



Disclosure &
Barring Service

DBS Chairman and Chief Executive Office
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[REDACTED]

Ms Nadia Persaud
HM Senior Coroner East London
Walthamstow Coroners Court
Queens Road
Walthamstow
London
E17 8QP

17 November 2020

Our Reference: [REDACTED]

Your Reference: [REDACTED]

Dear Madam,

Response to Regulation 28 Report relating to the inquest touching upon the death of Jane Anne Jowers

Thank you for your letter dated 23 September, enclosing a Regulation 28 Report relating to the inquest touching upon the death of Jane Anne Jowers.

This response is provided to your below concern recorded in the Regulation 28 report:

“The evidence at the inquest revealed that there is no statutory procedure for checks to be undertaken for criminal convictions outside of the UK. The absence of statutory international checks may result in unsuitable persons with prior convictions working with vulnerable adults and children”.

The Disclosure and Barring Service (DBS) was established under the Protection of Freedoms Act, 2012 and provides information to help employers in England and Wales make informed safer recruitment decisions, especially those involving children or

vulnerable adults. It does so by processing and issuing DBS certificates, also known as DBS checks, for employment in England, Wales, the Channel Islands and the Isle of Man. Primarily, the roles normally involve working with children, vulnerable adults, or both.

The types of DBS check are as follows:

- a Basic certificate issued pursuant to Section 112 Police Act 1997, which shows unspent convictions and conditional cautions
- a Standard certificate issued pursuant to Section 113A Police Act 1997, which shows spent and unspent convictions, cautions, reprimands and final warnings
- an Enhanced certificate issued pursuant to Section 113B Police Act 1997, which shows the same as a Standard check plus any information held by local police forces that is considered relevant to the role and the Chief Officer has made a decision that it ought to be disclosed
- an Enhanced check with a check of the barred lists issued pursuant to Section 113B, s113BA and s113BB Police Act 1997, which shows the same as an Enhanced check plus whether the applicant is on the adults' barred list, the children's barred list or both

The Police Act, 1997 (the Act) sets out the data sources that may be accessed by the DBS as part of the Disclosure service. It is understood that a certificate issued under Section 113B of the Act, is the relevant certificate that was issued in this matter. Section 113B of the Act provides, as far as is relevant to data sources:

(3) An enhanced criminal record certificate is a certificate which—

(a) gives the prescribed details of every relevant matter relating to the applicant which is recorded in central records and any information provided in accordance with subsection

(4), or

(b) states that there is no such matter or information.

(4) Before issuing an enhanced criminal record certificate [DBS] must request [any relevant chief officer] force to provide any information which [...] —

(a) [the chief officer reasonably believes to be relevant for the purpose described in the statement under subsection (2), and

(b) [in the chief officer's opinion, ought to be included in the certificate.

[

(4A) In exercising functions under subsection (4) a relevant chief officer must have regard to any guidance for the time being published by the Secretary of State.

]

(7) [DBS] may treat an application under this section as an application under section 113A if in [its] opinion the certificate is not required for a purpose prescribed under subsection (2).

(9) In this section—

“central records” , “exempted question” , and “relevant matter” have the same meaning as in section 113A;

[

“relevant chief officer” means any chief officer of a police force who is identified by [DBS] for the purposes of making a request under subsection (4) .

]

(10) For the purposes of this section references to a police force include any of the following— [

(a) the Royal Navy Police;

]

(c) the Royal Military Police;

(d) the Royal Air Force Police;

(e) the Ministry of Defence Police;

[...]

(h) the British Transport Police;

(i) the Civil Nuclear Constabulary;

(j) the States of Jersey Police Force;

(k) the salaried police force of the Island of Guernsey;

(l) the Isle of Man Constabulary;

(m) a body with functions in any country or territory outside the British Islands which correspond to those of a police force in any part of the United Kingdom,

and any reference to the chief officer of a police force includes the person responsible for the direction of a body mentioned in this subsection.

(11) For the purposes of this section each of the following must be treated as if it were a police force—

(a) the Commissioners for Her Majesty's Revenue and Customs (and for this purpose a reference to the chief officer of a police force must be taken to be a reference to any one of the Commissioners);

(b) the [National Crime Agency] (and for this purpose a reference to the chief officer of a police force must be taken to be a reference to the Director General of the Agency);

(c) such other department or body as is prescribed (and regulations may prescribe in relation to the department or body the person to whom a reference to the chief officer is to be taken to be).

[

In accordance with the above function DBS relies upon information held in Central Records which are defined within s113A of the Act as:

6) In this section—

“central records” means such records of convictions and cautions held for the use of police forces generally **as may be prescribed**;

The type of records to be disclosed in a certificate issued under s113B (3) (a) above, are prescribed within Regulation 9 of the Police Act 1997 (Criminal Records) Regulations 2002. Regulation 9 provides;

*Information in any form relating to convictions, cautions, reprimands and warnings on a **names database** held by the [Secretary of State] for the use of constables is prescribed as “central records” for the purposes of [sections 112(3) and 113A(6) of the Police Act 1997]4 (including [section 113A(6)]5 as applied by sections 114(3)6 and 116(3)7). “*

The “names database” referred to above is the Police National Computer (“PNC”). The DBS is, therefore, limited to disclosing information under the provisions of s113B(3)(a) of the Act to that information held within PNC. In some circumstances this may contain information from overseas agencies.

The only remaining method by which overseas information would be included in certificates issued by the DBS under s113B of the Act is if the information is disclosed to DBS by the police under the additional requirements of s113B(4) of the Act (above). In order to identify if a police force holds information of a type that may be disclosed under section 113B(4) of the Act, the DBS refers the application to relevant police forces to

confirm the existence of any relevant criminality information held at local level, which could include overseas information.

There is no other international system available to DBS to identify overseas convictions. The DBS is not, therefore, aware of overseas criminality information unless it is passed from international law enforcement agencies to UK forces and recorded on their systems. DBS guidance for employers, therefore, sets out that DBS does not access overseas criminal records.

The DBS is unable to establish a reliable international data flow guaranteeing the provision of information to the level disclosed in England and Wales. The DBS does not have the agreement and cooperation of each country and in some cases individual law enforcement agencies, where policing is not carried out at a national level, that would be necessary to enable this. There does however exist provision enabling employers to request further evidence of good conduct for those applicants who have lived outside of the UK directly from the country concerned.

Advice in this regard and reference to the appropriate Home Office guidance is published on the DBS website and is attached as Appendix A. The Home Office published guidance provides information as to how to apply to a number of countries, including the Republic of Ireland, for an overseas criminal records check. Home Office guidance is attached as Appendix B.

The decision to carry out an overseas check is made by the employer and forms part of their risk assessment to be used in conjunction with their other pre-employment checks. DBS guidance states that the DBS check is only one component of an employer's recruitment practices and the employer should decide on whether to obtain an overseas check on applicants who have lived or worked abroad, where there is not a statutory requirement to do so.

In conclusion, under the existing statutory arrangements, there is provision to disclose criminality information from overseas on DBS certificates, but DBS has not considered the appropriateness or not of further statutory requirements and no further action is proposed. Consideration of further statutory obligations is a matter for the Home Office and Parliament. However, as I have explained above, there are considerable practicable limitations in gaining access to and sharing such information.

I hope that this response provides you with assurance that measures are in place to support employers to make safe recruitment decisions.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'S. M.', is written on a light-colored rectangular background.A solid black rectangular redaction box covering the name of the signatory.

DBS Chief Executive

Appendix A

Overseas applicants

Checking via the DBS

DBS cannot access criminal records held overseas, but it is possible to submit an application while the applicant is overseas.

In a small number of cases, overseas criminal records are held on the Police National Computer (PNC) and these would be revealed as part of a criminal record check. You must still verify the identity of an overseas applicant.

As the DBS cannot access criminal records held overseas, a criminal record check may not provide a complete picture of an individual's criminal record.

Checking via embassies

If you are recruiting people from overseas and wish to check their overseas criminal record, you should contact the embassy or High Commission of the country in question.

You can also contact the FCO Response Centre on 020 7008 1500.

If the foreign check needs translating, the embassy of the country concerned may be able to help.

The DBS is not involved in the processing of applications made by individuals to overseas authorities and will not be responsible for the contents or the length of time taken for information to be returned.

Certificates of good conduct

You should try to obtain a certificate of good conduct, and any other references, from potential overseas employees. The standard of foreign police checks varies. For more information about a specific standard, you should contact the authorities in a particular country, or their embassy.

The DBS does not offer a translation service, so either you (or the employee) should obtain a certified translation of the certificate of good conduct

Appendix B

Statutory requirements for UK employers when carrying out checks on prospective employees who have spent time abroad

There are some statutory requirements for employers to carry out such checks in the health and education sectors, but elsewhere it is only best practice to do so.

For further guidance regarding applicants who have lived or worked outside of the UK, please see paragraphs 75/76 in the [Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges](#) guidance from the Department for Education (DfE).

It is not always possible to obtain a certificate from countries that do not have functioning criminal record regimes or refuse to provide these to anyone other than their own citizens.

Ireland, Republic of

Who can apply?

- any person who is resident or has resided in the Republic of Ireland
- the individual must directly apply. Third party representatives may be appointed to apply on their behalf.
- Northern Irish (NI) applicants cannot apply through this scheme and must visit [Access Northern Ireland](#) for further information and guidance

What must the applicant supply?

Applicants for police certificates should make an application in writing to the superintendent in charge of the district wherein they reside, or formerly resided, in the Republic of Ireland. Please go to our [station directory](#) to find out who your district superintendent is.

Your application in writing should include the following:

- your full name as on your birth certificate including your maiden name if applicable
- your date and place of birth (or a copy of your birth certificate)
- your current address
- all addresses at which you have lived at in Ireland and when you lived there
- the place and purpose for which you require the certificate

You should also include with your application:

- a copy of your passport, driving license or similar for identification purposes
- a stamped, self addressed envelope

What are the costs/turnaround times?

There is no charge for this certificate.

Contact details

Requests can be written free-formed, or via a [downloadable application form](#)