

DISCLOSURE AND BARRING SERVICE POLICY

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NORFOLK
CONSTABULARY



SUFFOLK
CONSTABULARY

DISCLOSURE AND BARRING SERVICE

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Legal Basis

Legislation specific to the subject of this policy document:

- Police Act 1997 (as amended) (Part 5)
- Protection of Freedoms Act 2012 (Part 5)
- Safeguarding Vulnerable Groups Act 2006

Other relevant legislation which you must check this document against (required by law)

- [Human Rights Act 1998 \(in particular A.14 – Prohibition of discrimination\)](#)
- [Equality Act 2010](#)
- [Crime and Disorder Act 1998](#)
- [Health and Safety at Work etc. Act 1974 and associated Regulations](#)
- [General Data Protection Regulation \(GDPR\) and Data Protection Act 2018](#)
- [Freedom Of Information Act 2000](#)
- [The Civil Contingencies Act 2004](#)

Other documentation which you must check this document against:

- [College of Policing – Code of Ethics](#)
- [Norfolk and Suffolk Constabularies' Standards of Professional Behaviour](#)
- [College of Policing – Authorised Professional Practice](#)
- NPCC DBS Service Level Agreement
- DBS Quality Assurance Framework
- Statutory Disclosure Guidance
- The Code of Practice on the Management of Police Information (MOPI)
- Common Law Police Disclosure Policy

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- Data Protection Policy

1. Statement of Policy

- 1.1 This policy has been formally agreed via the approved policy development/review process. It will be maintained by the Information Management Department in conjunction with the Central Policy Unit.
- 1.2 The policy is intended to promote equality, eliminate unlawful discrimination and actively promote good relations regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, economic or family status.
- 1.3 Managers have a responsibility to ensure this policy is applied fairly, and unless otherwise stated, all policies and procedures are non-contractual.

2. Introduction

- 2.1 This policy details how Norfolk and Suffolk Constabularies provide prospective and existing employers with sufficient information to make safer recruitment decisions for those individuals who work or volunteer with children and/or vulnerable adults.
- 2.2 The policy details how relevant information is identified and shared with potential employers, existing employers and the barring arm of the Disclosure and Barring Service in a timely manner in relation to individuals who may represent a risk to these groups.
- 2.3 The DBS operates under Part V of the Police Act 1997, working in partnership with National Police Chiefs Council (NPCC) and individual forces.
- 2.4 Disclosure to the barring arm operates under the Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012.

3. DBS Framework

- 3.1 The DBS Teams within Norfolk and Suffolk Constabularies act as the conduit between the Police Service and the Disclosure and Barring Service. A formal Service Level Agreement (SLA) outlines the services to be provided by the Constabularies. The provision of services is supported by specific procedures and processes as defined within:
 - The Quality Assurance Framework (QAF);
 - The Code of Practice on the Management of Police Information (MOPI);
 - Audit and Assurance as specified by Her Majesty's Inspectorate of Constabulary (HMIC) and the DBS Standards and Compliance Unit (SCU);

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- Civil Contingencies Act 2004 – the department has a Business Continuity Plan in place to cater for loss of staff and maintain the SLA;
- Local procedures.

4. Legal Basis

Disclosure and Barring Enhanced Checks

4.1 The DBS issues requests to Norfolk and Suffolk Constabularies and other Police Forces for information, under, Part V of the Police Act 1997. Forces assess information for the child and/or vulnerable adult workforce (there are no specific roles identified). There are two levels of enhanced DBS checks that require input from local forces:

- *Enhanced Disclosure (ED)* – These entail disclosure of ‘approved information’ by local police forces of both PNC data and any other non-conviction information, which might reasonably be believed to be relevant at the discretion of the Chief Constable controlling the information, while also considering the harm to the applicant’s Human Rights, particularly Article 8. PNC records for convictions, cautions, reprimands and warnings are automatically disclosed by the DBS (with the exception of old and minor offences under the current filtering rules – see 3.4).
- *Enhanced Disclosure with Barring List (EDBL)* – These are carried out for individuals employed in regulated activity (DBS regulated activity is a legal phrase used to describe specific circumstances where individuals are working or volunteering with children or vulnerable adults because of help or treatment they are receiving. Regulated activity is work that a barred person must not do) and include the same information as the Enhanced Disclosure however, in addition, a check is made of the Adult and Children’s barred list and the results made available to the employer/registered body. As a result of the Protection of Freedoms Act 2012, information disclosed as ‘approved information’ on the EDBL certificate is automatically disclosed to the barring arm.

Update Service

- 4.2 In June 2013, the Update Service was introduced by the Disclosure and Barring Service in order for Enhanced Certificates to be portable, which allows individuals to move around positions within the same work sector(s) without having to apply for a new certificate each time and allows employers to make regular checks on their staff to identify whether there are any changes to the status of the individual’s certificate since the last check was carried out.
- 3.3 When a person adds their DBS certificate to their update service account, the DBS will search regularly to see if any new information has come to

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light since it was issued. The frequency varies depending on the level and type of DBS certificate.

For criminal conviction and barring information the DBS will search for updates on a weekly basis.

For non-conviction information, the DBS will search for updates every nine months.

The status will change if:

- For all DBS certificates:
 - new convictions, cautions, reprimands or warnings have been added to police records, or
 - an amendment has been made by the police to current convictions, cautions, warnings or reprimands.
- For enhanced DBS certificates:
 - as above plus any new, relevant police information which Norfolk and Suffolk have assessed and decided relevant to the potential employer when assessing risk and safeguarding of the vulnerable.
- For enhanced certificates with a check against either of the barred lists):
 - as above plus if the person becomes barred for either/both barred lists.

Filtering

4.4 Following case law in the United Kingdom and from the European Court of Human Rights, old and minor convictions, cautions, reprimands and warnings may be filtered from the certificate where they meet defined rules. This filtering process is carried out by DBS Liverpool, however local forces retain the right to reinstate the conviction/caution etc. by way of the disclosure of approved information should it be identified as relevant and proportionate to do so as evidence of a potential risk.

Barring Arm Requests

4.5 The DBS Barring Arm requests local police information under the Safeguarding Vulnerable Groups Act 2006 for individuals that they are considering barring (See below).

5. DBS (Liverpool) Responsibilities as per the SLA

- Performing its obligations in accordance with the applicable conditions of the NPCC DBS SLA.
- Acting as the first point of contact for all enquiries concerning Enhanced DBS certificates and barring decisions from those involved with the application.

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- Providing the necessary assurance around the duties undertaken by a Registered Body as part of the DBS process under the DBS Code of Practice.
- The data-capture, validation and authorisation of applications within the specifications of this agreement.
- Data quality of application information provided by DBS (the application details presented to the force for vetting purposes).
- The accurate disclosure of conviction and certain other information for DBS certificates and barring considerations, where said information provided to DBS is both accurate and complete.

6. Primary Responsibilities of the Local DBS Team as per the SLA

- Conduct searches of agreed local information systems upon the application information provided by DBS and in line with the requirements of the Quality Assurance Framework (agreed local information from; Athena, CIS, CATS and Firearms as defined on the AT1 document, which must be logged with SCU for auditing purposes and the updated version held by the DBS Manager).
- Consideration of information held locally by the Force or on PNC (where PNC record exists and where the Force is the creator/owner of the record).
- Use of the prevailing QAF for processing all cases referred by the DBS.
- Compliance with the prevailing QAF to the satisfaction of the NPCC/DBS SCU.
- Adherence to the prevailing DBS conflict guidance. Before conflicting, the Constabularies must always consider the impact of the delay that will be caused to the application and the risks that such a delay may pose to the vulnerable when relevant information has already been identified for disclosure (by themselves or another force).
- Compliant operation and administration of the prevailing QAF.
- Return the results of the above to the DBS as specified.
- Be responsible for the accurate, relevant, proportionate and timely disclosure of information.
- Be accountable for the efficient use of all funding allocated for the provisions of service set out in this agreement and deliver value for money.
- Be responsible for the secure handling and processing for delivery of Common Law Powers Disclosure to Registered Bodies/Employers.
- Complete and return responses to the DBS within specific time parameters:

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- 85% within 14 days
 - 90% within 18 days
 - 95% within 25 days
 - 100% within 60 days
- Offer the opportunity for the applicant to provide written representations in support of non-disclosure where a disclosure is recommended.
 - ICT to supply designated nominal information as specified in the PLX External Interface Design document, to the DBS to support the PLX database.

7. Enhanced Disclosure Decision Making

- 7.1 Norfolk and Suffolk Constabularies receive applications where the nominal has been identified via the PLX system (which is a central nominal database, sourced by each Force from their identified systems), where the applicant has a PNC record with a Norfolk and/or Suffolk address or where the check is classed as home-based (whereby the applicant will have children or vulnerable adults in their home e.g. child minder, foster carer) and the applicant has declared a Norfolk and/or Suffolk address within the past 5 years. Enhanced disclosures are undertaken in compliance with the QAF methodology and audit guidance.
- 7.2 Categories of relevant information are defined under QAF as being: Sexual, significant Violence, Child Protection, Drugs, Refusal/Revocation of Firearm License, Detained Under Mental Health Act, Arson, Theft/Dishonesty (when working with vulnerable adults).
- 7.3 Enhanced disclosures are made at the discretion of the Chief Constable or delegate of the Chief Constable. Within Norfolk and Suffolk Constabularies, the disclosure of information as part of an enhanced DBS check is currently delegated to the Information Compliance Manager (as per Appendix A).
- 7.4 Disclosure is made via one of two routes:
- Approved information – as approved by the Chief Officer Delegate, which is included on the certificate.
 - Common Law powers disclosure – Also approved by the Chief Officer Delegate but is disclosed to the registered body/employer only. This route is only utilised in exceptional circumstances whereby release to the applicant may harm the prevention or detection of crime or cause a crime to be committed (e.g. provoke violence by the applicant towards a third party).
- 7.5 Disclosure must balance the need to protect the vulnerable with the rights of the applicant. The approach in previous case law had been to tilt the balance against the applicant too far and it had encouraged the idea that

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priority had to be given to the social need to protect the vulnerable as against the right to respect for private life. However, in *R (on the application of L) v Commissioner of Police of the Metropolis* [2009], the Court ruled that neither consideration has precedence over the other and that the rights of the individual are to be considered on an equal footing.

- 7.6 A clear and transparent decision making procedure and full audit trail is to be maintained by the DBS team and a record of information disclosed will be retained for ten years, in compliance with MOPI.

8. Complaints and Disputes

- 8.1 If an individual is not satisfied with the information disclosed on their certificate, there is a process in place for a dispute to be raised via DBS Liverpool. The dispute can be in relation to the PNC record or the approved information disclosed and is sent to the relevant police force for consideration. There is a local procedure in place, which outlines how a dispute will be processed by Norfolk and Suffolk Constabularies and a national service level agreement of 21 days in which the process will be completed.
- 8.2 Disputes are considered by the DBS Manager of the Force that did not make the original disclosure and a report created to show the details of the complaint, the action taken and the result. Where it is found that the data recorded on PNC is inaccurate then this will be amended accordingly and the applicant notified of the changes via the DBS.
- 8.3 Challenges to the approved information will be investigated by the DBS Manager and then a panel consisting of the Chief Officer Delegate, a frontline public protection Detective Superintendent and when required, the DBS Manager (as per Appendix A). In Suffolk Constabulary, a DBS Dispute Panel will only be convened when the Chief Officer Delegate intends to overturn the original decision to disclose.
- 8.4 Any disputes which may concern a person's statutory rights under the Data Protection legislation will be referred to the Information Compliance Manager for further consideration. The outcome of the dispute is then provided to the applicant via the DBS.
- 8.5 Following the conclusion of the dispute process and where the dispute is not upheld, the case will be referred to the Independent Monitor by DBS Liverpool for review. The Independent Monitor works for the Home Office, independently of the DBS and will request copies of the relevant paperwork from police forces and review the decision. The Independent Monitor will then update the applicant and the force with the conclusion of their investigation and if directed to, the force will remove or alter the disclosure text.
- 8.6 If the Independent Monitor agrees with the force and the information remains on the certificate, then an individual may seek judicial review of the

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decision, which is a legal procedure by which a judge in the High Court is asked to rule on the legality of an action or decision by a public authority.

9. Barring Arm Requests

- 9.1 Any information disclosed on the DBS Certificate (convictions and/or other information) is automatically sent to the Barring Arm as well as the applicant. The Barring Arm also receives referrals from employers, local authorities, regulatory bodies, police forces and courts (where an individual is convicted of an auto inclusion/relevant offence).
- 9.2 Requests will be received in force in letter format from the DBS Barring arm and will outline what information is required and why, the information disclosed is provided under Safeguarding Vulnerable Groups Act 2006 and authorised by the DBS Manager.

10. Secondary Responsibilities of the Local DBS team as per the SLA

- Answering of enquiries/challenges/complaints against the content of the Approved or Common Law Powers information, referred by DBS to the Forces, as part of the defined 'Dispute Resolution' process that operates under the Act.
- Respond to requests from the Independent Monitor for information relating to disclosures under dispute.
- Fingerprinting – the provision of fingerprinting services pertaining to validation of an applicant's identity, and/or the verification of a conviction matching decision.
- PNC update – where the DBS and the Force agree that a PNC record, created (owned) by the Force and related to an in-progress DBS application, is incorrect or incomplete, the Force will be responsible for its correction or deletion.
- The provision of management reports and organisational information by the Finance Team, required for validation and audit of costs.
- Updating local information and submitting intelligence where appropriate.

11. Definitions

Term	Definition
Quality Assurance Framework (QAF)	The Quality Assurance Framework (QAF) is the prescribed decision-making framework for the processing, consideration and disclosure of police information for Enhanced Disclosure and Barring Service Checks.

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Appendix A – Delegated Authority of the Chief Constable

Abbreviations

COD: Chief Officer Delegate

ICM: Information Compliance Manager

DM: DBS Manager

Panel: COD, DM and Suffolk Detective Chief Superintendent Safeguarding and Norfolk Detective Superintendent Safeguarding (Suffolk DCS is only required when the COD intends to over-turn the original decision to disclose).

SDA: Senior Disclosure Assistant

DA: DBS Assistant

TYPE OF DISCLOSURE	AUTHORISATION
Enhanced DBS Checks – Disclosure of non-conviction data, MO details and impending prosecutions.	COD / DM*
Enhanced DBS Checks – Disclosure of data under Common Law Powers (employer/RB only)	COD / DM*
Enhanced DBS Checks – Dispute of non-conviction data, MO details and impending prosecutions.	Panel
Enhanced DBS Checks – Dispute of accuracy of data disclosed from PNC	DA
DBS Barring – Disclosing of information to the Barring Arm	SDA
DBS Barring – Disclosure of non-contentious data to the Barring Arm (e.g. date of birth and address)	DA

*The DBS Manager can act as COD in the following scenarios:

Enhanced DBS Checks:

- Disclosing the relevant MO's when the Caution/Conviction is going to be automatically disclosed on the DBS Certificate. For example, a Caution/Conviction for 'Theft by Employee' and the MO is that the applicant stole from a vulnerable adult in their care or the Caution/Conviction for a violent offence and the victim was a child or a vulnerable adult in their care.
- Disclosing relevant information when there is an impending prosecution or ongoing investigation.
- Making a second or third disclosure of the same information that was disclosed within twelve months for the same workforce application. If further information is being considered for disclosure and impacts on the disclosure text, these are to be referred to the ICM as COD.

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