

Bat Conservation Trust



Disclosure and Barring Service (DBS) Checks Guidance, Policy and Procedure

Introduction

The Charity Commission expects trustees to manage safeguarding risks; and, of course, BCT wishes to protect vulnerable groups, to work ethically and within the law, and to protect its reputation.

BCT has a *Safeguarding Children & Vulnerable Adults Policy* which sets out requirements in planning activities as well as a code of conduct. Our control measures should be proportionate to the risks; this Guidance, Policy and Procedure aims to help managers and those working in Bat Groups to understand when and when not to carry out a DBS check. Organisations are responsible for assessing whether a DBS check (at whichever level as outlined below) is necessary for a specific role. A DBS check may be necessary for a paid or voluntary role so managers/Bat Groups need to keep this in mind.

DBS checks have their limitations in that they only reveal offences previously detected by the Police, and therefore it is important that an awareness of, and commitment to, safeguarding exists throughout the organisation.

Organisations must be aware of General Data Protection Regulations (GDPR): see retention, handling and usage paragraphs below and also <http://recruit.unlock.org.uk/guidance/asking/data-protection/>

Organisations that carry out DBS checks should also comply with the DBS Code of Practice: <https://www.gov.uk/government/publications/dbs-code-of-practice>

A copy of this Guidance, Policy and Procedure should be available to applicants and must be given to them when asking them to complete a DBS application form or when asking for consent to use their information to access any service DBS provides.

Context

BCT is not involved in regulated activities with adults (health care, personal care etc.).

BCT works with children and, potentially, vulnerable adults in an education and community outreach environment, via volunteer practical conservation, surveys and education opportunities and through public events such as family fun days, bat walks, conferences, training and fundraising. However, we do not take responsibility for the care of children and vulnerable adults (i.e. we do not work with those groups in an unsupervised way). Although this possibly limits the

need for a DBS check, it is still important for managers to assess each role/activity (as described below)

What is a DBS check?

A DBS check is a record of an individual's criminal convictions and cautions and is carried out by The Disclosure and Barring Service (DBS) (which replaced the Criminal Records Bureau (CRB) in 2012). There are three levels of check:

- **Basic:** This is the lowest level of check and it provides confirmation of an individual's previous unspent criminal convictions or lack thereof. This check can be requested by an individual or by the employer/voluntary organisation (with the applicant's permission) for any role. It is up to the organisation to decide if it believes there would be a benefit from this level of check but if the organisation does request a basic check, it must explain the purpose and lawful basis under GDPR.
- **Standard:** These checks are most common in the finance and legal professions. This type of check also includes spent and unspent convictions, cautions, reprimands and warnings as long as they are not "protected". A caution or conviction will not be protected if it is for a 'listed offence' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, i.e. is a serious violent or sexual offence or an offence which is relevant to the safeguarding of children and vulnerable adults. To be eligible for a standard level DBS check, the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This check cannot be requested by an individual.
- **Enhanced:** These are suitable for eligible roles where the applicant will be working/volunteering in regulated activity with children, young people and/or vulnerable groups. An enhanced check will show any unspent convictions, along with any spent convictions and cautions, reprimands and warnings that are not eligible for filtering. Intelligence held by the Police may also be included if the Police reasonably believe it is pertinent to a recruitment decision. Most people working in education and healthcare will require an enhanced check and roles in leisure, transport and places of worship are also likely to need one. This check cannot be requested by an individual.

Enhanced with barring: in addition to the information above, this includes a check of the two barred lists for children and vulnerable adults. The enhanced check is designed to ensure that no-one on either of these lists will undertake regulated activity with children and/or vulnerable adults.

To be eligible for an enhanced level check, the position must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) regulations. It is a criminal offence to ask for it otherwise.

The costs for the checks vary according to the level but are in the range of £25 for basic, £26 for standard, to £44 for enhanced; but registered bodies/umbrella bodies may add fees on top. These costs are to be paid by the employer/voluntary organisation. The charge is for paid positions and is free for voluntary roles (though there will be an admin charge from an umbrella body).

Other than the Exceptions Order, there is no definitive list of roles or positions with a corresponding level of DBS check. The employer/voluntary organisation must decide if the role is eligible for a DBS check and at what level. If the role involves “regulated activity”, then the employer/voluntary organisation would need to carry out an enhanced level check. They would be breaking the law if they employed someone in regulated activity with a group from which they are barred from working and a barred person is breaking the law if they seek, offer or engage in regulated activity with a group from which they are barred from working.

“Regulated activity” describes certain job functions and is activity which a barred person must not do.

BCT does not carry out regulated activity and generally we are not involved in activities where children are in our care/unsupervised. It is therefore unlikely that an enhanced DBS check would ever be necessary. Standard checks are generally required for specified professions or membership of professional bodies – for example law and finance. It is unlikely that any/many roles at BCT would require a standard DBS check.

The DBS removes certain specified old and minor offences from DBS certificates in line with legislation introduced in May 2013.

A person can be DBS checked from the age of 16.

Why carry out a DBS check?

A DBS check is a safeguarding risk management measure, but more particularly it helps employers/voluntary organisations make a recruitment decision. If there is ever a safeguarding issue and the people working or volunteering with children and/or vulnerable adults have not been adequately checked, the employer/voluntary organisation could be held legally liable.

When to carry out a DBS check

Although an individual may have an opportunity to come into contact with children or vulnerable adults, this is not sufficient to entitle an employer/voluntary organisation to request a DBS check. DBS checks must never be used on a ‘just in case’ or ‘blanket approach’ basis, but only carried out where necessary.

The law dictates whether a role or activity is eligible for a DBS check.

How do you get a DBS check?

An employer/voluntary organisation needs to ask for a DBS check, and needs the consent of the applicant to do so. If the employer/voluntary organisation is not registered with the DBS, they can do this via another registered body with an umbrella function for processing and submitting applications for DBS checks.

The employer/voluntary organisation asks the individual to complete the application form, but the DBS certificate itself is sent directly to the applicant. The registered body will receive personal information related to the application and, where the registered body is also the employer or voluntary sector organisation, they will receive disclosure information when the certificate is provided to them by the employee or applicant.

Individuals can ask for a basic level check without the employer's involvement but this will only show unspent convictions and employers/voluntary organisations need to take responsibility for making their own checks. If a check needs to be done at all the employer should determine the level and obtain a check at the correct level. If an applicant provides a certificate for a higher level of check than is required, the employer should not accept this as they will be potentially be collecting excessive data if they do.

How long does a DBS certificate last?

A DBS certificate is only truly accurate on the day it was issued. As such, there is no official expiry or renewal date. Organisations must decide when checks should be renewed depending on the type of role. If the applicant or employer/voluntary organisation has subscribed to the DBS Update Service they can use this to check the status of a DBS certificate online. This service is free for volunteers and there is a small fee for paid staff, but the service eliminates waiting times for DBS certificates and having to apply for numerous checks.

How long does it take to complete a DBS check?

A basic check should be completed within 14 days, but enhanced checks can take longer because they require input from the Police, possibly up to about 8 weeks.

Filtering of spent cautions / convictions

In 2013 legislation came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure, in other words, "filtered". Job applicants should find out whether their offence will be filtered to ensure that they do not disclose it to an employer if, legally, they don't need to. The legislation says:

- employers/voluntary organisations are no longer able to take an individual's old and minor cautions and convictions into account when making decisions;
- all cautions and convictions for specified serious violent and sexual offences, and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults, will remain subject to disclosure; and
- all convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.

Detailed guidance on this can be found here: <http://hub.unlock.org.uk/knowledgebase/filtering-simple-guide/>

Equality & diversity

As an equal opportunities employer, BCT welcomes job applications from a diverse range of suitably qualified candidates.

We recognise that the vast majority of applicants with a criminal record will have single, one-off offences from many years ago. Some might have recent offences that are not relevant to the role.

Following the principle of “fair chance recruitment”, a criminal record will not normally, in itself, prevent an appointment. Suitable applicants will not be refused jobs because of offences that are not relevant to the role and which do not raise serious concerns for the role. BCT will judge each case on its merits and not discriminate unfairly on the basis of a conviction or criminal record disclosed to us.

We know we can only ask applicants to provide details of spent convictions and cautions that we are legally entitled to know about, i.e. spent convictions do not need to be disclosed for roles that are not exempt. For roles that are exempt from ROA, we will ask applicants to disclose any convictions and cautions that would not currently be filtered by DBS, i.e. that are not protected, where a DBS certificate at either standard or enhanced level can legally be requested (where the role is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended).

Retention

A DBS certificate is the property of the individual. There is usually no need for an employer/voluntary organisation to retain or copy a DBS certificate any longer than is necessary for a recruitment decision to be made.

We may keep a record of the date of issue of a disclosure, the name of the subject, the type of disclosure requested, the role, the reference number of the disclosure and details of the recruitment decision.

Handling

Appointed staff will be informed of who knows about their convictions within the organisation. This information will only be shared internally on a ‘need to know’ basis, with those who are authorised to receive it. We recognise it is criminal offence to pass this information to those who are not entitled to receive it.

Usage

Disclosure information is only used for the specific purpose for which it was requested and only if the applicant’s consent has been given.

BCT processes

Pre-recruitment

1. This Guidance, Policy and Procedure will be shared with all BCT managers and with Bat Groups.
2. In addition, BCT managers and Bat Groups should use the SAFEcic DBS Eligibility Handguide to assess if a role is eligible for a DBS check.
3. An application for a DBS check will only be made after an assessment has indicated that one is both proportionate and relevant to the role.
4. For roles where a DBS check is identified as necessary, managers will ensure that all application forms, job adverts and recruitment briefs contain a statement that an

application for a DBS certificate (and at what level) will be submitted in the event of the individual being offered the position. (This of course applies to both employee and voluntary status roles).

It is essential that all applicants for roles where a DBS check is required are notified in advance of the requirement for a disclosure. It must be made clear in the role description whether the position is covered by the Rehabilitation of Offenders Act 1974 (and so only requiring the disclosure of unspent offences) or whether it is exempt (and so requiring the disclosure of all convictions and cautions, even if they are spent, unless they are filtered).

5. BCT shortlists candidates for all roles purely on merit, so for that reason we do not ask for criminal record details at the application stage. This is part of our commitment to the 'Ban the Box' campaign (see <http://www.unlock.org.uk/projects/employment-discrimination/ban-the-box/>)
6. Applicants will not be asked about their criminal record during the interview. This is to ensure that individuals are able to put themselves across in the best possible light.
7. BCT's Operations Manager will maintain a register of roles which require a DBS check and at which level. (However, it is the responsibility of the hiring manager to assess the role and ensure the DBS check is in place).
8. Where the role is identified as eligible for a DBS check, we will request a DBS check as part of pre-recruitment checking, following a conditional offer of employment in either an employee or volunteer role. The check must be in place before the role starts. We will only consider the use of existing disclosures to reduce delays in the start of employment in exceptional cases where commencement of the post is essential to BCT's operation, and only if a risk assessment is carried out. This will be in addition to undertaking a full new DBS check, i.e. the existing disclosure information will not be acceptable as a permanent replacement for a full new check.
9. Any relevant matters contained in the disclosure will be discussed with the applicant. Failure by an applicant to reveal information that is directly relevant to the role could lead to withdrawal of an offer of employment.
10. Before reaching a recruitment decision, we will consider:
 - a) Whether the information disclosed is relevant to the role
 - b) *Only if the information disclosed is relevant*, the seriousness of the offence or the other matter revealed (N.B. just because something is serious, it does not mean it is relevant)
 - c) The length of time since the offence or the other matter revealed
 - d) If the applicant's circumstances have changed since the offence or the other matter revealed
 - e) The explanation by the applicant of the circumstances around the offence (this is the most crucial information in terms of understanding the context)
 - f) Information provided by the Police in the disclosure (N.B. this will only appear on an enhanced DBS and even then additional information is provided by the Police in less than 2% of cases)

Post-recruitment

11. Where the role is identified as eligible for a DBS check, we expect staff to let us know of any relevant changes to their criminal record.
12. If the online update service is being used and this reveals that there is new information, we will apply for a new certificate. (N.B. The update service is only available for enhanced DBS certificates).
13. BCT's safeguarding policy is provided to every member of staff during their induction. This provides guidance on safe working practices and how to raise concerns.
14. As outlined in our safeguarding policy, we will ensure that safeguarding training is provided at the relevant level.

Note:

Each nation in the UK uses a different criminal checking scheme. Although barring is consistent (i.e. a person who is barred from working with children in one nation will be barred across the UK), the period of time before a conviction becomes spent varies between nations. For that reason it is really important to make sure that the correct service is used, otherwise the employer/voluntary organisation could be using information about a conviction that is spent in the jurisdiction they are in, but unspent in the jurisdiction doing the disclosure, or vice versa.

- **England and Wales.** The Disclosure and Barring Service (DBS)
- **Northern Ireland.** AccessNI
- **Scotland.** Disclosure Scotland

Sources:

Disclosure & Barring Service: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

SAFEcic: <https://www.safecic.co.uk/> - a not for profit community interest company. (BCT is a member of SAFEcic).

Recruit! – this is an excellent website managed by Unlock, a charity that works to achieve a fair and inclusive society where people with convictions can move on positively in their lives. It contains plain English information for employers. <http://recruit.unlock.org.uk/> and we recommend that anyone wanting a fuller understanding of the issues around criminal record checks visits this site.

NSPCC <https://learning.nspcc.org.uk/safeguarding-child-protection/safer-recruitment/>