

Guidance for managers: employing ex-offenders as members of the University

Background

The Rehabilitation of Offenders Act (1974) was introduced to ensure that ex-offenders who have not reoffended for a period of time since the date of their conviction are not discriminated against when applying for jobs. The Rehabilitation of Offenders Act makes it illegal to discriminate against an ex-offender on the grounds of a 'spent' conviction. Gov.uk provides [new guidance on the 'rehabilitation' periods for sentences](#), after which the conviction will be 'spent'. See Annex 1 for a list of sentences that are exempt from the act.

The following sentences are exempt from the 1974 Act and can never become spent:

- a. Sentence of imprisonment for life.
- b. Sentence of imprisonment, sentence of detention for youth detention in a young offender institution or corrective training of over 4 years for serious violent, sexual, or terrorist offences.
- c. Sentence of preventive detention.
- d. Sentence of detention during His Majesty's pleasure or for life.
- e. Sentence of custody for life.
- f. Public protection sentences (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders).

In order to protect certain vulnerable groups there are a large number of posts and professions that are exempted from the Rehabilitation of Offenders Act. These include posts involving access to children, young people, the elderly, disabled people, alcohol and drug misusers and the chronically sick. Many health service appointments and jobs involving the administration of justice, banking, other financial services and national security are also exempted. In such cases, organisations are legally entitled to ask applicants for details of all convictions, irrespective of whether they are 'spent' or 'unspent' under the Rehabilitation of Offenders Act.

Purpose

This document has the status of guidance and is intended to be used as a reference for managers and countersignatories for Disclosure and Barring Service (DBS) Disclosure applications, to ensure that any decisions made by University managers about the appointment and retention of staff are reasonable and consistent, and in compliance with University policy, the DBS Code of Practice and the Rehabilitation of Offenders Act.

Scope

This document applies to all employees of the University, including students who are employed and students or others who are engaged by the University as volunteers - and should be used to check and support all appointment decisions that involve consideration of criminal record or other information, whether provided by the applicant or from the DBS Disclosure service.

The key part of this document is concerned with establishing the factors to be considered when assessing an individual's suitability to join the University as an employee, or to retain that position.

Assessment Process

All applicants for employment are asked to declare any unspent criminal convictions or other relevant information at the point of application.

The University has a responsibility to assess and justify any post which it considers has a requirement for a standard or enhanced DBS check in line with the DBS's guide to eligibility for criminal record checks. The DBS / Safeguarding Group has reviewed staff posts within the University and identified those for which either a standard or enhanced DBS check is required. This list cannot be completely exhaustive. More guidance on this assessment process can be found in the Guidance for managers and counter signatories: Disclosure and Barring Service (DBS) Disclosure Eligibility and on the HR webpage: [The Disclosure & Barring Service \(DBS\) and types of DBS checks](#)

Applicants for posts which will require either a Standard or Enhanced DBS Disclosure are asked to declare any spent or unspent criminal convictions or other relevant information at the point of application.

Such information should not form part of the shortlisting or selection process. Occasionally interviewers will be aware of information about convictions during the selection process – this may be as a result of a disclosure from the candidate. It is reasonable to discuss the matter and explore any possible concerns, but no action should be taken based on this discussion. If the Chair of the panel has any concerns s/he should raise these with the Department of Human Resources (HR).

As with any assessment process, the first step should be the assessment of the applicant's skill, qualifications, experience and ability. All applicants should be judged on merit.

If a post requires DBS Disclosure, this must be stated at the earliest opportunity in the information provided to potential applicants – this will usually be at the advertising stage. The Department of Human Resources will advise on the need to include information in the recruitment advert and further particulars of the post.

The University will usually take up references on shortlisted candidates before the interview/selection process. However, application for Disclosure (DBS criminal and other record check) will only be made once the recruiting panel has identified the successful applicant(s). At this stage an offer of employment or place on a course can be made by the Department of Human Resources, subject to satisfactory DBS Disclosure.

If it is the case that the information provided in the Disclosure about a conviction contradicts that provided by the applicant, this should be discussed with the applicant in person. There may be a number of reasons for the discrepancy, including not understanding the sentence or rehabilitation period, or concern that providing information about convictions will damage their chances of appointment. It is also possible that the information contained in the Disclosure is inaccurate. While providing false information at application is potentially a very serious matter, applicants should always be given the opportunity to explain the situation before a final decision is made.

The suitability for employment of a person with a criminal record will vary, depending on the nature of the job and the details and circumstances of any convictions. An assessment of an applicant's qualifications, skills, and experience and conviction circumstances should be weighed against the risk assessment criteria for the job (or the work that a course of study will lead to).

- 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/course present any opportunities for the post holder to re-offend in the work place/study environment?

For example, paedophile or child pornography offences would almost certainly disqualify any person required to work with children or wishing to gain a qualification in this area of work; some violent offences would be relevant to positions involving unsupervised contact with the public; fraud and theft should be considered in relation to positions involving handling of money or stock. In the latter cases, 'consideration' should not be taken to mean that an individual is automatically unsuitable for employment or study.

In some cases the relationship between the offence and the post or course of study will be clear enough to decide easily on the suitability of the applicant. In other cases the decision

may not be so clear-cut. In these circumstances, the Recruiting Manager, in consultation with the relevant HR Business Partner, will make the assessment, taking into account the following:

- the seriousness of the offence and its relevance to other employees, students, customers, clients and property
- the length of time since the offence occurred
- whether the offence was a 'one-off', or part of a history of offending
- the country in which the offence was committed; some activities are offences in Scotland and not in England and Wales, and vice versa
- whether the offence has since been decriminalised by Parliament
- any other information that the group seeks or receives and which it considers to be relevant

Appeal

There is a right of appeal against the outcome of this assessment.

Further Information

For further guidance on the rehabilitation of offenders act 1974 please visit:

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974/guidance-on-the-rehabilitation-of-offenders-act-1974-and-the-exceptions-order-1975>

