



Protecting Children and Vulnerable Adults

-Police Checks and Things (December 2016)

Most voluntary and community organisations (VCOs) are set up to help and protect people. Therefore protecting people from harm (by others and their own organisation) is everyone's responsibility. CRBs, DBS, abuse, safeguarding, regulated activity, police checks, etc. are all phrases every VCO needs to understand and take account of. This briefing paper tries to bring these all together so VCOs can make a decision about how relevant and important they are to them, and if they need to take action. This information has been pulled together from various sources but should not be seen as comprehensive or legal opinion. Therefore groups may need to get specific professional advice depending on their circumstances.

Why should we think about the risk of harm to our users?

Many VCOs will come into contact with children, young people and vulnerable adults. The sort of contact will vary greatly from very infrequent, fleeting contact to very regular and highly personal. However fleeting that contact may be there is always the possibility that we become aware that individuals are subject to 'harm', either because they tell us, or we have concerns about them. Because the best interests of our users is a prime concern we should act on this, and know what to do. Also we as organisations will want to protect these users as much as we can from any 'harm' directly caused by our organisations, staff and volunteers. 'Harm' could be physical, mental, financial, sexual or neglect. Although such harm is very rare it does happen and so VCOs should not bury their head in the sand and say it could never happen here. Since many VCOs are set up to benefit individuals we would obviously not want to be the cause of harm, but also any incident could prove very damaging to reputations. Staff/volunteers also need to be protected from accusations and to be seen to be following legal and good practice. So every organisation should

- know what to do if you are concerned about a user
- assess the risks of users being harmed by the VCO
- see if those risks are acceptable (e.g. sports and play)
- how they can be reduced
- how any harm can be dealt with to minimise its effect

In the past the term 'abuse' was used however the term now used more often is 'safeguarding'. Safeguarding covers not only 'abuse' (i.e. physical, mental, sexual, financial and neglect) which is malicious 'harm' by those in positions of trust but also the risk of unintended harm such as accidents and injuries. Therefore **all** VCOs should consider the risks of injury and accidents to their users (not just children and vulnerable adults). A simple health and safety policy that sets out a process of regular and continuous risk assessment to identify risks, who is at risk, the likelihood of harm and how to minimise them happening or their effect, backed up with appropriate insurance should be adequate.

Protecting users from deliberate harm

Since any organisation may become aware of a child or vulnerable adult that is subject to harm **all** VCOs should have a simple policy setting out what they do if they are told about, or have concerns that, someone is being, or in danger of being, harmed. It should include a clear public statement that the organisation is committed to protecting users from harm and will act in their best interests, including reporting instances and concerns.

Each organisation that works with anyone who is less able to look after their own affairs, or where your staff/volunteers will be in a position of trust, should actively consider the risks of deliberate harm to those users by their organisation. Some VCOs will be obliged by law to consider and act to reduce those risks and others will have to because it is a condition of receiving a grant or contract. When considering the risks you will need to think about:

- The age and ability to reason of your users
- The ability of your users to be able to make a decision and act on it
- The frequency of contact with users (i.e. one off, irregular, regular)
- The degree of contact with users (will it be cursory or involve close, physical contact)
- The role and services your staff/volunteers will be providing
- If there will be unsupervised 1-2-1 contact with users
- How much 'supervision' your staff/volunteers will receive
- Any legal or regulatory requirements (e.g. Ofsted and CQC).

To protect users from harm, and staff/volunteers from accusations you should think about:

- A public declaration that sets out your commitment to protecting users and dealing with harm
- Ensure there is a culture that deliberate harm is unacceptable within the organisation (this will help deter perpetrators and encourage 'whistle blowing')
- Appoint a senior person in the organisation to oversee your procedures
- Having clear and robust recruitment processes (termed 'safer recruitment')
- Provide your staff/volunteers with training and supervision to avoid and identify instances of harm
- Ensure any activities reduce the chance of harm (e.g. reduce lone working)
- Have clear procedures in place to deal with instances and accusations of harm and what action you will take to report such instances.

The above should be set out in a Safeguarding Policy. Your policy should not only cover how to protect your users from harm by the organisation itself but also what action you will take to report instances, or suspicions, of harm by others. Depending on the complexity of your organisation and the services it provides one policy could cover both children and adults (for small VCOs providing a few services to all age groups) or separate ones. BCVS has some simple examples of such policies. There are locally agreed policies and procedures on safeguarding for both children¹ and adults² which may be useful, although complex and comprehensive, reference documents, and certainly if you have a contract with a local statutory body will be a formal condition to follow.

Defining children and vulnerable adults

Children are defined as under 18s. There are several definitions for vulnerable adults, particularly relating to checks on criminal records (sometime called police checks, formerly CRBs and now DBS certificates), perhaps the best general one is from the 'No Secrets' government report as a person over 18 "who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation."

¹ <http://pandorsetscb.proceduresonline.com/index.htm>

² <http://www.bpsafeguardingadultsboard.com/index.html#wheredoifind>

Police checking your staff and volunteers

A relatively easy thing to do is to check that your staff/volunteers do not pose a risk to your users because of previous behaviour. However remember that there is always a first offence and many perpetrators may not have been caught. So once you take on someone you need to remain vigilant through supervision, training and clear procedures. Vetting, or safer recruitment, involves:

- **Clear statement and policies.** Clearly demonstrating that harming users is unacceptable and that your organisation has policies and procedures in place to protect your users may well 'scare' off anyone who intends to take advantage of your users
- **Look at past work history.** When taking on staff check a person's work history by asking for a complete history of places of work (making sure all dates are accounted for, asking for explanations of any gaps, checking with past employers about dates worked, etc.)
- **Getting references.** References from past employers (not just the most immediate) may prompt you to ask questions of candidates as well as throw up any gaps in employment or concerns
- **Checking criminal record when able to.** A relatively easy action to take although there are various legalities to be observed, and remember that having a clear record does not mean that the person does not pose a risk (they might have not been caught or become a first time offender).

Checking criminal records

The main law relating to asking and checking past criminal convictions is the Rehabilitation of Offenders Act 1974 whose intention is to reduce discrimination against those who have served sentences. It allows ex-offenders for most jobs to:

- Not reveal convictions, even if asked, if these have become spent³
- Protection against a job refusal or dismissal because they have a spent conviction.

Therefore for most jobs it would be unlawful to make applicants reveal spent convictions and /or to use that information to decide whether to appoint someone or not. It is perfectly legal to ask about unspent convictions and make a decision on this. It is possible for individuals to get a Basic Disclosure online from Disclosure Scotland (even if you are in England!) for £25 which will list all unspent convictions. However the Act lists certain jobs and occupations (basically those working with children and vulnerable adults, financial, legal and health sectors) as exempt from the above protection and has been amended by the Protection of Freedoms Act 2012. These exceptions⁴ mean that candidates (whether paid or voluntary) when asked must disclose any convictions, including spent, when asked. Also the list of exceptions entitles someone to ask to see a certificate from the Disclosure and Barring Service (DBS), which was formerly CRB, listing a person's criminal record⁵.

DBS Certificates

In the past these were known as CRBs. Before you can see a certificate you need to check the list⁴ to make sure the paid or voluntary position is covered (you need to note the reference number and have supporting evidence that the position fits into that exception). It is unlawful to use a DBS certificate without being sure a position meets an exception. For

³ The period for a conviction to become spent, as long as they have not reoffended, varies depending on the sentence <https://www.gov.uk/exoffenders-and-employment>

⁴ www.gov.uk/government/publications/dbs-check-eligible-positions-guidance

⁵ <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers>

instance you cannot ask for a certificate just because they will be a finance person or treasurer. Certificates can only be obtained by registered bodies who intend to make at least 200 checks a year and pay an annual fee (on top of the fee for each check) so for many voluntary and community groups it will not be worth doing so. However there are a large number of 'umbrella bodies' that can check (some of whom do this on-line) on your behalf for a small administration fee (some will also offer Basic Checks). Please contact us for information about local umbrella bodies or DBS publish a list on their website⁶. Only individuals being checked will receive a DBS Certificate, therefore organisations will have to ask individuals for their certificate and take a copy for their records if required (see 'Using and storing certificates' on page 7).

There are now 4 types of certificate:

- Standard- will check for spent and unspent convictions, cautions, reprimands and final warnings.⁷
- Enhanced- the same information as the standard check, plus any information held locally by police forces that they consider "might be relevant".
- Enhanced with barred list checks- the same information as above, as well as if the individual is on a "barred list" of individuals that are unsuitable for working with children or vulnerable adults.
- Adult First- an individual can be checked against the DBS adult barred list while waiting for the full criminal record check to be completed

As well as these four types, certificates issued since 17 June 2013 specify what workforce they apply to, i.e. if they cover work with children, or adults, or both or other (not working with children or adults). You can only get a DBS check for those over 16. Although checks are free for volunteers (including committee members and trustees) there is a charge by DBS for employees (currently £6 for Adult First, £26 for a Standard and £44 for both types of Enhanced). If you have to use an 'umbrella body' there will also be an administrative charge, even for volunteers (anything between £5 to £20 per check). Standard checks take about 2 weeks, both enhanced checks about 4 weeks and First Adult within 72 hours (most within 48 hours).

DBS have an online eligibility tool to find out which roles or activities could be eligible for a standard or enhanced DBS check www.gov.uk/find-out-dbs-check

Standard Checks

For those in positions not very common in the VCOs such as those in NHS settings who have contact with patients but not a healthcare role, legal professions and financial services, security industry, traffic wardens and vets.

Enhanced Checks

Only positions listed as exceptions to the Rehabilitation of Offenders Act 1974 and the Police Act 1997 are entitled to an enhanced check. Generally these are positions that involve close and regular contact with children and vulnerable adults, applicants for gaming

⁶ <https://dbs-ub-directory.homeoffice.gov.uk>

⁷ If the conviction was more than 11 years old (5.5 years for those who were under 18 at the time) and is the only conviction, was not related to safeguarding or a prescribed list of offences and did not result in a custodial sentence it will be ignored. The time limit for cautions is 6 years (2 years for under 18s). For more information go to: www.gov.uk/government/news/dbs-filter-certain-old-and-minor-cautions-and-convictions-reprimands-and-warnings-from-criminal-record-certificates

and lottery licences and judicial appointments. This includes anyone working closely with children (any person under the age of 18) or vulnerable adults, either paid or unpaid on a frequent (once a week or more, except in health or personal care services where frequent means once a month or more), or intensive (means on four days or more in a single month) or overnight basis (covering the period 2am-6am). It can include, but is not limited to, any of the following:

- teaching, training or instruction, care or supervision of children
- teaching, training or instruction for vulnerable adults
- providing advice or guidance wholly or mainly for children, which relates to their physical, emotional or educational wellbeing
- providing advice, guidance or assistance wholly or mainly for vulnerable adults
- any form of treatment or therapy provided to children or vulnerable adults
- driving a vehicle that is being used only for the purpose of conveying children or vulnerable adults and their carers

A defining feature is that the activity is particularly and/or exclusively organised for those under 18s and/or for vulnerable adults. Also the day to day management or supervision of a person carrying out the activities above is also included.

Trustees of charities that carry out work targeted at under 18s and/or vulnerable adults are also entitled for an enhanced check. The Charity Commission strongly advises that trustees should be checked (there is no legal requirement to do so).

Enhanced and barred list check

Only those activities/positions on a list of 'regulated activities' (see below) can have this highest level of certificate. Organisations will need to carry out this level of check to ensure they are not illegally offering work (paid or unpaid) to someone on the barred lists (it is also illegal for an individual on the barred lists to seek, or be in, paid or unpaid work in a regulated activity). Also you must inform DBS if you dismiss someone, or stop them undertaking a regulated activity (or would have done if they had not already left) because they harm, or posed a risk of harm, to someone. There is an exception (see below) to classifying someone as undertaking a regulated activity when a worker/volunteer is being regularly supervised by someone who has been checked (organisations will have to decide what is reasonable in the circumstances and the government has published some guidance⁸ on this). The only benefit to not undertaking this level of check is if it would put off someone from applying for the work (surely the point of DBS checks) and /or the costs of carrying out this level of check. Many organisations will consider that they should carry out this higher level of check to ensure that children and vulnerable people are protected as far as possible.

Regulated Activity

Check the DBS website⁹ but in summary for under 18s this is:

- (i) unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children;
- (ii) work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, children's centres, childcare premises. This includes **all** employees but not supervised volunteers;

⁸ <http://media.education.gov.uk/assets/files/pdf/s/supervision%20guidance%20revised%20sos%20sept%202012.pdf>

⁹ <https://www.gov.uk/government/collections/dbs-eligibility-guidance#regulated-activity-and-workforces>

(Work under (i) or (ii) is regulated activity only if done regularly, i.e. at least once a week or 4 days in a 30 day period or in some cases overnight between 2am and 6am by the same person)

(iii) relevant personal care, e.g. eating/drinking, toileting, washing or dressing; or health care by or supervised by a professional (NB even if **only** once);

(iv) registered childminding; and foster-carers.

(v) a person who manages or supervises day-to-day someone who undertakes a regulated activity

Family and personal, non-commercial arrangements are not classified as regulated activity. Also there is something called the peer exception if the member of a group provides an activity to other members (e.g. parents/carers taking turns to look after all the children in a toddler group). In some community settings staff and volunteers may incidentally come in contact with children but as long as an event/activity was not intended for children or the presence of children was unforeseen (e.g. reception in a community centre) this is not classified as a regulated activity.

There are six categories within the new definition of regulated activity relating to adults (i.e. aged 18 or over). Those who provide:

- Healthcare: if they are a regulated health care professional or are acting under the direction or supervision of one, for example doctors, nurses, healthcare assistants and physiotherapists.
- Personal care: physical assistance with washing and dressing, eating, drinking and toileting; or teaching someone to do one of those tasks; or prompting and then supervising them doing one of these tasks.
- Social work: provision by a social care worker of social work which is required in connection with any health services or social services.
- Assistance with a person's cash, bills or shopping because of their age, illness or disability.
- Assistance with the conduct of an adult's own affairs, for example, lasting or enduring powers of attorney, or deputies appointed under the Mental Health Act.
- Conveying: conveying adults for reasons of age, illness or disability to, from or between places where they receive healthcare, personal care or social work. This would not include friends or family or taxi drivers.

Also someone who provides day-to-day management or supervision of others engaged in regulated activity is also in regulated activity. However it excludes any activity carried out in the course of family relationships and personal, non-commercial ones.

NB the term 'vulnerable adult' is no longer used but it is the activities above which make someone vulnerable and if carried out only once it counts as regulated.

DBS Adult First check

This is a service available to organisations who can request a check of the DBS adults' barred list. Depending on the result, a person can be permitted to start work, under supervision, with vulnerable adults before a DBS certificate has been obtained. For more information go to the DBS website¹⁰.

¹⁰ <https://www.gov.uk/guidance/dbs-check-requests-guidance-for-employers#types-of-dbs-checks>

Update Service¹¹

Since 17 June 2013 individuals could subscribe to the service for £13/year (free for volunteers), but they do not have to, at the point of applying for a DBS or within 19 days of the date of issue. Organisations can check online that a DBS Certificate issued after this date already held by an individual is still current. If an individual is subscribed they show you their certificate and, with their permission, you can check immediately online, for free, its status. Remember to check that the Certificate is at the right level (e.g. enhanced or enhanced and barred list) and workforce (i.e. child and/or adult) for the check you require. If the online check shows there has been a change then the organisation will need to consider asking for a new DBS check which will incur a charge as above. The intention is to reduce the number of DBS checks carried out and the cost. However since the individual has to pay an annual fee organisations may wish to consider reimbursing them for doing so (which may be cheaper than rechecking every few years). HMRC have announced that such reimbursement will be non-taxable.

Using and storing certificates

It is a requirement of the DBS (and will be part of any agreement you have with an umbrella body) that you have policies in place regarding the employment of ex-offenders¹² and the safe keeping and disposal of certificates¹³. DBS luckily have downloadable templates for both. Information on certificates are treated as sensitive data under the Data Protection Act and so to comply with this and DBS you need to ensure that only those who need to see certificates do so, that if original or copies are stored they are very securely stored and that these are destroyed as soon as possible (generally after 6 months). However organisations can keep a record of the certificate including its date of issue, the name of the person, the type requested, the position for which it was requested, the unique reference number and the details of the recruitment decision taken. Remember that a certificate is only a record at a particular date, so you might need to think about how often to recheck. Many organisations say every 3 years however now that on-line checking is available if individuals are registered then employers will be able to check if the certificate is still valid at any time.

Criminal record checks for people from overseas¹⁴

Potential employees or volunteers from overseas can be asked to obtain a criminal record check or "certificate of good conduct" from the overseas country. In some cases, it may be possible for the organisation to obtain this check through the relevant embassy in the UK, if the individual gives consent. Many countries have provided details of how to apply for certificates of good conduct and/or criminal record certificates. These details are on the DBS website¹⁵. DBS recommends that organisations continue to check with the relevant embassy, as processes for obtaining these checks and certificates can change. Contact details for embassies in the UK are on the Gov.uk website¹⁶.

¹¹ <https://www.gov.uk/dbs-update-service>

¹² www.gov.uk/government/publications/dbs-sample-policy-on-the-recruitment-of-ex-offenders

¹³ www.gov.uk/government/publications/handling-of-dbs-certificate-information

¹⁴ www.gov.uk/guidance/dbs-check-requests-guidance-for-employers#overseas-applicants

¹⁵ www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants

¹⁶ www.gov.uk/government/publications/foreign-embassies-in-the-uk

What happens if someone has a criminal record?

Just because someone has a criminal record does not mean you cannot take them on as an employee or volunteer. It is only illegal to take someone on if they will be undertaking a regulated activity **and** are on the barred lists. Indeed the DBS requires organisation that use certificates to have a policy on the use of ex-offenders (see above). Also some minor convictions and cautions are filtered out by DBS (see page 4 Note 7). Organisations will have to assess the risk to users of taking someone on with a criminal record. For instance a record of shop lifting 20 years may be viewed as low risk. However organisations need to be aware of their responsibilities and so avoid any claim of negligence if they knew about a history of past criminal activity but chose to ignore it. Also they may need to inform their insurer to make sure their policies will not be invalidated by taking someone on with a particular criminal record.

Sources of Help

BCVS. We can provide advice and support in developing policies and good practice.

NSPCC (www.nspcc.org.uk/preventing-abuse/safeguarding/) has loads of resources about safeguarding of children for VCOs including toolkits, templates and webinars

DBS, (www.gov.uk/dbs) has all the 'authoritative' information about disclosures. It also has a free e-newsletter for updates

NCVO, (<https://knowhownonprofit.org/people/volunteers/keeping/safeguarding-volunteers>) has links to resources including some very good flow charts about what sort of disclosure organisations should be asking for (although their resources relate to volunteers they generally also relate to employees). NCVO has a good summary document about safeguarding and volunteers <https://knowhownonprofit.org/people/volunteers/keeping/ncvosafeguardingforvolunteerinvolvingorgs.pdf>

Bournemouth and Poole Local Safeguarding Children's Board, (<http://bournemouth-poole-lscb.org.uk/home>) is the key statutory mechanism for agreeing and ensuring that local organisations within Bournemouth & Poole work together to safeguard and promote the welfare of children and young people effectively. Their website has useful information and links. VCOs have a representative on the Board.

Bournemouth & Poole Safeguarding Adults Board, (www.bpsafeguardingadultsboard.com) has been established to improve practice which protects and safeguards adults in vulnerable circumstances in Bournemouth & Poole. VCOs have a representative on the Board.

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