

Criminal Record Checks

You may need to have a criminal record check if you are applying for certain jobs. These checks used to be done by the Criminal Record Bureau (CRB). The Criminal Record Bureau is now the Disclosure and Barring Service (DBS).

This factsheet explains what these checks involve and what information can be included on a DBS certificate. It also explains how you can find out what information is held about you and what to do if you are unhappy with the information on your certificate. This information still applies if you have an old certificate issued by the Criminal Record Bureau (CRB).



KEY POINTS

- Employers will ask for a DBS certificate if you are applying for a job that involves regular work with children and/or vulnerable adults.
- Certificates include information about your contact with the criminal justice system (police, courts, prison) and other information that the police think your potential employer needs to know, which could include your mental health.
- The police might know about your mental health if you have had contact with them. For example, if the police moved you to a place of safety because of your mental health under section 136 of the Mental Health Act.
- The police have to use guidelines to decide what information is on your certificate.
- You can find out what information is held about you by making a Subject Access Request to your local police force.
- You can challenge the information that is on your DBS certificate. In some cases the police may ask if you want to put forward your views about the information before they give it to a potential employer.

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1. What are Disclosure and Barring Service (DBS) checks?

Employers can ask for a Disclosure and Barring Service (DBS) check if your work would involve a 'regulated activity'. Regulated activity means work with vulnerable groups such as children and vulnerable adults.

The number of jobs that are a 'regulated activity' has recently been reduced. This should let more people work with vulnerable groups.¹

Regulated activity with children is having close unsupervised contact with children. This includes work in:

- schools
- healthcare settings
- providing childcare

It does not include work by volunteers who are under close supervision by someone.²

Regulated activity with vulnerable adults can involve:

- healthcare and personal care
- social work
- helping with household tasks such as shopping and paying bills
- being involved in a person's affairs (for example, helping someone with their money or making decisions). This could include being a Mental Health Advocate or Independent Mental Capacity Advocate
- transporting an adult due to their age, illness or disability to another place to get health or social care (excluding family, friends and taxi drivers)³

There are two types of checks -

- Standard – an employer can ask for a standard DBS check if the position you are applying for involves regular work with children or vulnerable adults.
- Enhanced – an employer can ask for this type of check if the position you are applying for involves greater contact with children or vulnerable adults. For example, teachers, doctors, social workers, medical students and some other professions will need an enhanced check.

Who issues DBS certificates?

The Disclosure and Barring Service (DBS) issues certificates. They replaced the Criminal Record Bureau on December 3rd 2012.

Who sees the certificate?

The DBS will only send you a copy of the certificate and not your potential employer. This will give you the chance to question any information in the certificate that you don't think should be included before your potential employer sees it.

Your potential employer has to ask you to see a copy of the certificate.

Your potential employer can ask the DBS for a copy of the certificate in some situations⁴.

Your potential employer has to meet strict guidelines when handling this information. Information on your DBS certificate is sensitive. The information on the certificate needs to be stored securely and only some people involved in the recruitment process can see the information.⁵

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2. What information is included on a DBS certificate?

The DBS certificate will contain details of any convictions (criminal offences you have admitted to or been found guilty of), cautions, reprimands and final warnings that you have been given.

The employer can also check if you are on the DBS barred lists. People on these lists are not allowed to work with children or vulnerable adults. You would usually only be on the DBS barred list if you have done a very serious crime and if you have worked, are working, or might work in the future in a regulated activity. In some cases, you can put forward your views to the DBS to challenge this.

An enhanced DBS certificate involves another check with the police, who will see if they have any other information about you that may be relevant. This is done by the Chief Officer at your local police force. Information could include any contact with the police that is not to do with any convictions, cautions, reprimands or final warnings. For example, if the police were involved in taking you to a place of safety due to concerns about your mental health under section 136 of the Mental Health Act. The police may think about whether this is relevant to your DBS certificate. The police decide what, if any, information will be added.

The Protection of Freedoms Act 2012 makes sure the police use a much more detailed test before deciding to disclose information on enhanced DBS certificates. See Section 3 of this factsheet for more information about how the police decide what information to include.

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3. How do the police decide what information to include?

The Protection of Freedoms Act 2012 makes sure that the police only include information where they 'reasonably believe it to be relevant' and think that it should be disclosed.

There is guidance to help the police with their decision making, known as the Quality Assurance Framework (QAF).⁶ The Home Office has produced legal guidance which Chief Police Officers must check when deciding what information to include. This is called the Home Office Statutory Disclosure Guidance.⁷

There are eight rules that Chief Police Officers need to apply when they decide what, if any, information should be provided in an enhanced criminal record check. The main points are:

- Information should not be included on a DBS certificate just because it is of a certain type. For example, the Chief Officer should not include all information about your mental health, just because they feel this information is more important than other types of information.
- The Chief Officer should only include information if they reasonably believe it to be relevant. To decide if it is relevant they need to consider :
 - if the information is important to the position you are applying for. For example, what may be relevant to a job application for nursing may not be relevant if the application is for a school cleaner.
 - if the information is serious enough to be able to explain the reason for including it .
 - if the information is about a frequent event. For example, a one off allegation of aggressive behaviour might be less relevant than many allegations over a period of time.
 - how old the information is and how you have behaved between the event and now.
 - if the information is from a reliable person.
- The Chief Officer needs to balance the effect of disclosing this information on your private life with the reason for disclosing the information.
- There are very few cases where the police are investigating you, but you are not aware of this. The Chief Officer would need to think about how to handle this situation.
- In some cases, you may get the chance to put forward your views to the police before your certificate is given to a potential employer. This could happen if there is additional information that the police are thinking about including on your certificate.

4. Is health information included?

Information about your physical or mental health is unlikely to be appropriate for disclosure on its own⁸.

The revised Quality Assurance Framework (QAF) includes specific guidance in relation to mental health⁹. This is on top of the rules mentioned in Section 3 above.

The police must keep in mind the following when deciding whether to disclose mental health information:

- There are many different categories of mental illness/condition.
- The police are not mental health experts and should not be expected to be.
- Experiencing mental illness is not a crime. Only other factors can make mental health information relevant.
- Anyone experiencing mental illness can recover/manage their condition.

There are a number of questions in the mental health guidance to help the police decide whether or not mental health information may be relevant. These questions are:

- Can you act responsibly?
- Has your behaviour put you or others at risk of harm?
- Does your medication (or not taking prescribed medication) significantly affect your behaviour?
- Is your judgement affected?
- How old is this information?
- How is your current state of health?
- How could disclosure of your mental health affect you?
- Could getting your views on this information reduce the possible impact on your health or change the police's decision to disclose?

The police need to work out whether any risk to the vulnerable adults or children outweighs your right to a private life. Any interference to your private life needs to be necessary.

If mental health information is included on your DBS certificate without good reason then you can challenge this information. Part 6 of this factsheet explains how you can do this.

How could mental health information be worded on my certificate?

If the police decide to disclose information about your mental health, they should be very careful about how they word this on your certificate. Their statement should be clear and short and not leave the reader with any unanswered questions. The statement should not include aspects of your illness or characteristics of your behaviour while you were ill that are not relevant or fair.

5. How can I find out what information is held about me?

You can find out what information the police hold about you by making a Subject Access Request, under the Data Protection Act 1998¹⁰. The Data Protection Act lets you to see information that is held about you. You should put your request in writing. There is a standard form that you can get from your local police force.

You will need to give:

- your request in writing or a completed form
- a fee of £10 (the maximum fee for information to be provided)
- proof of your identity
- a photograph (only if you are asking for CCTV footage)

You should send your request to your local police force. They can find out any information the police hold about you.

It is a good idea to keep a copy of your request. You should get a reply from the police within 40 days.

You can also find out what information is held about you by the HM Courts Service, HM Prison Service, and The Crown Prosecution Service (CPS). You can do this by contacting the organisation directly. You can challenge information on your DBS certificate that relates to contact with the courts and/or prison by contacting the Disclosure and Barring Service (DBS).

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6. How can I challenge the information put on a DBS certificate?

If you think that some or all of the information on your DBS certificate is wrong or does not relate to you, you can contact the Disclosure and Barring Service (DBS). You can ask for the information to be reviewed under the dispute process. You can find their details in the Useful Contacts section of this factsheet.

You can only start the dispute process after you receive your completed DBS certificate. It does not apply to cases that are ongoing, including if you are in the process of putting forward your views to the police before they decide what information to include on your certificate.

There are two types of disputes:

- Data entry dispute – if personal information such as your name, address or date of birth is incorrect.
- Data source dispute – when you think criminal record information is wrong or irrelevant.

There is a form to complete if you would like to dispute information on your certificate. This form is available from the DBS and can be downloaded from the Home Office website. Contact details are in the Useful Contacts section at the end of this factsheet.

In some cases, the police may contact you before your check is completed and give you the option to put forward your views about your DBS application. This may happen if there is a possibility that the information they are thinking of disclosing could be:

- wrong, unreliable, out of date or where the outcome is unknown
- unknown to you and you have never had a chance to challenge it
- in dispute (you have already challenged it)¹¹

The police will contact you before issuing the DBS certificate, to ask if you want to disagree with or correct the information they have about you. You will usually need to do this in writing. You could ask someone else, such as a healthcare professional, to put forward views on your behalf too. If the information you disagree with is about your mental health, they could explain what care and treatment you are getting.

The police could then create a new certificate with the information removed or changed.

The DBS will tell your potential employer if you are disputing your certificate. Your potential employer will not know the outcome of your dispute.¹²

If the police carry on disclosing information on your DBS certificate without good reason, you could get legal advice from a solicitor who works in public law.

You can find information on how to find a solicitor in our **'How to get legal advice and assistance'** factsheet which you can download for free at www.rethink.org or call 0121 522 7007 and ask for a copy to be sent to you.

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7. I think an employer has discriminated against me because of information on my DBS certificate, what can I do?

It can be difficult to show that an employer has discriminated against you because of mental health information that has come up in an enhanced DBS check. This will depend on exactly what information was disclosed on the certificate, and what reason the employer has given for withdrawing the job offer. If you have had a job offer withdrawn and you think that this is simply because you have a mental illness rather than because of risk associated with the information on your DBS, you should get advice as soon as possible.

You can find more information on discrimination in our **'Mental Health and Discrimination (Equality Act 2010)'** factsheet, which you can download

for free at www.rethink.org or call 0121 522 7007 and ask for a copy to be sent to you.

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8. How long is a DBS certificate valid for?

There is no length of time that a DBS certificate is valid for. The information that is on the certificate is relevant at the time of printing.¹³

You might need to apply for another certificate if you stay in the same role for a long time. Your employer will ask you for an updated certificate if needed.

You may need to apply for a new certificate if you move to another job that asks for a DBS check.

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FURTHER
READING

You can find more information on www.rethink.org about:

- How to Get Legal Advice and Assistance
- Mental Health and Discrimination (Equality Act 2010)
- Work and Mental Illness
- Criminal Convictions – When and how to tell others



USEFUL
CONTACTS

The Disclosure and Barring Service (DBS) helps employers in England and Wales make safer recruitment decisions. You can also contact them to track your application or if you think information on your certificate is wrong.

Tel: 0870 909 0811

Email: customerservices@dbs.gsi.gov.uk

The DBS has a confidential checking process for transgender applicants who don't want to reveal details of their previous identity to a potential employer.

Email: sensitive@dbs.gsi.gov.uk

Directgov produces information related to employment including criminal record checks and what jobs require criminal record checks.

Website: www.direct.gov.uk

The Home Office oversees the work of the police and has produced publications relating to the Disclosure and Barring Service and the Protection of Freedoms Act 2012.

Website: www.homeoffice.gov.uk

Mind has a legal advice service that can give legal information and advice on mental health related law, including human rights and discrimination. Mind's Legal Advice Service: 0300 466 6463 (Monday to Friday 9am-6pm)
Email: legal@mind.org.uk
Website: www.mind.org.uk

Nacro is a large ex-offender charity. They offer information and advice on topics such as disclosure. They have a Resettlement Advice Service.
Tel: 0300 123 1999 (Monday to Friday 9am-5pm)
Email: helpline@nacro.org.uk
Website: www.nacro.org.uk

Unlock is The National Association of Reformed Offenders. They are an independent charity and membership organisation who run a helpline, led by reformed offenders.
Tel: 01634 247350 (Monday to Friday 10am-4pm)
Email: advice@unlock.org.uk
Website: www.unlock.org.uk

¹ Protection of Freedoms Act 2012. Available from <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted> [Accessed September 2012]

² Department of Education, 2012. *Safeguarding: disclosure and barring - changes from September 2012*. Available from <http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring> [Accessed September 2012].

³ Department of Health, 2012. *Definition of 'regulated activity' (adults) as defined by the Safeguarding Vulnerable Groups Act 2006 from 10th September 2012*. Available from <http://www.dh.gov.uk/health/files/2012/08/Regulated-Activity-adults-V2.pdf> [Accessed September 2012].

⁴ Home Office, 2014. *Disclosure and Barring Service, DBS update service employer guide*. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325079/Update_service_employer_guide_v3.8.pdf [Accessed February 2015]

⁵ Home Office, 2012. *DBS Code of Practice*. Available from <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/dbs/dbs-checking-service-guidance/cop> [Accessed December 2012].

⁶ Association of Chief Police Officers and Disclosure and Barring Service, 2014. *Overview of the Quality Assurance Framework*. Home Office: London. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353036/QAF_v9_OV1_Overview_of_QAF_Process_September_2014.pdf [Accessed February 2015]

⁷ Home Office, 2012. *Statutory Disclosure Guidance*. Home Office: London.

⁸ As note 7, pg. 7

⁹ Association of Chief Police Officers and Criminal Records Bureau, 2012. *Mental Health and Disclosure*. Home Office: London [Accessed September 2012]

¹⁰ Information Commissioner's Office. *Criminal records, court records and police records*. Available from <https://ico.org.uk/for-the-public/crime/> [Accessed February 2015].

¹¹ Home Office. *Applicant Guidance (Representations)*. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396332/Representations_-_Applicant_Guidance_Jan_2015.pdf [Accessed February 2015]

¹² As note 4, page 10

¹³ Directgov. *Disclosure and Barring Service (DBS) checks (previously CRB checks)*. Available from http://www.direct.gov.uk/en/Employment/Startinganewjob/DG_195809 [Accessed September 2012]

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Rethink Mental Illness Advice Service

Phone 0300 5000 927

**Monday to Friday, 9:30am to 4pm
(excluding bank holidays)**

Email advice@rethink.org

Did this help?

We'd love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:

RAIS

PO Box 17106

Birmingham B9 9LL

or call us on 0300 5000 927.

We're open 9:30am to 4pm
Monday to Friday (excluding bank holidays)



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Need to talk to an adviser?

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