

Disclosure and Barring Service Policy & Procedure

CPRCCG HR06

Version:	001
Ratified By:	Remuneration Committee
Date Ratified:	October 2017
Designation of Author:	HR Consultant
Name of Assurance Committee:	Remuneration Committee
Date Issued:	2017
Review Date:	May 2020
Target Audience:	All Castle Point & Rochford CCG employees and other users including contractors, agency and temporary workers etc.

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1. Purpose

The CCG has developed this policy:

- a) In line with our safeguarding principles, to help us ensure that the children, young people and adults at risk who we work with and for are protected and kept safe from harm by identifying individuals, through criminal records checks and/or barred list checks, who may be unsuitable to undertake 'regulated activity' (see section 5 and Appendix 1 below).
- b) To ensure the CCG abides by the obligations of the Disclosure and Barring Service (DBS) and the relevant laws for handling, checking and retaining criminal record disclosure information.
- c) To ensure the CCG complies with the spirit and requirements of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) and that applicants are treated fairly when considering disclosed information.
- d) To ensure the CCG follows the requirements of NELCSU as its umbrella body for DBS checks.

2. Scope

This policy and procedure applies to all candidates and all roles in the CCG that are subject to a disclosure check through the DBS. This includes employees, agency workers, bank workers, self-employed consultants (including those working as limited companies) and volunteers.

3. Roles & Responsibilities

3.1 Line Managers/Recruiting Managers – are responsible for deciding the required level of disclosure check and ensuring the checks are carried out in accordance with this policy; seeking advice from their HR contact on any aspect of the policy where needed.

3.2 Recruitment Team at NELCSU – is responsible for the administration of the disclosure checking process and supporting managers to ensure required checks are carried out in accordance with this policy; and when it is necessary to make a referral to the relevant regulatory bodies.

3.3 HR Business Manager – is responsible for endeavouring to ensure compliance with legal and regulatory obligations; and keeping up-to-date with any DBS policy or procedural changes and updating this policy, and other associated forms or processes, accordingly.

4. Definitions/Abbreviations

DBS – The Disclosure and Barring Service. It replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). Responsible for criminal record disclosure checks in England and Wales.

Rehabilitation of Offenders Act (ROA) 1974 – The Act of the UK Parliament that enables some criminal convictions to be ignored after a rehabilitation period. Its purpose is that

people do not have a lifelong blot on their records because of a relatively minor offence in their past. The rehabilitation period is automatically determined by the sentence, and starts from the date of the conviction. After this period, if there has been no further conviction the conviction is "spent" and, with certain exceptions, need not be disclosed by the ex-offender in any context such as when applying for a job, obtaining insurance, or in civil proceedings.

Regulated Activity – as currently defined by under the Protection of Freedoms Act 2012 (see section 5 and Appendix 1) .

Workforce Categories - The classification depends on the actual activities the individual is undertaking and whether they will fall under the definition of regulated activity in relation to adults and/or children.

5. The Purpose and Levels of a DBS Check

A DBS check forms one part of our wider safeguarding processes. It helps us determine whether a person is a suitable for a particular role by providing information about the individual's criminal history.

5.1 Types of Checks:

Standard DBS Check (for information only) reveals information relating to spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC). It is used primarily for people entering certain professions such as members of the legal and accountancy professions. To be eligible for a Standard Check the position must be specified in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. The CCG does not use Standard checks.

Enhanced Checks reveals the same information as Standard Checks but also checks against information held by local police forces (e.g. relevant on-going investigations). Where specified, and if the role falls within the current definition of regulated activity (see 5.2 below) it also checks against relevant lists of people prohibited from working with children and vulnerable adults. These are known as 'barred lists'.

To be eligible for an Enhanced Check the position **must** be specified in **both** the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) Regulations.

Positions falling within the old definitions of 'Regulated Activity' (under the Safeguarding Vulnerable Groups Act 2006) are eligible for an Enhanced Check only.

The minimum age that someone can apply for a DBS check is 16. The level of check will be determined by the nature of the role the individual will be undertaking:

Enhanced Check with Children and/or Adult Barred List Check

This determines whether an individual is barred from working with vulnerable persons, including children. To be eligible for an Enhanced Check + Barred List Check the position must meet the current legal definition of 'Regulated Activity' (see 5.2 below).

Further written guidance on eligibility can be found on the DBS website - [DBS - Eligibility Guidance](#). There is also an [on-line tool](#) to help determine eligibility. **It is a criminal**

offence for The CCG to undertake a DBS check on an individual whose role does not meet the eligibility criteria.

5.2 What is Regulated Activity?

Regulated Activity includes work that involves close and unsupervised contact with vulnerable groups. There are two types of Regulated Activity; Regulated Activity with Children and Regulated Activity with Adults (see the regulated activity definitions document at Appendix 1). If the nature of the work falls within either of these categories we can request an Enhanced Check against the relevant workforce barred list (see 5.3 below). Regulated Activity is work a person who appears on the DBS barred list is prohibited from doing.

The changes introduced in 2012 also mean that we are no longer able to obtain a DBS check for anyone undertaking “controlled activity”. This category covered people who had frequent access to education, health or social services records (i.e. sensitive data). This means we can no longer check people whose **only** eligibility would have fallen under that old category of “controlled activity”. If their role still falls within either new or old definitions of ‘regulated activity’ we can request a DBS check.

A person who is barred from working, or deemed unsuitable to work, with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups.

An organisation that knowingly employs or engages (paid or unpaid) a barred, or unsuitable, individual to work with children or vulnerable adults will also be breaking the law.

5.3 Classification of the Workforce

5.3.1 Child and Adult Workforce

Our ability to check against the different barred lists is determined by the type of workforce that the role works within. It is therefore important that on the DBS application form that the correct workforce category is indicated as follows:

- **Child Workforce** - any position that involves working/ volunteering with children.
- **Adult Workforce** - any position that involves working/ volunteering with adults.
- **Child and Adult Workforce** - any position that involves working/ volunteering with children **and** adults.
- **Other Workforce**- any position that does not involve working/ volunteering with children or adults e.g. security guard.

The classification depends on the actual activities the individual is undertaking and whether they will fall under the definition of regulated activity in relation to adults and/or children (Appendix 1).

5.3.2 Home Based Workers

The DBS also require that we indicate on the DBS application whether the applicant will be a home based worker. It is important to note that under the DBS’s definition this means that the applicant must be **providing the services** to the child or vulnerable adult

in the applicant's own home. This is because if a role is legitimately identified as being 'home based' the DBS will need to run checks on any other individual registered at the same address as the applicant. We must therefore not select home based for applicants who are home based for the purposes of their 'office' but who work with children or vulnerable adults from other CCG premises etc. **There is not likely to be anyone working for the CCG who would be considered home based for the purposes of DBS.**

6. Filtering or “Protecting” of convictions disclosed by the DBS

For roles based in England or Wales the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) by SI 2013 1198 provides that certain spent convictions and cautions are “protected” and are not subject to disclosure to employers, and cannot be taken into account. These convictions and cautions are protected subject to the filtering rules. Individuals therefore do not need to declare any convictions or cautions to us that would be subject to these rules.

Rules on filtering convictions from DBS certificates:

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

Even then, it will only be removed if it does not appear on the list of offences which will never be removed from a certificate. A full list of these offences can be found on the [DBS website](#). If a person has more than one offence, then details of all their convictions will always be included.

An adult caution will be removed after 6 years have elapsed since the date of the caution – and if it does not appear on the list of offences relevant to safeguarding.

For those under 18 at the time of the offence:

The same rules apply as for adult convictions, except that the elapsed time period is 5.5 years

The same rules apply as for adult cautions, except that the elapsed time period is 2 years.

Further information including can be found in the [DBS's employer's guidance on filtering](#).

7. Disclosure Process in Recruitment

At the start of the recruitment process the recruiting manager must decide if the role is eligible for a disclosure check.

If the role is eligible for a disclosure check any offer of employment/volunteering must be made conditional on the receipt of a satisfactory disclosure check. With regards to employees, apprentices, volunteers (including student placements and interns), bank workers, casual workers and self-employed consultants (including those working as

Limited Companies), it is the CCG's responsibility to ensure that up-to-date checks are carried out as appropriate for the role.

Agency staff are the responsibility of the employing agency. The line manager must ensure that the agency provides us with written confirmation that they have had the appropriate type of satisfactory DBS check within the 12 months immediately preceding the placement.

For those employed by other organisations but working for or on behalf of the CCG, the CCG must ensure a DBS check has been carried out. Contact must be made with the individuals' HR team. If they have had a check in the preceding 12 months, the certificate number should be recorded. If they have not had a check, arrangements should be made for one to take place.

No-one should start undertaking any regulated activity until the CCG has received the satisfactory check. In exceptional circumstances following a risk assessment, HR advice and Accountable Officer approval an individual who is waiting for a check may start work with the CCG, but this must be for induction purposes only, they must not carry out regulated activities before a certificate has been received. All paperwork and information relating to the disclosure process must be handled and stored in accordance with the DBS code of practice on the secure handling, use, storage and retention of disclosure information.

8. Repeat disclosure checks

It is CCG policy that disclosure checks will be undertaken on all those working in Regulated Activity (pre and post Sept 2012 definitions).

In addition a new/repeat check will be carried out on staff changing jobs or volunteers changing roles where the new role requires a disclosure check and/or involves working with a different workforce e.g. moving from a role outside Children's Services that did not involve working with children/vulnerable adults to a new role that does will require a disclosure check or a different level of disclosure check.

The level of information disclosed is dependent on which workforce the person is working in (section 5.3, above). It is therefore important that Managers consider whether any repeat checks are required if the client group that the service is working with changes.

For specific roles covered by Ofsted - A new DBS check is required when a person moves jobs in the same organisation if:

- the new job gives greater access to children or has more responsibility; such as a child care worker promoted to become a senior child care worker
- there has been a break of more than three months between leaving the old role and taking up the new role
- there are concerns about the person, which may affect his or her suitability/fitness.

9. Identity Verification

Obtaining a disclosure check requires applicants to provide valid, current, and original documents, to prove their identity and to verify their date of birth and address history in accordance with current DBS [guidelines](#). They must make arrangements, to meet with HR prior to their proposed start date so that checks can be undertaken in time to process the DBS check before the start date.

9.1 Overseas applicants and UK applicants who lived abroad

The DBS can only provide information relating to the UK. If the applicant is from overseas, or has spent time living or working abroad, The CCG will ask them to get a criminal records check, or 'Certificate of Good Character (CGC)', from their country of origin to supplement the DBS process.

In some cases it may also be possible for the individual to request such a check through the relevant embassy. Processes for getting [criminal records checks abroad](#) vary between countries.

Where it is not possible to obtain such checks, e.g. because the country in question won't co-operate, then a thorough risk assessment must be carried out by a suitably qualified member of staff. The Accountable Officer in discussion with HR, will then review the outcome of the risk assessment and, will take the decision on whether or not to appoint.

10. Storage and Use of Criminal Records Information

DBS certificates will only be sent to the applicant, even if it contains any criminal record information. Therefore the applicant will be requested to contact HR to bring the original certificate for checking and copying. The applicant's permission must be obtained to copy the certificate and they will be asked to sign the copy to confirm their consent.

10.1 Clear Disclosure Record

Where a disclosure indicates no criminal history, this will be recorded on ESR together with the date received and the date of the disclosure report. The recruiting Manager will be informed that the applicant/ employee has been cleared to commence in post (subject to all other pre-employment checks).

10.2 Positive Disclosure

If a disclosure indicates a conviction, caution or other record, the disclosure will be recorded and stored on the individual's electronic file. The counter-signatory will make checks to ascertain whether the information reported had been declared on either the application form, at interview or on the self-declaration form.

In the event that there are convictions / cautions recorded on the disclosure these should be brought to the attention of the Director of Service and discussed with HR to determine the appropriateness of proceeding.

The decision rests with the CCG as to whether to employ a person whose DBS check reveals a conviction or other relevant information. The information provided should be

carefully considered in the light of all the relevant circumstances and judged on a case-by-case basis.

If the issues on the disclosure certificate have not be previously declared, the recruiting manager will be informed and will be required to contact the candidate to ascertain why they failed to disclose this information, as this will normally result in the offer of employment being withdrawn. The recruiting manager will discuss the candidate explanation for failing to make the declaration with a member of HR. In exceptional circumstances and following discussions with the appropriate Director of Service a decision may be taken to accept the candidates' explanation for failure to disclose.

10.3 Storage

The CCG fully complies with the DBS code of practice on the secure handling, use, storage and retention of disclosure information. [DBS Code of Practice](#)

In summary the CCG will:

- Store all disclosure information securely
- Only retain disclosure information, its content or any representation of the same in any format for no longer than is necessary and for a maximum of six months following the recruitment decision unless a dispute is raised or, in exceptional circumstances, where agreement is secured from the relevant national disclosure body, for example for services regulated by the CQC.
- Ensure that no reproductions of the Disclosure or its content are made, including photocopies or scanned images, unless with the prior agreement of the relevant national disclosure body or as a result of a stipulated requirement relating to the e-channel service.
- Only share Disclosure information with relevant persons in the course of their specific duties relevant to recruitment and vetting processes
- Dispose of Disclosure information in a secure manner
- Ensure that Additional Information, including information as to its existence, is not revealed to the Disclosure applicant and is disposed of in the appropriate manner and at the appropriate time
- Ensure that we comply with DBS guidance on the portability of disclosures and their contents

11. Policy on Ex-Offenders

The CCG will not unfairly discriminate against the subject of Disclosure Information on the basis of conviction or other details revealed.

12. Referrals

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on organisations where people are working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This duty occurs when a person has been dismissed or removed from working with children or vulnerable adults (or would or may have been if they had not left or resigned etc.) because they have :

1. Been cautioned or convicted for a relevant offence; or
2. Engaged in relevant conduct in relation to children and/or vulnerable adults, i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm; or
3. Satisfied the Harm Test in relation to children and/or vulnerable adults, i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

13. Equality Impact Assessment

This document has been assessed for equality Impact of the protected groups, as set out in the Equality Act 2010. This Policy is applicable to every member of staff within the CCG irrespective of their age, disability, sex, gender reassignment, pregnancy, maternity, race, sexual orientation, religion or belief, marriage or civil partnership and those who work on behalf of the CCG.

This policy has been assessed using Castle Point & Rochford CCG's Equality Impact Assessment and identified as having the following impact upon equality and diversity issues.

Age	Disability	Gender	Race	Sexuality	Religion	Human Rights	Total Points	Impact
0	0	0	0	0	0	0	0	Low

14. Additional Resources

[Disclosure and Barring Service - GOV.UK](#)
[Employment checks - NHS Employers](#)
[DBS Code of Practice](#)

15. List of Stakeholders Consulted

Name	Designation
HR	

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16. Version Control

Version	Date	Author	Status	Comment
1.0	01.4.17	HR Consultant		New policy

Appendix 1 – Regulated Activity Definitions

Current definitions

Current Definitions of Regulated Activity for England and Wales

The Safeguarding Vulnerable Groups Act 2006 sets out the original definition of regulated activity in England and Wales, i.e. the activities and work which a person who has been barred must not do. This definition of regulated activity was scaled back by the Protection of Freedoms Act 2012. We are therefore left with two different definitions in England and Wales: Old versions under the Safeguarding Vulnerable Groups Act 2006 and the current definitions as set out below under the Protection of Freedoms Act 2012.

What this means = individuals undertaking the activities and work which are being carried out under the current definitions below are eligible for **enhanced** DBS checks **and** we will also be able to request the appropriate barred list check (for children, adults or both depending on the workforce the person is working with).

Regulated Activity with Children

This should be read in conjunction with the [full guidance from the Department for Education](#)

Activities that place an individual in Regulated Activity with Children:

- i. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- ii. Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is Regulated Activity only if done regularly. 'Regularly' means carried out by the same person frequently (once a week or more) or on four or more days in a 30-day period (or in some cases overnight).

- iii. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once.
- iv. Registered childminding; and foster-carers.

Activity under (iii) and (iv) does not have a frequency restriction and is Regulated Activity even if performed only once.

Broadly speaking the new definition of Regulated Activity relating to children no longer includes certain activities done on an irregular or ad-hoc basis or some activities properly supervised by someone who themselves is in Regulated Activity.

Regulated Activity with Adults

This should be read in conjunction with the [full guidance from the Department of Health](#)

Activities that place an individual in Regulated Activity with Adults:

1. Healthcare: if they are a regulated health care professional or are acting under the direction or supervision of one (e.g. Doctors, nurses, physiotherapists).
2. Personal care: assistance with washing and dressing, eating, drinking and toileting or teaching someone to do one of these tasks.
3. Social work: provision by a social care worker of social work which is required in connection with any health services or social services.
4. Assistance with a person's cash, bills or shopping because of their age, illness or disability.
5. Assistance with the conduct of an adult's own affairs, e.g. lasting or enduring powers of attorney, or deputies appointed under the Mental Health Act.
6. Conveying adults for reasons of age, illness or disability to, from or between places where they receive healthcare, personal care or social work (excludes friends, family or taxi drivers).

Regulated Activity relating to adults identifies the activities which lead to an adult being considered vulnerable at that particular time. As such the setting of the activity and the personal characteristics of the adult are extraneous. There is no requirement for a person to do the activities a certain number of times before they are engaging in Regulated Activity.