


Title:	Disclosure and Barring Service Policy	
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## **Disclosure and Barring Service Policy**

Pentreath Ltd is committed to ensuring that the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on the basis of their race, sex, pregnancy and maternity, marital or civil partnership status, gender reassignment, disability, religion or beliefs, age or sexual orientation.

### **Introduction**

All individuals or organisations using the Disclosure and Barring Service (DBS) Disclosure service to help assess the suitability of applicants for employment and volunteers who engage in Regulated Activity and who are recipients of Disclosure information must comply fully with the DBS Code of Practice. Amongst other things, this obliges them to have a written policy on the correct handling and safekeeping of Disclosure information. It also obliges them to ensure that a body or individual, on whose behalf they are countersigning Disclosure applications, has such a written policy and, if necessary, to provide a model for that body or individual to use or adapt for this purpose.

As an organisation using the Disclosure and Barring Service, Pentreath complies fully with the DBS Code of Practice. We also comply fully with our obligations under the Data Protection Act 2018 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and have a written policy on these matters, which is available to those who wish to see it on request.

This policy should be read in conjunction with the Confidentiality, Data Protection, DBS Referral, Information Security, Recruitment and Rehabilitation of Ex-Offenders Policies.

### **Background**

In December 2012 The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged to become the Disclosure and Barring Service (DBS). CRB checks are now called DBS checks.

The DBS was established under the Protection of Freedoms Act 2012 and provides a joined up service to combine the criminal records and barring functions. The legislative changes that amend the Safeguarding & Vulnerable Groups Act 2006 & the Police Act 1997 Regulations, which the DBS checking service is based on, were introduced through the Protection of Freedoms Act 2012 (as amended).

## Exemptions

If the post you are applying for is 'exempt' from the Rehabilitation of Offenders Act 1974, you are required to declare: -

- All unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974.
- All spent adult cautions (simple or conditional) or spent convictions that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)

The amendments to the Exceptions Order provide that certain 'spent' convictions and cautions are 'protected' and are not subject to disclosure to employers and cannot be taken into account. Guidance and criteria on the filtering of these cautions and convictions can be found on the Nacro Website.

## Regulated Activity

### Regulated activity – Adults

The new definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead the definition identifies the activities which, if any adult required them, lead to the adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity (and so will anyone who provides day to day management or supervision of those people).

An adult is still defined as a person aged 18 years or over.

### Regulated activity – Children

The new definition of regulated activity relating to children applies to individuals undertaking the following:

- I. Unsupervised activities - These activities are teaching, training, instructing, caring for or supervising children or providing advice/guidance on wellbeing or driving a vehicle solely for children.
- II. Work for a limited range of establishments ('specific places'), with opportunity for contact - for example, schools, children's homes, childcare providers. Not work by supervised volunteers.

Work under I. or II. is regulated activity only if done regularly.

III. Relevant personal care

IV. Registered child minding and foster carers.

### **The frequency test**

For an individual to be in regulated activity because of the activity they are carrying out or the establishment they are working in, they must also meet the frequency test as described below:

- regularly – carried out by the same person at least once a week
- carried out four or more days in 30-day period
- overnight – carried out between 2am – 6am where there is opportunity for face to face contact.

### **DBS**

Pentreath will not employ someone in regulated activity whom they know has been barred by the DBS.

If Pentreath dismisses or removes someone from regulated activity (or would have done had the person had not already left) because they have harmed or posed a risk of harm to vulnerable groups including children, we are legally required to forward information about that person to the DBS. This is called a referral. It is a criminal offence not to do so. If we believe that the person has committed a criminal offence, we will pass the information to the police. Please see DBS Referral Policy.

### **What kind of checks are carried out?**

There are three different types of criminal record check offered by the DBS, standard, enhanced and enhanced with a barred list:

- The standard DBS check is available for certain specified occupations, licences and entry into certain specified professions. These are listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. It contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC).
- The enhanced DBS check is available for those carrying out certain activities; working with children or adults in specified circumstances; applicants for gaming and lottery licences; and judicial appointments. These are listed in Part V of the Police Act 1997. It contains the same PNC information as the standard check but also includes a check of police records held locally.
- The enhanced with a barred list check is only available for those individuals who are in regulated activity and a small number of positions listed in Police Act regulations, for

example, prospective adoptive parents. It contains the same PNC information and check of police records held locally as an enhanced check but in addition will check against the children's and/or adults barring lists.

## **Application Process**

Once recruitment has taken place and a successful candidate has been identified they will be asked to complete an online DBS check application and provide supporting documentation as evidence.

Human Resources will check the application for any errors / gaps in information and take copies of the supporting evidence. The Human Resources will then sign and date the photocopies certifying that they have seen the original documents and that they are true and accurate copies.

The online application will be certified by Human Resources and the umbrella body will process the DBS application on behalf of Pentreath and forward it to the Disclosure and Barring Service.

Once received by the DBS they will make all their necessary check and issue the certificate. This on average takes 1 – 4 weeks but this may take longer if the applicant has lived at various addresses.

When all the checks are complete DBS will issue a certificate to the applicants' home address stating whether or not the applicant has a police record and, where appropriate, will confirm that the applicant has been checked against the barred lists.

When the applicant receives their certificate they must present it to Human Resources who will take a copy to store on the applicants personnel file.

## **Disclosures through the Disclosure and Barring Service**

- Where a Disclosure forms part of the recruitment process, we encourage all applicants to provide details of their criminal record at an early stage in the application for post process. This information should be completed on the application form.
- Pentreath undertakes to discuss any relevant matter revealed in a Disclosure with the applicant, and we aim to ask questions relating to the Disclosure information, which are relevant, non-discriminatory and fair.
- Applicants who are deemed unsuitable to undertake their position in the light of the contents of a Disclosure will receive a written explanation as to Pentreath's decision.
- Failure to reveal information that is directly relevant to the position sought could subsequently lead to Pentreath rejecting an application or the withdrawal of an offer of employment or a voluntary placement. Pentreath undertakes to discuss any matter revealed in a Disclosure with the applicant before withdrawing an offer of a job.

- Applicants who are not able to provide a Disclosure before the commencement of the job may be allowed to commence their position for a limited period of time at the discretion of the Chief Executive.
- Disclosure information will only be seen by those who need to see it as part of the recruitment process, and this information will be treated confidentially, sensitively and in accordance with Pentreath's Confidentiality and Information Security Policies and the Data Protection Act 2018.
- Having a criminal record will not necessarily prevent an applicant from being appointed at Pentreath. This will depend on the nature of the role they are applying for and the circumstances and background of the offences.

### **Challenges to Information on a DBS Certificate**

If the applicant thinks that any information included on an enhanced DBS certificate should not be, they will now be able to ask the Independent Monitor to review it, and the Independent Monitor can ask the DBS to issue a new certificate, either without that information or with amendments to it. We encourage applicants to inform us when they request such a review and to update us about what happens with their certificate.

### **Renewal**

There is no recommendation from the DBS with regards to how often a DBS check should be renewed. It is Pentreath's policy to recheck all those individuals requiring a DBS check every 3 years.

### **Storage and access**

Disclosure information will be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to the Chief Executive and Human Resources.

### **Handling**

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and it is a criminal offence to pass this information to anyone who is not entitled to receive it.

### **Usage**

Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

### **Retention**

Once a recruitment (or other relevant) decision has been made, Disclosure information will be kept in the personnel file. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional

circumstances, it is considered necessary to keep Disclosure information for longer than six months, we will consult the DBS about this and will give full consideration to the data protection and human rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

### **Disposal**

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, notwithstanding the above, we may keep a record of 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 and the details of the recruitment decision taken.

### **Review and Monitoring**

It is the responsibility of Human Resources to ensure that this policy is continually monitored and reviewed on a regular basis subject to changes made by the Disclosure and Barring Service.