DBS checks and conviction history – good practice

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Introduction

12.5 million people in the UK have a criminal record (convictions) which equates to around 25% of the working age population. Having a criminal record does not mean necessarily that a person is unsuitable to be employed or to volunteer for a particular role.

Having a job (or volunteering) can significantly reduce the risk of re-offending, with studies showing a reduction of 25-33%.

There are many misconceptions about employing people with convictions e.g. risk, reliability, illegality etc. leading to some reluctance. The voluntary sector is an important partner in providing opportunities for ex-offenders to re-enter employment, often through volunteering.

Using a criminal record as a reason to reject someone or favour another candidate without due consideration is illegal, and may lead to missing out on potential talent. Disclosure and Barring Service (DBS) checks, where there is eligibility, should be used as one tool within the overall recruitment process.

Anyone using DBS checks must have a fair and clear policy towards ex- offenders and not discriminate automatically on the basis of a criminal record. Organisations should look at criminal record information sensibly and responsibly, acting on legal obligations and good practice, using fairness and equality, considering the context for the conviction, and safety.

Step by Step

- **Inform applicants at the outset if criminal record information will be requested from them.**

This can be via an appropriate DBS check, where the vacant role is eligible, on application, at interview and/or as a self-declaration of unspent convictions. Where the job position or volunteer role is eligible for a DBS check, include this sentence on your applicant information: ‘This role is subject to a satisfactory DBS check which will be requested on your acceptance of a conditional offer’. However, you must ensure that you are asking only for information that you are entitled to know in accordance with the Rehabilitation of

Offenders Act 1974.

- **Ask applicants about criminal records in such a way as to encourage honesty.**

This will provide a basis for the applicant to decide whether or not to apply for the post. You should emphasise that this information will be used to assess their suitability only if relevant and that they will be considered on merit and ability and not discriminated against unfairly. Any self-declaration should be specific about what you are asking and ideally to be placed in a separate sealed envelope which will only be opened if the applicant is to be made a conditional offer/invited to volunteer.

Applicants do not have to tell you about criminal convictions that are spent. You must treat the applicant as if the conviction has not happened, and cannot refuse to employ the person because of their spent conviction.

- **Establish whether the conviction is relevant to the post either if self-disclosed or appears on a DBS certificate.**

Deciding on the relevance of convictions to specific posts is not an exact science. An assessment of an applicant's skills, experience and conviction circumstances should be weighed against the risk assessment criteria for the position. Don't be alarmed by the legal phrasing of a conviction, this can often make the offence sound far more serious than could be the case. Be prepared to ask about the circumstances around the offence.

Your organisation is best placed to consider whether a person's convictions make him or her unsuitable for a particular job or volunteer role. It is important that you should consider all factors in order to reach a balanced judgement.

Identify what risks might be involved and what precautions can be put in place in order to provide satisfactory safeguards.

Important

You can only conduct a safe and fair risk assessment if you have all the relevant information that you need. You are trying to establish:

- What is the likelihood that an offence or harmful act will occur?
- What is the impact of harm of that offence/act?
- What exactly might happen, to whom or what, under what circumstances and why?

For shortlisted applicants the risk assessment can comprise:

A decision based on the information provided can often be made for old, minor or clearly irrelevant information, where the decision could be to appoint with no further assessment. Current DBS filtering rules should remove most of the above details from a DBS check.

A face-to-face discussion, which is held independently of the actual interview, to discuss the relevance of their criminal record and the risk factors it may imply for the role on offer. Recognise that this may be a

difficult conversation for your applicant to take part in, but that it is a positive step to take.

Beforehand, gather as much (relevant) information as you can; encourage references and independent statements and if you've used a declaration form, this is where you can find out more about the circumstances of the conviction. Ensure that you have seen/read every part/page of the DBS certificate (access to examples are listed later on).

- Think beforehand about the questions you'll ask; develop a set of questions but treat each applicant individually.
- Be sensitive and empathetic to minimise anxiety or embarrassment and be clear of purpose of the meeting to instil confidence and openness.
- Be aware of any seating or room arrangement that might evoke memories of a police interview.

You are seeking to establish whether the applicant can follow your rules and meet your standards, not to try them again.

- Create a relaxed and welcoming environment to encourage an open conversation. Consider that you may be inviting them into somewhere quite different to their previous experiences, which can be unsettling.
- Do not pressure and try to ask open-ended questions, allowing the applicant to explain the situation in their own words
- Do not cross-examine and avoid a monotone or accusing vocal style.
- Try to focus on what they have done that demonstrates the changes they have made in their life or a shift in mindset
- You could ask 'What has led you to this stage in your life, that you feel ready to apply for this role?' 'What has helped you the most in your journey?'

Remember to make good notes of the conversation. Explain that you may have to discuss the information in confidence to aid the decision to appoint.

NB – anything that is learnt about the applicant should only ever be shared with those people in your organisation who truly need to know, and no further.

It is **not** your responsibility to comment on whether a court/police decision was right/wrong.

A template is provided to record and collate information to help you manage when a criminal record is disclosed.



External links and References

DBS Information

DBS Guidance Leaflets

Prison Reform Trust

No job, no hope report

Nacro

Recruiting safely and fairly

Unlock

Anon Enhanced DBS certificate with content Pages 1- 2

Blank DBS certificate

Employers: preventing discrimination: Discrimination in recruitment – GOV.UK

Many thanks to Inside Out Support Wales for their contribution to this version.

Sources of support:

https://adferiad.org/our-services/criminal-justice/

https://safercommunities.wales/offending-justice/

https://www.gov.uk/guidance/youth-offending-teams-wales

https://www.northwales-pcc.gov.uk/commissioned-services

https://www.stgilestrust.org.uk/st-giles-cymru-south-west/

https://www.clinks.org/our-work/wales

Looking at convictions – assessing risk

Context is important

Factors	Comments
The person's age at the time of the offence	Was the offence committed as an adult, or as a child or adolescent? Listen to the individual's explanation. Was it a difficult time in their life – result of lack of experience and understanding of personal responsibility? Immaturity and greater risk taking in youth?
How long ago the offence took place	Offences that took place years ago may have less relevance now with the exception of serious violent or sexual offences.
Whether it was an isolated offence or part of a pattern of offending and whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely	Repeated offences may indicate that the individual has not been able to change his/her offending behaviour and may be more likely to re-offend but this should not be assumed. What has/will help them to change?
The nature of the offence and relevance to the position. Does the post involve one-to-one contact with children or other vulnerable groups as service users and/or other employees/volunteers? Does the post involve direct contact with the public? Does the post involve any direct responsibility for finance or items of value? What options do you have to alter the level of supervision that can be placed around the post holder?	Base your assessment on actual risks that are relevant to the role. Some offences will be so serious that they result in that person being barred from working with vulnerable groups (children, or adults with health/care/support needs). If the role is not eligible for a DBS barring list check you will still see any criminal conviction information on the DBS certificate (for an enhanced DBS check without the barring list check) that would have been used for any barring decision. Paedophile/indecent images of children offences would almost certainly disqualify any person required to work with children, likely access to computers may have to be carefully considered; some violent offences would be relevant to positions involving unsupervised contact with the public. Fraud should be considered in relation to posts involving the handling of significant amounts of money; and theft in relation to posts involving the handling of stock.
What else is known about the person's conduct before and since the offence	Look at all the circumstances, including their employment pattern and the individual's own explanation.
What is known about the person's current feelings about and around the offence	Listen to the individual's explanation around the offence, for example the influence of domestic or financial difficulties. Have they expressed remorse, etc?
Relevant information offered by the applicant themselves	Did the applicant disclose any criminal record information as part of the application process/at interview, and in line with the ROA 1974? Failure to disclose a relevant offence, without a satisfactory reason, can lead to disciplinary action and subsequent dismissal.

Factors	Comments
Are there any concerns about their motivation to work with vulnerable groups (children, or adults with health/care/support needs)?	Use values based interview questions to help judge whether a candidate shares and can contribute to the ethos of your organisation. First, identify the values and behaviours that you want carried out within your organisation and would want the candidate to demonstrate. Use questions based on the 'how' and 'why' e.g. 'How does something you're done demonstrate your commitment to protecting a person in your care?' Is there anything about their response that concerns you e.g. not understanding what actions might protect an individual, not willing to act to protect the individual, not sure whether they should be protecting the individual. Does their reaction suggest that they can work within appropriate professional boundaries regarding your vulnerable groups (not overly detached, but not too close either)? Do they appear able to reflect on and develop their practice accordingly, accept challenge, and engage in continual learning for ongoing improvement?