

# DBS Checks

## Enhanced Disclosure and Barring Service checks

All prospective employers are entitled to know about any convictions that are not 'spent'. Most employers are *not* entitled to know about any spent convictions, cautions, reprimands or warnings (in the rest of this fact sheet, cautions, reprimands and warnings are referred to as "cautions"). Information on whether a conviction or caution is spent can be found on the fact sheet 'Disclosure of convictions'.

For certain jobs, however, employers are entitled to know about some spent convictions and cautions and, in some circumstances, other information that the police hold about you. These, and only these, employers are entitled to request a **standard** or **enhanced** Disclosure and Barring Service (DBS) check.

- 'Standard' DBS checks: generally apply to a number of professional careers, jobs that require a licence, and work with children or vulnerable adults.
- 'Enhanced' DBS checks: generally apply to jobs that involve regularly caring for, training, supervising or being solely in charge of children or vulnerable adults.

This fact sheet addresses only enhanced DBS checks. A separate fact sheet addresses standard DBS checks.

## Enhanced DBS checks – which employers can request them?

To qualify for an enhanced DBS check, the position you applied for must be included in the Rehabilitation of Offenders Act (Exceptions) Order 1975. In addition, the position should *also* be one that comes within a type of employment set out in regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002. Generally, this covers jobs that involve regularly caring for, training, supervising or being solely in charge of children or vulnerable adults. This work could include:

- teaching, training and supervision;
- registered childminders and foster carers;
- health care or therapy;
- driving a vehicle that transports children or vulnerable adults; and
- working in specified settings such as schools, childcare premises, care homes, hospitals and detention centres.

### **Checking eligibility for an Enhanced DBS check**

To qualify for an enhanced DBS, the position you applied for must be included in one of the categories in the relevant legislation as set out above. To ensure that your employer is entitled to request such a check, we recommend that you check that the role you are applying for entitles your employer to request a standard or enhanced DBS check. You can find this out by using this online tool: <https://www.gov.uk/find-out-dbs-check>

If your employer is asking you to complete a standard or enhanced DBS check and they are not legally allowed to request such a check, you can challenge it. To challenge an ineligible DBS check after it has been requested, you should contact DBS customer services, including information about yourself and the position you have applied for and the DBS form reference you have received as part of the application. Once the DBS have received your query, they will place your application on hold, and contact the employer to gain more information. DBS may contact you to establish your details and confirm your consent to contact the employer, but they will not disclose that it is you that has queried the check. If DBS decide the check the employer has requested is ineligible, they will stop the application and inform the employer.

You can find more information about how to challenge an ineligible DBS check here: <http://hub.unlock.org.uk/knowledgebase/challenging-an-ineligible-dbs-check-2/>

An enhanced DBS check cannot be carried out without your consent.

### **Enhanced DBS checks – which convictions and cautions can be disclosed?**

Most spent convictions and cautions are disclosed on enhanced DBS certificates. However, some old and minor convictions and cautions are filtered so that they are not automatically

included. This means that the disclosure of certain convictions and cautions will not be required once a certain period has passed. These periods are as follows:

- Cautions and warnings: *will not be disclosed after 6 years from the date of the caution*  
(If received when under the age of 18, this period is: 2 years)
- Convictions that did not result in a prison or suspended prison sentence: *will not be disclosed after 11 years from the date of the conviction*  
(If received when under the age of 18, this period is: 5½ years)

Certain convictions and cautions will never be filtered and will always be disclosed on DBS checks. This applies to offences committed under the Sexual Offences Act 2003, for example. A full list is set out in Article 2A(5) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and is available on the DBS's website: <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

All convictions will be disclosed if there is more than one on an individual's record. This rule does not apply to cautions.

Note that although filtered convictions and cautions will not be disclosed automatically on enhanced DBS checks, the police may still disclose such a conviction or caution under the system outlined below (see "what other information can be disclosed?").

Liberty is currently challenging the DBS system, and in particular this rule that multiple convictions will always be disclosed, on the basis that it breaches Article 8 of the European Convention on Human Rights (ECHR). In May 2017, the Court of Appeal held that the current system is unlawful: <https://www.libertyhumanrights.org.uk/news/press-releases-and-statements/court-appeal-rules-criminal-records-disclosure-scheme-unlawful>

This case has now been appealed by the Government to the Supreme Court. If the Supreme Court upholds the findings of the Court of Appeal, a new system for filtering criminal records may be introduced.

## **Enhanced DBS checks – what other information can be disclosed?**

In contrast with standard DBS checks, enhanced DBS checks include not only details of convictions and cautions recorded on the Police National Computer but may also include other information that the police or others hold about you. This may include information provided by the Independent Safeguarding Authority (ISA) as to whether you are barred from working with children or vulnerable adults. It may also include information about you held by the police that in their opinion might be relevant to the job you have applied for and ought to be disclosed. The scope of the information can very broad; any interaction with the police, whether or not it led to you being arrested or charged may be disclosed on an enhanced DBS check. Convictions and cautions that would otherwise be filtered can still be disclosed by the police on an enhanced DBS check, should the police consider it appropriate to disclose this information.

## **How to challenge non-conviction information disclosed on an enhanced DBS check**

The Supreme Court case of *L v Commissioner of Police of the Metropolis* in 2009 considered the issue of non-conviction information and what ought to be included. The Court decided that the police must strike a balance between the interests of the employer and the individual's right to his private life. Provided the information is relevant to the position applied for and strikes this balance, it is reasonable for the police to disclose it.

If you believe the police have included information that is not relevant to the post, or you are concerned that they might include such information, you should contact the relevant police force and tell them why this information should not be disclosed. In some cases, the police may contact you to ask you to make representations about the information they are proposing to disclose.

Further information about this can be found here: <https://www.gov.uk/guidance/disclosure-and-barring-service-representations-process>

If they decide to remove or amend the information in response to your request then a replacement certificate will be issued.

However, should the police decide not to remove or amend the information in line with your request, you can have your case reviewed by the Independent Monitor. The Independent Monitor reviews information disclosed by police forces on enhanced DBS checks and works independently from the DBS. If the Independent Monitor decides to uphold a complaint, it will direct that a revised replacement certificate be issued.

You can contact the Independent Monitor via email at:

[IndependentMonitor@homeoffice.gsi.gov.uk](mailto:IndependentMonitor@homeoffice.gsi.gov.uk)

Once all other remedies have been exhausted you may wish to seek judicial review of the decision to include the non-conviction information on the certificate. Judicial review is a legal procedure by which a judge in the High Court is asked to rule on the legality of an action or decision by a public authority. Applications for judicial review should be made promptly and no later than three months after the decision by the Independent Monitor. It is strongly advisable to get legal representation from a solicitor with expertise in public law before making an application.

Unless you have already done so, you may wish to gain a better understanding of what information the police hold about you by making a Subject Access Request to the police force holding your information, under the Data Protection Act 1998. You must complete a Subject Access form and send payment of £10 with proof of identification to the relevant force. More information on doing so can be found on our “Subject Access Request” factsheet.