



Disclosure &
Barring Service



Memorandum of Understanding

Sharing information under the
Safeguarding Vulnerable Groups Act 2006
(as amended by the Protection of
Freedoms Act 2012) between:

Disclosure and Barring Service and
The Care Quality Commission

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List of acronyms

CRB	Criminal Records Bureau
CQC	Care Quality Commission
DBS	Disclosure and Barring Service
ISA	Independent Safeguarding Authority
KoR	Keeper of Register
MoU	Memorandum of Understanding
POFA	Protection of Freedoms Act 2012
SA	Supervisory Authority
SVGA	Safeguarding Vulnerable Groups Act 2006
SVGO	Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

1. PARTIES TO THE MOU

The partners to this agreement are:

Disclosure and Barring Service (DBS)
PO Box 181
Darlington
DL1 9FA

and

Care Quality Commission (CQC)
Finsbury Tower
103 - 105 Bunhill Row
London
EC1Y 8TG

This document is jointly owned by Adrienne Kelbie, Chief Executive of DBS and David Behan, Chief Executive of CQC.

2. TERM OF AGREEMENT

This MoU includes changes to the way information is shared following amendments to the SVGA commencing 10 September 2012. Future legislative changes will be reflected as appropriate in this MoU and will follow the agreed change process as detailed below.

The MoU will be reviewed annually to negotiate any required changes or to confirm that the agreement is still valid.

A significant change to the Government's disclosure and barring policy or legislation impacting on the MoU will also trigger a review. The review will be conducted jointly by DBS and CQC officers named in the MoU as responsible for the MoU.

If no changes are required following a review, this will be confirmed by DBS and CQC officers responsible for the MoU. A review date will be set for a further twelve months time.

If following a review, only minor changes are required, the changes will be agreed by DBS and CQC officers responsible for the MoU. The MoU will be amended and a review date set for a further twelve months time.

If major or significant changes are required following a review, for example to the information flows, then the changes will be agreed by DBS and CQC officers responsible for the MoU and confirmed by the Chief Executive (or officer nominated by the Chief Executive) of the respective organisations. The MoU will be amended and a review date set for a further twelve months time.

3. PURPOSE AND AIMS

This MoU provides a framework for sharing information between the DBS and CQC and incorporates the arrangements and principles of such information sharing.

The overall aim of the MoU is to ensure that information is legally and appropriately shared in the interests of safeguarding vulnerable groups including children. In particular it aims to:

- Promote co-operation between the DBS and CQC at an operational level and in the conduct of their respective statutory duties;
- Facilitate an effective and efficient sharing of information within existing legal powers and constraints concerning safeguarding children and adults; and to
- Promote consultation on matters of safeguarding to improve the performance of DBS and CQC in meeting their respective statutory duties and corporate objectives.

4. ROLE AND FUNCTIONS

DBS

The primary role of the DBS is to help employers in England and Wales make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children.

Regulated Activity in this context describes the kind of work to which barring applies and is set out in schedule 4 of the SVGA (as amended by POFA)

The DBS is a Non-Departmental Public Body (NDPB) sponsored by the Home Office. DBS has certain statutory responsibilities and is accountable to parliament. This means that DBS operates within defined areas of autonomy and operational discretion however effectiveness and efficiencies are closely scrutinised by ministers, officials and stakeholders.

The statutory responsibilities of the DBS are:

- Processing requests for criminal records checks as defined by Part V of the Police Act 1997;
- Deciding whether it is appropriate for a person to be placed in, or removed from, a barred list under SVGA or SVGO;
- Maintaining the DBS Children's Barred List and the DBS Adults' Barred List.

The DBS is established under POFA and carries out the functions previously undertaken by CRB and ISA. Functions of CRB and ISA have been transferred to DBS under POFA and became operational on 1st December 2012.

CQC

CQC is the independent regulator of health care and adult social care in England. Its purpose is to make sure health and social care services provide people with safe, effective, compassionate, high quality care and to encourage service to improve. Established by the Health and Social Care Act 2008 (HSCA), CQC is responsible for registering providers of regulated activities (as defined under the HSCA). CQC monitors,

inspects and regulates services to make sure they meet the fundamental standards of quality and safety, and publishes its findings. CQC can use a range of powers to take action where a service fails to meet the standards

CQC is a supervisory authority for the purposes of the SVGA. Sections 45-50 of the SVGA set out the information sharing duties and powers in relation to the DBS and supervisory authorities.

5. INFORMATION FLOWS ¹

This section explains the legal duties and powers to refer and share information between CQC and the DBS.

From DBS to CQC

Article 7: Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012

The DBS may, at the request of a person (X) with a legitimate interest in person (Y), inform person (X) if person (Y) is included in the DBS barred lists (or previous barred lists). For the purposes of this MoU, a SA has a legitimate interest in relation to a person where it is relevant to the exercise of their functions.

It is agreed that the SA will not exercise this general power available to all people with a legitimate interest but use the powers specific to them under S.47 of the SVGA to request the barred status of a person where it is relevant to the exercise of their functions.

Section 47 (1) - (4): Safeguarding Vulnerable Groups Act 2006 (as amended)

A SA may apply to the DBS to ascertain if a person is barred, only if the information is required in connection with the exercise of their functions. If such application is made the DBS must notify the SA of the bar.

The SA may exercise this power by applying in writing to the DBS, citing the above legislation and providing sufficient information to provide identification of the person. On receiving a valid request in writing, by post or to the DBS COST email specified in section 7, the DBS must provide the information and will seek to provide a response within 5 working days.

Section 50: Safeguarding Vulnerable Groups Act 2006 (as amended)

The DBS may (whether on application by a SA or otherwise) provide to the SA such information as DBS considers relevant.

The DBS may exercise this power proactively in relation to the safeguarding of vulnerable groups, including children if there are sufficient, compelling reasons for the information to be provided and it is relevant to any function of the SA and not provided for under other legislative provisions. For clarity, the DBS will not proactively provide information under this provision on a routine basis in relation to referrals, decisions to bar or decisions not to bar. The DBS may exercise this power in circumstances where it

¹ In section 5, wording in italics is representative of the wording contained in the appropriate section of the SVGA

supports the safeguarding of vulnerable groups including children in general, or of any child or vulnerable adult in particular.

The SA may exercise their power to request information under this provision in relation to circumstances where there are sufficient, compelling reasons for the information to be provided to the SA, and only if the information is required in connection with the exercise of its functions. The DBS will not unreasonably withhold providing information under this provision, provided the circumstances are sufficient and compelling to safeguard vulnerable groups including children, relate to the SAs functions and are not provided for under other legislative provisions.

From CQC to DBS

Power to Refer

Section 45: Safeguarding Vulnerable Groups Act 2006 (as amended)

*The SA may provide the DBS with any information it holds relating to a person if the first **and** second conditions are satisfied.*

The first condition is that the SA thinks, on the basis of relevant evidence, that the person has:

- *Received a caution or conviction for a relevant (automatic barring) offence: or*
- *Engaged in relevant conduct; or*
- *Satisfied the harm test.*

Relevant evidence is evidence obtained by the SA in the exercise of its functions mentioned in s45(7) of the SVGA.

The second condition is that the SA thinks that the person is or has been or might in future be engaged in regulated activity and, except in the case of a relevant offence (automatic barring), that the DBS may consider it appropriate for the person to be included in a barred list.

Appendix 1 provides information and guidance in relation to the referral power.

Historical Cases – Power to Refer

Section 45(5) of the SVGA provides a power for a SA to refer any cases of ‘relevant conduct’ that occurred prior to the commencement of the referral provisions on 12 October 2009.

A SA may, in the interests of safeguarding children or vulnerable adults, provide the DBS if it thinks, on the basis of relevant evidence, that the person has engaged in relevant conduct prior to 12 October 2009 and that the second condition (as described above) has also been met.

Duty to provide information on request

Section 46: Safeguarding Vulnerable Groups Act 2006 (as amended)

If the DBS is considering whether to include a person in a barred list or whether to remove a person from a barred list it may require the SA to provide it with any prescribed information it holds in relation to the person. The SA must comply with this request

Appendix 1 provides a definition of 'prescribed information' for the purposes of this section.

6. WORKING IN PARTNERSHIP

When considering a case if either DBS or CQC consider that information that it has received is relevant to the functions of the other organisation, it will inform the other within five (5) working days.

All information provided by the DBS shall be treated in accordance with Appendix 2 (Security and Audit Assurance).

If either party receives a request (under section 7 of the Data Protection Act 1998 (DPA) or the Freedom of Information Act 2000 (FOI)) for disclosure of information that they received from the other party, they will consult with the other party before making a decision to disclose that information.

It is recognised that information requested under FOI or the Subject Access provisions has to be released (subject to exemptions under those Acts) irrespective of the originating party. Where the receiving organisation cannot provide the requested information pertaining to the originating organisation (because the requested information is not held) it is common practice to advise the requestor to contact the originating organisation directly to request that information.

7. CONTACT POINTS

DBS

The DBS Central Operations Support Team (COST) will be the principal point of contact regarding the day to day operation of the content of this agreement.

Queries in relation to Policy or the MoU should be directed to the officer responsible for MoU.

Contact type	Job Role	Name	Contact method
Operations - general day to day queries and postal contact for all correspondence	Central Operations Support Team	COST	Central Operations Support Team Disclosure and Barring Service Post Office Box 181 Darlington DL1 9FA dbsdipatch@db.s.gsi.gov.uk 01325 953795
Officer Responsible for MoU	MoU Lead	Graham Sadler	graham.sadler@db.s.gsi.gov.uk 01325 953728
Operations Escalation contact	Director for Operations (Barring)	Janet Gauld	janet.gauld@db.s.gsi.gov.uk 01325 953880
Security, Data protection & Freedom of information contact	DP & FOI officer	Michelle Anderson	michelle.anderson3@db.s.gsi.gov.uk 01325 953572

CQC

The CQC National Customer Service Centre (NCSC) will be the principal point of contact regarding the day to day operation of the content of this agreement.

Queries in relation to Policy or the MoU should be directed to the officer responsible for the MoU.

Contact type	Job Role	Name	Contact method
Operations - general day to day queries and postal contact for all correspondence	National Customer Service Centre	Sandra Gooding, Head of NCSC	CQC National Customer Service Centre Citygate Gallowgate Newcastle upon Tyne NE1 4PA Telephone: 03000 616161 Fax: 03000 616171 Website online form: http://www.cqc.org.uk/contact-us
Officer Responsible for MoU	Regulatory Policy Manager	Karen Culshaw	Karen.culshaw@cqc.org.uk
Operations Escalation contact	National Safeguarding Advisors	Janice Waters Teresa Kippax	Janice.Waters@cqc.org.uk Teresa.Kippax@cqc.org.uk
Security contact	Information Security Manager	Derek Wilkinson	Derek.wilkinson@cqc.org.uk
Data protection & Freedom of information contact	Information Rights Manager	Simon Richardson	Simon.richardson@cqc.org.uk

8. AUTHORISATIONS

On behalf of the DBS

Name	Janet Gauld
Role within organisation	Director for Operations (Barring)
Signature	Signed by hand by Janet Gauld
Date	16 th January 2015

On behalf of CQC

Name	David Behan
Role within organisation	Chief Executive



Signature

Date	16 th January 2015
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APPENDIX 1: SUPERVISORY AUTHORITIES

Power to Refer

Section 45 of the Safeguarding Vulnerable Groups Act (SVGA) 2006 sets out the power for a Supervisory Authority (SA) to refer information to the Disclosure and Barring Service (DBS) in certain circumstances.

A SA may provide the DBS with any information it holds relating to a person if the first **and** second conditions are met.

*The **first condition** is that the SA thinks that **either**,*

a) The person has received a caution or conviction for a relevant (automatic barring) offence.

b) The person has engaged in relevant conduct.

Relevant conduct is defined as

- Conduct which endangers a child / vulnerable adult or is likely to endanger a child / vulnerable adult.
- Conduct which, if repeated against or in relation to a child / vulnerable adult, would endanger that child / vulnerable adult or would be likely to endanger him
- Conduct involving sexual material relating to children (including possession of such material)
- Conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to the DBS that the conduct is inappropriate
- Conduct of a sexual nature involving a child / vulnerable adult, if it appears to the DBS that the conduct is inappropriate.

Conduct that endangers a child or vulnerable adult is further defined as; harm, causing to be harmed, putting at risk of harm, attempting to harm or inciting another to harm.

Sexual material relating to children is defined as indecent images produced by any means (whether of a real or imaginary subject) of children or material (in any form) portraying children in sexual activity produced for the purpose of giving sexual gratification, or

c) The harm test is satisfied.

The harm test is where the person, in relation to either a child or vulnerable adult; may harm, cause to be harmed, putting at risk of harm, attempting to harm or inciting another to harm.

*The **second condition** is that the SA thinks that **both**,*

a) The person is, or has been, or might in future be engaged in regulated activity.

b) The DBS may consider it appropriate for the person to be included in a barred list.

Prescribed Information for SAs

The information to be provided on request by DBS is outlined in Regulation 11 and Paragraphs 1, 2, 3, 5, 6, 9 and 10 of the Schedule to:

- The Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008 (No. 3265 of 2008) (as amended); and

The information is as follows:

Regulation 11

In addition to the information requested in the following paragraphs of the Schedule, Regulation 11 also requires the SA to provide any other information relating to the person's conduct which is likely to, or may, be relevant in considering whether the person should be included in (or if relevant, removed from) a barred list including information relating to any decisions made, actions taken, complaints received or inspections undertaken by the SA in relation to the person.

Paragraph 1 requires the provision of personal information about the person being referred namely:

- a) full name and title;
- b) any other name or names by which the person may be known e.g. maiden name, aliases;
- c) date of birth;
- d) national insurance number;
- e) gender;
- f) last known address (including postcode).

Paragraph 2 requires a description of the regulated activity that the person is, or was, engaged in.

Paragraph 3 requires information as to whether or not the person is included in a relevant register maintained by a keeper of a register or a supervisory authority and, if so, details of the relevant entries.

Paragraph 5 requires the SA to provide the following information relating to the persons conduct, (including copies of relevant documents):

- a) a summary of the conduct including details of the setting and location in which such conduct occurred;
- b) details of any harm suffered by any child or vulnerable adult resulting from or arising from the conduct or any risk of harm that a child or vulnerable adult was, or may have been, exposed to as a result of such conduct;
- c) the following details of any child or vulnerable adult referred to above;
 - I. the name and date of birth of the child or vulnerable adult;
 - II. details of the relationship between the person and the child or vulnerable adult;
 - III. information relating to the vulnerability of the child or vulnerable adult that may be relevant to DBS's consideration of whether to include or remove the person in or from a barred list including any emotional, behavioural, medical or physical condition;
- d) whether the person has accepted responsibility for or admitted the conduct or any part of it;

- e) any explanation offered by the person for the conduct or any remorse or insight demonstrated by the person in relation to the conduct;
- f) any information other than that relating to the persons conduct which is likely to, or may, be relevant in considering whether the person should be included in or removed from a barred list including information relating to any previous offences, allegations, incidents, behaviour or other acts or omissions.

Paragraph 6 requires information relating to the reason why the referring party considers that the harm test is satisfied in relation to the person (if the SA is the referring party and the referral is on the basis of satisfying the harm test).

Paragraph 9 requires details of any other proceedings before any court, tribunal or any other person taken or to be taken in relation to the person's conduct including the outcome of any such proceedings (and including proceedings commenced under the Children Act 1989).

Paragraph 10 requires details of any action taken, or to be taken, by the person referring or providing information under the Act to the DBS in relation to the person's conduct including whether or not the matter has been referred to the police or to any other person.

APPENDIX 2: SECURITY AND AUDIT ASSURANCE

Introduction

Information created or used by the DBS are Public Records under the Public Records Act (notwithstanding data exempt under the Data Protection Act 1998) and must be compliant with the relevant legislation and guidelines (see below) and managed in accordance with the relevant information management principles.

Objectives

The objectives are to preserve:

- **Confidentiality** - Access to Data must be confined to those with specific authority to view the data on a need to know basis.
- **Integrity** – Information is to be complete and accurate. All systems, assets and networks must operate correctly, according to management approved specification.
- **Availability** - Information must be available and delivered to the right person and/or system, at the time when it is needed.

Aim

The aim is to establish and maintain the security and confidentiality of information, information systems, applications and networks owned or held by the organisations receiving DBS data by:

- Ensuring that organisations are aware of and fully comply with the relevant legislation.
- Describing the principals of security and explaining how they must be implemented in the organisation.
- Introducing a consistent approach to security across the safeguarding community, ensuring that all organisations fully understand their own responsibilities.
- Creating and maintaining within the organisation a level of awareness of the need for information security as an integral part of the day to day business.
- Protecting information assets within the organisation that support DBS data.

Scope

This section applies to all DBS information and organisations' information systems, networks, applications, locations and users accessing and/or processing DBS information.

Security Responsibility

- Ultimate responsibility for security rests with the Chief Executive of the organisation.
- The organisation should have in place sufficient processes and policies, together with a nominated individual(s) with overall responsibility for their effectiveness, to ensure the security of day to day handling of data within the organisation, including data received from and/or sent to DBS.
- The organisation must ensure that their permanent and temporary staff and contractors are aware of:-
 - The information security policies applicable in their work areas, roles and responsibilities

- Their personal responsibilities for information security
- How to access advice on information security matters
- How security incidents must be reported and managed.
- All applicable staff must comply with security procedures supporting this section, including the maintenance of data confidentiality and data integrity

Legislation

The organisation is obliged to abide by all relevant UK and European Union legislation. The requirement to comply with this legislation must be devolved to employees and agents of the organisation, who may be held personally accountable for any breaches of security for which they may be held responsible. The organisation should comply with the following legislation and other legislation as appropriate:

- The Data Protection Act (1998)
- The Copyright, Designs and Patents Act (1988)
- The Computer Misuse Act (1990)
- Human Rights Act (1998)
- Regulation of Investigatory Powers Act 2000
- Freedom of Information Act 2000

In terms of security requirements for information, the main areas which organisations should comply with are:

- HMG Security Policy Framework
www.cabinetoffice.gov.uk/spf

The above is for government departments and public services; however, some partners may not follow these standards and hence ISO 27001 should be adhered to as the minimum level required for security management.

Whether or not a partner has adopted the HMG Security Policy Framework, partners would still be expected to ensure that the level of security would comply with the protective marking and not downgrade information to favour a lesser level of security.