

## Recruitment of Ex-Offenders Policy

### Introduction

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions each year by processing and issuing DBS checks for England, Wales, the Channel Islands and the Isle of Man. DBS also maintains the Adults' and Children's Barred Lists, and makes considered decisions as to whether an individual should be included on one or both of these lists and barred from engaging in regulated activity.

### DBS checks

There are four types of DBS check, and each type results in a DBS certificate being issued to an individual. Employers can then ask to see the certificate to ensure that they are recruiting suitable people into their organisation.

The four levels of DBS check are:

- Basic DBS check
- Standard DBS check
- Enhanced DBS check
- Enhanced with Barred List(s) DBS check

The information contained on each type of check is different.

### Basic DBS check

A basic DBS is for any purpose, including employment. The certificate will contain details of convictions and conditional cautions that are considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974.

An individual can apply for a Basic check directly to DBS through online or an employer can apply for a basic check on an individual's behalf, if they have consent.

### Standard DBS check

A Standard DBS check is suitable for certain roles, such as a security guard. The certificate will contain details of both spent and unspent convictions, cautions, reprimands and warnings that are held on the Police National Computer, which are not subject to filtering.

An individual cannot apply for a standard check by themselves. There must be a recruiting organisation who needs the applicant to get the check. The service is free for volunteers.

### **Enhanced DBS check**

An Enhanced DBS check is suitable for people working with children or adults in certain circumstances such as those in receipt of healthcare or personal care. An Enhanced DBS check is also suitable for a small number of other roles such as taxi licence applications or people working in the Gambling Commission.

The certificate will contain the same details as a standard certificate and, if the role is eligible, an employer can request that one or both of the DBS Barred Lists are checked.

The certificate may also contain non-conviction information supplied by relevant police forces, if it is deemed relevant and ought to be contained in the certificate.

An individual cannot apply for an Enhanced DBS check by themselves. There must be a recruiting organisation who needs the applicant to get the check. The service is free for volunteers.

An Enhanced with Barred Lists certificate will contain the same information as an Enhanced DBS certificate, but will also include a check of one or both Barred Lists.

### **Eligibility**

Eligibility for Standard, Enhanced, and Enhanced with Barred Lists DBS checks is prescribed in legislation. Recruiters should only request a DBS check on an individual when they are legally allowed to do so – they must be entitled by law to ask an individual to reveal their full criminal history. This is known as asking ‘an exempted question.’

An exempted question applies when the individual will be working in specific occupations, for certain licences and specified positions. These are covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Improving Lives is eligible to request information about unfiltered convictions in relation to staff and volunteers.

The minimum age at which someone can be asked to apply for a criminal record check is 16 years old.

Improving Lives undertakes Enhanced DBS checks for staff and volunteers, this includes a check of the Adults Barred List for support workers. Other workers have

an enhanced check without the check of the Adult's Barred List. Volunteers also have enhanced checks with no barred list check. If volunteers handle money or transport people they would have an enhanced check including the Adult's Barred List.

## Spent Convictions and Relevant Legislation

The Rehabilitation of Offenders Act (ROA) 1974 sets out in legislation rehabilitation periods, and that individuals do not have to disclose spent convictions unless they are covered in the Rehabilitation of Offenders Act 1975 (Exceptions) Order 1975.

The Rehabilitation of Offenders Act 1975 (Exceptions) Order 1975 sets out the exceptions for when an individual can be asked about spent convictions – known as asking 'an exempted question'.

The Safeguarding Vulnerable Groups Act 2006 sets out the scope of regulated activity and operation of the barring element of DBS, which was previously undertaken by the Independent Safeguarding Authority (ISA)

The Criminal Records Bureau, which is now part of DBS, was established under Part V of the Police Act 1997. This was updated as a result of Part 5 of the Protection of Freedoms Act 2012.

## Time Taken for Convictions to Become Spent

Sentence		Time it takes to become spent	
		Adult (18+) at conviction/disposal	Young person (U18) at conviction/disposal
Prison (including suspended prison sentences)	Over 4 years or a public protection sentence	Never spent	Never spent
	More than 30 months and less than (or equal to) 4 years	Full sentence + 7 years*	Full sentence + 3 ½ years*
	More than 6 months and less than (or equal to) 30 months	Full sentence + 4 years*	Full sentence + 2 years*
	Less than (or equal to) 6 months	Full sentence + 2 years*	Full sentence + 18 months*
Community order / Youth rehabilitation order		Full length of the order + 1 year	Full length of the order + 6 months

\*Sentence length includes time spent on licence

Sentence/Disposal	Time it takes to become spent (from date of conviction)	
	Adult (18+) at conviction/disposal	Young person (U18) at conviction/disposal
Fine	1 year	6 months
Conditional discharge	Length of the order	Length of the order
Absolute discharge	Spent immediately	
Conditional caution / youth conditional caution	3 months (or when it ends, if earlier)	3 months
Simple caution / youth caution	Spent immediately	
Compensation order	Once it is paid in full	
Bind over	Length of the order	
Hospital order (with or without restrictions)		
Referral order		
Reparation order	Spent immediately	
Endorsement (imposed by a court)	5 years	2 ½ years
Motoring disqualification (imposed by a court)	Length of the disqualification	
Relevant order	Length of the order	

## Filtering of Cautions and Convictions

In July 2020 the government plans to change the rules of what is disclosed on (and removed from) standard or enhanced criminal record checks issued by the Disclosure and Barring Service (DBS) in response to a Supreme Court ruling in 2019. The changes came into effect on 28 November 2020.

### What will not show up? Cautions

- Reprimands, final warnings and youth cautions (including conditional cautions) received when under the age of 18 will be removed from standard and enhanced checks immediately, regardless of the offence. This means that even if the caution was for a specified offence it would still be removed.
- Adult cautions will be removed from standard and enhanced checks if 6 years have passed since the date of issue, providing it is not for a specified offence.

The process applies no matter how many cautions you have. Cautions will be removed even if you have others which are not (for example where others are for a specified offence or they are too recent).

### What will not show up? Convictions

Convictions received when 18 or over will be removed from standard and enhanced checks if:

- 11 years have passed since the date of conviction.
- they did not result in a prison sentence (or suspended sentence).
- they were not for a specified offence.

The process applies no matter how many convictions the person has. They will be removed even if the person has others which are not (for example where others are for specified offences or they are too recent).

For a conviction received when under 18, the same rules apply as for adult convictions, except that the elapsed time period is 5.5 years.

### Offences that stay on ('specified offences')

A 'specified offence' is one which is on the list of offences that will never be filtered from standard and enhanced DBS checks. The list includes a range of offences which relate to sexual or violent offences, or are relevant in the context of safeguarding.

The table below provides a summary of the types of offences which are eligible for removal and those that are not.

Eligible for removal	Not eligible for removal
Common assault/battery	ABH
Drunk & disorderly	Assault on a child or vulnerable adult
Soliciting	Safeguarding offences
Drug possession & some supply offences	Sexual offences
Theft (where no violence is involved)	Robbery
	Aggravated burglary

## **Employees and Volunteers with Cautions and Convictions**

Improving Lives undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.

Improving Lives is committed to the fair treatment of its staff, potential staff, volunteers or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.

Improving Lives has this written policy on the recruitment of ex-offenders, which is made available to all DBS applicants at the start of the recruitment process.

Improving Lives actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records. Candidates are selected for interview based on their skills, qualifications and experience.

For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.

Staff who are involved in the recruitment process will be suitably trained to identify and assess the relevance and circumstances of offences. They will have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974

At interview, or in a separate discussion, Improving Lives ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

Improving Lives undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.