

A top-down view of a person sitting at a wooden desk. A silver laptop is open on the desk, displaying a website. The person's hands are visible near the laptop. The background is a dark, textured wall.

IMPLEMENTING SAFE AND COMPLIANT DBS CHECKS IN EDUCATION

eBOOK - 2021

**PERSONNEL
CHECKS**

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DBS CHECKS IN EDUCATION

A DBS Check is a search carried out by the Disclosure and Barring Service (DBS) to establish someone's criminal record history. In short, it's a criminal record check. Employers use these checks to make informed and safe recruitment decisions based upon the provided information.

Education providers must ensure that they have carried out the appropriate level of DBS Check on any member of staff, volunteers, or frequent visitors to sites. In the vast majority of cases, an Enhanced DBS Check will be required with a check of the Children's Barred List. There are certain situations where this doesn't apply which we'll look at in more detail later.

Education providers have a statutory responsibility under the Keeping Children Safe in Education (KCSIE) guidance to ensure that these checks are carried out correctly. However, any organisation processing DBS Checks are also subject to the DBS's rules. In this section, we will look at DBS Checks and how to maintain a compliant DBS checking process in more detail.

What do DBS Checks show?

Each level of DBS Check reveals a different amount of information relating to someone's criminal record history. The DBS process three levels of DBS Check, Basic, Standard and Enhanced and each progressively provide more information than the last.

Below is a breakdown of what information is shown on these checks.

Basic DBS Check: Contains details of any unspent convictions or cautions.

Standard DBS Check: Contains details of any spent or unspent convictions, cautions, reprimands, or warnings the candidate has. Non-convictions are sometimes protected. This means they are only shown when the police consider it relevant.

Enhanced DBS Check: Contains details of an individual's full criminal record history. This includes cautions, warnings, reprimands, spent and unspent convictions, any relevant notes from the police and an optional search of the relevant Barred List(s).

Enhanced DBS Checks are the baseline requirement for nearly every job role in the education sector. As this level of DBS Check is so commonplace in the education sector, many people don't realise that access to them is strictly controlled by law. The level of DBS Check someone can have is determined by two things: eligibility and regulated activity.

DBS Eligibility and Regulated Activity

DBS eligibility criteria are the rules in place governing what level of check is required for certain job roles. Eligibility isn't determined by someone's job title but rather, what day-to-day activities they are involved in. The eligibility criteria are there to protect ex-offenders against the disclosure of their criminal record history where it isn't relevant.

Under the Rehabilitation of Offenders Act 1974 (ROA), a person with a criminal record is not required to disclose any spent convictions unless the position they are applying for, or are currently undertaking, is listed as an exception under the Act. Activities relating to the care, supervision, or education of children are nearly always classed as an exception.

Regulated activity is work involving children or vulnerable adults that a barred person cannot do as they may pose a threat to those groups. To be eligible to carry out an Enhanced DBS Check with a check of one or more Barred Lists, the applicant must be carrying out regulated activity. Working with children, or on school or college sites is nearly always classed as 'regulated activity.'

Enhanced DBS & Barred List Checks

In our experience, many education providers are under the impression that any person going onto a school site automatically needs an Enhanced DBS Check with a Children's Barred List check included. This isn't always the case. Only people who are carrying out regulated activity are eligible for this type of DBS Check.

In some cases, an Enhanced DBS Check will need to be carried out, but the Barred List Check may not be allowed. In rarer cases, an Enhanced DBS Check may not be appropriate at all. Organisations need to be careful as carrying out the wrong check can actually be a criminal offence. Below we'll look at some examples to help illustrate:

Enhanced DBS Check without Barred Lists Check: A building contractor working on a school site for 2 or 3 days would only need an Enhanced DBS Check. This is because the activity they are carrying out is on an occasional or temporary basis and they are not responsible for teaching, training, or supervision of children.

No DBS Check Required: A parent volunteer helping supervise children on a school day trip on one occasion would not be eligible for an Enhanced DBS Check. This is because any activity needs to be carried out at least once before organisations can consider carrying out an Enhanced DBS Check on an individual.

Determining eligibility for DBS Check can be complicated outside of usual teaching or full-time staff roles. The above examples are for illustrative purposes only and each case can vary when it comes to eligibility. The type of check required can vary significantly if staff are working with students who are disabled or over-18.

If you need advice on what type of check someone needs, get in touch and we can give you advice specific to the circumstances.

Position Amendments

When it comes to completing a DBS application form, one of the sections of the form states 'Applicants Position.'

As a rule, the position stated here isn't necessarily the applicant's job title. Rather, it should contain information about the role which makes it clear to the DBS why the applicant is eligible for the level of DBS Check being applied for and if they are involved in regulated activity. For example:

A builder working on a school site would be required to have an Enhanced DBS Check. On the application form, the Applicant's Position field would be completed as 'Contractor in School.' This is because the location of the work being carried out means there is potential for contact with children. This is what makes the builder eligible for the Enhanced DBS Check.

This is why, on occasion, your DBS Umbrella Body may ask to amend the job title provided. The Applicant's Position field needs to clearly illustrate why that level of DBS Check is required. If the reason for the check isn't explicit, the DBS Could query the application which can slow the check down by several weeks.

Some employers worry that they are deceiving the DBS when changing the job title on the application form. This isn't the case and it's nothing to worry about! In the vast majority of cases, adding the word 'School' or phrase, 'in a School' is all that would need to be changed.

The following are some of the more common roles that need extra clarification:

- Business Manager -> School Business Manager
- Custodian -> School Custodian
- Administrator -> Administrator in a School
- Kitchen Assistant -> Kitchen Assistant in a School

Processing DBS Data

In line with the Data Protection Act 1998, any education provider needs a formal written policy on the secure handling of any information provided (electronically or otherwise). This policy needs to be clearly made available to any recruit or employee that a provider intends to run a DBS Check on. Your organisation is allowed to record the following information:

- 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
- The details of the recruitment decision taken

Disclosure information should never be kept on an applicant's personnel file and should be kept separately and securely, in a lockable, non-portable storage container with access strictly controlled and limited to those who are entitled to see it as part of their duties. This can be a physical or digital container.

Once a recruitment (or other relevant) decision has been made, organisations should not keep disclosure information 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.

Schools and colleges must also maintain a record of any DBS Checks carried out on their Single Central Record. We'll look at this in more detail in the Single Central Record section of this guide.

THE DBS UPDATE SERVICE

The DBS Update Service (DBSUS) is a subscription run by the DBS. Signing up to this means that applicants gain a level of portability over their DBS check(s). This service is charged at £13p.a. and by subscribing to this service, applicants can:

- Add/Remove DBS Certificates
- View employers who have checked the status of a certificate
- Amend their contact details

The key aim of the update service is to improve the speed and ease of the recruitment process for those within regulated industries like education. If applicants are working within the same workforce, it allows movement between roles without needing another DBS check to be completed. Rather than carrying out another check, employers can:

- Access a free online status check for an individual's DBS check
- Be notified of any new information relating to that check
- How Can Candidates and Employees Sign Up?

Signing up to the DBSUS is simple and individuals can even do it before a certificate is issued. Once a check is in process with the DBS, they will send the applicant an E-Reference number. This is the tracking number for the check and can be used to sign up.

Alternatively, they can wait for the certificate to come through. Each certificate has a unique disclosure number, and this can also be used to sign up. If they choose to wait until the certificate arrives, we recommend signing up as soon as possible. Certificate holders only have 30 days to sign up from the date of issue. Considering the DBS certificate can take up to two weeks to arrive, it's best to do this immediately upon receiving it.

To find the registration portal, either type 'DBS Update Service' into a search engine and look for the .gov website. Alternatively, you can follow this [link](#). All that's needed to sign up is basic personal information, the application or certificate reference and payment details.

Carrying out Status Checks

A Status Check is simply the act of looking up a subscriber's DBS certificate information online to check for new information. To do so, you would follow this [link](#) and be required to enter the following information:

- Your organisation name
- Your forename
- Your surname

Once you've entered this, the DBS system would ask you for the candidate's certificate information, as listed below:

- DBS Certificate Number
- Surname as it appears on the certificate
- DOB as it appears on the certificate

The DBSUS would then show whether the status of the applicant's check has changed. It is important to note that, the DBSUS will not show the original certificate. It only shows new information. For a subscription to the DBSUS to be valid, the certificate holder needs to retain the original certificate. You must have seen this before carrying out a Status Check.

Accepting an Existing Certificate on the DBS Update Service

The purpose of the DBSUS is to reduce the number of DBS Checks that need carrying out. Registration to the DBSUS means that a DBS certificate is essentially portable between employers. Before accepting an existing DBS certificate, which is registered to the DBSUS, organisations need to be sure of a couple of things:

- Obtain consent from the individual in question that you can carry out a Status Check of their existing DBS Check
- Examine the original DBS Certificate. If the candidate cannot provide this, their DBSUS subscription is invalid, and you cannot accept it.
- Confirm the DBS Certificate matches the individual's identity
- Ensure that the level of DBS Check is appropriate to the job they are applying for.

The last point is key when accepting an existing DBS Certificate. Not only does the level of DBS Check need to be the same, but it also needs to have the correct Workforce and Barred List included. Some DBS Certificates will disclose criminal history and barring information that is only relevant for working with adults. Some will only contain information relating to children.

Accepting an existing DBS Certificate of the wrong level or type can be a safeguarding risk because a recruitment decision would be made without all the relevant information. Consider the following situation:

A SEND teacher working at a school where the pupils are all over-18 has an Enhanced DBS Check in place. Their DBS Check is checked against the Adult Workforce and Adult's Barred List and is registered on the DBSUS. If this teacher applies for work at a primary school a new DBS Check must be carried out.

The new DBS Check is an Enhanced DBS Check against the Child Workforce and Children's Barred List. This ensures the primary school hiring the teacher are aware of any barring information or police notes that are relevant for a role working with children.

If the recruiting school in the example above had accepted the existing check, they would be failing in their statutory safeguarding responsibility as described in KCSIE. They would also inadvertently be committing a criminal offence. This is because they would be viewing information that is not relevant and therefore protected under the [Rehabilitation of Offenders Act 1974](#) (ROA). For more information about the DBS Update Service, [click here](#).

SAFEGUARDING AND BARRING REFERRALS

Under KCSIE guidance all education providers have a legal duty to make DBS referrals. The guidance states:

"There must be procedures in place to make a referral to the Disclosure and Barring Service (DBS) if a person in regulated activity has been dismissed or removed due to safeguarding concerns or would have been had they not resigned. This is a legal duty and failure to refer when the criteria are met is a criminal offence."

Good quality barring referrals are essential as the DBS has no investigatory powers. They rely on the information provided in barring referrals to make fair and informed decisions on whether to bar someone.

Providing good-quality, relevant information means the work the DBS carry out continues to be an effective safeguarding measure for the most vulnerable members of society. Without barring referrals and the work of the DBS, dangerous individuals would be left to pose a threat by seeking employment with malicious intent.

What Information Do You Need to Make a Referral to the DBS?

When making a barring referral to the DBS, it's important that you try and provide as much good-quality information as you can. The better the quality of the information provided, the easier it is for the DBS to make informed decisions. Next you will find a breakdown of exactly what information you need to make a good quality referral to the DBS. For more information on how to make a referral, [click here](#).

Personal Information

For barring referrals, the DBS require the individual's full name, gender, and date of birth. This information is used to place someone on the barred lists, and to check a person's barred list status in the future.

On top of this, contact details are of vital importance. If possible, this should include their phone number, email address, most up-to-date home address and date that they were last contacted or confirmed as living at this address.

Details of Work

Details of the individual's working life are important for the DBS to understand what kind of 'regulated activity' they have been involved in.

This should include their current job title, a description of their job role and the types of activities they would normally carry out. It also helps to include knowledge of a person's qualifications and training.

On top of this, the individual's employment history is important as this also provides evidence towards the individual satisfying the 'test for regulated activity.' Documents that should be used to support this can include job descriptions, application forms and CVs.

Information from Disciplinary Investigations

In most cases, when it comes to making a barring referral a disciplinary process will have been carried out. In these instances, it's important that any evidence you've gathered throughout the disciplinary process is shared with the DBS.

This evidence could include:

- copies of signed and dated witness statements
- victim statements
- the account of the person who is alleged to have caused harm or caused a risk of harm
- investigation meeting minutes and reports
- any available physical evidence such as CCTV

Any other evidence relied upon during the disciplinary process should also be provided if possible. Sometimes, an individual might have resigned partway through the disciplinary process, or other circumstances arise that mean an investigation can't be held. If this happens, it's important that you still provide any information that would have been used to support the disciplinary process.

Details of the victim or potential victim, and what harm was caused, are also important. These details should include:

- The victim's age,
- Why are they viewed as 'vulnerable'? Are they a child or an adult receiving care for example?
- What type of harm was caused? This could be financial, emotional, physical or any other kind of harm

It may also be the case that as part of your investigation, certain elements of the case could not be proven. This should not deter you from making a barring referral. The DBS often hold information from other organisations such as previous employers, or the police, that contain similar details. When the DBS receive similar reports from multiple sources, even if nothing was proven, it enables them to make additional findings on the 'balance of probabilities.' This means they will consider the additional information and use it to make an informed decision about whether something occurred and said individual poses a threat.

External Information

If there has been an external investigation into the individual that you're referring, the DBS also require details of this. This could include interviews, police intervention or details of multi-agency meetings. The DBS need to be aware of any of the other agencies involved including contact names and reference numbers.

Other Relevant Information

It's also useful to have any other relevant information and supporting evidence about the person's time when they were employed by you, such as previous investigations, allegations, or concerns. If possible, provide the DBS with a timeline of events of when this individual was working with you. This helps the DBS gain greater insight into how the behaviour occurred and any potential triggers. Below are a few things to be aware of:

Redaction

As part of the barring decision-making process, any information provided in a barring referral may be used by the DBS and could be disclosed to the referred person or other parties. If you redact any information, it would be helpful if you could code your redaction, so, the DBS caseworker can determine who is being referred to.

Sharing Information

If the DBS decide that it is appropriate to bar someone on either list, they are legally obligated to share all the information they have used to reach this decision, with the referred individual. Prior to sharing this information, they remove all non-essential personal details. In cases where the referring person or organisation have requested to remain anonymous, we will make sure that this request is respected. The same principles apply if an individual makes a subject access request.

SINGLE CENTRAL RECORD (SCR)

The Single Central Record (SCR) is a mandatory document for meeting safeguarding requirements under KCSIE. The SCR is the central record recording that relevant background checks have been carried out on staff and other relevant people.

Who Needs to be Recorded on the SCR?

The SCR must record information for:

All staff working at the school, including supply staff, salaried trainees, and agency staff. For independent schools, academies and free schools, all members of the proprietor body (i.e., the members and trustees of the trust in academies and free schools). For colleges, any staff responsible for providing education to children under the age of 18, including agency and supply staff.

The SCR itself can be kept as a document in either electronic or paper form. The details of an individual should be removed from the single central record once they no longer work at the school or college.

What Checks Need to Be Recorded?

The SCR must record whether the following checks have been completed on any of the individuals listed above. The record must also include the date the check was requested and the date the certificate or result was provided:

- An Enhanced DBS Check
- A barred list check
- An identity check
- A prohibition from teaching check
- A Qualification Check (where required)
- A Right to Work Check
- Relevant international checks on people who have lived or worked outside the UK

Contractors, Third-Party and Agency Staff

Schools and colleges must obtain written confirmation that the necessary checks have been carried out on any contractor or third-party/agency employee who will be working at the school or college. For the Enhanced DBS Check, this includes the certificate number, date of issue and, if regulated activity is being carried out, whether a barred list check was included.

If information has been disclosed on a DBS Certificate for third-party or agency staff, the school or college must obtain a copy of the certificate from the relevant organisation. The school or college would then need to make their own safeguarding decision about whether that person is appropriate to work on-site.

For contractors, schools and colleges have no legal right to request a copy of a DBS Certificate. This is because they are not the recruiting organisation, and the contractor will not be fulfilling responsibilities that the school or college would normally perform. Where schools and colleges use contractors for any services, they should set out safeguarding requirements in the contract before any work begins.

KEEPING COPIES OF DOCUMENTS

DBS Checks

Schools and colleges are not expected to keep copies of DBS Certificates to meet statutory expectations. DBS Certificates and any associated disclosed criminal record information are protected under UK GDPR.

If you do choose to retain a copy of a candidate's DBS Certificate you must have a valid reason for doing so, have the applicants consent to do so and it should not be kept longer than 6 months. **In no circumstance can you ask to keep a candidate or employees original DBS Certificate on file.**

Other Supporting Documents

Copies of any other supporting documents used to verify a successful candidate's identity, right to work or qualification history should be kept on their personnel file.

Copies of an individual's documents should be removed from personnel files and destroyed once they no longer work at the school or college.

OTHER BACKGROUND CHECKS

There are several other checks that are available for education providers to support safe recruitment. Some of these are optional whilst others are mandatory in certain circumstances. Below we'll cover some of the more common ones:

List 99 Checks

List 99 is simply an alternative name for the Children's Barred List. List 99 Checks are a search against this register to determine whether someone has been barred from working with children. These checks usually return an instant result but should only be used in certain circumstances.

A List 99 Check should only be used if an individual is due to start working before the results of the full Enhanced DBS Check become available. When these individuals start work, they should be supervised by another faculty member until the results of the full DBS Check become available.

Up until March 2021, third-party providers could manage List 99 Checks for schools and colleges, but this is no longer the case. Schools and colleges must use the TRA's Employer Access service to run these checks. The service is free to use and is available via the TRA's web page.

List 99 Checks are not available for 16-19 Academies, Special Post-16 institutions and Independent Training Providers

Adverse Financial Checks

Financial Checks are a key element of determining whether a candidate is financially sound. This is particularly important for governors, trustees or senior managers within academies and independent schools where funds are going to be managed. While Section 128 checks are mandatory for these positions (see below) additional Adverse Financial Checks can give a clear picture of someone's financial record.

Adverse Financial Checks include information on any county court judgements, bankruptcies, insolvencies in a candidate's history as well as including a credit report. For staff recruited with a history outside of the UK, there are overseas civil record checks as well. These can provide similar information to Adverse Financial Checks.

Section 128 Checks

Section 128 checks to see whether someone has been banned from the management or governance of schools. Individuals served with a Section 128 Direction cannot serve on the school board or be part of the senior management team in academies.

Section 128 Directions are issued on the following grounds:

- Conviction of an offence under military disciplinary proceedings
- Being found not guilty of an offence by reason of insanity
- Conduct found to be in breach of professional standards by a professional body
- Engaging in conduct that is aimed at undermining British values such as democracy, the rule of law, individual liberty or Mutual respect and tolerance of those with different faiths and beliefs

Academies and independent schools must carry out section 128 checks for:

- Trust members and trustees
- Individuals who sit on committees or local governing bodies with delegated responsibilities
- Staff engaged in management positions.

Management positions usually mean headteachers and deputy or assistant headteachers. However, other positions may also require the check dependent on their responsibilities. This can sometimes apply to heads of departments or other senior roles within the school.

Maintained schools should also carry out a section 128 check for school governors. This is because a person prevented from managing an independent school by a section 128 direction, is also disqualified from being a governor of a maintained school. For maintained schools, these checks are not mandatory.

When academies or independent schools process DBS Checks, Section 128 Checks can be requested within the check itself. This information is then provided on the DBS Certificate. Maintained schools can use the Teaching Regulation Agency's (TRA) Employer Access Service.

Qualification Checks

All staff should have relevant qualifications checked as a standard part of recruitment. For teaching staff, schools and colleges can use the Teaching Regulation Agency's (TRA) Employer Access Service to verify whether someone has achieved Qualified Teacher Status (QTS), completed their teacher induction or probation.

For more specialised posts, you may need to verify a wider range of qualifications that are not verifiable via the TRA. In these cases, Qualification Checks can be run by third-party background screening organisations. Qualification Checks provide a comprehensive report confirming the level and types of qualifications gained by an applicant.

Qualification fraud is a growing problem, and the quality of forgeries means most frauds go unnoticed until it's too late. Research has shown that up to 75% of admissions staff cannot recognise fraudulent degrees issued in their own institution's name. This is why external qualification checks can be a reliable way to give you peace of mind.

PROCESSING BACKGROUND CHECKS

Implementing a legally compliant background screening process is a complicated and time-intensive task. Screening regulations tend to involve overlapping areas of legislation that can often be contradictory. Relying on professional background screening and compliance organisation is the best way to ensure you get the most out of this process.

Personnel Checks provide comprehensive screening services to a range of public and private sector financial institutions. We are members of several background screening trade bodies, and our managing director is the sitting vice-chair of the Criminal Record Trade Body (CRTB). Personnel Checks are at the forefront of the industry and use this position to provide better solutions for our customers.

We can assist your firm by tailoring screening packages including any of the background checks listed in this eBook. Why not join the ever-growing community of conscientious businesses that are taking the leap into background screening?

For more information about how Personnel Checks background screening solutions can aid your organisation, get in touch! You can give us a call on **01254 355688** or drop us an email at letstalk@personnelchecks.co.uk