

CRIMINAL RECORD CHECKS POLICY

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Carejoy Healthcare is committed to ensuring that appropriate pre- and post-employment checks have been undertaken on its employees and other workers to ensure service users are protected.

Carejoy Healthcare will ensure that it adheres to the Disclosure and Barring Service Code of Practice which requires organisations to use the Disclosure information fairly and:

- not to discriminate against candidates based on unrelated criminal offences,
- to ensure data security,
- to comply with the recommendation for the retention of records,
- to comply with reasonable requests from the DBS to undertake assurance checks, Copies of the Code of Practice are available from the DBS website on: www.gov.uk/dbs

The aim of this policy is to set out the requirements of Carejoy Healthcare on undertaking Disclosure and Barring (DBS) checks.

Principles

The following key principles outline Carejoy Healthcare and their approach to DBS checks:

- we will ensure that disclosure information is treated fairly and without discrimination whilst ensuring a safe and robust recruitment process,
- will not accept a DBS check undertaken through any other organisation (except where written confirmation is received from our client) unless the certificate is subscribed to the update service,
- where the employee or candidate has registered with the DBS Update Service, the check is at the required level of Enhanced and covers both Child and Adult barring lists
- where Carejoy Healthcare has been granted permission by the work-seeker to undertake a DBS update service status check and is able to confirm a "valid" DBS check is in place, the candidate will not require a new check.
- The DBS process will form part of the pre-employment checks for all newly appointed staff when appointing staff into eligible positions,
- Carejoy Healthcare will assess the relevance of any disclosure information to the suitability for employment of the individual,
- Compliance with equality, human rights, employment legislation, all statutory and mandatory requirements,
- Compliance with the DBS Code of Practice,
- Where an employee is changing roles within Carejoy Healthcare due to promotion or ill health and the new role changes the level of check to a higher level than a new DBS check will be undertaken.
- Where a role is reviewed or changed as part of an organisational change process the requirements of the role will be formally reviewed to ensure that the level of check is appropriate and is still required.

Scope and Purpose

The policy applies to all Carejoy Healthcare employees and potential employees who are applying for employment with Carejoy Healthcare in substantive, fixed term, locum posts, and secondments. It also applies to all workers such as those individuals on honorary contract agency, contractors and to directly employed apprentices, trainees and students.

The purpose of this policy and associated guidance is to:

- Set out the requirements to undertake DBS checks and use of the DBS Update Service
- Prevent inappropriate and any illegal checks
- Provide Carejoy Healthcare with a framework and supplementary guidance in relation to DBS checking and the use of the information provided by the DBS
- Ensure consistency and fair treatment

Recruitment of Ex-Offenders

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), Carejoy Healthcare complies fully with the DBS code of practice and undertakes to treat all applicants for positions fairly.

Carejoy Healthcare undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.

Carejoy Healthcare will only ask an individual to provide details of convictions and cautions that we are legally entitled to know about. 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.

Carejoy Healthcare will only ask an individual about convictions, cautions, reprimands or final warnings that are not "protected" as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013).

Carejoy Healthcare is committed to the fair treatment of its candidates, applicants, staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.

Carejoy Healthcare 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.

Carejoy Healthcare selects all candidates for interview based on their skills, qualifications and experience.

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.

Carejoy Healthcare ensures that all of its staff who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences.

Carejoy Healthcare also ensures that they 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 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013).

At interview, or in a separate discussion, Carejoy Healthcare ensures that an open and measured discussion takes place on the subject of any offences or other matters that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to the termination of registration or of the registration process (as applicable), with Carejoy Healthcare.

Carejoy Healthcare makes every subject of a criminal record check submitted to DBS aware of the existence of the DBS code of practice and makes a copy available on request.

Carejoy Healthcare undertakes to discuss any matter revealed on a DBS certificate with the individual seeking registration, before proceeding to terminate the registration, or the registration process, with Carejoy Healthcare.

Levels of checking and eligibility for check

The need for a check and the level of check is determined by the activities and the type of access to patients and service users the employee will have as part of their role.

Posts not exempt from the Rehabilitation of Offenders Act

It is illegal to carry out a DBS check on any post that is not exempt under the Rehabilitation of Offenders Act (Exceptions) Order, and to do so could make Carejoy Healthcare liable for legal action. The DBS regularly monitors its registered bodies to ensure they are not carrying out ineligible checks. Persistent of the criminal record checking system can lead to decisions being taken by the DBS to de-register an organisation from carrying out checks.

Posts exempt from the Rehabilitation of Offenders Act

Where the position is listed as exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, Carejoy Healthcare is entitled to seek information about all spent and unspent convictions that are not subject to the filtering rules and that any information disclosed will be verified by obtaining a standard or enhanced check by requesting a DBS Check. Many roles within the NHS Are exempt from the Rehabilitation of Offenders Act.

There are currently three levels of DBS Checks available depending on the nature of the role. These are known as Standard/Basic, Enhanced without barred list(s) and Enhanced with barred list(s).

The levels of DBS Check

Standard Level DBS Check

To be eligible for a standard level DBS check, the post must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. This check contains details of both spent (old) and unspent (current) convictions, including cautions, reprimands and final warnings held in England and Wales on the Police National Computer (PNC). Most of the relevant convictions in Scotland and Northern Ireland may also be included.

Standard checks may be undertaken where the post enables the employee to have “access to persons in receipt of services in the course of their normal duties”. Access to persons’ does not include positions which only allow limited of incidental contact with patients or service users i.e. where staff are requested to pass through patient areas to get to their normal place of work.

Standard level of check does not check against either of the barred lists and should not be applied for when an employee is working in a “regulated activity”.

Enhanced Level DBS Check

To be eligible for an enhanced level DBS check, the post must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) Regulations. The enhanced check contains the same information as a standard check but also includes any non-conviction information held by local police, where they consider it to be relevant to the post. This information is referred to as “approved information” and is included on the enhanced check certificate.

In a small number of cases, the enhanced level DBS Check may also include additional non-criminal record information from the local police where this is thought necessary in the interests of preventing or detecting crime.

An enhanced level of check does not check against either of the barred lists.

Enhanced Level DBS Check with Check of the Barred List(s)

To be eligible for an enhanced level DBS check with either or both barred lists an employee must be expected to be working in a regulated activity with either children or adults or both. It must be specifically listed in the Police Act 1997 (Criminal Records) Regulations.

Carejoy Healthcare has a legislative requirement to request barring checks to be conducted for employees working in a regulated activity under the Protection of Freedom's Act 2012 which amended the Safeguarding Vulnerable Groups Act 2006 in September 2012.

Online Status checks using the DBS Update Service

The DBS update service is an online subscription that enables employers to accept a person's pre-issued standard or enhanced DBS disclosure certificate by carrying out a free and instant online check. The online check will confirm whether or not the individual's criminal record status has changed since the last disclosure was issued.

Where a prospective employee is registered with the DBS Update Service Carejoy Healthcare will perform an update service check, as long as the following criteria has been met:

- the work-seeker has provided consent;
- the work-seeker will be working in the same role and/or the role does not alter the level of check required or the type of workforce they will be working with (i.e. children, adults or both children and adults);
- the original DBS certificate has been seen

Overseas Police Checks

In the way same way a DBS is required for every candidate, any candidate that has lived in another country for 6 months or more since the age of 18 or during any specified time for our client – typically within the last 5 years, Carejoy Healthcare request the candidate to bring an Overseas Police Check with them to their face to face meeting – or show the candidate how to go about applying for a country specific check – also known as an International Police Clearance.

The certificate's personal data must correspond with the rest of the candidate's documents including name(s) spelling and date of birth.

CRIMINAL RECORD CHECKS PROCEDURE

Upon receipt of original certificate, a copy of the front and back of each page containing information is copied and original sighted.

A DBS update service status check is completed against the document with the candidate's recorded approval.

The status check will give one of four responses:

1. The certificate is clear and there is no new information – this means you can accept the current DBS disclosure certificate.
2. The certificate contains information but there is no new information – this means you must make your recruitment decision based on the information provided in the individual's original DBS disclosure certificate.
3. New information is known – this means that new information has been recorded since the issue of their last DBS disclosure certificate, and a new DBS check will need to be obtained.
4. Details not found – this could mean that the individual has provided the wrong information, or the subscription has not yet been processed or they haven't yet subscribed.

If the check fails to be subscribed to the update service an application is processed via our preferred DBS provider: **“E-Safeguarding”**

The candidate is encouraged to subscribe the Carejoy Healthcare disclosure to the update service once processed.

Further update service checks are completed as per the clients request or as a minimum on an annual basis the day after the issue date of the Disclosure certificate.

This policy has been written in line with the NHS Employment Check Standards for Disclosure and Barring Service Checks and the NHS Employers DBS update service guidance briefing.

Positive Disclosures

Carejoy Healthcare will always take into account what the law permits and ensure fair judgement of the applicant's suitability for any role, while considering the services its clients provides to patients. The following will be followed:

- Convictions and cautions that are specifically relevant to the position being appointed to will only be considered.
- Consideration will be given as to whether the disclosed information would pose any potential opportunities/risks to the client while the individual works in a specific role.
- If a DBS check confirms a conviction that the work-seeker has already disclosed, and this information has already been taken into account, then the registration process can continue. An exception to this would be if the applicant is on the children's and/or adults' barred list(s) and has applied to work in regulated activity, whereby, it would be illegal to allow the work-seeker to engage in a regulated activity with children and/or adults.
- If a DBS check reveals a conviction or caution that was not expected or the work-seeker had not previously disclosed and that is relevant to the role, then further consideration will be necessary to ascertain whether the work-seeker can register with Carejoy Healthcare.

- A documented record of all risk assessments will be kept using a standard template to ensure a consistent approach is followed. These will be retained in accordance with Data Protection legislation and destroyed when the criminal offence data is no longer needed.

Duties and Responsibilities

The Directors

The Directors have the responsibility to oversee this policy and ensure that appropriate processes and actions are in place to prevent illegal checks being undertaken and ensure those that are required are undertaken at the appropriate level.

The Head of Compliance and Compliance Team

The Compliance department are responsible for ensuring that DBS checks are undertaken in accordance with the requirements of this Policy, the DBS requirements, the DBS Code of Practice and NHS Employment Check Standards. They will ensure that appropriate records are kept on the database and that the rolling programme of checks is maintained. Where employees are registered with the DBS Update Service the Compliance Department are responsible for obtaining the consent of the employee for Carejoy Healthcare to register an interest in their DBS Statement, renewing these DBS Checks annually via the automated checking system and for highlighting any changes in the check immediately to the appropriate Line Manager and Consultant.

The Line Manager and Consultant are responsible for ensuring that disclosure information is treated fairly and without discrimination in line with Carejoy Healthcare guidance and to be aware of their employee's responsibility to disclosure information under their terms and conditions of employment.

Line Managers and Consultants are also responsible for ensuring appropriate action is taken when an employee fails to comply with Carejoy Healthcare's renewal process or fails to provide them with sight of their disclosure certificate when reasonably requested to do so.

Lapsed Registrations

In all instances if an employee allows their DBS Update Service registration to lapse then they will be responsible for the cost of re-registering with the DBS Update service and for a new DBS Check if required. The candidate will not be able to continue working until their new check is available.

CareJoy Healthcare use "E-Safeguarding" to process DBS applications. E-Safeguarding require the standard Government ID checks.

DBS Referrals

Employers in the NHS have a legal duty to refer to the Disclosure and Barring Service (DBS) in certain situations. This includes where the worker has been supplied by a personnel supplier, for example, an agency or third-party contractor.

Regulated activity providers (employers or volunteer managers of people working in regulated activity in England, Wales and Northern Ireland) and personnel suppliers have a legal duty to refer to DBS where conditions are met. This applies even when a referral has also been made to a local authority safeguarding team or professional regulator. A personnel supplier is defined as an employment agency, employment business or an educational institution.

A referral means sharing information about a person with the DBS. This will usually be a concern that an individual may have harmed a child or member of a vulnerable group, or put them at risk of harm.

Legal duty to refer: the two conditions that must be met

As a personnel supplier Carejoy Healthcare must make a referral to the DBS when both of the following conditions have been met:

Condition 1

- you withdraw permission for a person to engage in regulated activity with children and/or vulnerable adults. Or you move the person to another area of work that isn't regulated activity.

This includes situations when you would have taken the above action, but the person was re-deployed, resigned, retired, or left. For example, a teacher resigns when an allegation of harm to a student is first made.

Condition 2

You think the person has carried out 1 of the following:

- engaged in relevant conduct in relation to children and/or adults. An action or inaction has harmed a child or vulnerable adult or put them at risk or harm or;
- satisfied the harm test in relation to children and / or vulnerable adults e.g. there has been no relevant conduct but a risk of harm to a child or vulnerable still exists, or
- been cautioned or convicted of a relevant (automatic barring either with or without the right to make representations) offence

Carejoy Healthcare will always follow the DBS detailed guidance for making referrals which is available on the DBS website <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>

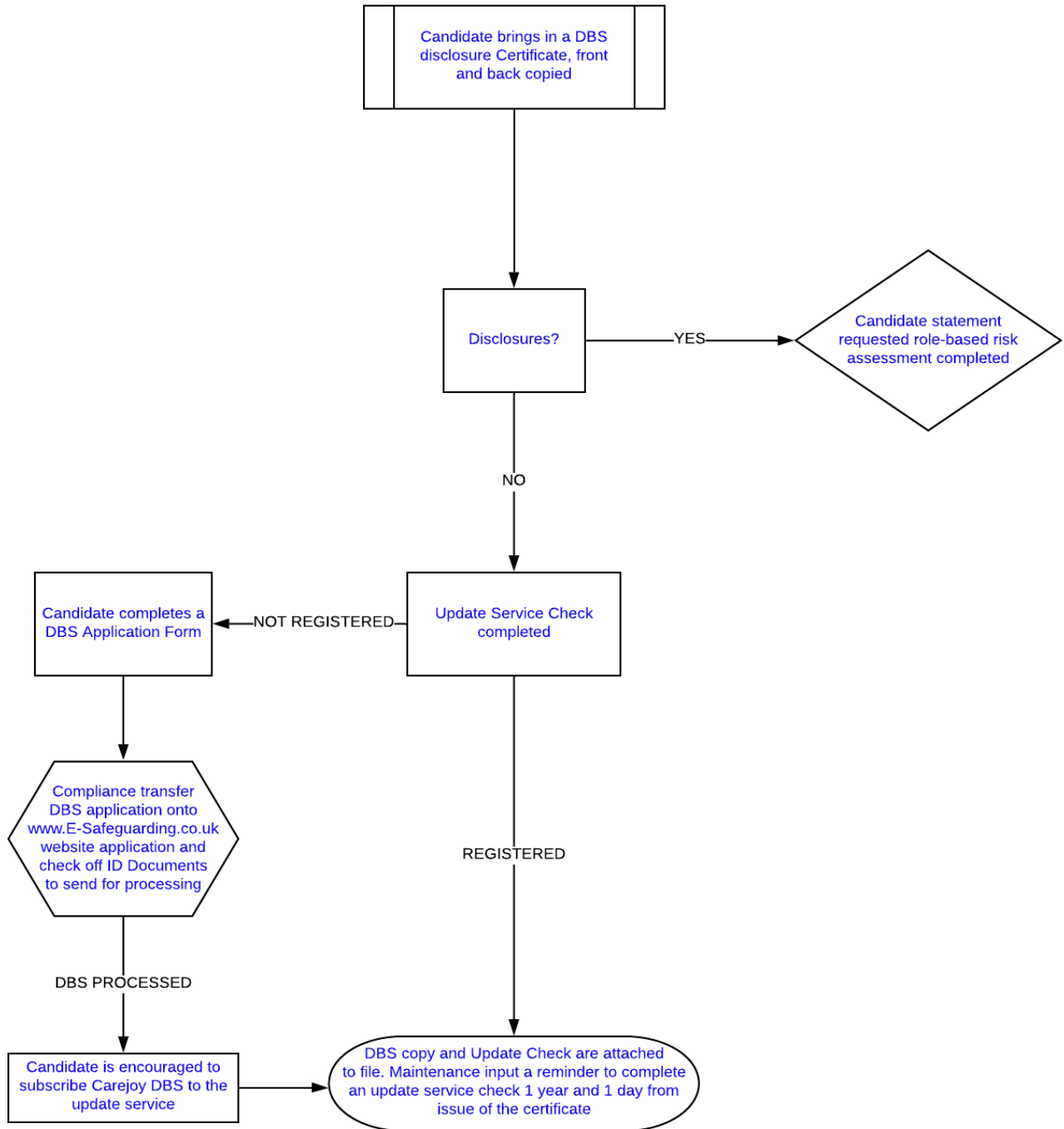
Carejoy Healthcare Ltd follows a stringent process for conducting pre-employment checks of all potential candidates. This policy should be read and applied in conjunction with the policies for the following: Identity checks, right to work checks, professional registration and qualification checks, employment history and reference checks, work health assessments.

COVID-19

During COVID19, CareJoy have followed the Government and DBS guidelines when processing DBS application forms, including the use of video calls to confirm ID documents, where the worker has been unable to send the originals or meet face to face.

For more information, and guidance we have used: <https://www.gov.uk/government/news/covid-19-changes-to-dbs-id-checking-guidelines>

Carejoy Healthcare's Process:



Further detailed guidance:

The Conduct of Employment Agencies and Employment Businesses Regulations 2003:

<http://www.legislation.gov.uk/uksi/2003/3319/contents/made>

NHS Employers Criminal Record Checks standard: <https://www.nhsemployers.org/your-workforce/recruit/employment-checks/criminal-record-check>

NHS Employers DBS update service guidance briefing: <https://www.nhsemployers.org/case-studies-and-resources/2019/07/dbs-update-service-guidance>

DBS guidance for making referrals: <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs#what-is-the-harm-test>