

Disclosure Barring Service (DBS) Checks & Employing Ex-offenders



Category	Policy
Summary	This policy outlines BAPAM's policy and procedures for conducting DBS checks and for recruiting ex-offenders.
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Related documents	<i>Clinicians Agreement</i> <i>Employee Handbook</i> <i>Incidents policy</i> <i>Public Interest Disclosure Policy</i> <i>Safeguarding of Children policy</i>
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Further information	<i>DBS update service: Employer guide</i> www.gov.uk/dbs <i>DBS checks: guidance for employers – gov.uk</i>

1. Policy Aim

This policy outlines BAPAM's approach and provides procedural guidance for conducting Disclosure and Barring Service (DBS) checks and for recruiting ex-offenders (and Access NI for Northern Ireland). This policy will be made available as part of the recruitment process to all job applicants and volunteers who are subject to a DBS check as a condition of employment or service at BAPAM.

BAPAM provides healthcare and advisory services to performers, which may include children and vulnerable adults. BAPAM is legally required to use the DBS checking service to make informed decisions when recruiting staff or volunteers into positions of trust which involve regular contact with children and/or vulnerable adults.

The Disclosure and Barring Service is an executive agency of the Home Office which provides access to criminal records and other information through a checking service called 'Disclosure'. The majority of our staff and volunteer roles require a DBS 'check'.

2. Recruitment and Employment Issues

BAPAM is committed to the fair treatment of its staff, volunteers, employment applicants, and service users. Having a criminal record will not necessarily bar an applicant or existing employee or volunteer from working at BAPAM.

BAPAM complies fully with the DBS Code of Practice and undertakes not to unlawfully discriminate against any subject of a DBS check on the basis of a conviction or other information revealed on the Disclosure documentation issued by the DBS. Any action taken on the basis of such information will depend on the nature of the position and the circumstances and background of the offence.

2.1 Staff authorised to use Disclosure and conviction information

The only BAPAM personnel authorised to see and discuss an individual's Disclosure and conviction information are the Director, Honorary Medical Director and Child Protection Lead. Where appropriate, the Office and Clinics Manager may also be included.

2.2 Recruitment Policy

BAPAM always conducts a risk assessment relating to each vacancy and uses DBS checks and level of check as appropriate to the nature of the post.

For those positions where a check is required, all application forms, job advertisements and recruitment briefs will contain a statement that a check will be requested in the event of the individual being offered the position. A copy of the DBS Code of Practice and details of the procedures BAPAM uses for checking will also be provided.

DBS checks do not substitute any of the full range of existing pre-appointment checks, including taking up references and enquiring into the person's previous employment history. DBS checks are seen as complementary to existing recruitment practices and will only be sought after a candidate has been approved with a provisional offer of employment.

However, where a DBS check is to form part of the recruitment process we encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process. We request that the information is sent under separate, confidential cover, to the BAPAM's Director and we guarantee that this information will only be seen by those who need to see it as outlined in 2.1 above.

2.3 Information required by BAPAM during recruitment

All potential staff and volunteers are obliged to declare any 'unspent' convictions (i.e. convictions of more than 30 months as defined in the Rehabilitation of Offenders Act (ROA) 1974) during the recruitment process, regardless of whether or not the role requires a DBS check.

For positions where a DBS check is required, job advertisements and recruitment briefs for staff and volunteers will contain a statement that an offer will be subject to such a check and at what level. We ensure that our recruitment panels include a member with appropriate Equality and Diversity training. If an applicant refuses to consent to a DBS check for a position identified as subject to such a check, BAPAM will not take the job application any further.

It is the responsibility of BAPAM's Director, in consultation with the Honorary Medical Director, Associate Medical Director and Honorary Safeguarding Lead, to determine whether an individual's conviction(s) may present a genuine risk. We will endeavour to discuss any matter revealed via a DBS check with the person seeking the position before withdrawing a conditional offer of employment.

In dealing with persons with a criminal record, BAPAM will consider the following:

- whether the conviction or other matter revealed is relevant to the position in question
- the seriousness of any offence or other matter revealed
- the length of time since the offence or other matter occurred
- Whether the applicant has a pattern of offending behaviour or other relevant matters
- Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters
- The circumstances surrounding the offence and the explanation offered by the individual

A refusal to employ a rehabilitated person on the grounds of a spent conviction is unlawful under the Rehabilitation of Offenders Act (ROA) 1974.

2.4 Recruitment decisions based on ongoing investigations

In a small number of cases, an Enhanced DBS check may result in the local police force disclosing non-conviction information to BAPAM and not to the individual. This may be because the information relates to an ongoing investigation. This information must not be disclosed to the individual under any circumstances. If the information is deemed to show that the individual would present a genuine risk if they were to be employed or were to continue with employment or service, legal advice should be sought on how to proceed.

2.5 Allegations of criminal behaviour and/or convictions

Claims made by a third party regarding the alleged criminal behaviour and/or conviction history of an individual should be dealt with fairly. Personnel with serious concerns are advised to consult *BAPAM's Public Interest Disclosure and Whistle-blowing Policies* and to speak with the Director should they receive such information.

2.6 Offenders and individuals banned from working with children or vulnerable adults

Under Schedule 4 of the Criminal Justice and Court Services Act 2000, it is a criminal offence for people with certain convictions (including various kinds of violence and sexual offences) to apply for and undertake work with children and vulnerable adults. It is also an offence to knowingly offer paid or unpaid work to such an individual. Procedures for dealing with these issues are outlined in Section 2.7.

2.7 Process for responding to notification of a BAPAM employee or volunteer being charged with or convicted of a criminal offence

Upon becoming aware that a BAPAM employee or volunteer has been charged with or convicted of a criminal offence, a committee consisting of BAPAM's Director and Honorary Medical Director will be convened. The Office and Clinics Manager may also be included if the issues relate to a member of the Admin Team.

If the allegations relate to a Schedule 4 Offence, the Safeguarding Lead will also be included. In such cases, the Committee must move to an immediate suspension of the individual concerned pending the outcome of a criminal investigation (see Section 6.7 of the *Employee Handbook* and *Public Interest Disclosure and Incidents Policies*). If the allegations are upheld and the employee or volunteer is convicted, their contract of employment or service will be immediately terminated.

In all other cases, the Committee will decide if it is a disciplinary matter. Disciplinary procedures will be undertaken in compliance with any statutory procedural requirements currently in force, and BAPAM's policies as outlined in the *Staff Handbook and Clinical Governance policy*. If the Committee decides that disciplinary action is warranted, procedures outlined in the Section 6 of the Staff Handbook will be implemented.

2.8 Fraudulent misrepresentation of conviction details

All staff and volunteers are obliged to declare any unspent convictions in the recruitment process regardless of whether or not their position is subject to a DBS check, and to declare any convictions arising during the course of their employment or service. If it becomes apparent (through a DBS check or otherwise) that an individual has fraudulently misrepresented their conviction history or other relevant information by not disclosing it when given the opportunity to do so on application or during employment or service, the applicant's job offer will be withdrawn or the member of staff or volunteer will be subject to disciplinary action as determined by the Director, Honorary Medical Director and Honorary Safeguarding Lead and the relevant BAPAM policies. Such action must be

proportionate to the nature and significance of the misrepresentation and all circumstances will be taken into account.

2.9 Instructions for staff and volunteers subject to a DBS check

Details of the process for conducting a DBS check will be sent to all relevant new staff and volunteers along with the employment contract and covering letter. BAPAM pays for the DBS checks of all contracted staff, successful job applicants and volunteers.

BAPAM advises all new staff and volunteers undertaking a DBS check to join the DBS update service. For a small annual subscription (currently £13 – free for volunteers) applicants can have their certificate kept up to date and take it with them from role to role.

The benefits of the update service to the employee include:-

- ✓ Instant online checks of DBS certificates
- ✓ No more DBS applications to fill in
- ✓ May never need to apply for another DBS check for an employee again
- ✓ Saves time and money
- ✓ Enhances safeguarding processes and may help to reduce your risk

Any future employer (with permission) can then carry out a DBS status check on-line without the need to process a new application

2.10 Safeguards whilst a check is being carried out

The DBS tries to ensure that Disclosures are issued in the shortest time possible (within 4 weeks).

Some Disclosures take only a matter of days, whilst others can take considerably longer.

BAPAM clinicians and staff are not able to commence working for BAPAM until their disclosure has been authorised.

2.11 Frequency of checks for employed staff and volunteers in service

BAPAM required all its staff and volunteers to undergo a DBS check every **three** years.

If the employee is a member of the DBS Update Service (see section 2.9) with their permission BAPAM can recheck their DBS status online.

If the employee is not part of the update service, they will be required to undertake a new DBS application every 3 years. All personnel will be issued with contracts requiring them to agree to regular checks and to declare any convictions occurring during their period of employment or service. The Director and Honorary Medical Director will make decisions about any disciplinary or legal action required following notification of a Disclosure or conviction relating to a staff member or volunteer which arises in the course of their employment or service at BAPAM.

2.12 Additional Personnel

BAPAM requires that independent BAPAM Directory of Practitioners who see BAPAM clients at BAPAM clinic premises are also bound by this policy and are required to undergo an Enhanced DBS check. However, practitioners will be required to arrange and pay for their own DBS checks and to

present the information to the Director when requested. Failure to do so will result in removal from the Directory and access to premises.

2.13 Policy for non-UK residents

The DBS can only access criminal records (convictions, cautions, reprimands and warnings) held on the UK Police National Computer. Therefore, when recruiting an applicant from overseas or with a substantial period of overseas residency, a DBS check may not provide a complete picture of their criminal record. Therefore, it is at the discretion of BAPAM to ask that applicants obtain a 'Certificate of Good Conduct' from the relevant countries (as listed on the DBS website) or to request additional references .

2.14 DRB checks undertaken by other organisations (see section 2.9 above)

If an employee is a member of the DBS update service, BAPAM, (with the permission of the employee) can check their DBS status online and will not require them to apply for a new DBS check on commencement of their employment with BAPAM.

However, if the employer is not a member of the update service, a new DBS check will be required before they commence employment or service at BAPAM.

2.15 Incorrect Disclosure information

If a member of BAPAM personnel believes the information on the DBS Disclosure is not theirs or is incorrect in any way, they should contact BAPAM's Director or DBS's dedicated Disputes Team. Consideration of the DBS Disclosure should be deferred until the issue has been resolved.

3. Secure storage, handling, use, retention and disposal of information

3.1 Principles

BAPAM complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of DBS information. It also complies with its obligations under the Data Protection Act 1998. BAPAM will ensure that information contained in DBS disclosure is available only to those identified as needing to have access in the course of their duties.

All recipients of DBS Disclosure information at BAPAM (as outlined in 2.1) must treat such information with care and responsibility. Where additional information has been released (as a separate letter from the Chief Police Officer) this additional information must be handled, stored, retained and used in exactly the same way as any other CRB Disclosure information in accordance with the Code of Practice. However, the information contained within this letter must never be revealed to the applicant or be shown to any other person not involved in the recruitment decision.

3.2 Storage and access

DBS Disclosure information will be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of (see 2.1) for the specified period, six months. DBS Disclosure information is not held with personnel records and we do not produce or retain any photocopy or other image of the DBS Disclosure or its contents.

3.3 Handling

In accordance with section 124 of the Police Act 1997, DBS Disclosure information is only passed to those at BAPAM who are authorised to receive it in the course of their duties (see 2.1). It is a criminal offence to pass this information to anyone who is not entitled to see it. BAPAM maintains a secure record of all those to whom Disclosures or Disclosure information has been revealed.

3.4 Usage

Information contained within a DBS Disclosure is only used for the specific purpose for which it is requested and for which the applicant's full consent has been given.

3.5 Retention

Once a recruitment (or other) decision has been made, we do not keep criminal records information contained in a Disclosure for any longer than is necessary. This is generally for the standard recommended period of up to six months, to allow for consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer, we will consult the DBS about this and will give full consideration to the data protection and human rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail. BAPAM will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure.

Although we do not retain the contents of an individual Disclosure, in accordance with Care Quality Commission (CQC) regulations, we do record the fact that a check has been undertaken and also note the date of issue of any Disclosure, the name of the subject, the level of DBS check carried out, the position for which the DBS check was requested and the recruitment decision, and the unique reference number of the DBS Disclosure. The same principles apply for international certificates of 'good conduct' where information on offences committed outside of the UK have been obtained from the relevant authority.

3.6 Disposal

Once the retention period of six months has elapsed, we will personally ensure that all DBS Disclosure information is destroyed by secure means. While awaiting destruction, DBS Disclosure information will not be kept in any insecure receptacle.

4. Breach of policy

All BAPAM personnel (staff, clinicians, trainers) will receive a copy of this policy and will be required to comply as a condition of working at BAPAM. Breaches may constitute professional misconduct and could lead to a termination of contract and disciplinary action.

Version 1.0 = Sept 2012.

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