

Policy on Safeguarding Children & Vulnerable Adults (Criminal Records Checks)

1. Scope and Purpose

- 1.1 This document outlines company policy on the recruitment of staff with criminal convictions, the use and assessment of criminal records checks and the storage and use of information on convictions which has been disclosed by the Disclosure & Barring Service (DBS) or Disclosure Scotland.
- 1.2 The policy applies to all staff groups. The policy will be given to applicants at the outset of the recruitment process where a criminal disclosure check will be required as part of the application process.

2. Recruitment of Staff with Criminal Convictions

- 2.1 The Rehabilitation of Offenders Act 1974 (ROA) provides that ex-offenders are not required to disclose convictions defined as 'spent' under the Act to prospective employers. An outline of the Act and the rehabilitation periods defined there is included as Appendix 1 to this policy.
- 2.2 It is our policy to require applicants to disclose any 'unspent' criminal convictions, as part of their application, except in the case of applications for posts working with children and vulnerable adults or in positions of trust where all convictions cautions, reprimands and warnings must be declared.
- 2.3 Part V of the Police Act 1997 enables us to make such criminal records checks where positions are identified as exempt under the Rehabilitation of Offenders Act 1974 (ROA) (Exceptions) Order 1975 (as amended).
- 2.4 Failure to reveal information relating to unspent convictions could lead to withdrawal of an offer of employment, or disciplinary action, including dismissal, for existing staff.
- 2.5 Where a conviction has been disclosed in an individual's application for a post with us an open and measured discussion will take place at interview, or in a separate discussion, on the subject of any offences or other matter that might be relevant to the position.
- 2.6 Having a criminal record will not necessarily bar an applicant from working for us; the nature of a disclosed conviction and its relevance to the post will be considered.

3. The DBS and Disclosure Scotland Services

- 3.1 The disclosure services run by the DBS and Disclosure Scotland assist employers in making safe recruitment decisions by identifying candidates who are unsuitable for certain work, particularly work which involves contact with children or vulnerable adults. It may also be relevant for occupations which are listed as exceptions to the ROA (see 3.4).

- 3.2 LSV is a registered user of the DBS and Disclosure Scotland services and complies with the DBS and Disclosure Scotland codes of practice and undertakes to treat all applicants/employees fairly and consistently. We will not discriminate unfairly on the basis of conviction or other information revealed in a criminal records disclosure.
- 3.3 A disclosure will only be requested after a risk assessment has indicated that one is proportionate and relevant to the position concerned or is a lawful requirement contained within a contract. Where a disclosure is required for a new position, the advertisement will include a clear statement to this effect.
- 3.4 There are four levels of Disclosure which might apply:
- *Basic Disclosures* (obtainable from Disclosure Scotland) containing only unspent convictions will be used where a specific contractual requirement needs to be met.
 - *Standard Disclosures* which may be used for positions covered by the Exceptions Order 1975 to the Rehabilitation of Offenders Act 1974 e.g., certified/chartered accountants, solicitors and legal executives.
- A Standard Disclosure will contain details of any spent and unspent convictions, as well as cautions, reprimands and warnings, recorded by the police centrally. It will also indicate if there are no such matters on record but does not reveal information about whether an individual is barred from working with children and vulnerable adults.
- *Enhanced Disclosures* will be required for certain roles which have contact with children or vulnerable adults, specifically all *regulated positions* or positions where *regulated activity* or *controlled activity* occurs (please see appendix 2 for further details). We will only utilise Enhanced Disclosures where an individual has direct and unsupervised contact with children and vulnerable adults as part of their day-to-day activities.
- An Enhanced Disclosure will contain the same details as a Standard Disclosure. However, it may also contain non-conviction information from local police force records that they reasonably consider might be relevant to a post applied for.
- *Enhanced Disclosure with Barred Lists Check*
- Includes the above, but also a review of the Barred Lists held by the DBS.
- 3.5 If the disclosure identifies convictions or other relevant information the following information will be considered:
- The seriousness of the offence and its relevance to the safety of other employees/students/members of the public;
 - The length of time since the offence occurred;

- Whether the offence was a one-off or part of a history of offending;
- Any relevant information offered by the applicant about the circumstances that led to the offence being committed;
- Whether the individual has disclosed the offence.

This is outlined further in Appendix 3 of this policy.

- 3.6 We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

If the decision is not to appoint, a letter will be sent to the applicant withdrawing the offer of employment and stating the reasons for this decision.

- 3.7 We will not normally accept a Disclosure report which was obtained for a position in a different organisation. We will initiate a new Disclosure request following a transfer under the Transfer of Undertaking (Protection of Employees) Regulations 2006.

- 3.8 All individuals who are in a post that requires a DBS check will need to be re-checked every three (3) years and/or after a break in service.

4. Definitions of Vulnerable Groups

- 4.1 Children are defined as those persons under the age of 18.

- 4.2 A vulnerable adult (as defined by the Safeguarding Vulnerable Groups Act 2006) is a person who has attained the age of 18 and meets one of the following conditions:

- a. they are in residential accommodation;
- b. they are in sheltered housing;
- c. they receive domiciliary care;
- d. they receive any form of health care (e.g. treatment);
- e. they are detained in lawful custody;
- f. they are under supervision of the probation services;
- g. they receive a welfare service defined as the provision of support, assistance or advice by any person, the purpose of which is to develop an individual's capacity to live independently in accommodation or support their capacity to do so.;
- h. they receive a service or participate in an activity for people who have particular needs because of their age or who have any form of disability;
- i. they are an expectant or nursing mother living in residential care;
- j. they receive direct payments from a local authority or health and social care trust in lieu of social care services;
- k. they require assistance in the conduct of their own affairs.

Whilst an adult may be considered vulnerable due to conditions or circumstances other than those listed here, the scope of the scheme is restricted by legislation to those persons who fall into the categories above.

People are not vulnerable adults just because of any physical/mental health condition or learning difficulty/learning disability. They will be defined as vulnerable adults when

they receive health, social care or other services, or engage in activities provided specifically for those with those health conditions or learning difficulties/disabilities.

For the purposes of this scheme the following conditions are not treated as learning difficulties that lead to classification of the individual as a vulnerable adult: dyslexia, dyscalculia, dyspraxia, irlen syndrome, alexia, auditory processing disorder or dysgraphia.

5. Barring Service

- 5.1 The DBS provides a vetting and barring service for those working with children and vulnerable adults. The DBS assesses relevant information on individual applicants and maintains the lists of those individuals who are barred from working with children and/or vulnerable adults.

Where they believe the individual poses a risk, they will bar them from working in a regulated activity with children and/or vulnerable adults. The DBS will not bar every single individual with a criminal conviction, only those who pose an obvious risk.

- 5.2 A person who is barred from working with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups. If an employer knowingly employs someone who is barred from working with those groups they will also be breaking the law. We may be required to refer information about individuals who may pose a risk to children and vulnerable adults to the DBS.

6. Secure Storage, Handling, Use, Retention and Disposal of Disclosure Information

- 6.1 Disclosure information will be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.
- 6.2 Once a recruitment (or other relevant) decision has been made, we do not keep disclosure information for any longer than is necessary. This is generally for 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 for longer than six months we will consult the DBS about this and we will give full consideration to the General Data Protection Regulations and human rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.
- 6.3 A record of the following information will be kept on the company HR system:
- The issue date of the DBS Certificate
 - The level of check requested, including any checks against one or both of the barred lists.
 - The unique reference number of the certificate.
 - The DBS check outcome, e.g. post to be offered, offer withdrawn etc.

7. Review

This policy will be monitored on an on-going basis and will be reviewed every three years and/or in light of any guidance or legislative changes.

APPENDIX 1 - GUIDANCE NOTE - The Rehabilitation of Offenders Act 1974

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal or the length of the sentence imposed. It is calculated from the date of conviction or the date the disposal is administered.

Sentence	Rehabilitation Period (Age 18 or over when convicted or when the disposal was made)	Rehabilitation Period (Age 17 or under when convicted or when the disposal was made)
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order**	1 year	6 months
Fine	1 year	6 months
Conditional discharge	Period of the order	Period of the 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*	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

*Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a 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.

**In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

APPENDIX 2 – Definitions

Regulated positions are specific posts which involve a greater degree of contact with children or vulnerable adults and are therefore subject to the Exceptions Order 1975 to the Rehabilitation of Offenders Act 1974. The Safeguarding Vulnerable Groups Act 2006 sets out all regulated positions but they would generally involve regularly caring for, supervising, training or being in sole charge of such people.

Regulated activities are activities which are of a specific nature (teaching, training, care, supervision, advice, treatment or transport) or in a specified place (schools, childcare premises, children's homes & hospitals, juvenile detention facilities or adult care homes). Higher Education institutions (apart from their nurseries) are not listed as one of the specified places.

These activities will also need to take place either once a week or more, on at least 4 days in one month or overnight between 2am - 6am. In health and personal care services frequent is once a month or more.

Regulated activities also include fostering, and defined office holders such as trustees of children's charities.

Controlled activities are jobs carried out by support workers such as cleaners, caretakers, shop workers, receptionists and catering staff, and workers with frequent access to sensitive records about children or vulnerable adults.

APPENDIX 3 - GUIDELINES ON THE ASSESSMENT OF CRIMINAL RECORDS CHECKS

Criminal Records checks are required where our employees will come into contact with vulnerable people, either adults or children, usually when working within hospitals or schools (although not exclusively).

On receipt of a DBS Certificate and based on the information disclosed, as the manager you will need to make an assessment (in conjunction with Human Resources) whether the person is suitable to be employed in the environment where they will be working.

Firstly, any convictions that either overtly or otherwise suggest that vulnerable adults or children are likely to be at risk will prevent that person from entering or continuing employment with the Company. In this instance, please seek advice from your local HR Manager regarding the appropriate approach to withdrawal of an offer, or termination, of employment.

For any other convictions the provisions of the Rehabilitation of Offenders Act 1974 will apply and you will need to assess whether or not they have a bearing on the person's employment. Factors to take into account are:

- Is the conviction 'spent'?

The table in Appendix 2 shows how long a conviction remains on a person's record before it is 'spent'. If the conviction is spent you must disregard it when considering the applicant for normal employment not associated with vulnerable groups or part of an Exception Order.

If the conviction is not 'spent' then you have to decide whether to take the conviction into account or not. There are a number of considerations you should make:

- Did the employee / applicant declare the conviction on their application form?

If they did not, this may indicate a lack of transparency which gives rise to doubt about their honesty and integrity. If they are already employed then this may be a disciplinary matter.

- The date of the conviction

How long ago did the incident happen? Is it close to the end of the rehabilitation period? Was it during the person's teenage years etc. and have they since shown good character?

- The nature of the offence

Safeguarding Children & Vulnerable Adults

Does this affect the position of trust that the employee will be placed in? For example, if the conviction was for fraud and they have applied for a position requiring considerable trust and confidence or for which an Exceptions Order applies e.g. certified/chartered accountants, solicitors and legal executives, would their employment be appropriate?

- Was the employee convicted or fined? – this will indicate the seriousness of the original offence