|  |  |
| --- | --- |
| New Logo 2 | Barnardo’sCorporate Policy |
| **Criminal Records Disclosure Policy - England and Wales** |
| **Risk Owner:** | Director of People and Culture  |
| **Supported by:** | Employee Relations & Policy Manager  |
| **Date Approved:** | 14 July 2022 |
| **Date for Review:** | 14 July 2025 |
| **Distribution** | **Internal & External – Non Confidential**  |
| 1. **Purpose**
 |
| Barnardo’s has developed this policy:1. In line with our safeguarding principles, to help us ensure that the children, young people and adults at risk who we work with and for are protected and kept safe from harm by identifying individuals, through criminal records checks and/or barred list checks, who may be unsuitable to undertake ‘regulated activity’ (see 1.3 below).
2. To ensure that Barnardo’s abides by the obligations of the Disclosure and Barring Service (DBS) and the relevant laws for handling, checking and retaining criminal record disclosure information.
3. To ensure that Barnardo’s complies with the spirit and requirements of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013 and 2020) and that applicants are treated fairly when considering disclosed information.
4. To ensure that Barnardo’s retains its status as a Registered Body.
 |
| 1. **Policy**
 |
| **1. The Purpose and Levels of a DBS Check**A DBS check forms one part of our wider safeguarding processes. It helps us determine whether a person is a suitable for a particular role by providing information about the individual’s criminal history. **1.1 Types of Checks:****Basic DBS Check** reveals information relating to only 'unspent' cautions or convictions.**Standard DBS Check** reveals information relating to spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC). It is used primarily for people entering certain professions such as members of the legal and accountancy professions. Barnardo’s only uses Standard checks for relevant Department of Education staff, who meet the eligibility criteria referred to in 1.2.ii below.**Enhanced Checks** reveals the same information as Standard Checks but also checks against information held by local police forces (e.g. relevant on-going investigations). Where specified, and if the role falls within the definition of regulated activity (see 1.3 below) it also checks against relevant lists of people prohibited from working with children and vulnerable adults. These are known as ‘barred lists’. **1.2 Which DBS Check is Required?**The minimum age that someone can apply for a DBS check is 16[[1]](#footnote-1). The level of check will be determined by the nature of the role the individual will be undertaking:**i**. **Basic Check** A Basic Check is available for roles that are covered by the Rehabilitation of Offenders Act 1974.. **ii. Standard Check** To be eligible for a Standard Check the position must be specified in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.Eligibility exists for a Standard DBS check for those who are working in the Department for Education, the Office for Standards in Education, Children's Services and Skills with access to sensitive or personal information about children (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 Part 2 Para 34).**iii. Enhanced Check**To be eligible for an Enhanced Check the position **must** be specified in **both** the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) Regulations. Positions falling within the old definitions of ‘Regulated Activity’ (under the Safeguarding Vulnerable Groups Act 2006) are eligible for an Enhanced Check (See ‘regulated activity old definitions’ document on Inside.Barnardo’s).**iv. Enhanced Check with Children and/or Adult Barred List Check**This determines whether an individual is barred from working with vulnerable persons, including children. To be eligible for an Enhanced Check + Barred List Check the position must meet the current legal definition of ‘Regulated Activity’ (see 1.3 below).Further written guidance on eligibility can be found on the DBS website[Eligibility guidance for enhanced DBS checks - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/dbs-workforce-guidance)There is also an [on-line tool](https://www.gov.uk/find-out-dbs-check) to help determine eligibility. It is a criminal offence for Barnardo’s to undertake a DBS check on an individual whose role does not meet the eligibility criteria. **1.3 What is Regulated Activity?**Regulated Activity includes work that involves close and unsupervised contact with vulnerable groups. There are two types of Regulated Activity; Regulated Activity with Children and Regulated Activity with Adults (see the ‘regulated activity current definitions’ document and the ‘regulated activity flowchart’ on Inside.Barnardo’s to help you determine whether a role falls within the new definitions of Regulated Activity). If the nature of the work falls within either of these categories, Barnardo’s can request an Enhanced Check against the relevant workforce barred list (see 1.4 below). Regulated Activity is work a person who appears on the DBS barred list is prohibited from doing. Further detailed guidance on regulated activity with children and regulated activity with adults is available at [DBS guidance leaflets - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/dbs-guidance-leaflets)Barnardo’s has received additional guidance from the DBS and Ofsted on our eligibility to check staff working in EYFS setting/Children’s Centres (see ‘CQC Ofsted and EYFS additional guidance’ document on Inside.Barnardo’s for further details).The changes introduced in 2012 mean that we can no longer obtain an enhanced DBS check for anyone undertaking “controlled activity” as this has been removed. This category covered people who might have had less contact with vulnerable groups than in regulated activity – for example dealing with sensitive records. This means we can no longer check people whose **only** eligibility would have fallen under that old category of “controlled activity” [[2]](#footnote-2). If their role still falls within either new or old definitions of ‘regulated activity’ Barnardo’s can request an enhanced DBS check (with relevant barred list where eligible). A person who is barred from working, or deemed unsuitable to work, with children or vulnerable adults will be breaking the law if they work or volunteer or try to work or volunteer with those groups. An organisation that knowingly employs or engages (paid or unpaid) a barred, or unsuitable, individual to work with children or vulnerable adults will also be breaking the law.**1.4 Classification of the Workforce****1.4.1 – Child and Adult Workforce** Our ability to check against the different barred lists is determined by the type of workforce that the role works within. It is therefore important that on the DBS application form that the correct workforce category is indicated as follows:* + - **Child Workforce** **-** any position that involves working/ volunteering with children.
		- **Adult Workforce -**any position that involves working/ volunteering with adults.
		- **Child and Adult Workforce -**any position that involves working/ volunteering with children **and** adults.
		- **Other Workforce-**any position that does not involve working/ volunteering with children or adults e.g. security guard.

The classification depends on the actual activities the individual is undertaking and whether they will fall under the definition of regulated activity in relation to adults and/or children (see 1.3).   Most roles in Barnardo’s will be Child Workforce. Roles will only be Adult Workforce or Child and Adult Workforce if the services the individual is providing to the adults would fall within the regulated activity definitions for vulnerable adults. If the work they are doing falls within both definitions then child and adult workforce can be indicated on the form. **1.4.2 – Home Based Workers**The DBS also require that we indicate on the DBS application whether the applicant will be a home-based worker. It is important to note that under the DBS’s definition this means that the applicant must be **providing the services** to the child or adult **in the applicant’s own home**. This is because if a role is legitimately identified as being ‘home based’ the DBS will need to run checks on any other individual registered at the same address as the applicant. We must therefore not select home based for applicants who are home based for the purposes of their ‘office’ but who work with children or vulnerable adults from other Barnardo's premises etc. Further information on the definition can be [found](https://www.gov.uk/government/publications/dbs-home-based-positions-guide) in the DBS Homebased positions guide on the [DBS website](https://www.gov.uk/government/publications/dbs-home-based-positions-guide).**1.5 – Volunteers**The DBS require that we indicate on the DBS application whether the applicant is a volunteer and therefore eligible for a free of charge application. If an individual moves from a volunteering role to a paid role, a new paid DBS check must be undertaken. The DBS do not permit working in a paid role with a free of charge volunteer DBS certificate. Further guidance on the DBS definition of a volunteer can be found on the [DBS website](https://www.gov.uk/government/publications/disclosure-application-process-for-volunteers/disclosure-application-process-for-volunteers).**1.6 Filtering or “Protecting” of convictions disclosed by the DBS**For roles based in England or Wales the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013 and 2020) by SI 2013 1198 and SI 2020 1373 provides that certain spent convictions and cautions are “protected” and are not subject to disclosure to employers, and cannot be taken into account. These convictions and cautions are protected subject to the filtering rules (see the ‘filtering rules’ page on Inside.Barnardo’s for further details). Individuals therefore do not need to declare any convictions or cautions to us that would be subject to these rules.**2. Disclosure process in Recruitment**At the start of the recruitment process the recruiting manager must decide if the role is eligible for a disclosure check.If the role is eligible for a standard or enhanced disclosure check any offer of employment/volunteering must be made conditional on the receipt of a satisfactory disclosure check. With regards to employees, apprentices, volunteers (including student placements), As and When Workers, Casual Workers, Contractors and Self-Employed Consultants, it is Barnardo’s responsibility to ensure that up-to-date checks are carried out as appropriate for the role. Agency staff are the responsibility of the employing agency. However, the line manager must ensure that the agency provides us with written confirmation that they have had the appropriate type of satisfactory DBS check within the 12 months immediately preceding the placement. See [agency worker guidance](https://inside.barnardos.org.uk/sites/default/files/uploads/Agency%20worker%20guidance.pdf) for further details of checks and vetting for agency workers. No-one should start undertaking any regulated activity until Barnardo’s has received the satisfactory check, except in limited circumstances following a risk assessment (which is available to download on Inside.Barnardo’s) and Director approval. All paperwork and information relating to the disclosure process must be handled and stored in accordance with the DBS Disclosure and Storage Policy (see ‘disclosure and storage policy England and Wales’ document on Inside.Barnardo’s for further details).The outcome of the checks must also be logged on Barnardo’s HR system as set out in the DBS process guidance on Inside.Barnardo’s.There is a separate external on-line DBS check process for Registered/ Nominated Persons in roles covered by CQC and Ofsted (see ‘CQC Ofsted and EYFS additional guidance’ document on Inside.Barnardo’s for further details). **3. Retail Safeguarding** To further strengthen our safeguarding practices in Retail, basic DBS checks will be requested for all retail staff and key holder volunteers who give their consent. Whilst new starters in Retail may commence work/volunteering pending the outcome of a basic DBS check, a risk assessment will be completed to determine this (see Inside.Barnardo’s).In the event that consent is not provided for Barnardo’s to obtain a basic DBS check, a risk assessment will be completed (see Inside.Barnardo’s). If a criminal conviction(s) is disclosed, a ‘Risk Assessment Following the Disclosure of Convictions’ must be completed (see Inside.Barnardo’s) and a decision made and recorded on whether to continue with the recruitment process or not. For existing staff and volunteers an assessment will be made of the implications (if any) for their continued employment/volunteering in the role. As part of our wider safeguarding practices, we undertake bi-annual risk assessments and provide appropriate safeguarding training for all store managers. **4. Repeat disclosure checks**It is Barnardo’s policy that enhanced disclosure checks will be undertaken on all those working in Regulated Activity (pre and post Sept 2012 definitions) and basic checks for all retail staff and key holder volunteers (who give their consent) periodically and/or at every 3 years while they remain in employment/volunteering. In addition, a new/repeat check will be carried out on staff changing jobs or volunteers changing roles where the new role requires a disclosure check and/or involves working with a different workforce e.g. moving from a role outside Children’s Services that did not involve regulated activity with children/vulnerable adults to a new role that does and therefore will require a disclosure check or a different level of disclosure check. The level of information disclosed is dependent on which workforce [See 1.4 above] the person is working in. It is therefore important that Children’s Services Managers consider whether any repeat checks are required if the client group that the service is working with changes.**For specific roles covered by Ofsted** - A new DBS check is required when a person moves jobs in the same organisation if:* the new job gives greater access to children or has more responsibility, such as a child care worker promoted to become a senior child care worker
* there has been a break of more than three months between leaving the old role and taking up the new role
* there are concerns about the person, which may affect his or her suitability/fitness.

Details of the recheck process are contained in the DBS Process Guidance document on Inside.Barnardo’s. All paperwork and information relating to the disclosure process must be handled and stored in accordance with the DBS Disclosure and Storage Policy (see ‘disclosure and storage policy England and Wales’ document on Inside.Barnardo’s for further details).The outcome of the checks must also be logged on Oracle as described in the ‘DBS Process Guidance’ notes available on Inside.Barnardo’s.**5. Identity Verification**Obtaining a disclosure check requires applicants to provide valid, current, and original documents, to prove their identity and to verify their date of birth and address history in accordance with current DBS [guidelines.](https://www.gov.uk/government/publications/dbs-identity-checking-guidelines)Where applicants cannot provide the required number or types of original documents to demonstrate their identity, external ID verification is required by the DBS. In order to facilitate this, the applicant’s disclosure check must be processed via our online Employment Check system.**5.1 Overseas applicants and UK applicants who lived abroad**DBS can only provide criminal records information relating to the UK. If the applicant is from overseas or has lived or worked outside of the UK for a period of more than 6 months in the last 5 years, they will need to obtain a criminal records check, or ‘Certificate of Good Character (CGC)’, from the relevant country/countries to supplement the DBS process. If the individual is completing their DBS application via the online process, a systems-generated email will alert them to the need to obtain a CGC and will give them the relevant link on the [gov.uk website](https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants) which explains how to do this. If the individual is completing a paper DBS form, the recruiting manager is responsible for determining whether a CGC is required and asking the individual to obtain the CGC. The process for obtaining CGCs varies between countries and details can be found on the [gov.uk website](https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants). The recruiting manager has responsibility for checking whether returned CGCs are satisfactory, seeking advice from the People Team where necessary. If criminal convictions are disclosed on a CGC, a ‘Risk Assessment Following the Disclosure of Convictions’ must be completed, and a decision must be made and recorded on, whether or not to continue with the recruitment process. Where it is not possible to obtain such checks, e.g. because the country in question won’t co-operate, a thorough risk assessment must be carried out by the recruiting manager.  The appropriate Director will then review the outcome of the risk assessment and will take the decision on, whether or not, to continue with the recruitment process. **6. Management and Use of disclosure information**Barnardo’s fully complies with the [DBS code of practice](https://www.gov.uk/government/publications/dbs-code-of-practice) on the secure handling, use, storage and retention of disclosure information, as detailed in Barnardo’s policy [here.](https://inside.barnardos.org.uk/sites/default/files/uploads/Storage%20Handling%20Retention%20and%20Disposal%20of%20Disclosure%20Policy%20-%20England%20and%20Wales.pdf) This policy contains specific details on services inspected by Ofsted, CIW and CQC. **7. Policy on Ex-Offenders**Barnardo’s will not unfairly discriminate against the subject of Disclosure Information on the basis of conviction or other details revealed. Barnardo’s has a policy statement located on Inside.Barnardo’s on the recruitment of ex-offenders which is also available to all job applicants through the recruitment website or in hard copy on request. **8. Referrals**The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on organisations where people are working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This duty occurs when a person has been dismissed or removed from working with children or vulnerable adults (or would or may have been if they had not left or resigned etc.) because they have:1. Been cautioned or convicted for a relevant offence; or
2. Engaged in relevant conduct in relation to 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
3. Satisfied the Harm Test in relation to 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.

Further information on referrals to the relevant disclosure bodies and other required agencies (e.g. Ofsted) can be found in the [Safeguarding referral guidance | Inside Barnardos](https://inside.barnardos.org.uk/safeguarding/safeguarding-referral-guidance).   |
| 1. **Scope**
 |
| This policy and procedure applies to all candidates and all roles in Barnardo’s based within England and Wales that are subject to a disclosure check through the DBS. This includes As & When workers, employees, agency workers, self-employed consultants, contractors and volunteers.Criminal Record checks in Scotland and Northern Ireland are governed by Disclosure Scotland and Access Northern Ireland respectively so the rules and definitions are slightly different. There are therefore separate policies on criminal record disclosure checks in Scotland and in Northern Ireland located on Inside.Barnardo’s. |
| 1. **Definitions and Key Concepts**
 |
| **DBS** – The Disclosure and Barring Service. Responsible for criminal record disclosure checks in England and Wales.**Rehabilitation of Offenders Act (ROA) 1974** – The Act of the UK Parliament that enables some criminal convictions to be ignored after a rehabilitation period. Its purpose is that people do not have a lifelong blot on their records because of a relatively minor offence in their past. The rehabilitation period is automatically determined by the sentence and starts from the date of the conviction. After this period, if there has been no further conviction the conviction is "spent" and, with certain exceptions, need not be disclosed by the ex-offender in any context such as when applying for a job, obtaining insurance, or in civil proceedings. **Regulated Activity** – as currently defined by under the Protection of Freedoms Act 2012 (see 1.3).**Workforce Categories** - The classification depends on the actual activities the individual is undertaking and whether they will fall under the definition of regulated activity in relation to adults and/or children (see 1.4). |
| 1. **Roles and Responsibilities**
 |
| **Line managers/recruiting managers** **Recruitment Support/People Teams/ Barnardo’s UK Volunteering Team****People Strategy and Projects Team**  | Responsible for deciding the required the level of disclosure check and ensuring the checks are carried out in accordance with this policy; seeking advice from the People Team on any aspect of the policy where needed.Responsible for the administration of the disclosure checking process and supporting managers to ensure required checks are carried out in accordance with this policy; and when it is necessary to make a referral to the relevant regulatory bodies.Responsible for endeavouring to ensure compliance with legal and regulatory obligations; and keeping up-to-date with any DBS policy or procedural changes and updating this policy, and other associated forms or processes, accordingly. |
| 1. **Procedures**
 |
| There are two processes for new and repeat DBS checks. Individuals can either apply through the Barnardo’s on-line Employment Check system or alternatively, individuals may subscribe to the DBS Update Service. In exceptional circumstances and only where it is not possible to undertake an on-line check, a paper application form may be used.Please refer to the detailed guidance on the two DBS application processes in the ‘DBS Process Guidance’ document and in the Online Criminal Record Checks area on Inside.Barnardo’s. The DBS also has a detailed [e-guide](https://www.gov.uk/government/publications/completing-the-dbs-application-form-e-guide) for counter-signatories on checking and completing the paper application form. |
| 1. **Associated Legislation, Guidance, References and Documents**
 |
| **Guidance and Documents*** DBS Process Guidance
* Disclosure and Storage Policy
* Recruitment and Selection Policy
* Recruitment of Ex-Offenders Policy
* Volunteer Procedures
* Safeguarding Code of Conduct
* Agency Worker Welcome Pack
* External Consultant’s Questionnaire and Frequently Asked Questions

**References**DBS Guidance on:* Eligibility for enhanced DBS checks including homebased checks
* Filtering
* Storage, retention and disposal of certificates
* [Ofsted Guidance on DBS Checks](https://www.gov.uk/government/publications/disclosure-and-barring-service-dbs-checks-for-childcare-providers-who-register-with-ofsted)
* Protection of Freedoms Act 2012
* Rehabilitation of Offenders Act (ROA) 1974 – Exceptions and amendments
 |
| 1. **Compliance and Oversight**
 |
| In addition to the compliance and oversight arrangements set out under Roles and Responsibilities, the following applies:* The Risk Owner will ensure that management information demonstrating adherence to and compliance with this Policy is produced and provided to relevant parties as required and on request complete a business self-assessment.
* The Audit and Assurance Team will periodically and independently review adherence to and compliance with this Policy and associated procedures and processes across the Charity in line with their approved audit and inspection plans.
 |
| 1. **Document History**
 |
| **Version** | **Date** | **Author** | **Comments**  | **Approval**  |
| 1.0 | 01.01.14 | Policy & Advice Team | New policy | Agreed |
| 1.1 | 20.12.14 | Policy & Advice Team | Further info added on DBS and Ofsted checking requirements and introduction of Barnardo’s online application system | Agreed |
| 1.2 | 22.04.16 | Policy & Advice Team | Update to clarify DBS checks in respect of retail staff/volunteers. | Agreed |
| 1.3 | 18.01.17 | Policy & Advice | Policy put into new templateUpdated to include link to on-line eligibility tool and removal of reference to ‘basic’ check for self-employed consultations; change to Retail checks. | Agreed |
| 1.4 | 20.04.17 | Policy & Advice | Clarity on overseas checking policy/ process | Agreed |
| 1.5 | 01.10.18 | Policy & Advice | Update to reflect Basic DBS checks in Retail. | Agreed |
| 1.6 | 30.04.19 | Policy & Advice | Updated references to Barnardo’s intranet to reflect Inside.Barnardo’s | Agreed |
| 1.7 | 1 July 2022 | People, Strategy & Projects  | Reviewed and updated to reflect eligibility for standard checks in DofE roles and transferred to new policy template. | Agreed  |
| 1.8 | 14 July 2022 | People, Strategy & Projects | Link added to DBS eligibility guidance leaflets.  | Agreed |

1. Barnardo’s does take volunteers from the age of 10 so please refer to the Volunteering Policy on Inside.Barnardo’s for steps to be taken for volunteers under 16. [↑](#footnote-ref-1)
2. An exception made to the Rehabilitation of Offenders Act in 2014 permits enhanced DBS checks to be undertaken on individuals working within Fostering and Adoption who, in their role, have the opportunity for contact with children or have access to sensitive or personal information about children.

Standard DBS checks can be carried out on those working for the Department of Education who undertake ‘controlled’ activity, see 1.2.ii [↑](#footnote-ref-2)