



DBS (DISCLOSURE AND BARRING SERVICE) POLICY AND PROCEDURE

This policy sets out Cafcass' approach to obtaining DBS disclosures for new employees/contractors and the process for re-checking the DBS disclosures of existing staff and contractors.

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DBS POLICY AND PROCEDURE

1 INTRODUCTION

Cafcass' primary purpose is to safeguard the welfare and represent the interest of each child and young person referred to us. Our ability to make safe recruitment decisions will help us to minimise the risks to individual children in all family court cases referred to us.

We will do this whilst ensuring we have due regard to all relevant legislation including, but not limited to the Rehabilitation of Offenders Act (1974), the Police Act (1997), the Safeguarding Vulnerable Groups Act (2006), the Protection of Freedoms Act (2012), the Data Protection Act (1998) as well as the DBS Code of Practice and HMG Baseline Personnel Security Standards.

2 PURPOSE

This policy and procedure sets out Cafcass' approach to obtaining DBS disclosures for employees/contractors prior to appointment and also sets out the process of re-checking the DBS disclosures of existing staff and contractors.

3 SCOPE OF POLICY

This policy applies to employees and contractors who work for Cafcass and is in accordance with the Disclosure and Barring Service eligibility guidance.

This policy and procedure supersedes the CRB policy that existed previously within Cafcass.

4 BACKGROUND

The work undertaken by Cafcass is covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and as such permits Cafcass to request DBS checks on all employees and Associate FCA's prior to commencement of employment/engagement.

The Disclosure and Barring Service (DBS), is a Non-Departmental Public Body sponsored by the Home Office, which provides wider access to criminal record information through its disclosure service. This service enables organisations in the public, private and voluntary sectors to make safer recruitment decisions by preventing unsuitable people from working with vulnerable groups including children. The DBS was established under the Protection of Freedoms Act 2012 and launched on 1st December 2012. It merges the functions previously carried out by the Criminal Records Bureau (CRB and Independent Safeguarding Authority (ISA).

The Protection of Freedoms Act 2012 amended the definition of "regulated activity" removing certain positions and establishments and placing more emphasis on the activities an individual would undertake. If an individual is in

regulated activity this provides the legal authority to request an Enhanced and Barred List check. .

A DBS disclosure details a person's criminal record including convictions, cautions, reprimands and warnings held on the Police National Computer (PNC). With effect from 29th May 2013 certain and old convictions, cautions reprimands and warnings will be filtered out and not shown on a disclosure however any that are relevant to safeguarding will not be filtered out. Depending upon the level of Disclosure it may also contain additional information held by local police forces. Where the position involves work defined as regulated activity in the Protection of Freedoms Act 2012, a disclosure will be requested that also contain information held on the children's Barred List about those considered unsuitable for this type of work.

5 PRINCIPLES

As a safeguarding agency, Cafcass is committed to ensuring that all employees are to the best of our knowledge considered safe to work with children and young people.

Cafcass works within the Rehabilitation of Offenders Act and a criminal record will not necessarily be a bar to either obtaining or retaining a post with Cafcass. Cafcass' policy on the recruitment of ex-offenders is set out at Appendix 2 of this document.

Cafcass complies with the DBS Code of Practice. This may be found on the DBS website at <http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>.

The information declared or disclosed by the DBS or an individual will be treated in compliance with the Data Protection Act 1998.

6 DISCLOSURE CHECKS

All employees and contractors will be required to have a DBS Disclosure as a condition of their appointment or contract for service.

The level of Disclosure will be dependent on the role and responsibilities and in all cases we will adhere to the relevant legislation.

An Enhanced check with children's Barred list check will be undertaken for frontline roles (NQSW, FCA, PS and SM), and Legal. For all Business Services and Corporate roles an Enhanced only check will be undertaken.

Cafcass is committed to re checking the DBS disclosures of existing staff and contractors every 3 years. In cases where an employee has resigned or is due to leave the service prior to the expiry of the current disclosure, a re-check will not be required.

Agency staff will be required to provide evidence that they have a satisfactory DBS disclosure that is less than 12 months old at the time of their engagement.

7 DISCLOSING OFFENCES (New Employees/ Contractors)

It is a requirement for all new appointees / contractors to Cafcass to declare any offences prior to the start of their employment / engagement. In addition they will be required to have DBS Disclosure as a condition of their appointment or contract for service. Contractors are expected to provide permission for this disclosure to be obtained via the online DBS Update Service. In exceptional cases where a contractor is not registered with the update service then Cafcass may agree to obtain the disclosure but reserve the right to pass the costs to the contractor.

8 DISCLOSING OFFENCES (Existing Employees/ Contractors)

It is a requirement for employees and contractors to declare any offences to Cafcass at the time they occur.

Employees and contractors who have previously declared their convictions and who have been deemed by Cafcass to be suitable to work with children and young people will still be required to declare these offences as part of the re-checking process.

In the event of a DBS disclosure containing details of offences that have not been previously disclosed to Cafcass by the employee/contractor, the following action will be taken:-

The employee/contractor will be required to meet with their line/contract manager to explain the offence. The line manager and HR will consider the nature of the offence in line with the principles in Appendix 1. If it is determined that further action should be taken the following will apply:

Dependent on the nature of the offence the employee may be suspended from work pending the outcome of an investigation.

The Cafcass Employee Relations Policy and Procedures may be instigated and an investigation conducted into the employee/contractor's failure to disclose the information revealed, and/or the nature of the offence.

Failure by an employee/contractor to provide accurate and truthful information is considered to be a serious matter. Where it is found that a person has intentionally provided inaccurate information or tried to withhold information from Cafcass, this may result in dismissal/termination of contract or another form of action being taken in addition to referral to the appropriate professional regulatory body for their consideration.

9 DBS RE-CHECKING PROCEDURE

Stage 1

In order to ensure that employees/contractors are rechecked within the 3 year period, the HR Resourcing Team (HRRT) will identify DBS disclosures that are due to expire within 16 weeks.

Line/Contract Managers will be advised by HRRT of the employees/contractors within their team who require a re-check.

A standard letter and DBS disclosure application form will be sent to the employee's home address by HRRT. Where an employee is long-term absent from work through ill-health or maternity leave, the approach to be taken will be determined by the line manager and HR although the general assumption will be that the check should still be completed unless there are specific reasons why this is not possible.

For Contractors an update of their DBS certificate status will be obtained via the online DBS Update Service. In exceptional cases where a contractor is not registered with the update service then Cafcass will obtain a disclosure in the line with the procedure for employees as described below, although the cost of doing so will be passed to the contractor.

Employees/contractors will have 10 working days from the date of the letter to complete the form and to return it with the required documentation to their line/contract manager.

The line/contract manager is responsible for sending the DBS form and a signed photocopy of the documentary evidence to HRRT within 5 working days of receipt. Information received by HRRT will be checked, and signed by the counter signatory before forwarding to the DBS.

The DBS no longer supplies employers with a copy of the DBS certificates once checks have been completed. It is therefore the employee's responsibility to supply Cafcass with a copy of their DBS certificate within 10 working days of receipt, or to advise Cafcass if they are disputing information on the certificate. The HR Resourcing Team will check the DBS website on a weekly basis and will be aware when a DBS certificate has been dispatched to an individual's home address. Once the DBS has been dispatched, the HRRT will email the employee and copy in the manager to request a copy of certificate.

Stage 2

DBS Forms

Employees/contractors who do not return their DBS form and supporting documentation within the 10 working day period, will receive an email reminder giving a further period of 10 working days to complete and return the DBS form to their line/contract manager. Line managers will be notified by HRRT of checks outstanding for follow up.

At this stage the relevant senior manager will also be informed (for frontline staff this will usually be the Head of Practice or Assistant Director).

Employees/contractors who fail to return their DBS form and documentation within this further period will then receive a final email, which will confirm that failure to respond within a further period of 5 working days will leave Cafcass

with no option but to instigate the Employee Relations Procedure to address the matter.

DBS Certificates

A failure to present a DBS certificate will be escalated in line with the stage 2 process as outlined above with the exception that where that timescale would extend beyond the renewal date for completion of the check then this may be progressed immediately to a final email and then to stage 3 below unless there are material circumstances which prevent the individual from presenting a copy of their certificate.

Stage 3

Employees/contractors who fail to complete and return their DBS form or fail to supply a copy of their DBS Certificate after the final reminder will receive a letter from their Senior Manager informing them that the Employee Relations Procedures have been instigated, the allegation to be investigated being their failure to comply with Cafcass re-vetting procedures. The employee/contractor will be informed that the allegation may constitute gross misconduct, and if proven could result in their dismissal/termination of contract. (The principles of the Employee Relations Procedures will apply to Associate FCA's).

In circumstances where it has not been possible to complete the DBS re-checking procedure prior to the specified renewal date then Managers will be entitled to suspend the employee from work or to consider alternative measures to remove them from front line work. Alternatives to a suspension may include the individual undertaking alternative duties, taking annual leave, being placed on unpaid leave or a combination of these until such time as the re-check has been completed. The appropriate measure will be determined taking into account the circumstances and the reasons why the renewal has not been completed.

10 HANDLING OF DBS CERTIFICATE INFORMATION

Cafcass complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of DBS certificates and certificate information.

Disclosure information will only be shared with relevant persons in the course of their specific duties relevant to recruitment and vetting processes.

We will not keep any photocopy or other image of the certificate or any copy or representation of the contents of a certificate. However, notwithstanding the above, we will keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, the position for which the certificate was requested, the unique reference number of the certificates and the details of any recruitment decision taken.

11 REVIEW OF POLICY

This policy and procedure will be reviewed by 31st December 2018

12 OTHER RELATED POLICES AND PROCEDURES

See also:

Addendum to DBS Policy and Procedure – Temporary Staff
Cafcass Recruitment and Retention Policy
Cafcass Employee Relations Policy
HMG Baseline Personnel Security Standard
DBS Handling of DBS Certificate Information guidance
DBS Code of Practice.

13 Appendix 1 - DISCLOSURE ASSESSMENT (Guidelines)

Relevance of offences

In many cases a declared criminal offence will have no bearing on an individual's suitability to work in Cafcass, and the assessment of suitability will be straightforward. In others, however, the assessment will be more complicated. In all cases the assessment can only be made considering:

- a) The relevance of the offence to Cafcass work
- b) The seriousness of the offence
- c) The length of time since the offence
- d) Whether the applicant has a pattern of offending
- e) Whether the applicant's situation has changed since the offence was committed
- f) The circumstances surrounding the offence
- g) The applicant's explanation for the offence
- h) Evidence of the applicant's subsequent rehabilitation

Please note that the information below is only given as a guide and all cases would be treated individually and on their merits.

Factor	Relevant Considerations
The relevance of the offence to Cafcass work	<p>The range of work settings should also be considered. For example, the role may involve working in a closely supervised team, or working independently in a capacity where there is routinely unsupervised access to children and young people.</p> <p>Cafcass work involves contact with children and young people and hold positions of trust. The seriousness of offences should be assessed with this in mind.</p>

Factor	Relevant Considerations
The seriousness of the offence	<p>Offences: -</p> <ul style="list-style-type: none"> • against children • leading to registration on the Sex Offenders Register • which disqualify the offender from becoming an adoptive parent, foster parent or child minder • which could lead to a legal ban on working with children • which could lead to a legal ban on teaching

	<p>are very serious when considering the suitability of someone to work in social care. It is unlikely that someone who has committed such an offence would be suitable for social care work</p> <p>Other serious offences for the purposes of determining suitability to work in social care include:</p> <ul style="list-style-type: none"> • offences which involve a betrayal of trust, such as fraud and embezzlement • violent and sexual offences • offences against vulnerable people <p>The seriousness of the offence must be considered as well as the severity of the sentence. Severity of the sentence is not a good enough indication of how serious the offence is and there have been cases of people convicted of using child pornography, which have resulted in fines and cautions.</p>
<p>The length of time since the offence</p>	<p>The length of time since the offence should be considered, along with the age of applicant at the time of the offence.</p> <p>For example, someone with a conviction for threatening behaviour at the age of 18 who is now 40 and has no other convictions may pose a low risk to service users. A 40 year old with a recent conviction for threatening behaviour may be viewed differently.</p> <p>Evidence suggests that most people who offend as juveniles do not go on to offend as adults. The exceptions to this are sexual offences linked to active drug use.</p>

Factor	Relevant Considerations
<p>The pattern of offending</p>	<p>The number of offences should be considered. Someone with a single conviction may be less of a risk than someone who has a pattern of repeat offending.</p>
<p>Circumstances surrounding the offence and explanation offered by the applicant</p>	<p>Mitigating circumstances need to be considered. Was there a financial or political context to the offence?</p>

<p>Where the applicants' circumstances have changed since the offence</p>	<p>Applicants' circumstances may now be very different to those in which the offence was committed.</p> <p>For example, someone who has a history of offences linked to active drug use (such as theft) may have undergone treatment programmes and have been drug free for many years.</p>
<p>Evidence of rehabilitation</p>	<p>Applicants are invited to submit evidence of rehabilitation. This may take the form of character references, evidence of community work etc.</p>

Appendix 2 – Cafcass Recruitment of Ex-Offenders

1. As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), Cafcass complies fully with the DBS [code of practice](#) and undertakes to treat all applicants for positions fairly.
2. Cafcass undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.
3. Cafcass will only ask an individual to provide details of convictions and cautions that Cafcass are legally entitled to know about and where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended)
4. Cafcass can only ask an individual about convictions and cautions that are not protected.
5. Cafcass is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background.
6. This policy on the recruitment of ex-offenders, is made available to all DBS applicants at the start of the recruitment process.
7. Cafcass actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records.
8. Cafcass select all candidates for interview based on their skills, qualifications and experience.
9. An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.
10. We will ensure that all those in Cafcass who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences and have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
11. At interview, or in a separate discussion, Cafcass ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
12. Cafcass makes every subject of a criminal record check submitted to DBS aware of the existence of the [code of practice](#) and makes a copy available on request.

13. Cafcass undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.