

Screening and Police Checking

Screening is used here to mean checking if someone has a criminal record. It is one way of reducing the risk of recruiting volunteers who may be unsuitable to work with children or other vulnerable people. Screening is a valuable tool in identifying unsuitable volunteers, but it is not foolproof. For example, 90% of child sex offenders have no relevant criminal record. Even those with a criminal record may be able to avoid detection by giving a false or different name.

Organisations should not assume that by screening volunteers they have done enough. It is vital to always carry out effective recruitment, training and supervision of staff. As well as this, there should be a system for anyone to raise concerns about an individual.

Does your organisation need to screen volunteers?

Not all organisations will need to screen volunteers. The need to screen will depend entirely on what the volunteer is doing and the client group that they are working with. Except for organisations which fall under the remit of the Care Standards Act or are 'Childcare organisations' under the definition in the Protection of Children Act, the only legal obligation that organisations have to screen their volunteers is the 'duty of care' that they have towards the people they work with. Duty of care requires that you do everything 'reasonable' within your power to protect others from harm. So if an organisation involves volunteers working with vulnerable people, it could be argued that part of their duty of care is to screen volunteers. Organisations need to look carefully at their client group and volunteer roles to decide whether screening is necessary, and a risk assessment needs to be done to decide whether clients are at risk if volunteers are not screened. In some situations, organisations may decide that even if their

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client group is vulnerable, the risks involved are minimal because of the way that they work.

Are your volunteers working in roles where they should be screened?

Under the Rehabilitation of Offenders Act most convictions become spent (old) after a period of time. The more serious the crime, the longer the rehabilitation period. Ex-offenders normally have the right not to reveal spent (old) convictions, and in many situations, potential employers or volunteer managers do not have the right to ask.

However, the Rehabilitation of Offenders Act also says that where work involves contact with 'vulnerable' people, organisations can require applicants to declare spent convictions as well as current ones. Such types of work are defined in the 'Exceptions Order' to the Rehabilitation of Offenders Act. This means that organisations should only ask volunteers to reveal spent convictions if they are recruiting for a position which falls into the Exceptions Order.

Section 115 (4) (a) of the Police Act 1997 describes vulnerable people as:

- Anyone under the age of 18
- Anyone receiving:
 - accommodation and nursing or personal care in a care home
 - personal care in their own home through a domiciliary care agency
 - healthcare services provided by an independent hospital, independent clinic, independent medical agency or NHS body
 - services provided in an establishment catering for a person with learning difficulties
- Anyone who could be described as having:
 - a substantial learning or physical disability

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- a physical or mental illness, chronic or otherwise, including and addiction to alcohol or drugs
- a substantial reduction in physical or mental capacity.

If people are applying for such roles, it is fairer to let them know from the outset that they will be required to reveal information about spent convictions. One form of wording is:

'Because of the nature of the work, [befriending people with severe learning difficulties], you are required by the Rehabilitation of Offenders Act 1974 to declare all criminal convictions including those which are spent.'

You may also want to make it clear that just because someone has a conviction, it does not mean that they are automatically unsuitable. The majority of convictions would not have any bearing on someone's suitability for volunteering. However, ex-offenders are used to being discriminated against and may well be wary about discussing their convictions with you. Anything you can do to reassure them that your organisation is fair will encourage them to be open. Remember that one in five adult men has a criminal conviction. If your organisation discriminates against ex-offenders, you could well be losing out on valuable volunteers.

The Criminal Records Bureau

The Criminal Records Bureau has been set up as a 'one stop shop' for criminal record checks. Prior to this access to checks for volunteers was patchy at best.

The general principle of the CRB checks is that organisations have different levels of need to access information, so two levels of check have been introduced. To make the process less threatening to individuals being checked, police checks have now been re-named 'disclosures'.

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- **Enhanced Disclosures**

For posts involving substantial contact with children or vulnerable adults regularly training, supervising or being in sole charge of individuals or groups. Also for individuals seeking gaming or lottery licences or judicial appointments. The Enhanced Disclosure would contain details of all convictions current or spent as well as details of cautions, reprimands or warnings. It would also detail inclusion on the Protection of Vulnerable Children Act and Protection of Vulnerable Adult lists. In addition, they will include any other 'relevant' information held by the police, including so-called 'soft' information. Enhanced Disclosures are free for volunteers and cost £36 for staff.

- **Standard Disclosures**

For posts involving regular contact with vulnerable people and people entering 'positions of trust' such as accountancy and veterinary professions. The Standard Disclosure will be the same as the Enhanced Disclosure but without the addition of extra 'soft' information held by the police. Standard disclosures are free for volunteers and cost £31 for staff.

Enhanced and Standard Disclosures are currently available and can only be issued to registered organisations for roles that fit the requirements. Basic Disclosures were originally planned but have never been introduced. (They would only have contained details of convictions that are 'unspent' under the Rehabilitation of Offenders Act.)

Applying for disclosures

In order to get Enhanced and Standard Disclosures, individuals must apply through the organisation and complete a form with personal details and list their addresses for the past five years. Applicants also have to present certain forms

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of proof of identity in order for the check to be processed. Disclosures are posted out both to the organisation and to the individual.

In order to process checks for potential employees or volunteers, organisations need to either become registered bodies or apply through an umbrella body.

Registration forms are available from the CRB on the website or phone number below. To register, an organisation will need to:

- pay a £300 fee
- meet the threshold requirement and submit a minimum of 100 applications per year (a new rule introduced in 2006)
- satisfy the CRB that it is entitled to ask for the information under the Exceptions Order of the Rehabilitation of Offenders Act
- show that it has a code of practice vis-a-vis employing ex-offenders
- show that its confidentiality policy is clear about who will need to know information, how it will be stored, and when it will be destroyed.

If the CRB is satisfied that all this is in place, then the organisation needs to nominate a lead signatory who will have overall responsibility for checks and counter signatories. All signatories are checked by the CRB to see if they have committed any offences that would make them unsuitable to receive confidential information. All applications for Enhanced and Standard Disclosures have to be signed by a signatory and the individual being checked.

Umbrella bodies

If organisations cannot meet the above criteria to register, then it is also possible to get disclosures via an 'umbrella body'. Where appropriate, an umbrella body

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can register and sign on behalf of other organisations, or register them as counter-signatories. The umbrella body has ultimate responsibility for checking that members are abiding by the Code of Practice and are dealing with disclosure information strictly within the bounds of their confidentiality policy. Passing on information unless it is strictly necessary could be a criminal offence, and therefore organisations will need to think carefully about their relationship with the other organisations and the extra work involved before taking on the umbrella role. Because of all the extra administration, umbrella bodies have to charge organisations for checks. Charges do seem to vary, with some voluntary sector organisations able to process checks at a low cost, while some private companies have taken on an umbrella role and are hoping to operate at a profit. There is a database of umbrella bodies on the CRB website which organisations can search to find an umbrella body in their region or which specialises in working in relevant sectors.

Recent developments with the Criminal Records Bureau

Since the introduction of CRB checks in 2002, organisations have reported various concerns with using the service. Recent developments indicate that the CRB is tackling some of these issues, although other difficulties persist or are still arising. We would be really interested to hear from you and find out what your experience has been. E-mail us at: information@volunteeringengland.org or ring our Information Line on 0800 028 3304.

The biggest problem now that the waiting time for disclosures has dropped seems to be finding affordable and local umbrella bodies. Because of the extra work and responsibility involved in this role, there are not many umbrella bodies in the voluntary sector, so many organisations have struggled to find one. The database of umbrella bodies on the CRB website was re-launched in April 2006

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and now aims to provide more information on individual bodies and their fees, services and specialist knowledge.

Some volunteer-involving organisations have still reported difficulties in finding umbrella bodies to process checks for them, so they are advised to try searching the new CRB database for regional or national umbrella bodies which have expertise in working with the sector. In areas where there is a gap in coverage, voluntary organisations may want to consider setting themselves up as umbrella bodies. However, it seems as though groups which choose to take on an umbrella role definitely need to take on staff to cover the extra administrative work involved. As there is currently no extra funding available to cover this, the staffing costs must be covered by charging for disclosures. Obviously it is more effective for organisations to process lots of checks, so any group considering becoming an umbrella body needs to weigh up the potential workload and knock-on effects. The CRB website has some guidance to help organisations with making this decision.

Many organisations have found it difficult to get background checks for people coming from overseas to volunteer. The CRB website has recently launched a new section with information on how to get criminal record information from 21 overseas countries. However, if the person who wants to volunteer doesn't come from one of the countries listed, organisations need to get in touch with the Embassy or High Commission of the country concerned for information on how to proceed.

It is also difficult to arrange CRB checks for refugees and asylum seekers resident in the UK, as they often lack sufficient identity documents to present with their completed CRB check form. One refugee volunteering project in northern England has developed a pro-forma letter which enables asylum seekers to have CRB checks done, although they need to go to their local Police station to have

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their fingerprints taken. The letter is available to use from http://www.vas.org.uk/refugee_asylum_project.htm.

One other recent development has been the Criminal Records Bureau's new position on portability. Portability refers to the re-use of a CRB Disclosure, obtained for a position in one organisation and later used for another position in another organisation. In November 2006, the CRB published new guidance on its website explaining when an organisation might consider portability and how to weigh up the risks. It can be found at www.crb.gov.uk/portability.

Future developments in screening

The Bichard Enquiry was set up following the Soham murders in 2002 to review how CRB checks are carried out. The enquiry team found that the system could be improved by simplifying the way that information about an individual can be stored in various places, such as the POCA, POVA and Department of Education lists, as well as on local police databases. The Bichard Implementation Team is now looking at creating a central 'barred' list which would bring the current lists together and hopefully create a faster and more accurate system. These reforms aren't expected to be implemented until at least 2008. Further information about the proposed new scheme is available at: <http://www.everychildmatters.gov.uk/vettingandbarring/>

Treating ex-offenders fairly

There is a major concern that organisations may shy away from taking on individuals with any kind of criminal record at all. This could result in a huge amount of wasted potential. It is estimated that at least 20% of the working population has a criminal record and one in three men under the age of 30 have criminal convictions. To decide to rule out all these people when looking for volunteers considerably narrows down the available options and means that

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people with potentially valuable skills and life experience are being ignored. This presents a major challenge for the sector in breaking down the prejudices that many people have against ex-offenders. One of the provisions of becoming a registered body with the CRB is that the organisation should have a written policy on the recruitment of ex-offenders and sign up to the CRB 'code of practice' which will include guidance on:

- at what stage of the application process disclosures should be sought
- when and how applicants should be informed of the need for a disclosure
- how information should be stored and handled.

Regular spot checks will be made by the CRB to check that organisations are sticking to the Code, with particular emphasis on how information is stored and handled. However, whether or not organisations are treating ex-offenders fairly will be much harder to assess. The Code of Practice is available from the CRB and can be downloaded from its website.

Under the Protection of Children Act 1999 and Court Services Act 2000, it is an offence to knowingly employ anyone with a conviction for specified crimes against children including murder, manslaughter, rape, GBH and a number of sexual offences, to work with people under 18. These specified crimes are also known as 'Schedule 4 offences'. Aside from these, there are no set guidelines on which other offences would make an individual unsuitable to work with vulnerable people. The CRB has issued a list of 'considerations' to take into account:

- whether the conviction is relevant to the position
- the seriousness of the offence
- the length of time since the offence occurred
- whether the applicant has a pattern of offending behaviour
- whether the applicant's circumstances have changed

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- the circumstances surrounding the offence and explanation offered by the applicant.

Even taking this guidance into consideration, the decision on whether or not to take on an individual with a criminal record will remain almost entirely subjective, which could well mean that many people are being unfairly discriminated against and that organisations are losing out on perfectly capable and safe staff and volunteers. It will be a challenge for the sector as a whole to work together to develop good practice guidelines to ensure that the 5 million-plus people in this country with convictions for a crime which could have involved imprisonment are not written off as potential staff and volunteers. A balance has to be struck between the need to protect vulnerable individuals and the need allow everybody to have a place and a purpose within the community.

Confidentiality and Data Protection

The CRB is concerned that organisations should be able to show that they will be able to deal with disclosures in a safe and confidential manner. This is very important because it is a criminal offence to pass on someone's conviction details without their prior permission. There are also two pieces of legislation that a volunteer could potentially cite to sue an organisation breaching confidentiality over conviction details. Article 8 of the new Human Rights Act states the right to respect for private and family life. This will mean that individuals who feel that their privacy has been infringed can take a case forward under Article 8. The Data Protection Act also lays out clear guidelines for how personal information should be stored and dealt with. Organisations should have clear confidentiality policies outlining how information will be stored and whom it will be shared with. Individuals should be made aware of this policy right from the beginning so that they feel able to discuss any convictions without fear of the information being passed on.

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Only specific people within an organisation should have access to disclosures, which should be stored securely. Allowing for a suitable period for an individual to raise any queries or concerns over their disclosure, the document itself should be destroyed. Once a decision has been reached on whether to take on an individual, the information contained within the disclosure becomes irrelevant and does not need to be kept on file. When deciding whether to take someone on, information about disclosures should only be discussed with a set group of individuals within the organisation and the volunteer should be made aware from the beginning who these people are and that they will be involved in the decision-making process.

The Protection of Children Act

Under the Act, child care organisations recruiting to Childcare positions (later amended to 'regulated positions' by the Criminal Justice and Court Services Act 2000) are obliged to carry out checks against the Protection of Children Act list, which is now only available through a CRB disclosure.

The Act defines "**child care organisation**" to mean an organisation:

- “(a) which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children;
- (b) whose activities are regulated by or by virtue of any prescribed enactment, and
- (c) which fulfils such other conditions as may be prescribed.”

The Protection of Children (Child Care Organisations) Regulations 2000 (SI 2000/2432) lists the enactments described in paragraph (b):

- Local Authority Social Services Act 1970, sections 2 and 7A to 7D;

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- Adoption Act 1976, section 9;
- National Health Service Act 1977, sections 8 and 15 to 18A, Schedule 5 and Schedule 5A;
- Registered Homes Act 1984, sections 16 and 26;
- Children Act 1989, sections 72 and 73, paragraph 4 of Schedule 4, paragraph 7 of Schedule 5 and paragraph 10 of Schedule 6;
- National Health Service and Community Care Act 1990, section 5 and Schedule 2;
- Criminal Justice Act 1991, sections 84 to 88A;
- Probation Service Act 1993, section 25; and
- Criminal Justice and Public Order Act 1994, sections 7 to 15.

Legislation is subject to change, so organisations are advised to seek advice on whether they are a Childcare organisation if their activities are regulated in a similar manner.

There are several duties on child care organisations; further guidance called “The Protection of Children Act 1999: A Practical Guide to The Act for all Organisations Working with Children” is available at <http://www.teachernet.gov.uk/wholeschool/familyandcommunity/childprotection/poca/>

Care Standards Act

Organisations regulated under the Care Standards Act are bound by regulations and national minimum standards, which cover the screening of staff and volunteers. A CRB disclosure is required for most roles in such organisations. For guidance see:

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http://www.csci.org.uk/care_professional/service_providers/criminal_records_bureau_checks.aspx

As with the Protection of Children Act, there is now a Protection of Vulnerable Adults list for organisations under the Care Standards Act. POVA checks come via CRB disclosures, although in some circumstances it is possible to obtain a preliminary 'POVAfirst' check before the disclosure is returned. For further information see <http://www.disclosure.gov.uk/Default.aspx?page=2226> and the Commission for Social Care Inspection www.csci.gov.uk.

Further information

Criminal Records Bureau

<http://www.crb.gov.uk>

Information line: 0870 90 90 811

Criminal Justice and Court Services Act 2000

Contains the full list of the 'schedule 4' convictions which bar offenders from working with children.

<http://www.legislation.hmso.gov.uk/acts/acts2000/20000043.htm>

Involving Ex-offenders in Volunteering

A new good practice guide from Volunteering England written in collaboration with Nacro

<http://www.volunteering.org.uk/publications>

If you want further information about the CRB, how the Data Protection Act affects volunteers, or advice on writing a confidentiality policy, you can contact Volunteering England's information service.

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For more information, please contact

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All of Volunteering England's Information Sheets are available at:

www.volunteering.org.uk/information

For more information on managing volunteers, please visit

The Good Practice Bank at www.volunteering.org.uk/goodpractice

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