



DBS EMPLOYING PERSONS WITH CRIMINAL CONVICTIONS PROCEDURE



Document Status	Final
Version:	V 3.0

Document Change History		
Initiated by	Date	Author (s)
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Version	Date	Comments (i.e. viewed, or reviewed, amended approved by person or committee)
V2.0	6 December 2013	SPF Chairs sign off amendments following changes from CRB to DBS
V3.0	10 Jan 2014	SPF Ext April 2013 + April 2016

Document Reference	HR Directorate
Recommended at Date	Staff Partnership Forum November 2011
Approved at Date	Executive Management Team 1 February 2011
Review date of approved document	April 2016
Equality Impact Assessment	Completed
Linked procedural documents	Recruitment and Selection Procedure Driving Licence Procedure
Dissemination requirements	All managers and staff, via staff bulletins and the intranet
Part of Trust's publication scheme	Yes / No? YES

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1. Procedure Statement

- 1.1 The Trust is committed to implementing fair and effective procedure and practice for recruiting and retaining people with criminal convictions based on a full assessment of the risks involved.
- 1.2 This procedure has been developed in accordance with recommended DBS and Chartered Institute of Personnel and Development (CIPD) guidelines, and has been written in partnership by management and staff side.

2. Scope

- 2.1 This Procedure applies to all:
- staff employed by the Trust
 - applicants to posts in the Trust

- casual workers
- volunteers

3. Access to the Procedure

- 3.1 All employees, applicants to posts, casual workers and volunteers are entitled to access to this procedure which is located in the Human Resources Policies and Procedures Folders and/or on the Trust's Intranet. Copies are also available from the Human Resources Department.
- 3.2 Any employee or casual worker can seek guidance from line management, their trade union representative or the Human Resources Department.
- 3.3 External applicants to posts and volunteers can seek guidance from the Human Resources Department by calling their nearest office in either Bedford 01234 243200, Chelmsford 01245 443344, or Norwich 01603 424255.
- 3.3 Individuals and managers may also wish to consult related Trust procedures such as the DBS Criminal Record and Barring Checks Procedure and the DBS Storage and Handling Procedure

4. Roles and Responsibilities

- 4.1 The Human Resources Department is responsible for keeping the provisions within this procedure in line with employment legislation and best practice people management principles such as those set out in the DBS Code of Practice Guidelines.
- 4.2 Managers, HR staff and trade union representatives are responsible for providing advice and guidance to employees on the application of this procedure. Advice for applicants, casual workers and volunteers will be provided by the Human Resources Department.
- 4.3 Management and trade union representatives are responsible for bringing any mutually beneficial improvements to this procedure to the attention of the Trust.

5. Gathering Information

- 5.1 The Trust should advise in any advertisement, recruitment briefs to agencies recruiting on our behalf and contractors if a Criminal Record Check will be required, particularly if the job is exempted from The Rehabilitation of Offenders Act (ROA) 1974.
- 5.2 Applicants should be informed at the outset if criminal record information will be requested from them. This will provide a basis for the applicant to decide whether or not to apply for the post. This information will be used only to assess the applicant's suitability for employment insofar as it is relevant as assessed in line with the principles outlined within this procedure.
- 5.3 Where the Trust decides to ask applicants about criminal records, it will do so in such a way as to encourage honesty. For example, by issuing a statement expressing its willingness to consider ex-offenders.
- 5.4 Any information relating to criminal records required from applicants will be sought before making a final recruitment decision. At this stage, where appropriate, an application will be made to the relevant body for a Criminal Record Check.

5.5 The process for dealing with Disclosure Certificates received at the point of a job offer is outlined in Appendix 1.

6. Limitations of Disclosure

6.1 It is acknowledged that where information is revealed by a Standard or Enhanced check, the Disclosure will generally only provide the basic facts such as the name, date of offences and the associated sentence. It will not put them into context.

6.2 Disclosures may not provide information on people convicted abroad, although the DBS will draw on data on the Police National Computer.

6.3 Disclosure information should not be relied upon as the sole means to determine suitability. They should support rigorous recruitment checks, not replace them.

7. Additional Information

7.1 The Protection of Freedoms Act removed the provision that the Police would make additional information available to a potential employer without that information ever being disclosed to the applicant. This has been removed to ensure transparency and openness of the disclosure process.

7.2 As part of their common law powers, the Police will still be able to share relevant information with prospective employers. This decision is made by the police service who will assess the relevance and reliability of local information, in relation the position applied for.

8. Assessing the Relevance of Criminal Records

8.1 The Trust acknowledges that deciding on the relevance of convictions to specific posts is not an exact science. In some cases the relationship between the offence and the post will be clear enough for the Trust to decide easily on the suitability of the applicant for the job. In other cases the suitability for employment of a person with a criminal record will be less clear and will vary depending on the nature of the job and the details and circumstances of any convictions.

8.2 The Trust will weigh up an assessment of an applicant's skills, experience and conviction circumstances against the risk assessment criteria for the job as outlined in Appendix 2.

8.3 An applicant's criminal record will be assessed in relation to the tasks that they will be required to perform and the circumstances in which that work will be carried out.

8.4 In line with best practice, the Trust will consider the following points when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers or clients?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct contact with the public?
- Will the nature of the job present any opportunities for the post holder to re-offend in the course of work?

8.5 For a preferred candidate(s) who has met the requirements of the person specification and has disclosed a criminal record, the relevance of each offence will be considered by the Trust and/or where appropriate discussed with the applicant, taking into account the following issues:

- the seriousness of the offence and its relevance to the safety of other employees, customers, clients or property;
- the honesty of the applicant in disclosing the information when requested;
- the length of time since the offence occurred;
- any relevant information offered by the applicant about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties;
- whether the offence was a one-off, or part of a history of offending;
- whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely;
- whether the offence has been decriminalised by Parliament;
- the country in which the offence was committed. Some activities are offences in Scotland and not in England and Wales, and vice versa;
- the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

8.6 A summary of the process for assessing the job for risk is included within Appendix 2.

9. Managing Sensitive Information

9.1 The Trust will ensure that information regarding offences is kept confidential, so that applicants feel confident that information about their convictions will not be disclosed to anyone unless there is a specific reason for doing so.

9.2 Only persons directly involved in recruitment will be informed of an applicant's criminal record.

9.3 On request, a successful applicant will be informed who in the organisation has been told about the conviction and the reasons for this. If the individual's line manager was not directly involved in the recruitment process, they will only be informed of the offence if it is directly connected with the job.

9.4 Offence information will be stored and handled in accordance with the Trust's Storage and Handling Procedure.

10. Recruitment Decisions

10.1 Recruitment decisions will be made on the basis of all information released by the Disclosure and Barring Service, in accordance with good recruitment practice.

10.2 If the decision is made to withdraw a provisional offer of an appointment, the applicant will be informed of that decision. It may be that matters revealed in the Disclosure certificate justify such a decision or, provides evidence that, in the view of the Trust, the applicant is unsuitable for the position.

11. Reviewing Policies and Procedures

- 11.1 The Trust is committed to involving managers, employees and their representatives in its development of procedure on employing people with criminal records.
- 11.2 All new posts will be reviewed by the Human Resources Department in conjunction with relevant management to assess whether they involve any risk.
- 11.3 Staff involved in recruitment will be provided with guidance on the employment of ex-offenders and the Rehabilitation of Offenders Act.
- 11.4 The Trust will provide all unsuccessful applicants with relevant feedback related to their convictions.

12. Seeking Disclosure For An Existing Employee Found To Have a Criminal Record

- 12.1 All employees are contractually obliged to disclose any convictions, cautions, reprimands or warnings, which would not be filtered in the line with the new DBS guidance (see Section 14.3 below).
- 12.2 If it becomes appropriate to seek Disclosure information in relation to an existing employee and it is found that they have failed to disclose any unspent convictions, cautions, reprimands or warnings, the Trust will firstly establish whether the conviction is relevant to the post.
- 12.3 All new information will then be assessed in terms of relevance to the job as per Section 8 of this procedure.
- 12.4 If information is found to be relevant and serious, the Trust will consider a range of options, which might include the introduction of safeguards where this is reasonably practical and/or movement to another job or, potentially dismissal.

13. Enhanced Checks With Barred List Information and Regulated Activity

- 13.1 Employers have a legislative requirement to request barring checks for employees and prospective employees in positions defined as regulated activity under the Protection of Freedom's Act 2012, which amended the Safeguarding Vulnerable Groups Act 2006.
- 13.2 Regulated Activity is defined by the Safeguarding Vulnerable Groups Act 2006 as amended, principally by the Protection of Freedoms Act 2012 and includes roles where individuals are required to work unsupervised with children or working with adults in the categories defined below:
 - Healthcare
 - Personal care
 - Social work
 - Assistance with cash, bills or shopping
 - Assistance with the conduct of their own affairs
 - Conveying services
- 13.4 It is an offence for any organisation to 'knowingly' appoint or continue to allow an individual who is barred from working with children and/or adults to engage in a regulated activity with that group.

13.5 The barring checks are accessed through the process of applying for an enhanced criminal record disclosure.

14. The Rehabilitation of Offenders Act 1974

14.1 The Rehabilitation of Offenders Act 1974 enables criminal convictions to become `spent`, or ignored, after a `rehabilitation period`. After this period, with certain exceptions, a person with a conviction is not normally obliged to mention it when applying for a job. The Act is more likely to help people with few and/or minor convictions because further convictions usually extend rehabilitation periods. People with many convictions, especially serious convictions, may not benefit from the Act unless the convictions are very old.

14.2 Rehabilitation Periods

The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served (refer to table below). Custodial sentences of more than two and a half years can never become spent.

Sentence / disposal	Rehabilitation Period for people aged <u>under 18</u> when convicted	Rehabilitation Period for people aged <u>18 or over</u> when convicted
Imprisonment or detention in a young offender institution for over 30 months (2 ½ years)	Never spent	Never spent
Imprisonment or detention in a young offender institution over 6 months but not exceeding 30 months (2 ½ years)	5 years	10 years
Imprisonment up to 6 months	3 ½ years	7 years
Fine	2 ½ years	5 years
Community Sentence	2 ½ years	5 years
Conditional discharge	The period of the order, or a minimum of 12 months (whichever is longer)	The period of the order, or a minimum of 12 months (whichever is longer)
Absolute Discharge	6 months	6 months
Conditional caution	3 months	3 months
Simple caution, Reprimand, Final Warning	Spent immediately	Spent immediately

14.3 Filtering

14.4 On 29 May 2013, legislation came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure under the Exceptions Order (1975), this is known as filtering. In addition employers will not be able to take certain old and minor cautions and convictions into account when making decisions about an individual and their employment with the Trust.

14.5 Under the new provisions of the Exceptions Order 1975 (2013) as described in 14.4 above, all cautions and convictions for specified serious violent and sexual offences and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults will remain subject to disclosure. In addition, all convictions resulting in a custodial sentence will remain subject to disclosure. Guidance on the filtering rules and offences that will never be removed from a certificate can be found at www.gov.uk/dbs.

15. Glossary of Terms

Cautions

Given when there is sufficient evidence for a conviction but it is not considered to be in the public interest to institute criminal proceedings. Cautions have traditionally been used most for juvenile and first time offenders.

Code of practice

Code published by the DBS that sets out the requirements with which organisations using Disclosure information must comply.

Conviction(s)

Arise from offences tried at court.

Criminal records

Contain details of convictions, as well as cautions, reprimands, final warnings, etc.

Fidelity bonding

A form of insurance that organisations can buy to protect themselves against loss of money or property caused through the dishonest acts of employees. Also known as Fidelity Guarantee Insurance.

Police National Computer

The central police database against which all checks will be made.

Registered body

An employer or other agency registered with the DBS to administer Standard and Enhanced Disclosures.

Schedule Four offence

Under the Criminal Justice and Court Services Act 2000, adults convicted of a Schedule Four offence and given a hospital or guardianship order or a custodial sentence of 12 months or more are banned from working with children.

16. Useful Organisations

Advisory, Conciliation and Arbitration Service

Head Office: Brandon House, 180 Borough High Street, London SE1 1LW
Tel: 020 7210 3613 Website: www.acas.org.uk

Chartered Institute of Personnel and Development

CIPD House, Camp Road, London SW19 4UX
Tel. No. 020 8971 9000 Website: www.cipd.co.uk

Disclosure and Barring Service

PO Box 110, Liverpool L69 3EF

Tel: 0870 90 90 811 Website:

www.gov.uk/DBS

Code of Practice for Registered Bodies, DBS

Department for Education and Skills – Adult Disadvantage Policy Division

8th Floor, Moorfoot, Sheffield, S1 4PQ

Tel: 0114 259 4806 Website: www.dfes.gov.uk

Department of Health

Richmond House, 79 Whitehall, London SW1A 2NL

Tel: 020 7210 4850 Website: www.doh.gov.uk

The Protection of Children Act 1999: A practical guide for all organisations working with children, Department of Health

Employment Service

236 Grays Inn Road, London, WC1X

Tel: 020 7211 3000 Website: www.employmentservice.gov.uk

Just for the record, Employment Service

Home Office

50 Queen Anne's Gate, London, SW1 9AT

Tel: 020 7273 4000 Website: www.homeoffice.gov.uk

Wiping the Slate Clean, Home Office

Safe from Harm: Safeguarding the welfare of children in voluntary organisations in England and Wales, Home Office

Criminal Justice and Court Services Act 2000: Protection of children guidance, Home Office

Trade Union Congress

Congress House, Great Russell Street, London WC1B 3LS

Tel: 020 7636 4030 Website: www.tuc.org.uk

Rehabilitation of Offenders Act 1974

www.homeoffice.gov.uk/justice/sentencing/rehabilitation/obtain.html

Police Act 1997

www.hmso.gov.uk/acts/acts_1997/1997050.htm

17. Procedure Review

- 17.1 This procedure will be reviewed every three years or more frequently if significant changes to its effective operation are necessary.



