Disclosure And Barring Service (DBS) And (DBS) Referral (v1.0.0)

Date Reviewed: 11/12/2024 | **Next Review Date:** 11/12/2025

Person responsible for updating this policy: Hitendrakumar Sharma

Policy Statement

This policy outlines Bluestar Care & Support- Bluestar Resourcing approach to the use of Disclosure and Barring Service DBS checks and the storage and use of information on convictions disclosed by the Disclosure and Barring Service DBS. The policy applies to all staff groups and should be given to applicants at the outset of the recruitment process where an enhanced Disclosure and Barring Service DBSdisclosure of their criminal record will be required as part of the application process for working in a regulated activity.

All counter signatories will be trained and competent with the Code of Practice and the updated service guidance. The post-holder will also be required to ensure that all guidance in use by Bluestar Care & Support- Bluestar Resourcing is current.

Overview

An employer may request a Disclosure and Barring Service DBS check as part of its recruitment process only where it is lawful to do so. For certain checks, this includes a barred list check and police-held information that is reasonably considered to be relevant for the post. The information is used as part of a safer recruitment and selection process, considering a variety of information gathered during the recruitment stage.

Exempted Questions

For Disclosure and Barring Service DBS purposes, an exempted question is a valid request for a person to reveal their full criminal record history, which excludes protected cautions and convictions that are filtered from a criminal record.

Access to the Disclosure and Barring Service DBS Checking Service is restricted to those registered employers for entitlement by law to ask an individual to reveal their full criminal history, including spent convictions, also known as asking an exempted question. The exempted question applies only in specific occupations, for certain licenses, and specified positions covered by the The Rehabilitation of Offenders Act 1974 (Exceptions Order 1975). Due to case law decisions, including those of the EU Courts, and the introduction of the UK General Data Protection Regulation (UK GDPR) into data protection legislation, criminal records data is viewed as sensitive data and should be handled as such.

Applicant's Rights

Usually, a job applicant has no legal obligation to disclose. If an applicant has a conviction that is spent, the employer must treat the applicant as if the conviction had not happened. To do otherwise is unlawful.

For clarity, certain areas of employment, such as regulated activities, are exempt from The Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) for which employers can ask about spent convictions. This is known as asking exempted questions.

Transgender Process

Disclosure and Barring Service DBS offers a confidential checking process for these applications who do not wish to reveal details of their previous identity to their prospective employer. Further information can be obtained by email, where the process will be explained. This information must be held following the latest UK data protection legislation

where the process will be explained. This information must be held following the latest UK data protection legislation regarding sensitive personal data.

Self-employed Workers

A self-employed person, who is eligible for a standard or enhanced check, can ask Bluestar Care & Support- Bluestar Resourcing that wishes to contract their services to apply for their Disclosure and Barring Service DBS check.

A self-employed worker can apply through the Disclosure and Barring Service DBS online application route, if they live or work in England or Wales, for a basic disclosure only.

Posts Requiring a Disclosure

An applicant will be requested to submit to a Disclosure and Barring Service DBS disclosure request only where lawful. Before considering asking a person to apply for a criminal record check through Disclosure and Barring Service DBS, Bluestar Care & Support- Bluestar Resourcing is legally responsible for ensuring that they are entitled to apply for the job role. A countersigning officer must satisfy themselves that the position is eligible under the current legal provisions before countersigning each application form. The Disclosure and Barring Service DBS is continually updating their eligibility for Disclosure and Barring Service DBS checks.

All subjects of a Disclosure and Barring Service DBS disclosure request will be made aware of the Disclosure and Barring Service DBS Code of Practice. Any information revealed in a disclosure that is likely to lead to the withdrawal of a job offer will be discussed with the applicant before the offer is withdrawn.

Where a conviction has been disclosed in an individual's application for a post within Bluestar Care & Support- Bluestar Resourcing, a discussion will take place at the end of the interview regarding the offence and its relevance to the position.

Failure to reveal information relating to unspent convictions could lead to the withdrawal of an offer of employment.

Risk-based Decision Making in Relation to Disclosures

Where a prospective employee has a Disclosure and Barring Service DBS returned detailing criminal offences that have not been disclosed, a risk assessment will be undertaken in respect to their recruitment. This must be based on the information at hand, and a balanced view should be maintained throughout the process. It is Bluestar Care & Support- Bluestar Resourcing responsibility to ensure the safeguarding of every service user, and the decision to employ will be taken in the context of risk to every service user, staff, and the business. The decision will be recorded and held on file.

The Rehabilitation of Offenders Act 1974 provides that ex-offenders are not required to disclose to prospective employer's convictions defined as 'spent under the act. However, because our employees work in a regulated activity, the updated list applies as defined in the The Rehabilitation of Offenders Act 1974 (Exceptions Order 1975).

Disclosures and Data Protection

In Bluestar Care & Support- Bluestar Resourcing:

- Disclosure and Barring Service DBS disclosure information will not be stored on an employee's personnel file but will be stored separately, in lockable storage, with access limited to those who are entitled to see it as part of their duties
- A record will be maintained of all those to whom disclosure information has been revealed, as it is a criminal offence to pass on this information to anyone who is not entitled to receive it
- The Disclosure and Barring Service DBS reference number will be the means used to investigate any queries regarding the disclosure
- A log of these numbers will be kept to check and review the information, where required, with a restricted access list for data sharing processes
- Disclosure and Barring Service DBS disclosure information will only be used for the specific purpose for which it was requested and for which the applicant's full consent will have been obtained
- Any information disclosed during the DBS process will be dealt with sensitively and appropriately
- We follow the guidance issued by Care Quality Commission (CQC) : Disclosure and Barring Service DBSChecks issued December 2017
- There is further guidance available from Care Quality Commission (CQC) concerning work placements that we follow as required
- Disclosure and Barring Service DBS disclosure copies, if held, will be destroyed as soon as they are added to the Disclosure and Barring Service DBS log

The DBS Code of Practice

All organisations using the Disclosure and Barring Service DBS checking service must comply with the above code, which is issued under Section 122(2) of the Police and Criminal Evidence Act 1984. The code is there to ensure that organisations are aware of their obligations and that the information released will be used fairly. The code also ensures that sensitive personal information disclosed by the Disclosure and Barring Service DBS is stored and handled appropriately and is kept for only as long as necessary

Storing Information

The correct storage of the information from a Disclosure and Barring Service DBS certificate is important.
The Disclosure and Barring Service DBS Code of Practice requires that the information revealed is considered only for the purpose for which it was obtained and should be destroyed after a suitable period, usually no more than six months from the date of issue.

Disclosure and Barring Service DBS can refuse to issue a disclosure certificate if it believes the code is not being followed.

Deletion of Data Requests

These can only be processed by using the appropriate template from the Disclosure and Barring Service DBS website.

Portability Requests

These can only be processed by using the appropriate template from the Disclosure and Barring Service DBS website.

DBS Process

The Disclosure and Barring Service DBS disclosure can only be processed by the completion of all documentation and the ID validation process for all applicants. This means strict adherence to the Disclosure and Barring Service DBS Code of Practice, including the three-route identity process to validate the name, date of birth and address of the applicant. Failure to validate because of a lack of the required documentation means the applicant will be asked to attend for fingerprinting at their local police station, which could lead to delays in the application process.

In the event of any discrepancy between the information provided on the Disclosure and Barring Service DBS application form and the identity documents supplied, and where fraud is not suspected, further clarification should be sought from the applicant.

Any suspected fraud e.g. false ID or documents should be reported to the Action Fraud website.

DBS Update Service

Bluestar Care & Support- Bluestar Resourcing lets employers check the status of an existing Disclosure and Barring Service DBS certificate if it is for the same workforce where the same type and level of Disclosure and Barring Service DBS are required and where you have the permission of the individual. The limit to the consent that the individual gives includes:

- They can show their certificate to anyone because it is their information.
- Can give consent to an employer, so they can view their status on the update service.

The employer can only make the status check if they can also legally request a new Disclosure and Barring Service DBS application for the role the individual will be working in. Full guidance on the update service can be found on the Disclosure and Barring Service DBS Update Service website.

Making a Referral

To fulfil Bluestar Care & Support- Bluestar Resourcing legal obligations and procedures for referring to the Disclosure and Barring Service DBS , the referral system is set out below:

When to Refer

The Safeguarding Vulnerable Groups Act (SVGA) 2006 place a duty on employers of people working with children or vulnerable adults to make a referral to the Disclosure and Barring Service DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have, if the person had not left or resigned, etc.) because the person has:

- Been cautioned or convicted for a relevant offence
- Engaged in relevant conduct concerning 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,
- Satisfied the harm test concerning 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).

Referral Procedure

After an incident has been reported or an allegation made that a service user has been abused, there will be a thorough investigation that follows the company's disciplinary procedures.

The local authority (LA) safeguarding team will be informed immediately, and, in some cases, there may be a police investigation. During such an investigation, this organisation will take all possible steps to ensure that the service users in question are kept safe and well protected from any possible further incidents. In most instances the employee(s) in question will be suspended or, if there is clear evidence of misconduct, they may already be dismissed.

Once it is clear that misconduct resulting in harm or possible harm has occurred and the worker(s) involved remains a risk to vulnerable people, the company's manager must, by law, refer that person to the DBS. However, it is important to note that a DBS referral might be made at any stage in the procedures used for establishing whether misconduct causing harm to a service user has taken place.

The company does not have to complete the investigation before making a referral; the paramount principle is the protection and safety of the vulnerable person. The DBS team will decide based on the information made available if the worker should be investigated. If, after assessment, the person is not placed on the list, the person is not barred from current or future employment in a regulated activity. This does not necessarily mean that the company will re-employ the person if they have been dismissed. If the person is provisionally placed on the DBS list, they will no longer be able to work in a regulated activity.

A person can appeal against both provisional placement and confirmation on the DBS list following the established procedures that are not the concern of this company as an employer. The DBS referral and assessment process are separate from the company's own disciplinary and appeal procedures. The only obligation this company has is to make a referral if it considers vulnerable people have been harmed or are at risk of being harmed if the individual continues to work in a regulated activity.

The DBS team will communicate all decisions to the individual once the referral has been made and investigations complete. A statutory notification should be made within the appropriate timescale to the CQC.

This policy will be read in conjunction with the Recruitment and Selection Policy.

Training Statement

All staff, during induction, are made aware of the organisation's policies and procedures, all of which are used for training updates. All policies and procedures are reviewed and amended where necessary and staff are made aware of any changes. Observations are undertaken to check skills and competencies. Various methods of training are used including one to one, online, workbook, group meetings, individual supervision and external courses are sourced as required.

Related Policies

- Adult Safeguarding (Domiciliary)
- Data Protection (UK GDPR) (Domiciliary)
- Duty Of Candour (Domiciliary)
- Good Governance (Domiciliary)
- Recruitment And Selection (Domiciliary)

Related Guidance

- National Protective Security Authority - How to obtain an overseas criminal record check
- CQC: Disclosure and Barring Service DBS Checks
- Gov.UK DBS Update Service
- Gov.UK DBS Official Site
- Gov.UK DBS Check: Guidance for Employers
- Gov.UK DBS Code of Practice
- Gov.UK DBS Handling of DBS Certificate Information
- Gov.UK DBS Retention Policy
- Gov.UK DBS ID Checking Guidance

- Gov.UK Data Portability Request Template
- Gov.UK Basic Check Guidance and Policies for Responsible Organisations
- Gov.UK Making Barring Referrals to the DBS
- Gov.UK Barring Referral Guidance
- Action Fraud: Police
- Gov.UK Deletion of Data request Template
- Recruit Unlock: Unlock for People with Convictions: Guidance for Employers on the GDPR, Data Protection and the Processing of Criminal Records Data in Recruitment

Policy Legal Statement

This policy is Copyright © W&P Assessment & Training Centre Ltd. 2024 and is only licensed for use with a current W&P Portal Contract. If you have a current contract, it can be accessed in your online account. Use of this policy without a current W&P Portal Contract is strictly prohibited.