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## **Criminality Policy & Procedure**

### **Context**

1. The Rehabilitation of Offenders Act 1974 provides that some convictions may be “spent” and that employees seeking employment need not disclose them. The Act specifies that certain categories of conviction are never spent and certain categories of employee are exempt from the legislation, e.g. where they work with young children or vulnerable people or where they are in positions of trust.
2. The Home Office has established the Criminal Records Bureau, which enables checks to be made on the criminal convictions of potential employees. The purpose of this policy is to ensure that checks are not made except where specifically required by the nature of the employment and that where disclosures have been made decisions about whether to employ them can be made within an agreed policy framework and in the context of individual circumstances.

### **Recruitment of Ex-Offenders**

As an organisation within the Voluntary Sector we actively promote equality of opportunity for all the right mix of talent, skills and potential and welcome applicants from a wide range of candidates, including those with criminal records. Selection of all candidates at interview is based on skills, qualification and experience.

1. Decisions regarding whether or not any post within the organisation require the applicant (paid or voluntary) to declare information about a criminal conviction shall be made by the Manager responsible for recruitment either within the organisation or, in the case of a voluntary worker, via the host provider prior to any post being advertised. Any decision shall be based on whether the person will be working with vulnerable people (including children) or in a position of trust, or working within the community where there is a risk to the community or an individual re-offending.
2. Where a conviction has been disclosed by an individual, in identifying any risk to the organisation, users, customers and employees, Managers should explore the following:
  - The nature and background to the offence
  - Whether the individual has a pattern of convictions
  - The length of time since the offence took place
  - The nature of the work in which the individual will be involved, e.g. access to money, property and vulnerable people
    - Whether the individual's circumstances have changed since the offence was committed
    - The extent to which the individual will be supervised

3. In situations where there is any degree of risk involved, applicants shall be advised as part of the recruitment process that they will be required to disclose convictions when invited for interview and the appropriate level of Disclosure will be sought from the Criminal Records Bureau (CRB) for the successful applicant/volunteer.
4. All applicants must be advised that where a conviction has been disclosed, it will only be considered if it is relevant to the post in question.
5. Where decisions are taken to seek information about criminal convictions, Disclosure will only be sought following a decision having been made to appoint the candidate, and any appointment will then be subject to the outcome of the Disclosure. If, during a meeting to discuss a positive Disclosure, the applicant denies they have convictions the meeting should be adjourned and the organisation should contact the CRB for further details. The meeting should be reconvened as soon as possible to clarify the position.
6. Decisions to not appoint should not be made solely on the basis of the Disclosure.
7. Where the post is voluntary, information regarding the applicant's conviction will be disclosed only on a need to know basis, however any risks shall be discussed with the host provider before any decision is made to confirm the appointment or otherwise.
8. Where a decision is made that a volunteer will not be appointed on the basis of a criminal conviction, every effort should be made to find suitable alternative employment as a volunteer where the nature of the conviction is not material. If no suitable position can be found, the applicant should be informed of the decision verbally as soon as possible and this must be confirmed in writing within five working days stating the reasons why.
9. Where Disclosure reveals a degree of risk regarding engaging an individual, no decision shall be taken regarding engagement or otherwise, without first discussion regarding the Disclosure and the potential implications with the individual.
10. Where existing employees/volunteers are found to have a criminal record no action should be taken about their future employment/volunteering or otherwise, without full discussion of the matter with them. Their engagement may be terminated only if the nature of the offence is relevant to the job or makes it impossible for them to continue in post and only after consideration of alternative options.

### **Procedure for dealing with a person who withholds information**

Police records do not normally have to be declared but a person with a criminal record must declare a caution if applying for a job/voluntary position. If an applicant fails to reveal information directly relevant to the position, a meeting should be held and the individual should be given the opportunity to discuss the issue and provide an explanation. If no satisfactory explanation is given as to why this information has been withheld, consideration should be given as to whether the offer of employment will be withdrawn.

### **Considerations**

The following factors should be taken into account before any decision is made about whether to employ an individual who has an "unspent" conviction or where Disclosure indicates that they may be unsuitable for the employment offered.

- The nature of the offence
- Type of work being offered

- Whether work is with vulnerable groups
- Whether work offered could be changed to avoid exposure to individuals or the community
- Did the offence result in a conviction, warning or caution?
- The relevance of the offence to the nature of the proposed job
- The length of time since the offence was committed
- The age of the person when the offence was committed
- The person's history of other offending since the offence
- Other issues that might have affected the person's lifestyle at the time the offence was committed.

### **Disclosure Information**

Information on Disclosure should be safely destroyed following the decision being made and only a record of the Disclosure number should be made on the employee/volunteer file and the reason for the decision noted. A new Disclosure will be required for internal promotions where an employee is being promoted to a job that required a level of Disclosure.

### **Checks on Existing Employees**

Disclosure will only be sought in respect of existing employees/volunteers where they are promoted or moved to a new position that has been identified as requiring a level of Disclosure or where the nature of their job has changed which means they are now in contact with vulnerable people.

### **Prosecution during the course of employment/engagement in volunteer**

#### **Work**

Where there is a prosecution and there subsequently occurs a conviction of an employee or volunteer during the course of their engagement, this must be declared to their manager. A meeting must then be arranged to discuss the information and its relevance to the post the employee holds. If considered relevant, a disciplinary investigation will result.

#### **Appeals**

Organisations must offer an applicant or employee the right of appeal if they disagree with the decision. Reasons for appeal should be given in writing to the Chief Officer of the organisation whose decision will be final.

## SCHEDULE OF REHABILITATION PERIOD

| SENTENCE   | REHABILITATION PERIOD |
|--|-----------------------|
| Imprisonment, corrective training or Sentence of detention in a young Offenders' institution for more than six months but no more than 30 months | 10 years*             |
| A sentence of dismissal for serious wrong doing, discharge with public disgrace or dismissal from Her Majesty's services                         | 10 years              |
| Imprisonment or sentence of detention in a young offenders' institution for a period not exceeding six months                                    | 7 years*              |
| A sentence of dismissal from Her Majesty's Services  | 7 years               |
| A fine or other sentence not expressly covered by the Act  | 5 years*              |
| Any sentence of detention in respect of a conviction in service disciplinary proceedings   | 5 years               |
| Order for detention in a detention centre  | 3 years               |
| Absolute discharge   | 6 months              |
| Conditional discharge  | 1 year                |
| Probation  | 5 years*              |

\*this period may be reduced by half for a person under 18 at the time of sentencing.'

### Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information

## **Introduction**

Everyone involved in using the Criminal Records Bureau Disclosure service to help assess the suitability of candidates for positions of trust and those who are the recipients of Disclosure information must comply fully with the CRB Code of Practice. **Amongst other things, this obliges them to have a written policy on the correct handling and safekeeping of Disclosure information.** It also obliges organisations to ensure that a body or individual, on whose behalf they are countersigning Disclosure applications, has such a written policy and, if necessary, to provide a model for that body or individual to use or adapt for this purpose.

To assist individuals/organisations to meet this requirement the CRB has produced a sample policy statement which can be used or adapted for this purpose. Adherence to this policy will ensure compliance with the Code in this respect.

## **General Principles**

As an organisation using the Criminal Records Bureau (CRB) Disclosure service to help assess the suitability of applicants for positions of trust, Foresight Project complies fully with the CRB Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters, which is available to those who wish to see it on request.

## **Storage & Access**

Disclosure information is never kept on an applicant's personnel file and is always kept separately and securely, in lockable, non-portable containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

## **Handling**

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a criminal offence to pass this information to anyone not entitled to receive it.

## **Usage**

Disclosure information is only used for the specific purpose of which it was requested and for which the applicant's full consent has been given.

## **Retention**

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is absolutely necessary. This is generally a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information longer than six months, we will consult the CRB about this and will give full consideration to the Data Protection and Human Rights individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

## **Disposal**

Once the restoration period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction Disclosure information will not be kept in any insecure receptacle, e.g. waste bin or confidential waste sack. No photocopy or other image of the Disclosure information or any copy or representation of the contents of a Disclosure will be retained.

### **For Organisations who are acting as an Umbrella Body**

Before acting as an Umbrella Body (one which countersigns applications and receives Disclosure information on behalf of other employers or recruiting organisations), we will take all reasonable steps to ensure that they can comply fully with the CRB Code of Practice. We will also take all reasonable steps to satisfy ourselves that they will handle, store, retain and dispose of Disclosure information in full compliance with the CRB Code and in full accordance of this policy. We will also ensure that any body or individual, at whose request applications for Disclosure information are countersigned, has such a written policy, and if necessary, will provide a model policy for that body or individual to use or adapt for this purpose.

### **Code of Practice**

The Code of Practice is intended to ensure – an to provide assurance to those applying for Standard and Enhanced Disclosures – that the information released will be used fairly.

The Code also seeks to ensure that sensitive personal information is handled and stored appropriately and is kept for only as long as necessary.

### **Obligations of the Code**

These are as follows:

#### **1. Fair use of Disclosure information**

Recipients of Disclosure information shall:

- Observe guidance issued or supported by the Criminal Record Bureau (“the Bureau”) on the use of Disclosure information – and, in particular, recipients of Disclosure information shall not unfairly discriminate against the subject of Disclosure information on the basis of conviction or other details revealed.

In the interests of the proper use of Disclosure information and for the reassurance of persons who are the subject of Disclosure information, registered persons shall:

- Have a written policy on the recruitment of ex-offenders, so that a copy can be given to all applicants for positions where a Disclosure will be requested.
- Ensure that a body or individual at whose request applications for Disclosures are countersigned has such a written policy and, if necessary, provide a model for that body or individual use.

In order that persons who are, or may be, the subject of Disclosure Information are made aware of the use of such information, and be reassured, Employers shall:

- Ensure that the applications forms for positions where Disclosures will be requested contain a statement that a Disclosure will be requested in the event of a successful application, so that applicants are aware of the situation.
- Include in application forms or accompanying material a statement to the effect that a criminal record will not necessarily be a bar to obtaining a position, in order to reassure applicants that Disclosure information will not be used unfairly.
- Discuss any matters revealed in Disclosure information with the person seeking the position before withdrawing an offer of employment/engagement in a voluntary position.
- Make every subject of Disclosure aware of the Existence of this Code of Practice, and made a copy available on request.
- In order to assist staff to make appropriate use of Disclosure information in reaching decisions, make available guidance in relation to the employment and fair treatment of ex-offenders and to the Resettlement of Offenders Act 1974.

## **2. Handling of Disclosure Information**

Recipients of Disclosure information:

- Must ensure that Disclosure information is not passed to persons not authorised to receive it under section 124 of the Act. Under section 124, unauthorised disclosure is an offence.
- Must ensure that Disclosures and the information they contain are available only to those who need to have access in the course of their duties.
- Must securely store Disclosures and the information that they contain
- Should retain neither Disclosures nor a record of Disclosure information contained within them for longer than is required for the particular purpose. In general, this should be no later than 6 months after the date on which recruitment or other relevant decisions have been taken, or after the date on which any dispute about the accuracy of the disclosure information has been resolved. This period should be exceeded only in very exceptional circumstances which justify the retention for a longer period.

Registered persons shall:

- Have a written security policy covering the correct handling and safekeeping of Disclosure information, and
- Ensure that a body or individual at whose request applications for Disclosures are countersigned has such a written policy, and, if necessary provide a model policy for that body or individual to adopt.

## **3. Assurance**

Registered persons shall:

- Co-operate with requests from the Bureau to undertake assurance checks as to the proper use and safekeeping of Disclosure information
- Report to the Bureau regarding suspected malpractice in relation to the Code of Practice or any suspected offences in relation to the misuse of Disclosures.

## **4. Umbrella Bodies**

- An Umbrella Body is one which has registered with the Bureau on the basis that it will countersign applications on behalf of others who are not registered.

- Umbrella Bodies must satisfy themselves that those on whose behalf they intend to countersign applications are likely to ask exempted questions under the Exceptions Order to the Rehabilitation of Offenders Act 1974.
- Umbrella Bodies must take reasonable steps to ensure that those to whom they pass Disclosure information observe the Code of Practice.

## **5. Failure to comply with the Code of Practice**

The Bureau is empowered to refuse to issue a Disclosure if it believes that:

- A registered person, or
- Someone on whose behalf a registered person has acted has failed to comply with the Code of Practice.

***This information is also available in other formats.***

### **Amendments:**

#### **13-05-09**

As agreed by the board of trustees, Foresight will accept proof of current CRB disclosures from outside organisations that have been issued within the last 18 months. Foresight will only take the disclosure number from the certificate and will record this in the staff / volunteer file.

This information is also available in other formats, languages and picture format upon request.