Disclosure and Barring Service

The murders of Holly Wells and Jessica Chapman in Soham in 2002 highlighted a number of major deficiencies in the system for checking the backgrounds, including criminal records, of those wishing to work or volunteer with children and vulnerable adults. This factsheet outlines the current system for checking in England and Wales.

Northern Ireland and Scotland
In Northern Ireland, criminal records disclosures continue to be managed by AccessNI, and applications for disclosure in Northern Ireland should be requested from AccessNI. The Disclosure and Barring Service (DBS) will however make barring decisions in relation to Northern Ireland. An appeal against a barring decision is made through the Care Tribunal in Northern Ireland. A separate scheme applies in Scotland and is managed by Disclosure Scotland.

Background to changes in vetting individuals
Following the Soham murders, an inquiry chaired by Sir Michael Bichard was set up, which published its report in 2004 and made 31 recommendations.

One of the recommendations stated: “New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with those clients.”

The then-government accepted the recommendation and, as a result enacted the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, and set up the Independent Safeguarding Authority (ISA).

Shortly after taking office in 2010, the coalition government indicated its intention to simplify the vetting and barring process. The first step was to announce there was no requirement for individuals working with children and vulnerable adults to register with the ISA.

Further changes were introduced by the Protection of Freedoms Act 2012 (the Act).

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On 1 December 2012 the DBS was launched. This service merged the Criminal Records Bureau (CRB) with the ISA.

There are three types of criminal record check:
• standard: this sets out spent and unspent convictions, cautions, reprimands and final warnings
• enhanced: this is as above plus any additional information held locally by the police that they reasonably consider relevant to the post applied for (see below)
• enhanced with list checks: this is as above plus a check of the appropriate DBS barred list(s).

Regulated activity
An individual must apply for and undergo an enhanced disclosure check (previously a CRB check) if they wish to work in regulated activity. Regulated activity is work that a barred person must not do. You can read more about barring below.

One of the key changes under the Act was to reduce the scope of regulated activity and therefore the number of people required to undergo enhanced checks. However, anyone working or seeking to work in education with children under 18 will still be covered by the DBS provisions and will therefore need an enhanced disclosure with list checks, so the reduced scope of regulated activity will not be covered in this factsheet.
Disclosure
The DBS is now responsible for searching police records and barred list information before issuing a certificate to the job applicant and employer. Based on the information on this certificate, the employer can then make an informed decision about the suitability of the applicant for the post on offer. It remains unlawful to employ somebody to work in education with children under 16 who has been barred.

Enhanced disclosure
The Act also introduces a stricter “relevancy test” for the police to apply when considering what information they should release on an enhanced DBS check. Previously, information held locally was to be included if it “might be relevant”. Now only information that the police “reasonably believe” to be relevant should be included. What difference this makes in practice remains to be seen.

An applicant can now apply to the Independent Monitor to review information disclosed by police forces on enhanced level certificates; they work independently from the DBS.

Cost
The cost of an enhanced certificate (and an enhanced with barred list check) is currently set at £44. The legal position is that the cost is passed by the DBS to the individual. However, many employers absorb the cost. Others (supply agencies in particular) rely on individuals to pay. This is a practice ATL is very much against.

For an annual subscription of £13, individuals can have their DBS certificate kept up to date and they can take it with them from role to role.

Referrals
The DBS is now responsible for continuous monitoring. When relevant information becomes known about an individual who may pose a risk to children or vulnerable adults, the DBS will, if necessary, move to bar the individual.

The DBS will accept information not just from employers but from other interested parties. The DBS has no investigatory powers, so parents’ concerns, etc, should be reported to the police, the local authority or the individual’s employer first.

It is important for ATL caseworkers and representatives to be involved in supporting members facing disciplinary action, as caseworkers and representatives could have an impact on the DBS’s decision to bar an individual.

It is also important that members recognise this is an entirely separate process to the one performed by the National College for Teaching and Leadership (NCTL). The DBS may not bar a person from working with children, but the NCTL may still conclude that they should be prohibited from teaching.

DBS notification and barring
When the DBS is informed that an individual may pose a risk to vulnerable groups, there are two types of formal (written) notification it can send to that individual:

Notification of inclusion in a barred list
This occurs in the most serious of offences, such as convictions for the rape of a child, which carries automatic barring. The individual does not have the right to make representations.

Notification of minded to bar
Here the individual is invited to make written representations (within eight weeks) as to why s/he should not be barred, prior to any final decision being made.

Those considered to be unsuitable to work with vulnerable groups, including children, are included in either the children’s barred list, the adults’ barred list, or both, where appropriate.

Representations to the DBS
When making representations to the DBS about a ‘minded to bar’ notification, the individual will not be able to challenge any finding of fact. A conviction or caution cannot be challenged. The following should be included:

• an explanation of the behaviour
• any mitigating factors
• career details
• professional references or testimonials
• a copy of any pre-sentence report; Probation/Social Service assessment; a judge’s sentencing remarks
• any relevant medical reports
• why the individual thinks s/he poses no current or future risk to children or vulnerable adults.

After receipt of the representations, the DBS will reassess the case and make a final decision. If no representations are made, the DBS will make a final decision based on the information and documents in its possession.

According to the government’s 2007 consultation
document, the DBS’s guiding principle is that an individual should be barred unless it is satisfied that they do not present a risk of harm to children or vulnerable adults.

**Review of barring decisions**

Once barred, an individual will not be able to make an application for a review of his/her case for five years if aged between 18 and 24 at the time of barring, or 10 years if aged over 24 at the time of barring.

The inability to request a review applies regardless of whether the barring was automatic or the decision to bar was made after considering representations.

An application for a review can only be made with the permission of the DBS. Permission will only be granted if the DBS considers that the individual's circumstances have changed sufficiently to justify a review of the case.

When seeking a review, the individual is required to satisfy the DBS that his/her circumstances have changed and that barring is no longer appropriate. Evidence of change might include the following:

- reports from medical experts or other professionals/specialists
- evidence of a successful appeal against conviction
- evidence of a change in personal circumstances
- details of any relevant work (paid or voluntary) s/he has undertaken since being barred
- any factors that might explain what happened
- testimonials.

Supporting statements must not challenge police cautions, criminal convictions or findings of fact made by competent bodies, such as statutory regulatory bodies.

**Appealing against barring decisions**

An appeal against a barring decision is through the Administrative Appeals Chamber of the Upper Tribunal in England and Wales. An appeal can only be made on the grounds that there has been a mistake in law or in any finding of fact on which the decision to bar was made. There is no right of appeal against a DBS decision to refuse a review.

**ATL’s view on representation**

ATL strongly believes in an individual’s right to make personal representations and to be represented in proceedings where consequences such as barring could be an outcome.

ATL is working with other unions and professional associations to lobby the government to amend the scheme to enable an individual to be represented in all proceedings that could lead to barring.

**What about malicious referrals made to the DBS?**

The DBS says that it is staffed by individuals who are experienced in allegations management, that individuals will only be barred if the DBS is satisfied, following close scrutiny of information, that its own criteria for barring are satisfied.

**ATL’s view of the review period**

ATL believes that the period of review — 10 years for those barred at age 24 or over — is too long a period for a first review to take place.