



USE OF DISCLOSURE AND BARRING SERVICE POLICY

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Destroy All Previous Issues

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Glossary

Term	Description
CRB	Criminal Records Bureau
DBS	Disclosure and Barring Service

1 INTRODUCTION

The Disclosure and Barring Service (DBS) maintains lists of people barred from working with children and vulnerable adults. An employer that knowingly allows a barred individual to work in a "regulated activity" with children or vulnerable adults commits a criminal offence. Where a post amounts to a regulated activity, the employer can apply for an enhanced DBS check, which can include information held on the lists of barred individuals.

Employers, local authorities and employment businesses and agencies are under a duty to pass information about certain individuals to the DBS. The duty to refer information arises where an employee in a regulated activity has resigned or been dismissed, or would or could have been dismissed, because he or she has harmed, or may harm, a child or vulnerable adult. From 10 September 2012, the duty to refer information to the DBS no longer applies in relation to individuals carrying out "controlled activities", i.e. roles that are not regulated activities but that allow holders the opportunity to have contact with vulnerable groups or to have access to certain records relating to vulnerable groups.

All organisations using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust and who are recipients of Disclosure information must comply fully with the DBS Code of Practice.

The Code of Practice requires them to have a written policy on the correct handling and safekeeping of Disclosure information. The Code of Practice also requires them to treat all applicants for positions who have a criminal record fairly and not to discriminate unfairly against the subject of a Disclosure on the basis of conviction or other information revealed.

2 THE REQUIREMENT FOR A DISCLOSURE AND BARRING SERVICE CHECK

Due consideration has been undertaken to the guidance as set out by the DBS with regards to determining those posts and professions that are subject to;

- A legal requirement for a DBS check to be completed and
- The entitlement to ask that person to reveal their conviction history.

The requirement for a DBS check as set out in the guidance encompasses;

- Any work which is defined as regulated activity relating to vulnerable adults and or children within the meaning of Safeguarding Vulnerable Groups Act 2006
- Any office or employment which is concerned with:
 - a) the provision of care services to vulnerable adults
 - b) the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment; and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services
- Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of children
- Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of vulnerable adults
- Those engaged in professional employment as set out in Appendix 3

2.1 Frequency Test

To meet the criteria for a regulated activity, the activity must be carried out frequently, intensively or overnight as outlined below.

Frequently: In health and social care services providing personal care the activity must be carried out once a month or more. In all other sectors, this is defined as once a week or more.

Intensively: In all sectors this is where the activity is carried out four days or more in any 30 day period.

Overnight: In all sectors this is where the activity is carried out between the hours of 2am and 6am.

These definitions follow recommendations outlined within Sir Roger Singleton's review and report (*Drawing the Line*) issued in December 2009

2.2 Enhanced DBS Checks

Within Badger the application of this policy means that professional staff such as those who deliver care (for example doctors and other health care personnel) are required to have undergone an enhanced DBS check. Badger will validate DBS checks and where DBS status is absent, invalid or if otherwise necessary, Badger will require the individual to produce evidence of their DBS status or enable Badger to validate such.

In the event that any other member of staff has contact with patients in accordance with the criteria above and as per the frequency test then an Enhanced DBS check will be required.

3 THE SECURE STORAGE, HANDLING, USE, RETENTION & DISPOSAL OF DISCLOSURES & DISCLOSURE INFORMATION

3.1 Policy Statement

As an organisation using the DBS service to help validate the suitability of applicants for positions of trust, Badger complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information (see appendix 1).

3.2 USAGE

Certificate information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given

3.3 Storage & Access

Disclosure information is never kept on an applicant's personal file and is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

3.4 Handling

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. Badger maintains a record of all those to whom Disclosures or Disclosure information has been revealed and it is recognised that it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.

3.5 Retention

Once a recruitment (or other relevant) decision has been made, Disclosure information is not kept for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. In very exceptional circumstances it may be considered necessary to keep Disclosure information for longer than six-months.

3.6 Disposal

Once the retention period has elapsed, any Disclosure information will be immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. A record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken will be retained.

4 THE RECRUITMENT OF EX-OFFENDERS

4.1 Policy Statement

As an organisation using the DBS to validate applicants' suitability for positions of trust, Badger complies fully with the DBS Code of Practice (see appendix 1) and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.

Due to the nature of its work Badger is exempt from the provisions of the Rehabilitation of Offenders Act 1974 (see appendix 2) and requires applicants for all posts to disclose all information about all convictions in a Court of Law, no matter when they occurred.

4.2 Equal Opportunities

Badger is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, creed, gender or reassignment, religion or belief, sexual orientation, marital or civil status, responsibilities for dependants, age, physical/mental disability or offending background.

Badger demonstrates equality of opportunity for all with the right mix of skills, knowledge and competencies and welcomes applications from a wide range of candidates, including those with criminal records. All candidates are shortlisted for interview based on their skills, qualifications and experience.

4.3 Disclosure requests

Due to its exemption from the Rehabilitation of Offenders Act 1974 Badger requires applicants for all posts to disclose all information about all convictions in a Court of Law, no matter when they occurred.

All eligible team members, under DBS guidelines, are required to provide evidence of their DBS status whether at the recruitment stage or at a later date. This information is accessed and available to designated persons within Badger and is only to be seen by those who need to see it as part of the recruitment process. Where matters arising from a DBS check require consideration in terms of patient safety or organisational risk, a referral is made to the Chief Executive Officer. The Executive team may be asked to consider such matters in conjunction with the CEO where appropriate and as determined by the CEO.

4.4 The Recruitment Process

At interview, or in a separate discussion, Badger ensures that an open and measured discussion takes place on the subject of any offences or other matters 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.

Badger undertakes to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

Having a criminal record will not necessarily prevent an applicant from working with Badger. This will depend on the nature of the position and the circumstances and background of the offence(s).

The DBS cannot conduct overseas enquiries. Some countries including most EU countries, have arrangements in place that allow citizens to obtain certificates of good conduct or extracts of criminal record to show prospective employers.

Appendix 1

CODE OF PRACTICE FOR REGISTERED PERSONS AND OTHER RECIPIENTS OF DISCLOSURE INFORMATION

Handling of Disclosure information

Recipients of Disclosure information

- Must ensure that Disclosure information is not passed to persons not authorised to receive it under section 124 of the Act. Under section 124, unauthorised disclosure is an offence;
- Must ensure that Disclosures and the information they contain are available only to those who need to have access in the course of their duties;
- Must securely store Disclosures and the information that they contain;
- Should retain neither Disclosures nor a record of Disclosure information contained within them for longer than is required for the particular purpose.

In general, this should be no later than six months after the date on which recruitment or other relevant decisions have been taken, or after the date on which any dispute about the accuracy of the Disclosure information has been resolved. This period should be exceeded only in very exceptional circumstances that justify retention for a longer period.

Registered persons shall:

- Have a written security policy covering the correct handling and safe-keeping of Disclosure information; and
- Ensure that a body or individual at whose request applications for Disclosures are countersigned has such a written policy, and, if necessary, provide a model for that body or individual to adopt.

Appendix 2

Rehabilitation of Offenders Act 1974

Under the Rehabilitation of Offenders Act 1974, an individual who has had a conviction (or convictions) for an offence, may, with certain exceptions, be rehabilitated and allowed to treat the conviction as if it had never occurred. A conviction will become "spent" where the individual has not, after a period of time, committed another serious offence.

Generally employers may not, under the Act, ask prospective employees if they have spent convictions during the recruitment process. An employer may ask if the individual has convictions but the prospective employee is under no obligation to reveal spent convictions and may answer "no". The Act also makes it unlawful for an employer to discriminate in any way against an employee or to dismiss an employee because of a spent conviction. An employee may, if so dismissed, subject to normal qualification rights, claim unfair dismissal. The employer may not rely on a spent conviction as justification for dismissal.

In certain circumstances the Act does not apply, see **Exceptions** below. By the nature of the work, many posts in Badger are exempt from the provisions of the Act and prospective employees are under an obligation to reveal spent convictions and current convictions where such a request is made.

- **Rehabilitation Periods**

Rehabilitation periods vary depending on the type and length of conviction originally incurred.

Imprisonment, corrective training or sentence of detention in a young offenders' institution for more than six months but not more than 30 months	Ten years*
Imprisonment or sentence of detention in a young offenders' institution for a term not exceeding six months	Seven years*
A fine or other sentence not expressly covered by the Act	Five years*
Order for detention in detention centre	Three years
Absolute discharge	Six months
Conditional discharge	One year
Probation	Five years*

The rehabilitation periods given above indicated * may be reduced by half for a person under 18 at the time the sentence was passed. (In the case of a probation order the period is two and a half years from the date of conviction or a period beginning with the date and ending when the order ends, whichever is longer.)

- **Suspended Sentences**

All suspended sentences are treated for the purposes of rehabilitation periods as if they had been put into effect.

- **Effect of Conviction During the Rehabilitation Period**

If a further offence is committed during the rehabilitation period, and the sentence in respect of the conviction is one that is not excluded from rehabilitation, the two rehabilitation periods run together. The one, which would end the earlier, is extended to expire when the longer period expires.

If the offender is (during the rehabilitation period) convicted of an offence subject to a sentence excluded from rehabilitation (eg imprisonment for a term exceeding 30 months) he or she will not become a rehabilitated person in respect of either conviction.

1. EXCEPTIONS

A conviction cannot be spent under the Act if it incurred a sentence of more than 2½ years in prison or was a life sentence, preventative detention or their equivalent for young offenders.

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975 No. 1023), as amended, provides that in certain circumstances the Act shall not apply.

It does not apply to the following professions:

medical practitioner; barrister (in England and Wales), advocate (in Scotland), solicitor; chartered accountant, certified accountant; dentist, dental hygienist, dental auxiliary; veterinary surgeon; nurse, midwife; ophthalmic optician, dispensing optician; pharmaceutical chemist; osteopath, chiropractor, operator of the national lottery; registered teacher (Scotland); or to the following offices and employments: certain judicial and law enforcement officers; those involved with providing young people with accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training (and those working on premises where such provision is made); those concerned with providing elderly, sick or disabled people with health or social services; building society officers or directors where a "relevant offence", e.g. fraud, has been committed; certain regulated occupations. Any profession to which the Health Professions Order 2001 applies.

2. REFERENCES

An employer may disclose an employee's spent conviction if, and only if, it is done without malice. Malice, i.e. an improper or dishonest motive, will destroy any defence to defamation irrespective of the truth of the information revealed.

If any employer wants to reveal a spent conviction, he must be satisfied that the facts are correct and that the information is relevant.

An employer is not obliged to disclose a spent conviction in a reference except where the employment is exempted from the provisions of the Act.