



# Practical guidance on DBS filtering

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## Introduction

In January 2013, the Court of Appeal ruled that the Police Act 1997 and the Rehabilitation of Offenders Act Exceptions Order 1975 (the Exceptions Order) were incompatible with a person's right to protect their private life under Article 8 of the European Convention on Human Rights.

The ruling came about after two individuals launched a legal challenge (in the case [T and another v Secretary of State for the Home Department and others](#)) because they faced significant barriers due to previous cautions and final warnings having to be disclosed on enhanced criminal record checks when they applied for education and job opportunities.

The government appealed the judgement, but in June 2014, the Supreme Court dismissed the government's appeal, as the Court deemed the Police Act 1997 and the Exceptions Order interfered with an individual's human rights in a way which did not meet the requirements of a democratic society and did not contribute to any adequate assessment of risk.

In passing judgement, Supreme Court Judge Lord Reed pointed to "a lack of rational connection between dishonesty as a child and the question of whether, as an adult, the person might pose a threat to the safety of the children with whom he comes into contact."

## What is filtering?

In response to the original judgement (in the Court of Appeal), the government introduced a filtering system to remove certain cautions and convictions from standard and enhanced DBS certificates.

Previously, if a role was 'exempt' from the Rehabilitation of Offenders Act 1974 (ROA), an employer was entitled to know about an applicant's (or existing employee's) full criminal record history. This meant that all convictions, cautions, reprimands and final warnings held on the Police National Computer (PNC) were disclosed on standard and enhanced DBS (formerly 'CRB') checks until a person reached 100 years of age.

However, on 29 May 2013, the changes made to legislation allowed for certain minor offences to be removed or 'filtered' from standard or enhanced certificates, which are also known as DBS checks. These changes are only applicable in England, Wales and Northern Ireland. In Northern Ireland standard and enhanced certificates are provided by [Access NI](#), not the DBS; [filtering provisions](#) were introduced in Northern Ireland in 2014.

Offences that are eligible to be filtered no longer need to be disclosed by the applicant for jobs that require standard or enhanced DBS checks (filtering is not applicable to jobs that are 'exempt' from the ROA, but do not require DBS checks e.g. the police). It is unlawful for an employer to take into account a caution or conviction that is 'protected' (the legal terminology for a caution or conviction that has qualified for filtering) and would therefore not be disclosed on a DBS check, when making a decision to employ a person (or dismiss an existing employee).

Many employers (and applicants) struggle to understand the complexities of the filtering regime; this practical guidance for employers and applicants aims to reduce some of the complexity that they experience by providing a step-by-step approach to understanding all aspects of the filtering process. It should be read in conjunction with the [DBS filtering](#) guidance and the [DBS list of specified offences that will never be filtered](#).

For further comprehensive advice, support or training on filtering please contact Nacro's Resettlement Advice Service:

Employers can contact our **Employer Advice Line** on tel **0845 600 3194** or via email [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk).

Applicants can contact our **helpline** on tel **0300 123 1999** or email [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk).

Alternatively, visit the Nacro website at [www.nacro.org.uk](http://www.nacro.org.uk)

## Guidance for employers

It is the responsibility of employers to update their recruitment application forms and online portals to ensure that:

1. They ask the correct criminal record declaration question in line with the legal requirements.
2. The question is not framed in a way which leads to an applicant inadvertently disclosing a caution or conviction that would be filtered off a DBS check.

The simplest way of achieving this is to use the following criminal record declaration question as advised by the Ministry of Justice, Disclosure and Barring Service and Nacro:

### Criminal record declaration for DBS roles

Do you have any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)?

In order to reduce the potential for non-disclosure from the applicant (or existing employee), Nacro recommends that employers direct applicants (and employees) to the DBS filtering guidance, and also to the Nacro comprehensive guidance on how to work out whether or not they would need to disclose a prior conviction, caution, reprimand or final warning for the position applied for.

### Example policy statement

The post you are applying for is 'exempt' from the Rehabilitation of Offenders Act 1974 and therefore, you are required to declare any convictions, cautions, reprimands and final warnings that are not 'protected' (i.e. filtered out) as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). The amendments to the Exceptions Order provide that certain 'spent' convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account.

Guidance and criteria on the filtering of these cautions and convictions can be found on the Disclosure and Barring Service [website](#). Further information can also be found on the Nacro [website](#).

## What are the filtering rules?

### For adults

An adult conviction will be removed from a DBS check only if:

1. 11 years have elapsed since the date of conviction
2. It is the person's only conviction
3. Conviction did not result in a custodial or suspended sentence
4. Conviction does not appear on the [list of specified offences](#)

An adult caution will be removed after 6 years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the amount of cautions that can be filtered.

### For juveniles

A juvenile conviction will be removed from a DBS check only if

1. Five and a half years have elapsed since the date of conviction
2. It is the person's only conviction
3. Conviction did not result in a custodial or suspended sentence
4. Conviction does not appear on the [list of specified offences](#)

A youth caution, reprimand or final warning will be removed after 2 years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the amount of cautions, reprimands or final warnings that can be filtered.

### Key considerations for employers

- It is unlawful to carry out a standard or enhanced DBS check for a role which is not 'exempt' from the ROA or included in the Police Act Regulations, where applicable, and therefore not eligible for a DBS check.
- It is unlawful to require an applicant to disclose a 'protected' conviction, caution, reprimand or final warning, which would be filtered off a DBS check.
- It is unlawful to require an applicant or existing employee to carry out an 'enforced subject access request, i.e. provide a copy of their full criminal record directly from the police, prison, probation service or courts.
- Applicants are not legally required to disclose fixed penalty notices (FPNs), penalty notices for disorder (PNDs) or other disposals that are not convictions, cautions, reprimands or final warning.
- Applicants are not legally required to disclose allegations, arrests or not guilty verdicts.

## How does an applicant work out whether their caution or conviction is eligible for filtering?

### Step 1: Obtain a copy of subject access request (police record)

An individual cannot carry out a DBS check on oneself, therefore if a person is planning to apply for jobs which require a standard or enhanced DBS check it is important for them to work out exactly what they need to disclose.

Unless a person knows exactly what information is held about them on the Police National Computer (PNC), it will be very difficult. Therefore, Nacro recommends that the applicant first obtains a copy of their police subject access request.

The subject access request is a full copy of the person's criminal record. It costs only £10, but it can take up to 40 days for the police to produce.

Applicants can either contact their local police force to obtain a copy or use the following [link](#).

### Step 2: Assess disclosure requirements of cautions, reprimands or final warnings

Once the applicant receives a copy of the subject access request then they can work out exactly what convictions, cautions, reprimands or final warnings need to be disclosed – if they need to disclose any at all.

If the applicant received any youth cautions, reprimands or final warnings as a juvenile (under 18), they would need to calculate whether 2 years has passed since date of issue. Any that are still within the 2-year period would need to be disclosed. Any that have passed the 2-year period would then have to be checked against the DBS list of offences that will never be filtered.

Any of the youth cautions, reprimands or final warnings that appear on the DBS list of offences that will never be filtered must be disclosed.

Any of the youth cautions, reprimands or final warnings that do not appear on the DBS list of offences that will never be filtered should not be disclosed.

Next, if the applicant received any cautions as an adult (aged over 18), they would need to calculate whether 6 years has passed since date of issue. Any that are still within the 6-year period would need to be disclosed. Any that have passed the 6-year period would then have to be checked against the DBS list of offences that will never be filtered.

Any of the cautions that appear on the DBS list of offences that will never be filtered must be disclosed.

Any of the cautions that do not appear on the DBS list of offences that will never be filtered should not be disclosed.

### **Step 3: Assess disclosure requirements of convictions**

Next, the applicant needs to work out whether they have more than one conviction. If so, then the applicant would need to disclose all convictions as they would never be filtered.

If the applicant has only been convicted once in a single court proceeding, but the police record shows more than one conviction (or count), or multiple offences, then for filtering purposes, this is considered more than one conviction and therefore all the convictions must be disclosed.

Next, if the applicant has only been convicted once in a single court proceedings and the police record shows the offence is recorded as a single conviction, then the applicant needs to calculate whether the sentence was a custodial sentence (including detention and training centre orders, youth offending institutions, secure training centres, service detention, public protection sentences or a suspended custodial sentence). If so, then the conviction is not eligible for filtering and therefore must be disclosed.

Next, if the applicant has only received a single conviction, which is not a custodial sentence or a suspended custodial sentence, then applicant would not need to disclose the conviction if 11 years have elapsed since the date of conviction if over 18 when convicted; or if 5 ½ years have elapsed since date of conviction if under 18 when convicted.

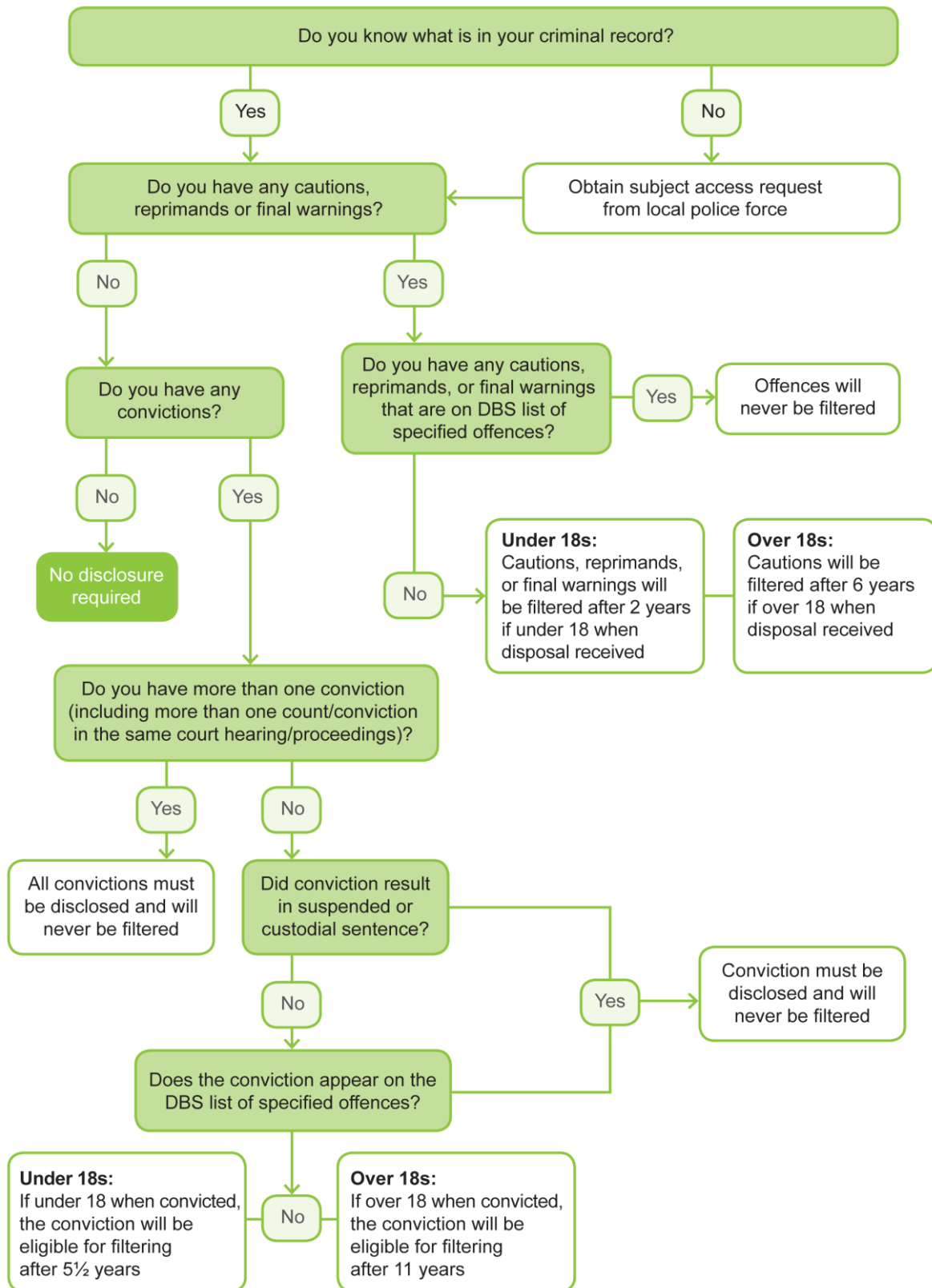
If not, then the applicant must disclose the conviction as it would never be filtered.

If the relevant time period has elapsed, then the applicant must check the DBS list of offences to determine whether the offence appears. If so, then the offence is not eligible for filtering and therefore must be disclosed. If the offence does not appear on the DBS list of offences then the offence is eligible for filtering and therefore must not be disclosed.

### **Step 4: Prepare for disclosure if required**

If the applicant is required to disclose any convictions, cautions, reprimands or final warnings, then Nacro advise that they should prepare a disclosure statement to present to the employer (in a sealed envelope marked confidential) using the Nacro guidance on [disclosing convictions](#).

## Filtering process flowchart



## Filtering FAQs

### **Do I need to disclose filtered offences for jobs that are subject to standard or enhanced Disclosure and Barring Service (DBS) disclosures?**

No. If your conviction and/or caution(s), reprimand(s), final warning(s) have been filtered, you do not need to disclose these for future job applications that are subject to standard or enhanced DBS checks. Please see the [DBS guidance](#) for more information.

Some jobs are not covered by filtering and are subject to other forms of vetting e.g. the police. In such cases, the employer may be entitled to ask about, and receive information about, all convictions, cautions, final warnings and reprimands, regardless of whether they are 'spent' under the Rehabilitation of Offenders Act and regardless of whether they are eligible for filtering from DBS checks.

### **Is my caution/reprimand/final warning eligible for filtering?**

If you have received a caution or cautions as an adult (18+), these will be eligible for filtering as long as:

1. The caution was not for an offence on the DBS list of specified offences that will never be filtered
2. Six years or more have elapsed since the caution/cautions were issued

If you received a youth caution/ cautions, reprimand/reprimands or final warning/warnings (under the age of 18), these will be eligible for filtering as long as:

1. The youth caution, reprimand/ or final warning was not for an 'exempt' offence
2. Two years or more have elapsed since the reprimand/final warnings were issued

### **What if I have more than one caution/reprimand/final warning?**

Any number of cautions, reprimands or final warnings are eligible to be filtered as long as they meet the above criteria. If one or more of the cautions, reprimands, or final warnings is for an offence on the DBS list of specified offences that will never be filtered offence, it will continue to be disclosed. Any that are not on the list will be filtered after the relevant time period has elapsed.

### **Is my conviction eligible for filtering?**

If you were convicted for a criminal offence as an adult, your conviction will be eligible for filtering as long as all of the following criteria apply:

1. You have only one conviction
2. You did not receive a prison sentence or suspended prison sentence for the conviction
3. The conviction was not for an offence on the DBS list of specified offences that will never be filtered
4. 11 years or more have elapsed since the conviction



If your conviction does not meet all of the above criteria, it will not be eligible for filtering and will continue to be disclosed on your standard or enhanced DBS disclosure until you reach 100 years of age.

If you were convicted for a criminal offence as a juvenile, your conviction will be eligible for filtering as long as all of the following criteria apply:

1. You have only one conviction
2. You did not receive a prison sentence, suspended prison sentence or a detention order for the conviction
3. The conviction was not for an offence on the DBS list of specified offences that will never be filtered
4. Five and a half years or more have elapsed since the conviction

If your conviction does not meet all of the above criteria, it will not be eligible for filtering and will continue to be disclosed on your standard or enhanced DBS disclosure until you reach 100 years of age.

### **What if I have more than one conviction?**

If you have more than one conviction, none of your convictions will be eligible for filtering, regardless of the offences and regardless of your age at the time of the convictions.

### **What if I have a caution and a conviction on my record?**

As long as the caution and conviction meets the eligibility criteria above, both would be filtered from your DBS check.

If the caution does not meet the eligibility criteria, but the conviction does, the conviction will be filtered and the caution will remain on your disclosure.

If the conviction does not meet the eligibility criteria, but the caution does, the caution would be filtered and the conviction will remain on your disclosure.

### **What if I have an absolute or conditional discharge?**

Absolute or conditional discharge orders are given upon conviction of an offence (i.e. admitting guilt or being found guilty). For this reason, they do form part of your criminal record and will be treated in the same way as other convictions for the purposes of filtering.

### **What if I have a bind over?**

If you admit guilt or are found guilty of a criminal offence and the court imposes a bind over, this will form part of your criminal record and will be treated in the same way as other convictions for the purposes of filtering.

## What if I have a hospital order?

For the purposes of filtering, a hospital order is not considered a custodial sentence. However, a hospital order results from a conviction and therefore filtering will or will not apply depending on the offence committed.

## Can a caution that has been filtered become unfiltered in the future?

No. If you have had a caution filtered from your DBS check, it will remain filtered even if you are later cautioned or convicted for another offence.

## Can a conviction that has been filtered become unfiltered in the future?

Yes. If you have a conviction that has been filtered from your DBS check, a subsequent further conviction will result in both convictions being disclosed on future DBS checks. Only one conviction may be filtered, so if you have more than one conviction, all convictions will be disclosed regardless of the offence committed.

## Can a 'protected' caution or conviction be disclosed as police intelligence?

Yes. A chief officer may include details relating to an otherwise filtered conviction, caution, reprimand or final warning on an enhanced DBS if s/he considers, having regard to all the circumstances, that the filtered disposal is relevant and that it ought to be disclosed. A filtered disposal may also continue to be considered by the DBS for the purposes of making a barring decision. There is no such ability to add a filtered disposal back in to a standard disclosure certificate.

## Do I need to disclose fixed penalty notices or penalty notices for disorder?

No, the filtering provisions relate to information that will be included on standard and enhanced DBS checks that are of 'relevant matters' as defined under the Police Act 1997, meaning convictions, cautions, reprimands and final warnings.

As Fixed Penalty Notices do not fall under the definition of a 'relevant matter', they would not be automatically released on a DBS check, and as such are not subject to the filtering provisions.

### Disclaimer

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**Nacro's employer advice line**

**Tel: 0845 600 3194**

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