

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.

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 who fall under the remit of the National Care Standards 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 client group is vulnerable, the risks involved are minimal because of the way that they work.

Under the Rehabilitation of Offenders Act, ex-offenders normally have the right not to reveal spent (old) convictions. However, where work involves contact with 'vulnerable' people, organisations can require applicants to declare spent convictions too. 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
 - a physical or mental illness, chronic or otherwise, including and addiction to alcohol or drugs
 - a substantial reduction in physical or mental capacity due to advanced age.

It is fairer to let people know from the outset that they will be required to reveal this information. One form of wording is:

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

You may also want 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 have a criminal conviction. If your organisation discriminates against ex-offenders, you could well be losing out on valuable volunteers.

The New Criminal Records Bureau

There has been a huge amount of publicity over the last couple of years for the new criminal records checks. Charities will have much greater access to information about potential volunteers than ever before. Access will be uniformly available throughout the country. However, there is still a great deal of confusion in the sector about how the system will work, who is eligible to use it, and what the pros and cons of the new checks will be.

After numerous child abuse scandals, public calls for tighter checks on individuals working with children meant that the system had to be reviewed. The government decided that in order to make checks efficient, fair and equitable throughout the UK, a body was needed that would specifically deal with them. It was announced in 1998 that a self-financing, privately managed 'Criminal Records Bureau' (CRB) would be set up.

The CRB deals with the paperwork and day-to-day bureaucracy of checking and gives support to police stations to actually carry out the checks. Police forces struggling with the extra work that checks create are being given cash injections. The general idea is that employers anywhere in the country will be able to receive up-to-date checks on an individual within an agreed time-scale. This means that not only will more organisations working with children have access to checks, but also that organisations working with vulnerable adults will be able to check staff and volunteers.

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

- **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 lists held by the Department for Education and Employment and the Department of Health of individuals unsuitable to work with children. In addition, they will include any other 'relevant' information held by the police, including so-called 'soft' information. Enhanced Disclosures will be free for volunteers and will cost £12 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 information held by the police. Standard disclosures will be free for volunteers and will cost £12 for staff.

- **Basic Disclosure**

Available for anyone. Contains details of convictions that are 'unspent' under the Rehabilitation of Offenders Act. These checks are of limited use and will probably not be used widely in the voluntary sector. The charge for Basic Disclosures has not been announced yet, but it is unlikely that they will be free for volunteers as they are not seen as a vital check.

Enhanced and Standard Disclosures are currently available and can only be issued to registered organisations for posts that fit the requirements. Disclosures will be posted out both to the organisation and to the individual. Basic Disclosures will not be available until later in 2002. They will be issued directly to individuals, who can then show them to organisations themselves when applying for a position.

In order to get Enhanced and Standard Disclosures, organisations need to become registered bodies. Registration forms are available from the CRB on the website or phone number below. To register, organisations will need to:

- pay a £300 fee
- satisfy the CRB that they are 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 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.

If organisations cannot afford the £300 registration fee themselves, then it is also possible to get disclosures via an 'umbrella body'. Where appropriate, an umbrella body 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 all the extra administration, umbrella bodies have to charge organisations for checks. Inevitably, therefore, some private companies have taken on an umbrella role and are hoping to operate at a profit.

The current situation

The Criminal Records Bureau became fully operational on 1 April 2002. From that date, all organisations needing to police check their volunteers have had to access checks through the CRB. At the moment it is difficult to judge exactly how well the system is working, so it is impossible to draw any firm conclusions. However, there do seem to be teething troubles, and many organisations are having problems accessing checks.

The biggest problem seems to be that many organisations are unable to afford the £300 registration fee and need to access checks through umbrella bodies. Because of the extra work and responsibility involved this role, there are not many umbrella bodies in the voluntary sector, so many organisations are struggling to find one and hence are unable to access checks. There is a list of umbrella bodies on the CRB website (<http://www.disclosure.gov.uk>), but few of them are national and there are large areas of the country that are not covered.

Organisations that have set themselves up as umbrella bodies are also encountering some problems. They are finding that the demand from organisations to access checks via them is huge and they are being obliged to set criteria (generally type of group or geographical) to limit the number of groups who can register with them. It seems as though those groups that 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 only option open to them is to charge a higher fee per disclosure to cover staffing costs.

This means that although checks for volunteers are free to registered bodies, most of these bodies are charging because of the administration and time involved. They are allowed to charge any rate they want, and at the moment charges seem to vary from £5 per disclosure to £15. The CRB charges £12 for checks on staff, so organisations accessing disclosures for staff through an umbrella body may find themselves paying up to £27 for a check. Obviously it is more cost-effective for an organisation that has a lot of staff and volunteers to register themselves, as they would fairly quickly recoup the one-off £300 fee. However, organisations who can't afford to register, or who only have short-term volunteer projects, may find themselves having to pay quite a lot for volunteer checks.

Even organisations who are registered or who have managed to find themselves an umbrella body are encountering problems. The CRB has been absolutely swamped with requests for checks and the system does not seem to be coping. Organisations are reporting delays in receiving the necessary forms, huge delays in receiving disclosures and difficulties in getting to get through to the CRB on the phone. These complaints are not confined to the voluntary sector. It has been reported in the national press that agencies providing supply teachers have found themselves unable to work because, despite registering with the CRB and filling out the necessary forms, they have not received the necessary disclosures back.

There have also been reports that the service that the CRB offers is not accessible. Many organisations have opted not to fill out disclosure forms themselves but to get applicants to ring the CRB direct. Most made this decision after being reassured that the CRB offered a service to people speaking a variety of community languages. This service does not seem to be working and potential applicants have found themselves struggling with a list of sensitive questions about, for example, their addresses over the last five years, their National Insurance number and their passport number. The system also

assumes that everybody will have either a passport or a driving licence, and makes little effort to suggest what other forms of ID may be appropriate. This may prove to be a further barrier to groups who are already socially excluded from many areas of volunteer work.

At the moment it seems as if there are many problems with the CRB but it is difficult to assess whether this is just because only bad news is filtering through. 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 helpline on 0800 028 3304

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 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, particularly since discrimination could infringe an individual's rights under the new Human Rights Act. 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. 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
- 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.

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.

Further Information

The CRB produces a number of booklets on the new disclosures, and its website contains a lots of useful downloads, including all the relevant acts and legislation. It also includes registration forms and information about training events.

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

or phone 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>

If you want further information about the CRB, how the Human Rights and Data Protection Acts affect volunteers, or advice on writing a confidentiality policy, you can e-mail the Volunteering England information service at

information@volunteeringengland.org or ring the free helpline on 0800 028 3304.