about whether a DBS check is needed has to be based on each individual role.

For some jobs, a DBS check will always be required – for example:

- teachers
- social workers
- childminders
- foster carers
- medical professionals

Some jobs in particular settings will also always require a DBS check – for example:

- schools
- children’s homes
- hospitals

There are also jobs that require a DBS check when you enter the profession – for example:

- solicitors
- barristers
- veterinary surgeons
- accountants

There is guidance on what jobs require a DBS check, but it does not provide a list of jobs. If you are unsure whether a DBS check will be needed for a particular job, you should contact the Disclosure and Barring Service.

What if I’ve been asked to have a DBS check but I disagree?

If you have been asked by a prospective employer to have a DBS check, but you don’t think the job requires one, you can ask the Disclosure and Barring Service to investigate. Read this guide on the Gov.uk website to find out how to do this (scroll down to ‘Applicant eligibility enquiries’).
When is a DBS check carried out?

A DBS check should only be carried out at the point a job offer has been made to you.

What if I’m a volunteer?

You will only need to have a DBS check if the voluntary role involves regular unsupervised contact with children or vulnerable adults.

What if I change jobs?

A DBS check does not expire, but it is only accurate at the date the check is carried out. It is up to your new employer to decide whether to accept a DBS certificate that you got for a previous job, or ask you to get another DBS check.
What is the process?

- What is the process?
- How long does it take?
- How much does it cost?

What is the process?

See flowchart on next page
You are offered a job which involves working with children or vulnerable adults.

Employer gives you a DBS check application form.

Complete DBS check form and return to employer with documents to prove your identity.

Employer submits form to Disclosure and Barring Service (directly or via an umbrella body).

DBS check carried out.

Standard DBS check

Enhanced DBS check

Search of Police National Computer carried out.

Search of local police records carried out.¹

DBS certificate printed and sent to you (not your employer).

¹ A search of children and adults barred lists may also be undertaken if the job involves caring for, supervising or being in sole charge of children or vulnerable adults.
How long does it take?

- **Standard DBS checks** take about 2 weeks
- **Enhanced** and **Enhanced with list checks** take about 4 weeks

How much does it cost?

You employer will pay for your **DBS check**.

- **Standard DBS checks** cost £26.
- **Enhanced** and **Enhanced with list checks** cost £44.
- DBS checks for most volunteering roles are free.
What will show up?

- What will show up on a DBS check?
- Will it include information about my mental health problem?
- How do the police decide what information to include?
- Can I find out what it would contain in advance?
- What if the information is wrong or irrelevant?

What will show up on a DBS check?

It depends on what level of check is carried out:

<table>
<thead>
<tr>
<th>What kind of check is it?</th>
<th>What will show up?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard DBS check</strong></td>
<td>Details of all <em>spent</em> and <em>unspent convictions, cautions, reprimands</em> and <em>final warnings</em> held on central police records.</td>
</tr>
<tr>
<td><strong>Enhanced DBS check</strong></td>
<td>The same as the standard check plus any additional information held on <em>local police records</em> that is reasonably considered relevant to the job in question.</td>
</tr>
<tr>
<td><strong>Enhanced DBS with list check</strong></td>
<td>The same as an Enhanced DBS, but it will also include a check of the <em>Disclosure and Barring Service</em> children and adults barred lists – a list of individuals who are barred from working with children or vulnerable adults. This level of check will only be needed for jobs which involve caring for, supervising or being in sole charge of children or vulnerable adults.</td>
</tr>
</tbody>
</table>

Your prospective employer will tell you if a DBS check is needed for your job and, if so, what level of check is required.

Will it include information about my mental health problem?

A standard DBS check won’t include this information, but an enhanced DBS check will include details of any non-conviction information held about you on local police records which the police consider relevant.

This could include information which relates to your mental health – for example, if you have ever been removed to a place of safety by the police under section 136 of the Mental Health Act 1983 (see our information on sectioning to find out more).

How do the police decide what information to include?
Before including non-conviction information in your DBS certificate, the police must ‘reasonably believe’ that the information is relevant. This means they should consider the following:

- **There should be no presumption** either in favour of or against disclosing the particular information – for example, the police should not include all information about your mental health regardless of its relevance.

- **Information must be relevant.** Information must only be disclosed if the police reasonably believe it to be relevant to the job you have applied for. It should be serious enough to justify inclusion and should be sufficiently current, taking into account the age of the information, your age at the time of the incident and your conduct since the incident. The information should also have come from a trustworthy source.

- **The impact it has on you.** Account should be taken of the impact on you of disclosing the information.

- **Opportunity to comment.** The police should consider whether you should be given an opportunity to comment on the information before it is disclosed.

The guidance for the police on disclosing non-conviction information from the Gov.uk website specifically says: "on its own, information relating to physical health or mental health is unlikely to be appropriate for disclosure."

The police have to balance any risk posed to the public against your right to privacy.

**Example**

Janet is 28 years old. When she was 18, she experienced significant mental health problems following a family bereavement. On one occasion, she became very distressed in a shopping centre and was removed by the police to a place of safety.
She spent a few hours in a police cell before being taken to hospital to be assessed under the Mental Health Act 1983. She has been well ever since and has never had any further involvement with the police.

Janet recently applied to work in a children’s home. She has been offered the job and been sent a DBS check application form. Janet is worried that the DBS certificate will include details of when she was held in a police cell.

Because her new job will involve regular unsupervised work with children, Janet will need to have an Enhanced DBS check, which will include relevant non-conviction information held on local police records. However, the police will need to decide:

- whether the information about Janet is relevant to the job at the children’s home
- whether the incident is serious enough to justify inclusion

The incident in this case did not happen because Janet committed a crime, but purely because she was mentally unwell. Also, it happened 10 years ago when Janet was 18 and she has not had any involvement with the police since.

In these circumstances, it is unlikely that the police could justify including the information. If they did, Janet could ask the Disclosure and Barring Service to review the certificate.

Can I find out what it would contain in advance?

Yes. You could make a subject access request to the police to find out what information they hold about you. See our information on accessing personal information to find out how to do this.

What if the information is wrong or irrelevant?

Your DBS certificate will be sent to you, not your prospective employer. This will give you an opportunity to challenge any of the information in the certificate.

Asking for a review

You can ask the Disclosure and Barring Service to carry out a review of the certificate if:

- the information in the certificate is wrong – for example, it includes information about another person or is inaccurate
- you feel that information in the certificate is irrelevant – for example, information about your mental health that has no relevance to the job you have applied for

To do this, you need to:
• complete a Certificate Dispute Form. The Disclosure and Barring Service will pass the dispute to the relevant police force to reconsider
• make sure you do this within 3 months of the date on the certificate

What could happen afterwards:

• **If the police decide to remove or amend the information** disclosed, the Disclosure and Barring Service will send you a replacement certificate.

• **If the police decide not to remove or amend the information** disclosed, the dispute will be referred to the Independent Monitor to investigate.

• **If the Independent Monitor agrees with you**, they will direct the Disclosure and Barring Service to issue a revised DBS certificate which doesn’t include the irrelevant information.

• **If the Independent Monitor does not agree with you**, you may be able to take the police to court, but you would need to seek advice from a public law solicitor about this.
What if my job offer is withdrawn because of a DBS check?

You may be able to challenge this on grounds of disability discrimination, but it will depend on the reasons given by the employer for withdrawing the job offer.

You would need to be able to show that the employer has changed their mind because you have a mental health problem, and not because they believe the information in the DBS certificate suggests that you pose a risk to children or vulnerable adults.

If you think you may have been discriminated against in this way, you should get advice from an employment law solicitor.

For more information on disability discrimination by a prospective employer, and how you can complain about this, see our information on discrimination at work.
Useful contacts

Mind Legal Line

PO Box 277
Manchester
M60 3XN
0300 466 6463 (Monday to Friday, 9.00 am to 5.00 pm)
legal@mind.org.uk

The Mind Legal Line can provide you with legal information and general advice.

Disclosure and Barring Service

Telephone: 0870 909 0811
Minicom: 0870 909 0344
customerservices@dbs.gsi.gov.uk

The Disclosure and Barring Service runs a Disclosure helpline for questions about DBS checks.

Independent Monitor

Safeguarding and Public Protection Unit Home Office
4th Floor Fry Building
2 Marsham Street
London
SW1P 4DF
IndependentMonitor@homeoffice.gsi.gov.uk

The Independent Monitor is an independent body responsible for reviewing disputes from applicants regarding local police information disclosed on Enhanced DBS Certificates.

The Law Society

020 7242 1222 (England)
029 2064 5254 (Wales)
lawsocty.org.uk

The Law Society provides details of solicitors you can get in touch with for specialist legal advice.

Where can I get support?

Local Mind
Local Minds support over 280,000 people across England and Wales. Their services include supported housing, crisis helplines, drop-in centres, employment and training schemes, counselling and befriending. They may be able to help you find advocacy services in your area.

Find your local Mind here.

**Find an advocate**

An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.

For information on advocacy services and groups in your area, you could start by contacting the Mind Legal Line and your local Mind.

Read more about how advocacy might help you.

Published by Mind © 2015

To be revised in 2017.