

People Team

Policy on the Employment of People with Criminal Records and Procedure for the use of Criminal Record Checks

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1 Policy statement

- 1.1 When a person applies for a position with Oxford City Council, the Council will not take into account previous time-expired (spent) convictions as laid down in the Rehabilitation of Offenders Act 1974 (ROA 74) except when a person is being appointed to a position exempted under the ROA 74.
- 1.2 The disclosure of a criminal record or other information will not necessarily prevent a person being appointed. The authority will take into account the nature of any offences, their relevance to the post applied for, how long since the offence took place and age of the person when the offence was committed. This information will be treated in strictest confidence and taken into account in relation to the specific application only.
- 1.3 In situations where an employee is being investigated by the police or is charged with a criminal offence the Council will consider the circumstances of the case to determine the most reasonable and appropriate action, taking into consideration the nature of the allegation in relation to their employment and their ability to attend work during the course of the investigation or prosecution. Actions may include suspension with or without pay or termination of employment.
- 1.4 Should an existing employee be convicted of an offence which may or may not include a custodial sentence, the circumstances and type of offence will be considered in relation to their continued employment, before a decision is made.
- 1.5 Dismissal on these grounds will not preclude an employee from applying for job vacancies in the normal way on release.

2 Equality of opportunity

- 2.1 Oxford City Council is committed to recruiting, retaining and developing a dedicated and diverse workforce. This is reflected in our policies including the Corporate Equality Scheme, Recruitment and Selection Policy and Fair Employment Policy Statement. Criminal records will only be taken into account for recruitment purposes, when the conviction is relevant. Unless the nature of the work demands it, employees will not be asked to disclose convictions which are spent under the Rehabilitation of Offenders Act 1974 (ROA 74).

3 Positions requiring criminal record and vetting checks

- 3.1 The Council assesses all posts to determine the type of disclosure that is required. This takes place prior to recruitment and on an on- going basis. Employees may be required to complete different types of check during their employment.
- 3.2 Positions requiring criminal record and/or vetting checks include the following:-
 - Positions where the duties involve access Department for Work and Pensions (DWP) data must be cleared to the Government's "Baseline Personnel Security Standard (BPSS)." This includes the requirement for a Basic Check from the Disclosure and Barring Service (DBS) or Basic Disclosure from Disclosure Scotland (applicants currently residing or

working in Scotland only). This is a check for unspent convictions. Further information about the BPSS can be found in the Human Resources Information Security Standards document.

- Positions which are exempt from the ROA 74 due to the nature of the work require a criminal record check from the DBS. There are five types of check. Decision trees, to determine which type of enhanced check is required, are provided at Appendix 1. The checks are:-
 - Standard DBS Check – for people entering certain professions such as legal and accountancy and for maintenance workers in hospitals who have direct access to patients in the course of their normal duties. These involve a check of the police national computer only.
 - Enhanced DBS Check – where someone meets the pre September 2012 definition of regulated activity. These involve a check of the police national computer and police information.
 - Enhanced DBS Check and Children’s Barred List Check – where someone is undertaking a regulated activity relating to children. These involve a check of the police national computer, police information and the children’s barred list.
 - Enhanced DBS Check and Adults Barred List Check – where someone is undertaking a regulated activity relating to adults. These involve a check of the police national computer, police information and the adults barred list.
 - Enhanced DBS Check and Children’s and Adults Barred Lists Check – where someone is undertaking a regulated activity relating to both children and adults. These involve a check of the police national computer, police information and the children’s and adults barred lists.
- Positions which involve working in partnership with Thames Valley Police may require a Non-Police Personnel Vetting (NPPV) check. There are 3 levels of check depending on the nature of the work being undertaken and the access to police premises and IT services that are needed. In addition to checking criminal records, financial checks and checks on family members and household members are completed. Where a check is required it is usually a level 2 check.

4 Responsibilities in relation to DBS ‘Regulated Activities’

4.1 Individuals who are barred from working in a ‘Regulated Activity’ with children, vulnerable adults or both are committing a criminal offence if they work in such a regulated activity. If found guilty of this offence individuals may be liable to imprisonment, a fine or both.

4.2 It is also a serious criminal offence for an employer to knowingly allow someone to engage in regulated activity whilst barred. This may also be punishable by imprisonment, a fine or both.

- 4.3 The Council is under a duty to refer information to the DBS if it removes an employee from a regulated activity, or if the employee leaves while under investigation for allegedly causing harm or posing a risk of harm to children or vulnerable adults. Failure to do so is a criminal offence which carries a significant penalty.

5 The recruitment process

- 5.1 The recruitment process will follow the stages below: -

- The criminal record and vetting check requirements will be stated on the role profile including if the post is exempt from the ROA 74.
- All applicants will be required to complete the criminal records declaration section on the application form.
- The People Team will review criminal records declarations during the recruitment process to determine whether there is any reason why the application should not continue.
- It may be necessary for the People Team to contact the applicant for further details on any points mentioned on the form before confirming whether an application can continue or an appointment offer can be made.
- Offers of appointment are made by the Recruiting Manager. In addition to the normal conditions of satisfactory references and medical reports/examinations etc, offers of appointment to positions requiring criminal record checks and/or vetting checks will be subject to satisfactory completion of all checks and receipt of the appropriate disclosure certificates.

- 5.2 Each of the criminal record and vetting check procedures is explained below.

NPPV Checks

- 5.3 The procedure for a NPPV Check is:-

- The recruiting manager will contact candidates that have been offered a position to advise them of the process for making an application for a vetting check to Thames Valley Police.
- Thames Valley Police will advise the recruiting manager (or sponsoring manager if this is not the recruiting manager) of the outcome of the vetting application.
- If the sponsoring officer was not the recruiting manager they will advise the recruiting manager of the outcome.
- If the applicant is cleared to work, the recruiting manager will advise the applicant and the People Team. The job offer or employment can continue.
- If the applicant has not been cleared the recruiting manager will advise the People Team. The applicant will be contacted to inform

them of the outcome and advise them of the Council's decision in relation to whether to continue with the job offer or employment.

- Thames Valley Police do not advise the applicant or Council of the reasons for deciding not to give clearance. The individual may request a review of the decision to Thames Valley Police.
- If the Council decides to withdraw the job offer or terminate employment and the individual intends requesting a review they must advise the Council so that it can reconsider its position. In the event that the applicant requests a review the Council may, if reasonable, wait for the review to be completed before determining whether or not to confirm the appointment or terminate employment. The Council may, however, withdraw the job offer or terminate employment before the review is complete.

DBS Checks

5.4 The procedure for a criminal record check from the DBS is:-

- The People Team will contact candidates that have been offered a post to tell them how to make an online application and that they will be required to arrange to bring the appropriate identity documents in to the People Team office so the application can be completed.
- The completed form will be submitted, via our Registered Body, for checking.
- When the check has been completed the People Team will be notified of the outcome electronically. The full certificate will be sent by the checking authority direct to the applicant only.
- If the notification received by the People Team confirms that there is no information to declare (the record is clear) the Recruiting Manager will be informed that they can then continue with the appointment process.
- If the notification received by the People Team indicates that information has been declared on the disclosure certificate the applicant will be required to provide the original certificate to the People Team.
- The People Team will assess the information disclosed and undertake a risk assessment. If further information is required before a decision can be made the People Team will contact the applicant to discuss the information on the form. The Recruiting Manager may also be involved in this process.
- If the outcome of the assessment is that the information disclosed does not affect employment in the job role the Recruiting Manager will be informed that they can continue with the appointment process.
- If the outcome is that the employment offer is being withdrawn the People Team will advise the applicant and this will be confirmed in writing.

- In the event that an individual disagrees with the content of a Disclosure they will have a right to appeal to DBS through their appeal procedures. The individual should advise the People Team if they submit an appeal and the information that they are disputing affects the Council's decision to employ them. The Council will review its position. If reasonable the Council may wait for the dispute to be resolved and then determine whether or not to confirm the appointment. The Council may, however, withdraw the job offer before the dispute is resolved.
- For applicants residing in Scotland applications for a basic disclosure will be made to Disclosure Scotland following their application process.

5.5 The facts that will be considered when making the employment decision are listed below: -

- job related issues:
 - Will the nature of the job present any opportunities for the post holder to re-offend in the workplace?
 - What level of supervision will the post holder receive?
 - Does the post involve any direct responsibility for finance or items of value?
 - Does the post involve direct contact with the public?
 - Does the post involve one-to-one contact with children or other vulnerable groups?
- offence related issues:
 - The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property.
 - The length of time since the offence occurred.
 - The person's age at the time of the offence.
 - Any relevant information offered by the applicant about the circumstances which led to the offence being committed, eg the influence of domestic or financial difficulties.
 - Whether the offence was a one off, or part of a history of offending.
 - Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely.
 - The country in which the offence was committed; some activities are offences in Scotland and not in England and Wales, and vice versa.
 - Whether the offence has since been decriminalised by Parliament.
 - The degree of remorse, or otherwise, expressed by the applicant and their own motivation to change.

6 Cost and frequency of checks

6.1 The cost of each criminal record check will be met by the Council (the employing Service Area.) Enhanced level DBS checks will be repeated every three years. Basic Disclosure checks are repeated every two years. Employees who initially required a risk assessment will not need to have a new assessment processed unless new information is disclosed. Existing employees will also be required complete the appropriate checks if they

become necessary because of changes to their role, the check requirements for their role change or they are appointed to a post which requires a criminal record check.

7 Portability of disclosures

- 7.1 Some applicants may have already completed a criminal record checking procedure with another organisation and have a current Disclosure certificate. Oxford City Council will not accept this Disclosure and all applicants will therefore still have to complete the Disclosure process with Oxford City Council.
- 7.2 The DBS has an update service which allows employers to check an applicant's status online. The benefit of this for the individual is that they do not need to complete an application form every time, unless their record has changed. Employees who choose to join the DBS update service and wish the Council to complete a check using this method should advise the People Team at the time that a check is required. The Council will not reimburse the cost of joining the update service.

8 Dissemination of information and staff briefing

- 8.1 All interviewing officers and staff with responsibility for any part of the recruitment process must familiarise themselves with this Policy and Procedure. Information on the Policy and Procedure will be given in the training provided to all staff involved in the recruitment and selection process.
- 8.2 This document is available on the Council's website and intranet and paper copies are available on request. Some details are included on the application form and role profile.
- 8.3 As an organisation using Disclosure Scotland and the Disclosure and Barring Service the Council complies fully with their Codes of Practice, copies of which are available on their websites.

9 Statistical information

- 9.1 Statistical information may be collated so that the Council can monitor and review the operational effectiveness of the policy.

10 Policy on the handling of DBS certificate information

General principles

- 10.1 As an organisation using the DBS and Disclosure Scotland checking services to help assess the suitability of applicants for positions of trust, Oxford City Council complies fully with the Codes of Practice regarding the correct handling, use, storage, retention and disposal of certificates and certificate information. It also complies fully with its obligations under the General Data Protection Regulation (GDPR) and other relevant legislation relating to the safe handling, use, storage, retention and disposal of certificates and certificate information.

Storage and access

- 10.2 Certificate information will be stored in our secure electronic filing/People Team systems. Access to this information is restricted to those authorised to have access to it as part of their duties.

Handling

- 10.3 In accordance with section 124 of the Police Act 1997, certificate 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 information has been revealed and it is a criminal offence to pass this information on to anyone who is not entitled to receive it.

Usage

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

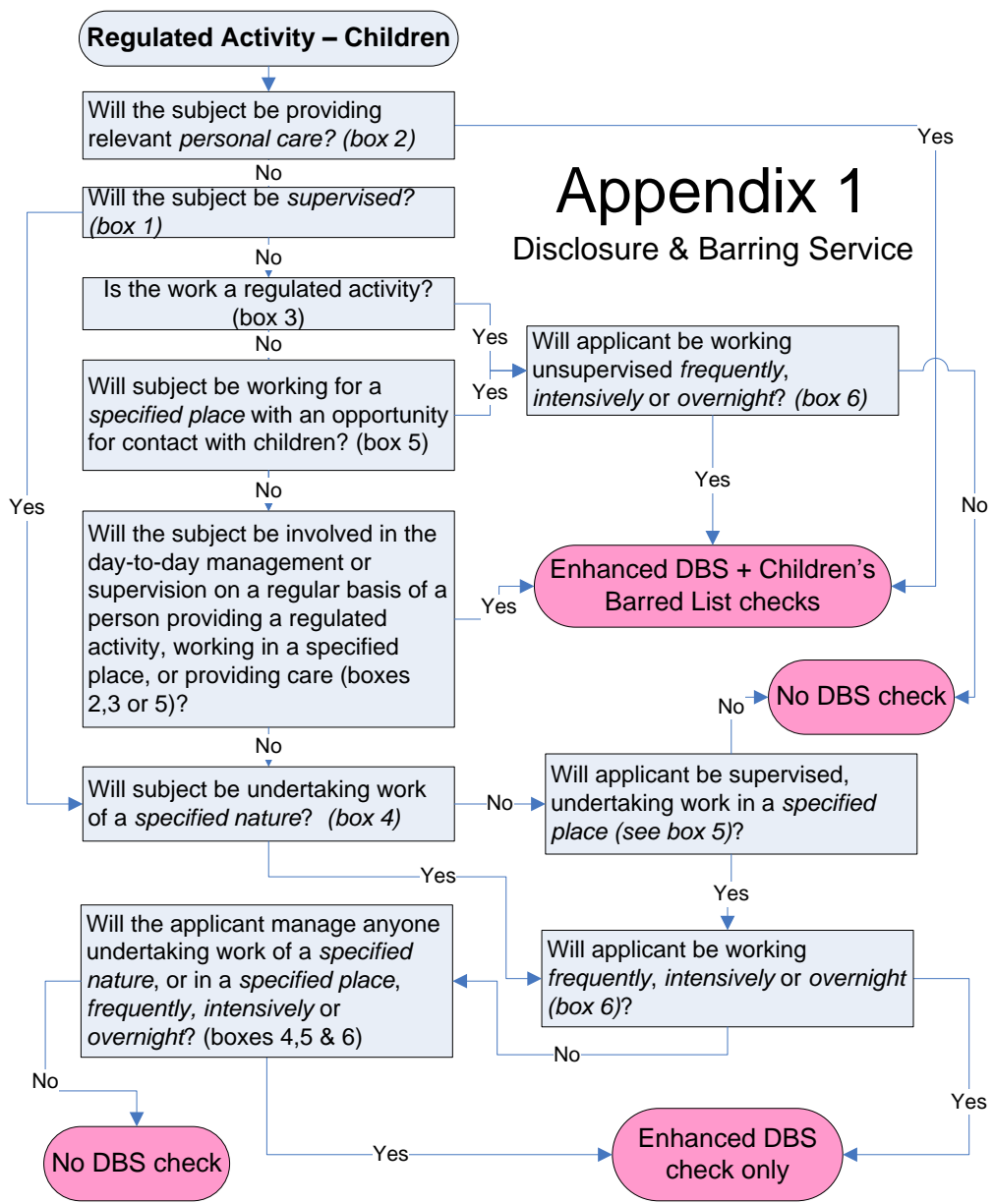
Retention

- 10.5 Once a recruitment (or other relevant) decision has been made, certificate information is not kept for any longer than is necessary. This retention is to allow for the consideration and resolution of any disputes or complaints, or for the purpose of completing safeguarding audits. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will be applied.

Disposal

- 10.6 Once the retention period has elapsed, any DBS certificate information will be deleted from our systems.
- 10.7 We will not keep any Certificate. However, notwithstanding the above we will keep a record of the date of issue of a certificate, the name of the person, the type of Certificate requested, the position for which the Certificate was requested, the unique reference number of the Certificate and the details of the recruitment decision taken.

Appendix 1 Disclosure & Barring Service



1 Supervision
The precise nature and level of supervision will vary from case to case. This means that organisations must ensure that the supervision in place is sufficient in their judgement, to provide reasonable assurance for the protection of the children concerned. You should consider the following factors in deciding the specific level of supervision the the job will require in an individual case:

- the age of the children;
- the number of children the applicant works with;
- whether or not there are other carers/adults around;
- the vulnerability of the children;
- the experience of, and checks made on, the supervised person;
- the number of people being supervised;

Supervision must be by a person in a regulated activity.
Supervision must be regular and day-to-day.
Supervision must be 'reasonable in all the circumstances to ensure the protection of children'

6 Frequency
Frequently - once a week or more
Intensively - 4 or more occasions in a 30 day period
Overnight - between 2am and 6am

2 Personal care - Children includes; physical help with eating or drinking, washing or dressing or health care by, or supervised by, a professional

3 Regulated activities – Children include: teaching, training, instructing, supervising or caring for children, or providing advice/guidance on wellbeing, chatroom moderation or driving a vehicle only for children and their carers.

4 Specified Nature – Children include: teaching, training, caring for, supervising, giving advice to or providing treatment or transport for children.

5 Specified places - Children include...
Schools & Academies, Pupil referral units, Nursery schools, Institutions for the detention of children, Children's centres, Children's homes, Childcare premises
Important Where the activity occurs in a *specified place*, it is only a regulated activity if *frequent* or *intensive* in the **same** place e.g. same school

7 Health care - Adults
Any health care professional providing health care to an adult, or anyone providing health care to an adult, directed or supervised by a health care professional. *Health care* includes all forms of health care provided for adults, whether physical or mental health, including palliative care. It includes diagnostic tests and investigative procedures and procedures that are similar to forms of medical or surgical care not provided in connection with medical conditions, e.g. taking blood from a blood donor or cosmetic surgery.

8 Personal care - Adults
Physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability; prompting and supervision of an adult who, because of their age, illness or disability, cannot make the decision about the foregoing without prompting or supervision; training, instructing or offering advice or guidance relating to the foregoing.

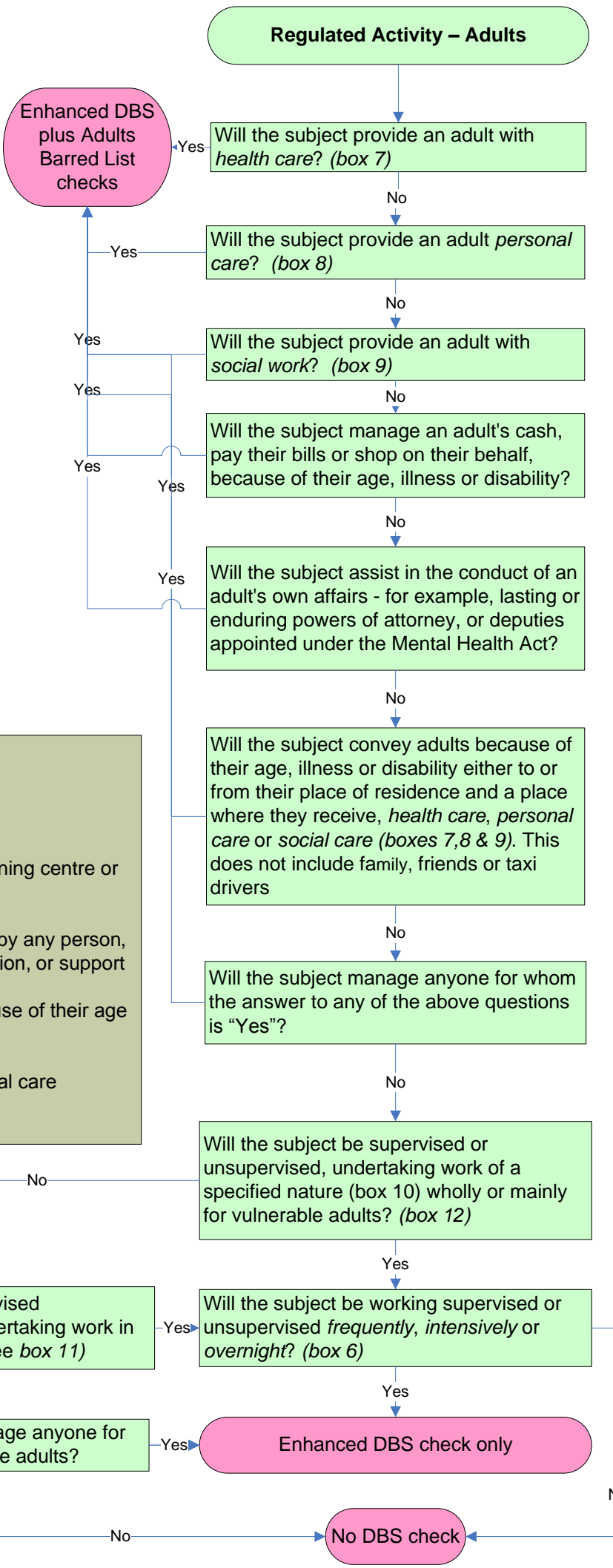
9 Social work - Adults
The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

10 Specified Nature – where wholly or mainly for Vulnerable Adults
Teaching, training or instruction; care for or supervision; advice or guidance wholly or mainly relating to their wellbeing; treatment or therapy; moderation of chatrooms, forums etc; driving a vehicle used solely for transporting Vulnerable Adults (and their carers)?

11 Specified place - Adults
Adult Care Homes as defined by the Health and Social Care Act 2008

12 Definition of Vulnerable Adult

- is living in residential accommodation, such as a care home or a residential special school
- is living in sheltered housing
- is receiving domiciliary care in their own home
- is receiving any form of healthcare
- is detained in lawful custody (in a prison, remandcentre, young offender institution, secure training centre or attendance centre, or under the powers of the Immigration and Asylum Act 1999)
- is under the supervision of the probation services
- is receiving a specified welfare service, namely the provision of support, assistance or advice by any person, the purpose of which is to develop an individual's capacity to live independently in accommodation, or support their capacity to do so
- is receiving a service or participating in an activity for people who have particular needs because of their age or who have any form of disability
- is an expectant or nursing mother living in residential care
- is receiving direct payments from a local authority or health and social care trust in lieu of social care services, or
- requires assistance in the conduct of their own affairs.



Enhanced DBS plus Adults Barred List checks

Enhanced DBS + Children's Barred List checks

Enhanced DBS check only

Enhanced DBS check only

No DBS check