 Barnardo’s

Corporate Policy

Criminal Records Disclosure Policy - Northern Ireland

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Policy Owner: People Strategy & Projects Team

Distribution: Internal and External - Non Confidential

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# 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 AccessNI 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 (Northern Ireland) Order 1978, as amended in 2014, and takes account of the Rehabilitation of Offenders(Exceptions) Order (Northern Ireland) 1979 as amended to ensure that applicants are treated fairly when considering information disclosed.
4. To ensure that Barnardo’s retains its status as a Registered Body.

# Scope

This policy and procedure applies to all candidates and all roles in Barnardo’s within Northern Ireland that are subject to a disclosure check through AccessNI. This includes As & When workers, employees, agency workers, self-employed consultants (including those working as limited companies) and volunteers.

Criminal Record checks in Scotland and England and Wales are governed by Disclosure Scotland and the Disclosure and Barring Service (DBS) respectively so the rules and definitions are slightly different. There are therefore separate policies on criminal record disclosure checks in Scotland and in England and Wales which are located on Inside.Barnardo’s.

# Roles & Responsibilities

**Line Managers/Recruiting Managers** – are 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 Local People Team on any aspect of the policy where needed.

**Local People Teams (LPTs)/Recruitment Team/Volunteer Advisors** – are 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.

**People Strategy & Projects Team** – are responsible for endeavouring to ensure compliance with legal and regulatory obligations; and keeping up-to-date with any AccessNI policy or procedural changes and updating this policy, and other associated forms or processes, accordingly.

# Definitions/Abbreviations

**AccessNI** – branch within the Department of Justice in the Northern Ireland Executive responsible for criminal record disclosure checks in Northern Ireland.

**DBS** – The Disclosure and Barring Service. It replaced the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) and maintains the ‘barred lists’ which are used by AccessNI for Enhanced + Barred Lists checks.

**Rehabilitation of Offenders (Northern Ireland) Order 1978, as amended in 2014** - The Order of the Northern Ireland Executive 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.

**Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 –** details the ‘excepted’ employments or professions which must always declare their convictions, even if they are considered spent. Excepted employments and professions can include working or coming into contact with children or vulnerable people; working in financial institutions; in the medical world; and in law enforcement, amongst others, where a particular conviction could have a strong bearing on an individual’s suitability for employment in that area.

# The Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern

**Ireland) 2012** - amended the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 to update the law relating to circumstances when past convictions must be declared, when required, for employment purposes. It ensured that existing safeguarding arrangements were not diminished for those working with vulnerable groups, including children, in light of the changes made by the Protection of Freedoms 2012 Act to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (2007 Order).

**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 below).

# Policy and Procedure 1. The Purpose and Levels of an AccessNI Check

A disclosure 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.

AccessNI provides the criminal record disclosure service in Northern Ireland.

**1.1 Types of Checks:**

**Basic AccessNI Check** reveals details of convictions from the Police National Computer (PNC) which are not spent under the terms of the Rehabilitation of Offenders (Northern Ireland) Order 1978; or it will state there are no such convictions. Any employer will be able to request a potential employee to apply for a basic disclosure.

**Standard AccessNI Check** reveals information relating to spent and unspent convictions, cautions, informed warnings and details of diversionary youth conferences from the PNC. It is used primarily for people entering certain professions such as members of the legal and accountancy professions. Barnardo’s does not use Standard checks. It is not suitable for positions working with children or vulnerable adults.

**Enhanced Checks** reveals the same information as Standard Checks but and may also have non-conviction information from police records where a chief of police believes the information might be relevant and ought to be disclosed.

**Enhanced Check with Barred List** **Check** reveals the same as an Enhanced Check **and** where specified, if the role falls within the definition of [Regulated activity](https://inside.barnardos.org.uk/safeguarding/regulated-activity-northern-ireland) it also checks against relevant lists of people prohibited from working with children and vulnerable adults. These are known as ‘barred lists’. Since December 2012 the Disclosure and Barring Service (DBS) has been responsible for maintaining the list of individuals barred from engaging in regulated activity with children and the list of individuals barred from engaging in regulated activity with adults across England, Wales and Northern Ireland.

**1.2 Which Level Check is Required?**

**i. Basic Check**

Anyone can apply for a basic disclosure check.

# ii. Standard Check

To be eligible for a Standard Check the position or profession must be specified in the terms of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

# iii. Enhanced Check

Enhanced Disclosures can only be provided for positions and professions within the terms of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 as amended, provided that the position applied for is also prescribed within the Police Act (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008, as amended.

Positions falling within the old definition (see Inside.Barnardo’s) of ‘Regulated Activity’ (under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007) are eligible for an Enhanced Check.

# 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 definition of ‘[Regulated activity](https://inside.barnardos.org.uk/safeguarding/regulated-activity-northern-ireland) ’. There are questions on the AccessNI application form to indicate which barred list requires checking.

It is a criminal offence for Barnardo’s to undertake an AccessNI check on an individual whose role does not meet the eligibility criteria.

**1.3 What is Regulated Activity?**

Schedule 2 to The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 sets out the original definition of 'Regulated Activity' in Northern Ireland i.e. the activities and work which a person who is barred must not do. This definition of regulated activity was amended and scaled back by the Protection of Freedoms Act 2012. We are therefore left with two different definitions in Northern Ireland: the old definition under The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and the current definition as amended through the Protection of Freedoms Act 2012 (see Inside.Barnardo’s for further details).

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. There are flowcharts (see

Inside.Barnardo’s) to help you determine whether a role falls within the current definitions of Regulated Activity. If the nature of the work falls within either of these categories we can request an Enhanced Check against the relevant workforce barred list.

The changes introduced in 2012 also mean that we are no longer able to obtain a disclosure check for anyone undertaking “controlled activity”. This category covered people who had frequent access to education, health or social services records (i.e. sensitive data). This means we can no longer check people whose **only** eligibility would have fallen under that old category of “controlled activity” [[1]](#footnote-1). If their role still falls within either new or old definitions of ‘regulated activity’ we can request a disclosure check.

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 For Enhanced Checks (with Children and/or Adult Barred List check)

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 AccessNI 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.

The classification depends on the actual activities the individual is undertaking and whether they will fall under the definition of [Regulated activity](https://inside.barnardos.org.uk/safeguarding/regulated-activity-northern-ireland) in relation to adults and/or children.

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.

## 1.5 Filtering or “Protecting” of convictions disclosed by AccessNI

For roles based in Northern Ireland the Rehabilitation of Offenders (Northern Ireland) Order 1978, as amended in 2014, 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](https://inside.barnardos.org.uk/sites/default/files/uploads/Filtering%20rules%20Northern%20Ireland.doc) (see Barnardo’s intranet). 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 an 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 and interns), As and When Workers, Casual Workers and Self Employed Consultants, it is the recruiting/hiring manager’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. The line manager must ensure that the agency provides us with written confirmation that they have had the appropriate type of satisfactory check within the 12 months immediately preceding the placement. See the checks and vetting section of the master vendor agreement on Barnardo’s intranet for further details.

No-one should start undertaking any regulated activity until we have had receipt of the satisfactory check except in limited circumstances following a risk assessment (see pre-disclosure risk assessment on Inside.Barnardo’s) and Director approval.

The outcome of the checks must be logged on Oracle.

# 3. Retail Safeguarding

To further strengthen our safeguarding practices in Retail, basic disclosure 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 disclosure 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 disclosure check, a risk assessment will be completed.

If a criminal conviction(s) is disclosed, a ‘Risk Assessment Following the Disclosure of Convictions’ must be completed and a decision made and recorded on whether or not to continue with the recruitment process. 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 disclosure 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 didn’t involve working with children/vulnerable adults to a new role that does will require a disclosure check or a different level of disclosure check.

The level of information disclosed is dependent on which workforce the person is working in. It is therefore also important that Children’s Services managers consider whether any repeat checks are required if the client group that the service is working with changes.

The outcome of the checks must be logged on Oracle.

# 5. Identity Verification

Obtaining a disclosure check requires applicants to provide valid, current, original documents, to prove their identity and to verify their date of birth and address history in accordance with current [AccessNI identity check guidance for signatories | nidirect](https://www.nidirect.gov.uk/publications/accessni-identity-check-guidance-signatories).

The recruiting manager is responsible for verifying the person’s ID. In the employee recruitment process this will take the form of a passport or other original documentation which was presented and copied during the selection process to prove their eligibility to work in the UK.

As a Registered Body Barnardo’s are required by AccessNI to keep copies of ID for successful candidates and securely store this information for a period of 90 days after the certificate has been issued.

## 5.1 Overseas applicants and UK applicants who lived abroad

Aside from some exceptions[[2]](#footnote-2), AccessNI 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 disclosure checking process.

If a CGC is required, the recruiting manager is responsible for determining whether a CGC is required and asking the individual to obtain the CGC. In some cases it may be possible for the individual to get such a check through the relevant embassy in the UK. 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 LPT where necessary. If criminal convictions are disclosed on a CGC, a ‘Risk Assessment Following the Disclosure of Convictions’ must be completed and an 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, then 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 appoint.

# 6. Management and Use of disclosure information

Barnardo’s fully complies with the AccessNI code of practice on the secure handling, use, storage and retention of disclosure information.

In summary Barnardo’s will:

* Store all disclosure information securely
* Only retain disclosure information, its content or any representation of the same in any format for no longer than is necessary and for a maximum of six months following the recruitment decision unless a dispute is raised or, in exceptional circumstances, where agreement is secured from the relevant national disclosure body.
* Ensure that no reproductions of the Disclosure or its content are made, including photocopies or scanned images, unless with the prior agreement of the relevant national disclosure body.
* Only share Disclosure information with relevant persons in the course of their specific duties relevant to recruitment and vetting processes • Dispose of Disclosure information in a secure manner
* Ensure that Additional Information, including information as to its existence, is not revealed to the Disclosure applicant and is disposed of in the appropriate manner and at the appropriate time
* Ensure that we comply with guidance on the portability of disclosures and their contents

A full policy statement is contained in the Disclosure and Storage (Northern Ireland) Policy available on Inside.Barnardo’s.

# 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 on the recruitment of ex-offenders located on Inside.Barnardo’s which is available to all job applicants through the recruitment website or in hard copy on request.

# 8. Referrals

Safeguarding Vulnerable Groups (Northern Ireland) Order (SGVO) 2007 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

1. 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. RQIA) can be found in the Referrals Guidance on Inside.Barnardo’s.

# Associated guidance and documents

* Recruitment and Selection Policy
* Volunteer Procedures
* Safeguarding Code of Conduct
* Agency Worker Welcome Pack
* ECQ Guidance

# References

* Police Act 1997
* Police Act (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008
* Protection of Freedoms Act 2012
* Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
* Rehabilitation of Offenders (Northern Ireland) Order 1978, as amended in 2014
* Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979
* Rehabilitation of Offenders (Exceptions) (Amendment) Order (Northern Ireland) 2012
* [Northern Ireland Department of Justice guidance on filtering](http://www.dojni.gov.uk/index/accessni/disclosures/filtering.htm)

# Compliance

Recruitment Team and Local People Teams monitoring of general adherence to policy.

Feedback from UNISON and Equality, Diversity and Inclusion Networks. Audits.

# Document history

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| --- | --- | --- | --- | --- | --- |
| **Version** | **Date** | **Author** | **Status** | **Comment** |  |
| 1 | 01.01.14 | Policy &  Advice Team | Agreed |  |
| 1.1 | 25.04.14 | Policy &  Advice Team | Agreed | Updated to reflect introduction of filtering rules on convictions w.e.f 14.04.14 |
| 1.2 | 22.04.16 | Policy &  Advice Team | Agreed | Update to clarify disclosure checks with AccessNI in respect of retail staff/volunteers |
| 1.3 | 30.01.17 | Policy & Advice | Agreed | Policy put into new template; change to Retail checks. |
| 1.4 | 24.05.18 | Policy & Advice | Agreed | Updated to reflect new AccessNI  ID retention requirements wef  01.05.18 |
| 1.5 | 01.10.18 | Policy & Advice | Agreed | Updated to reflect basic disclosure checks via AccessNI. |
| 1.6 | 30.04.19 | Policy & Advice | Agreed | Updated references to  Barnardo’s intranet to reflect  Inside.Barnardo’s |
| 1.7 | 02.08.22 | People Strategy & Projects Team | Agreed | Updated to reflect agreed review date. |
| 1.8 | 07.07.23 | People Strategy & Projects Team | Agreed | Policy updated to reflect revised review date in accordance with planned schedule agreed by CLT |  |

1. There are some exceptions to this for those working with Children in Fostering and Adoption; please refer to the Business Lines People Team for further information. [↑](#footnote-ref-1)
2. AccessNI are able to also check criminal records of some EU citizens if the individual holds French, German, Italian, Lithuanian, Polish, Portuguese, Romanian, Slovakia or Spanish nationality. AccessNI will not only check UK criminal records, but also make a request for that applicant’s criminal record to be checked in their home country. If there is any additional information available, this will be disclosed in the AccessNI certificate. [↑](#footnote-ref-2)