

DBS Disclosure and Recruitment of Ex-Offenders Policy		
Lead: Director of People Services		Status: Approved
Version: 2		Date of version: October 2018
Approving body: Executive Team		Supersedes: August 2017
Approved on: N/A		Next review date: October 2028
Equality Analysis Tool¹		
1.	Is this policy relevant to the public sector equality duty?	Yes
2.	Have any concerns previously been raised about this policy or practice?	No
3.	Is this policy likely to result in discrimination against a protected group?	No
4.	Does this policy positively contribute to the participation of under-represented groups in the Group's activities?	No
Version Control		
Version	Date	Change(s)
2	October 2023	Terminology and definition update
Access		
Location	Yes / No	
Service Centre	Yes	
Document Centre	Yes	
Public Website	Yes	
Communication		
Medium	Audience	

¹ The Screening Template relating to the DBS Disclosure and Recruitment of Ex-Offenders Policy can be found on page 8 of this document.

DISCLOSURE AND RECRUITMENT OF EX-OFFENDERS POLICY

Review Cycle: **Every 5 years**

Next Review Date: **October 2028**

Person Responsible: **Director of People Services**

Approving Body: **Executive Team**

1. Introduction

- The DBS [code of practice](#) published under section 122 of the Police Act 1997 advises that it is a requirement that all registered bodies must treat DBS applicants who have a criminal record fairly and not discriminate automatically because of a conviction or other information revealed.
- The code also obliges registered bodies to have a written policy on the recruitment of ex-offenders; a copy of which can be given to DBS applicants at the outset of the recruitment process.

2. Aims

The policy aims:

- to ensure as large a pool of suitable applicants as possible is attracted to vacancies without unreasonably excluding those with a previous criminal record.
- to be committed to the fair treatment of prospective employees regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
- to deter unsuitable applicants by publicly stating the Group responsibilities in relation to employment vetting.
- to encourage confidence that the Group will not automatically exclude ex-offenders from employment.

3. Detail

On the 29 May 2013, legislation came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure. [Click here for more information on the filtering of conviction information](#)

In addition, employers will no longer be able to take an individual's old and minor cautions and convictions into account when making decisions.

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, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.

Applicants can get further guidance which explains the filtering of old and minor cautions and convictions which are now 'protected' so not subject to disclosure to employers.

The safety and wellbeing of our learners is our utmost priority. The Group aims to adhere strictly to the published guidance provided by the DBS.

However, the Group understands the difficulties experienced by ex-offenders in finding work. We recognise that many ex-offenders have valuable skills to offer and support the principles of rehabilitation. The disclosure of a conviction will not necessarily determine a candidate unsuitable for employment. There are some exceptions, and these include persons disqualified by the Secretary of State by virtue of the Children's Barred List or those debarred by the General Teaching Council.

The Group will adhere to the guidance from the Disclosure and Barring Service (DBS) and the Code of Practice to ensure that Disclosure information is used fairly, appropriately and treated as confidential information.

4. Criminal Record – interpretation

A 'record' is a far wider term than 'criminal conviction'. There are also police records, and these are not criminal convictions. They include cautions, reprimands, final warnings and other information (acquittals and some bind-overs).

Cautions (for adults) are based on the seriousness of the offence. A caution is a warning about future conduct given by a senior police officer after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution. Reprimands and final warnings (for offenders under 18 years old) are issued by the police as an alternative to putting a young person before the court.

4.1 Examples are provided below and on the [Gov.uk website](#):

Cautions

Cautions are given to individuals aged 10 or over for minor crimes - e.g. writing graffiti on a bus shelter.

Individuals must admit to an offence and agree to be cautioned. If this isn't agreed, individuals can be arrested and charged.

A caution is not a criminal conviction, but it could be used as evidence of bad character if there is a requirement to go to court for another crime.

Conditional cautions

A conditional caution, requires individuals to abide to certain rules and restrictions as part of the caution, e.g.:

- going for treatment for drug abuse
- fixing damage to a property

A failure to abide to the conditions may result in being charged with a crime.

The age of criminal responsibility in England and Wales is 10 years old.

This means that children under 10 can't be arrested or charged with a crime. There are other punishments that can be given to [children under 10 who break the law](#).

Children over 10

Children between 10 and 17 can be arrested and taken to court if they commit a crime.

They are treated differently from adults and are:

- dealt with by youth courts
- given different sentences
- sent to special secure center's for young people, not adult prisons

Young people aged 18

Young people aged 18 are treated as adults by the law.

If sent to prison, they'll be sent to a place that holds 18 to 25-year-olds, not a full adult prison.

5. Procedure

5.1 The Recruitment Process

Adverts and recruitment information for each post will contain a paragraph stating that an enhanced disclosure is required.

Applicants will be required to declare criminal records, conviction, cautions, reprimands, and final warnings etc. after they have been shortlisted for interview to avoid discrimination. The following question will be asked:

'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).

5.2 Assessing the Relevance of Criminal Records / Convictions

In the case of a disclosure of a record / conviction, the chair of the recruitment panel will consult with the relevant People Advisor about an applicant's suitability for a role. An individual's criminal background will be assessed against risk to learners and the Group, and a DBS risk assessment will be completed. See the DBS and Safer Recruitment Policy for the risk assessment form.

In assessing the risk, the following may be taken into account:

- Does the post involve unsupervised contact with learners, the public, children or vulnerable adults.
- Does the post involve direct contact with learners or the public.
- The level of supervision that might be needed.
- Whether the offence would create unacceptable risks for other employees, learners or customers of the Group (for example, those with convictions for assault or sexual offences employed to work on a one-to-one basis).
- Whether the post involves direct responsibility for finance or items of value (for example, those with convictions for theft employed looking after items of high value).
- Whether the nature of the job is bound by legal constraints (for example, those with motoring convictions employed in a position which involves driving).
- Whether the nature of the job will present opportunities for the applicant to re-offend in the course of their work.
- Whether the offence or other matter revealed is relevant to the position to which they will be/have been appointed.
- The seriousness of the offence or any other matter revealed and its relevance to the safety of other employees, learners and other customers of the Group.
- The length of time since the offence or other matter occurred.
- 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 reoffending less likely (for example, improved personal circumstances).
- The country in which the offence was committed (for example, some activities are offences in Scotland and not in England and Wales, and vice versa).
- The circumstances surrounding the offence and the explanation(s) of the circumstances which led to the offence being committed, for example the influence of domestic or financial difficulties.
- Whether the offence has since been decriminalised by parliament.
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

Please refer to Appendix A & B.

The Group is entitled to ask applicants to disclose all cautions and convictions, whether spent or not. Applicants with a criminal record must therefore declare **all** previous convictions. If applicants do not disclose any previous convictions, regardless of whether they are spent or not, and which are subsequently disclosed via a Disclosure check, then any offer of employment may be withdrawn.

Any matter revealed in a DBS check will be discussed and assessed with the person seeking the position before withdrawing a conditional offer of employment.

5.3 Confidentiality and Security

The contents of a disclosure will be kept in strictest confidence and made known only to the relevant manager and People Services where appropriate.

The disclosure reference number and date of issue will be entered onto the single central record and the details of any cautions/convictions, and the relevant risk assessment will be stored on the employee's personal file.

6. Communication

The policy will be made available to potential applicants via the website.

Details of the policy will be included in recruitment and selection guidance.

Reference to the policy will be included in recruitment and selection training, ensuring that Managers receive appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

6. Reviews and monitoring

This policy will be reviewed in five years or in the event of any legislative change if sooner.

Appendix A – Assessing the risk

Questions to be considered

1. Will the nature of the post present any realistic opportunities for the applicant to re-offend at work? Nb. It is illegal to employ certain ex-offenders.
2. To what extent is the post bound by legal constraints? For example, those with motoring convictions applying for positions involving frequent driving.
3. Does the position involve any direct responsibility for finance or items of value? For example, those with convictions for theft employed looking after items of high value such as computer equipment.
4. Would the offence create unacceptable risks for other employees, learners or customers of the college? For example, those with convictions for assault or sexual offences employed to work on a one-to-one basis.
5. What could happen at work and how serious would that be? Consider the factors that might increase or decrease the risk, such as the level and closeness of supervision.

Appendix B – Assessing the applicant and the offences

Questions to be considered

1. Is the offence or other matter revealed is relevant to the position?
2. How serious is the offence or any other matter revealed?
3. Is the offence relevant to the safety of other employees, learners and other customers of the Group?
4. What is the length of time since the offence or other matter occurred?
5. Was the offence a one-off, or part of a history of offending?
6. Have the applicant's circumstances changed since the offence was committed, making re-offending less likely (for example, improved personal circumstances)?
7. Consider the country in which the offence was committed (for example some activities are offences in the UK but not in other countries and vice versa).
8. What were the circumstances surrounding the offence and the explanation(s) of the circumstances which led to the offence being committed?
9. Has the offence since been decriminalised by parliament?
10. What is the degree of remorse, or otherwise, expressed by the applicant and their motivation to change?
11. If the conviction(s) are relevant to the post, consider (in consultation with the relevant People Services Advisor): a) withdrawal of the offer of employment b) the introduction of safeguards c) dismissal.

Appendix One: Screening Tool

Public Sector Equality Duty

The Public Sector Equality Duty requires the Group to have due regard for the need to eliminate discrimination, harassment and victimisation, and other conduct prohibited by the Equality Act 2010.

Advance equality of opportunity between people from different groups; this involves considering the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Meet the needs of people with protected characteristics.
- Encourage people with protected characteristics to participate in activities where their participation is low, and to
- Foster good relations between people from different groups. This involves tackling prejudice and promoting understanding between people from different groups.

Consequently, we need to assure ourselves that our policies will not have an adverse differential impact on any particular group. This pre-screening section will enable you to identify whether your policy is likely to have an adverse differential impact.

Please use the following template to help determine whether an equality analysis is required.

Name of the policy:	DBS Disclosure & Recruitment of Ex-Offenders
Author:	Director of People Services (Interim)

Author of Equality Analysis	
Author:	K Fisher
Job Title:	Director of People Services
Date:	August 2024
Signature:	K Fisher

To decide whether the policy requires further action, please complete the following questions:

1. What are the main aims, purpose and outcomes of the policy?				
The purpose is to outline the Group procedure in relation to the recruitment of ex-offenders, ensuring compliance with safeguarding responsibilities whilst promoting equality of opportunity.				
2. Will these aims affect our duty to:				
	Yes/No	How?		
Advance equality of opportunity?	No			
Eliminate discrimination?	No			
Eliminate harassment?	No			
Foster good relations between people from different groups?	No			
Tackle prejudice and promote understanding between people from different groups?	Yes	Tackling prejudice against applicants who disclose convictions.		
3. What aspects of the policy, including how it is delivered, or accessed, could contribute to inequality?				
A non-standardised approach to the recruitment of ex-offenders may contribute to inequality. This policy outlines our commitments and procedural obligations. It is available for use by recruiting panels, in either a paper or online format.				
4. Will the policy have an impact (positive or negative) upon the experience of people, including those who share a protected characteristic?				
Protected Characteristic	Meet needs of people with this characteristic	Encourage participation (if under-represented)	Remove or minimise disadvantage	Positive negative impact
Race	Yes			
Gender	Yes			
Disability	Yes			
Religion / belief	Yes			
Sexual orientation	Yes			
Gender reassignment	Yes			

Pregnancy / maternity	Yes			
Age	Yes			
Marriage / civil partnership	Yes			
Evidence:	<p>This policy focuses on the recruitment of ex-offenders. Decisions made through this policy will be based on the information provided as part of recruitment checks. Protected characteristics will not form or influence any of the decision making. Recording of information will be undertaken in accordance with the data protection legislation current at the time of review.</p>			
4.1.	<p>In addition, please consider whether this policy may indirectly discriminate against young adult carers (16-24). Although not a legally protected group, this group often suffers disadvantage due to their caring responsibilities and we have a moral duty to protect them.</p>			
Evidence:	<p>It is not considered that this policy will indirectly discriminate.</p>			
<p>What different needs, experiences or attitudes are particular communities or groups likely to have in relation to this policy?</p>				
Evidence:	<p>Not aware of any.</p>			
<p>Next steps:</p> <p>If your answers to these questions have identified potential negative impacts, then you should consider further consultation or action to minimise the differential impact. Please contact the Executive Director, Curriculum & Quality for support.</p> <p>If no further action is required, please sign the declaration below and include with all published copies of the policy.</p>				

Declaration	
Author(s) of Equality Assessment	
Name:	K Fisher
Job Title:	Director of People Services
Date:	29 August 2024
Signature:	K Fisher