



**London Borough  
of Hounslow**

# Employment of Ex-Offenders Policy

Transformation & Human Resources

Issued by HR Policy Team  
Effective from March 2014

# EMPLOYMENT OF EX-OFFENDERS POLICY

## 1 Policy Statement

- 1.1 As an organisation using the Disclosure and Barring Service (DBS) checking service to assess applicants' suitability for positions of trust, the Council complies with the DBS Code of Practice and undertakes to treat all applicants for positions fairly.
- 1.2 The Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, disability or offending background. The Council will not discriminate unfairly on the basis of a conviction or other information revealed either by the applicant or by a DBS disclosure.
- 1.3 A DBS check is requested where one is proportionate and relevant to the position concerned. Where a check is deemed necessary, the job adverts and recruitment briefs will contain a statement that a DBS check will be required in the event of a job offer being made.
- 1.4 Unless the post is "exempted" under the Rehabilitation of Offenders Act 1974 the Council only asks at application about "unspent" convictions as defined in this Act. The information provided will be seen by those who need to see it as part of the recruitment process.
- 1.5 The Council will ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be revealed before any decision is made to withdraw a conditional offer of employment.
- 1.6 A failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
- 1.7 A copy of this policy will be available to all DBS applicants upon request.

## 2 Rehabilitation of Offenders Act 1974

- 2.1 Ex-offenders comprise a large proportion of the working population and research has shown that employment is the single most important factor in reducing re-offending. The Rehabilitation of Offenders Act 1974 was introduced to ensure that ex-offenders who have not re-offended for a period of time since the dates of their conviction are not discriminated against when applying for jobs.
- 2.2 Under this legislation, a conviction becomes "spent" after the elapse of a defined period of time, which in turn depends on the type of

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conviction and the length of time that has elapsed since it occurred, see appendix A. Some convictions are never spent.

- 2.3 Subject to certain exceptions (see paragraphs 2.6 – 2.8), once a criminal conviction is spent, it does not have to be disclosed by an individual on a job application, even if the application asks for details of previous convictions.
- 2.4 This allows the individual to be treated for the most purposes as if their conviction had never happened. Therefore an employer cannot refuse to employ someone (or dismiss someone) because they have a spent caution or conviction unless an exception applies.
- 2.5 The Council asks job applicants to declare criminal convictions, cautions, warnings or bind over's that are not spent. Any information provided will be treated as strictly confidential and will be considered only in relation to the type of work that has been applied for.

### **Exemptions**

- 2.6 There is however a long list of excluded jobs and professions under the Rehabilitation of Offenders Act 1974. This means that for certain types of employment, it is lawful to ask questions about spent convictions and to reject a person for employment on the grounds of a spent conviction. Job applicants for exempted positions are obliged to disclose all convictions, whether spent or not.
- 2.7 Within the Council there are many posts which are exempted from the Rehabilitation of Offenders Act in order to protect certain vulnerable groups, like children, young people, and vulnerable adults. There are also some administrative and professional posts which fall within the exempted category.
- 2.8 Applicants for these posts will be asked at recruitment to declare all convictions, spent or otherwise.

## **3 Disclosure and Barring Service (DBS)**

- 3.1 The Disclosure and Barring Service (DBS), formed from the merger of the Criminal Records Bureau and Independent Safeguarding Authority, provides both a disclosure and barring service. It helps employers make safer recruitment decisions and prevent unsuitable people working with vulnerable groups including children through its criminal records checks and barring service.
- 3.2 The Council meets the requirements in respect of exempted posts under the Rehabilitation of Offenders Act, and all job applicants for such posts will be subject to a criminal records check from the DBS before appointment is confirmed.

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- 3.3 This will be either a basic, standard or enhanced disclosure and depending on the level of disclosure will include details of cautions, reprimands, final warnings, police enquiries and pending prosecutions as well as convictions.
- 3.4 The Council undertakes to deal with any information received in respect of previous convictions fairly and discreetly, taking into account legal obligations and good practice. Each individual case will be carefully considered on its own merits to ensure that successful candidates for posts are not discriminated against unfairly.
- 3.5 The information received will be used only to assess an applicant's suitability for employment, in so far as it is relevant, and applicants will be given every chance to obtain the job for which they have successfully applied.
- 3.6 It is however an offence for a person who is barred from working with children or vulnerable adults to seek to, or actually engage in a "regulated activity". It is also an offence for an employer knowingly to permit someone who is barred to engage in a "regulated activity".

## **4 PROCEDURE**

### **Submitting details about convictions**

- 4.1 All job offers to successful candidates will be made subject to checks such as references, medical information and disclosure details.

#### Exempted posts

- 4.2 Applicants for posts exempt from the Rehabilitation of Offenders Act are asked to submit appropriate written details about all criminal convictions (both spent and unspent) and other associated information, with dates. This information is requested within the application form.
- 4.3 The Council will seek the appropriate level of disclosure information from the DBS in respect of all successful applicants for exempted posts.
- 4.4 If the information provided in the disclosure contradicts that provided by the applicant, this will be discussed with the applicant once this has been received.
- 4.5 There may be valid reasons why the applicant was unaware that they had a criminal record, or it may be that the information contained in the disclosure is inaccurate, or refers to someone with the same name. In any event, applicants should be given the opportunity to explain the situation before a final decision is made.

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- 4.6 Failure to declare a conviction, caution or bind over may disqualify applicants from appointment or result in summary dismissal if the discrepancy comes to light.

#### Other posts

- 4.7 Applicants for other posts are asked only to declare those criminal convictions, cautions, warnings or bind over's that are not spent.
- 4.8 Where the post will involve accessing the Public Sector Network (PSN) a basic disclosure check with DBS Scotland will be necessary in order to satisfy the Baseline Personnel Security Standard (BPSS).
- 4.9 Failure to declare a conviction, caution or bind over may disqualify applicants from appointment or result in summary dismissal if the discrepancy comes to light.

#### **Assessing the relevance of criminal records**

- 4.10 The suitability for employment with the Council of a person with a criminal record will vary, according to the job and the nature of any convictions.
- 4.11 In order to ensure that fair decisions are made, the **applicant's criminal record** will be assessed in relation to the **tasks** that s/he will be required to carry out and the circumstances in which the work will be carried out. In doing so we will take into consideration such matter as:
- Does the post involve one-to-one contact with children or other vulnerable groups as customers or clients?
  - What level of supervision will the post holder receive?
  - Does the post involve direct contact with the public?
  - Does the post involve any direct responsibility for finance or items of value?
  - Will the nature of the job present any opportunities for the post holder to re-offend in the place of work?
  - The seriousness of the offence(s) and its relevance to the safety of other staff, customers, clients and property?
  - The length of time since the offence(s) 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
  - 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

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- The degree of remorse, or otherwise, expressed by the applicant and their motivation for change
- 4.12 This list is not exhaustive and other matters may be taken into consideration.
- 4.13 It is important that a discussion takes place with the applicant prior to a decision being made to withdraw a job offer.

#### **Handling of disclosure information**

- 4.14 The Council is committed to ensuring that disclosure information is stored, handled and disposed of in the most appropriate way and complies with the DBS Code of Practice to ensure this. Further details are available in the Council's policy statement on the secure storage, handling, use, retention and disposal of disclosures and disclosure information.

#### **Reviewing policies and procedures**

- 4.15 The Council is an equal opportunities employer and will keep this policy under review in order to ensure that all our decisions about the employment of people are fair and appropriate.

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## Rehabilitation Periods

Under the Rehabilitation of Offenders Act 1974, a conviction becomes "spent" after the elapse of a defined period of time, allowing a job applicant to be treated for most purposes as if his or her conviction had never occurred. The period of time depends upon the type and length of sentence imposed, see tables below.

**Table 1: These rehabilitation periods apply from the end date of the sentence**

Sentence	Rehabilitation period
Custodial sentence <sup>1</sup> of over 4 years, or a public protection sentence	Never spent
Custodial sentence of over 30 months (2½ years) and up to and including 48 months (4 years)	7 years
Custodial sentence of over 6 months and up to and including 30 months (2½ years)	4 years
Custodial sentence of over 6 months or less	2 years
Community order or youth rehabilitation order <sup>2</sup>	1 year

*The above rehabilitation periods are cut in half where the person was under the age of 18 at the time of his or her conviction.*

**Table 2: The following rehabilitation periods run from the date of conviction**

Sentence	Rehabilitation period	
	Adults (aged 18 and over at time of conviction)	Young people (under 18 at time of conviction)
Fine	1 year	6 months
Conditional discharge	Period of order	Period of order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order <sup>3</sup>	On discharge of the order i.e. when paid in full	On discharge of the order i.e. when paid in full
Binding over order	Period of order	Period of order
Attendance centre order	Period of order	Period of order
Hospital order (with or without a restriction order)	Period of order	Period of order

<sup>1</sup> Custodial sentence includes a sentence of imprisonment (both immediate custodial sentence or suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

<sup>2</sup> Community or youth rehabilitation order which have no specified end date, the rehabilitation period is 2 years from the date of conviction.

<sup>3</sup> It is important to obtain proof of payment from the court and keep this document to prove that the compensation order has been paid in full.

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Referral order	N/A	Period of order
Reparation order	N/A	None

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

- a. Sentence of imprisonment for life;
- b. Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years;
- c. Sentence of preventive detention;
- d. Sentence of detention during Her 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).

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