

# Submission

## Public Accounts Committee's inquiry into modernising the Disclosure and Barring Service

Unlock welcomes the opportunity to provide a short written submission to the Public Accounts Committee's inquiry into modernising the Disclosure and Barring Service (DBS).

Unlock is an independent award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.

Unlock works with the Disclosure and Barring Service and sees itself as a key stakeholder in representing the interests of people with a criminal record, given the significant adverse impact that a criminal record revealed on a DBS check can have. We have an ongoing dialogue with both the DBS and the Home Office on both policy and operational issues.

The focus of our response is on the following part of the inquiry: *"The modernisation programme and the update service were expected to increase the ease and frequency with which people were checked, thereby improving safeguarding. But the Home Office and DBS do not know how many people have been prevented from working with children or vulnerable adults through use of this information"*.

## The impact of revealing criminal records

1. As the recent National Audit Office highlighted, the DBS does not track the outcomes associated with the checks that it issues to employers. The Committee may be rightly interested in this from the perspective of ensuring that those with serious, relevant convictions are not employed in roles where the offences are relevant. However, the other important perspective is to consider the outcomes where there are old, minor or irrelevant criminal records disclosed to employers which leads to job offers being revoked, volunteering roles ended or university course offers being rescinded.
  - a. **Almost three-quarters of a million convictions over 10 years old were disclosed on standard or enhanced DBS checks in 2015.** In 2015, the DBS disclosed 742,482 convictions on standard and enhanced checks.<sup>1</sup>
  - b. **Over 70% of convictions included on enhanced DBS checks in 2015 were over 10 years old.** In 2015, 859,451 convictions were disclosed on enhanced DBS checks. Of these, 620,552 (72%) were over 10 years old. 136,977 (16%) were between 5 and 10 years old, 65,628 (8%) were between 2 and 5 years old, and 36,294 (4%) were up to 2 years old.<sup>2</sup>
2. **We recommend that the committee looks at whether the DBS and/or government should be carrying out research to understand how employers use DBS checks and, in particular, how they respond to DBS checks that reveal criminal record information.**

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<sup>1</sup> DBS (2016) [Response to a Freedom of Information request](#), 28<sup>th</sup> April 2016

<sup>2</sup> DBS (2016) [Response to a Freedom of Information request](#), 28<sup>th</sup> April 2016

## The impact on processing ineligible checks

3. In November 2017, Unlock wrote a briefing paper that was submitted to the DBS,<sup>3</sup> highlighting the issue of ineligible checks. This is where employers try to carry out a standard or enhanced DBS check for a role which is only eligible for a basic level check. This issue can have a profound impact on people with convictions that are spent under the Rehabilitation of Offenders Act 1974. Spent convictions are not disclosed on basic checks but are usually disclosed on standard or enhanced checks.
4. The briefing, attached as an annex, highlights problems with the systems and processes that the DBS has in place to ensure that it is taking reasonable steps to prevent ineligible checks from happening.
5. The DBS has done some work on this, such as developing an [online eligibility tool](#). However, this is not directly linked to the application for a DBS check and does not provide sufficiently detailed responses to individual roles.
6. **We recommend that the committee looks at whether the systems the DBS has in place to stop ineligible checks are fit for purpose for a modern non-departmental public body.**

## More information

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<sup>3</sup> Attached as an appendix, but also available to download from our website at <http://www.unlock.org.uk/wp-content/uploads/Briefing-Stopping-ineligible-DBS-checks.pdf>

# Appendix A: Briefing: Stopping ineligible DBS checks

## The DBS processes for investigating and stopping ineligible checks

Unlock is an independent award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.

As part of our [Fair Access to Employment project](#), we've been working with individuals who believe that an employer has requested and/or carried out an inappropriate level of criminal record check on them. This has been particularly where a standard or enhanced Disclosure and Barring Service (DBS) check has been requested, when the role in question is only eligible for a basic check.

In recent months we have worked with several individuals who, following advocacy support from Unlock, have been successful in getting an ineligible check stopped. However, in the course of this work we have identified some recurring issues in relation to the processes and practices of the DBS when investigating eligibility. We have set out below the details of four recent cases that demonstrate these issues.

### Case 1

We were contacted by an individual who was employed as an air-conditioning/refrigeration engineer visiting cafes, pubs and motorway service stations. As a result of his employer taking on a contract with a mental health treatment organisation, his employer had requested an enhanced DBS check.

We raised an eligibility query with the DBS on behalf of the individual, also highlighting that the registered body would be carrying out checks on approximately 20 other employees all working in similar roles.

The DBS confirmed that they had been in contact with the registered body and who believed that, as a result of him possibly attending call-outs to places where he would come into contact with children or vulnerable adults, his role would be eligible for an enhanced check.

Unlock provided evidence to the DBS from the applicant's worksheets which showed that, in the previous 30-day period, he had only attended calls to food outlets and bars. We also reverted to advice previously given by the DBS that for an enhanced check to be eligible, there needed to be more than just a 'possibility' that attendance at a designated place would occur. Based on this evidence, we believed it would be unlikely that the applicant would attend callouts at places where he would have unsupervised access to children or vulnerable adults.

The DBS investigated further with the registered Body and the application was found to be ineligible and withdrawn. Despite having alerted the DBS to other applications from the same Registered Body for the same role, the DBS went ahead and processed a further 14 applications.

## Case 2

An individual contacted the DBS to ask about the eligibility of an enhanced check for the role of a driver with a healthcare provider after his employer had submitted an application for an enhanced DBS check.

The individual was contacted by the DBS, asking him to confirm whether he wanted the DBS to investigate eligibility or withdraw the application. He confirmed on the 19<sup>th</sup> July that he wished the DBS to go through the IAP (Ineligible applications process).

As part of their investigation, the DBS contacted the registered body and were told that as part of the role, the applicant would be required to act as a chaperone and would convey adults and children on behalf of the organisation for the purpose of enabling them to receive health services. Therefore, the registered bodies believed that an enhanced check was appropriate.

The DBS took this at face value and did not (despite it being part of the process as we understand it) revert to the applicant with their findings to check whether he wished to continue to give his consent to the check. Instead, the DBS issued the enhanced DBS certificate. He subsequently lost his job.

## Case 3

An eligibility query was raised by an individual as he did not believe that his role of driver/technician for a equipment supplier should require an enhanced DBS check. At the time he raised the query, he also highlighted that the registered body had submitted a further 3 applications for the same role.

The DBS contacted the applicant, confirming that they had received the application for the role of *Outreach Support Worker*, which they had put on hold pending further investigation. When the applicant queried the job role with the DBS, he was advised that he needed to contact the registered body, which he was reluctant to do for fear of identifying himself as the individual raising the query. He was also told that the DBS were unable to put the other 3 checks on hold as the individuals concerned would need to contact the DBS independently.

Unlock contacted the DBS; we provided details of the applicants' contract of employment and job description, and requested that they seek clarification from the registered body as to the exact job role.

The DBS responded by stating that they were unable to alter a job title. However, they had placed the application on hold but only because the police force had questioned the workforce entered on the application form. The DBS stated that *"this now gives the DBS the opportunity to question the eligibility of the application because it has been raised by the police and not yourself"*.

## Case 4

We were contacted by an individual who had applied for a job working in the benefits office of a local council and was being asked to have an enhanced DBS check.

After contacting the DBS, we were told by the customer services department that in order to raise an eligibility query, the applicant would have to contact the registered body. Despite explaining that the applicant did not wish to contact the registered body (who believed the check to be eligible), and alert them to the fact that they may have a criminal record, the customer service advisor confirmed that there was no other way of querying a check.

The advisor explained that if the DBS believed a check to be ineligible they would raise it as a query with the registered body.

We alerted the DBS policy department who responded with the following:

*'I have contacted customer services regarding this application, which will be put on hold while the eligibility is investigated. DBS will need to see the job description and discuss with the RB. We won't let the RB know it's the applicant that's querying the eligibility.'*

*'The email chain has been forwarded to customer services managers to make sure all staff are aware of the appropriate processes when dealing with potentially ineligible applications.'*

Despite the application being put on hold, the applicant heard nothing further from the DBS until, to his surprise, he received an enhanced DBS check in the post.

## Summary of findings

1. **The important role the DBS has to play** – All four cases demonstrate, in different ways, why it's important to recognise the role that the DBS has in investigating and stopping DBS check applications for jobs not eligible for them, especially where they've been proactively highlighted to them.
2. **Looking at other similar jobs** - The DBS seems to be narrowly focused on individual eligibility queries rather than looking at similar checks being done by the same employer. When the DBS finds that a check is ineligible and stops processing the application, it should look to see if there are similar checks being requested and consider whether they should be stopped too. Despite giving notice to the DBS that registered bodies are carrying out potentially ineligible checks, the DBS continued to process them and said that they could do nothing until the applicant for the job contacted them himself.
3. **Customer service awareness of the process** - It appears that DBS customer services advisors are unaware of the process that individuals can go through to raise an eligibility query mid-application with the DBS. There also appears to be confusion about the process; some applicants have been told by DBS customer service advisors that their query cannot be taken further unless they agree to the DBS disclosing their personal details to the registered body; this would deter many people and is not a requirement of the process. DBS customer service advisors have suggested that applicants raise an eligibility query with the registered body who requested the check.
4. **Believing what an employer says** - The burden of proof appears to be on the applicant to show that a check is not eligible rather than on the employer or registered body to provide evidence that it is eligible.
5. **Checking consent to process** - The DBS are not following its own processes in going back to the individual who has raised the eligibility query once the issue has been investigated (including the option of whether they wish to proceed).

## Recommendation

The cases highlighted here are, in our view, symptomatic of a wider problem – the DBS is continuing to process DBS checks for roles that are not eligible for them, even once they have been clearly identified as being ineligible.

We recommend that the DBS urgently reviews its processes for investigating and stopping ineligible checks. We would be keen to feed into this review.

Once reviewed, the DBS process for investigating and stopping ineligible checks should be published on the DBS website. There should also be clear practical information for individuals on how they can raise eligibility queries and what they can expect. The DBS should also publish regular data about the numbers and types of queries it is dealing with through this process and what the outcomes and lessons are.

**For more information, contact Christopher Stacey on [christopher.stacey@unlock.org.uk](mailto:christopher.stacey@unlock.org.uk) or 07557 676433.**