Policy Statement: The Recruitment of Staff exempted from the Rehabilitation of Offenders Act

The Disclosures and Barrings Service (DBS), (formerly the Criminal Records Bureau) has been established by the UK Government to provide a system for background checks on employees and volunteers, known as ‘disclosures’

Employers and voluntary organisations are required by law to check someone’s criminal record if they apply for certain jobs or voluntary work, e.g. working with children, vulnerable adults or in healthcare. Applicants will be informed by the University recruitment team if the position requires one of three types of disclosure and the level of disclosure.

The University uses an umbrella body (a registered body which gives access to the DBS) to carry out these checks:

**Standard:** This checks for spent and unspent convictions, cautions, reprimands and final warnings.

**Enhanced:** This covers the same information as the standard check, plus any additional information held by local police that’s reasonably considered relevant to the role being applied for.

**Enhanced with list checks:** This is an enhanced check plus a check of the DBS barred lists. An employer can only ask for a barred list check for specific roles. It’s a criminal offence to ask for a check for any other roles.

<table>
<thead>
<tr>
<th>Cost of disclosure:</th>
<th>In all cases the application to the DBS for a disclosure is made by the applicant. The process is overseen by the University HR Section. The cost of the disclosure is funded by a University central fund.</th>
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<tbody>
<tr>
<td>1. Standard £32</td>
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<tr>
<td>2. Enhanced - £50</td>
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<tr>
<td>3. Enhanced with list checks £50.</td>
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**Appeals:** An individual can challenge any information that is disclosed on a DBS certificate relating to an enhanced disclosure. They can ask the Independent Monitor to review the certificate and the Independent Monitor can ask the DBS to issue a revised certificate. The Protection of Freedoms Act 2012 also allows for individuals other than the applicant to challenge a DBS certificate if it is believed that it is inaccurate.

**Barred Lists:** Barred individuals are placed on one of two barred lists: the Children’s Barred List and the Adults’ Barred List. If an individual will be working in a regulated activity they will be checked against the relevant barred list.

Employers and personnel providers have a legal duty to refer relevant information about individuals to the DBS. They must do this if they remove an individual from a regulated activity on the basis that they have caused harm to a child or adult.

The University has agreed to comply with the code of practice drawn up by the DBS. This code is designed to ensure that all disclosure information is handled confidentially and fairly within an organisation. All disclosure information must be kept securely and disposed of when decisions based on them have been made. A policy on the correct handling and storage of disclosures has been agreed by the university.
As a registered organisation, the University also has a written policy on the recruitment of ex-offenders. This is to ensure that disclosure information is used fairly and sensibly in order to avoid unfair discrimination.

**How long a DBS check is valid:** A DBS check has no official expiry date. Any information included will be accurate at the time the check was carried out. The University will decide if and when a new check is appropriate.

Applicants and employers can use the DBS update service to keep a certificate up to date or carry out checks on a potential employee’s certificate.

**Update Service:** Under the Update Service, applicants can apply once for a DBS check and then, if they need a similar check again, the recruiting organisation will be able to carry out an instant on-line check to view the existing check and see if anything has been added since the original check was carried out. This is called a ‘status check’. The employer must have the applicant’s verbal or written permission before carrying out a status check. This means that individuals will not need to make an application for a new check each time they start work in a new regulated activity. Job applicants will have to pay an annual fee of £13 to be registered with this service.

**Rehabilitation of Offenders Act 1974:** exists to support the rehabilitation into employment of reformed offenders who have not reoffended. Following a specified period (depending on the sentence) some convictions may become spent. As a result the offender is regarded as rehabilitated. This means they are treated as if they had never committed or been charged or prosecuted for the offence. Therefore they are not required to declare their spent cautions or convictions in a job application.

All cautions and convictions may eventually become spent with the exception of prison sentences (See Table of Rehabilitation Periods for more information). A person does not have to reveal a conviction unless an exception applies (See Exceptions to the Act).

**Consecutive and Concurrent sentences:** An offender may receive more than one sentence at the same time the total rehabilitation period will depend on whether the sentences run concurrently (at the same time) or consecutively (one after the other). If Concurrent sentences are imposed, then the longest applicable rehabilitation period will apply to all sentences e.g. a four month and six month prison sentence ordered to run concurrently will count as a single term of six months (carrying a buffer period of two years from the end of the sentence. This gives a total rehabilitation period of two years and 6 months before both convictions can be considered spent.)

If consecutive sentences are imposed, then the sentences will be added together to calculate the rehabilitation period. E.g. a four month and six month prison sentence will count as a 10 month sentence (carrying a buffer period of four years from the end of the sentence, giving a total rehabilitation period of four years and ten months before the convictions can be considered spent).

**Protection of rehabilitated person:** The unauthorised disclosure of information about a spent conviction is illegal. Unauthorised disclosure is where an official with access to information about the persons’ criminal record discloses this information other than in the course of official duties. Serious misuse of a person’s criminal record could result in a prison sentence or a fine or both.
Exceptions to the Act: Various occupations, professionals and types of employment are exempt from the Rehabilitation of Offenders Act 1974. The Exceptions Order over rules the employment rights an ex-offender would otherwise have in respect of spent convictions. Ex-offenders have to disclose information about spent, as well as unspent convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempted. Exempted occupations fall into the following categories:

- Work involving matters of national security, e.g. some civil service posts, defence contractors etc.
- Work that brings the person into contact with vulnerable groups such as the infirm, elderly, mentally ill and young people under the age of 18.
- Professionals that have legal protection e.g. healthcare professionals, accountants.
- Posts concerned with the administration of justice and law enforcement e.g. Police officers, lawyers, probation officers.

Rehabilitation periods as defined by the Rehabilitation of Offenders Act 1974

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<tr>
<th>Sentence</th>
<th>Rehabilitation period for Adults</th>
<th>Rehabilitation period for Under 18s</th>
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<tr>
<td>Custodial Sentence of over 4 years</td>
<td>Never Spent</td>
<td>Never Spent</td>
</tr>
<tr>
<td>Custodial Sentence of over 30 months (2 ½ years) and up to 48 months (4 years)</td>
<td>7 years</td>
<td>3 ½ years</td>
</tr>
<tr>
<td>Custodial Sentence of over 6 months and up to and including 30 months (2 ½ years)</td>
<td>4 years</td>
<td>2 years</td>
</tr>
<tr>
<td>Custodial Sentence of 6 months or less</td>
<td>2 years</td>
<td>18 months</td>
</tr>
<tr>
<td>Fines</td>
<td>1 year</td>
<td>6 months</td>
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<tr>
<td>Absolute discharge</td>
<td>None</td>
<td>None</td>
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<tr>
<td>Conditional caution and youth conditional caution</td>
<td>3 months or when the caution ceases to have effect if earlier</td>
<td>3 months</td>
</tr>
<tr>
<td>Simple caution, youth caution</td>
<td>Spent immediately</td>
<td>Spent immediately</td>
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What is a spent conviction?: Some sentences can become spent after fixed periods from the date of conviction. The length of a rehabilitation period will depend of the sentence as outlined in the table above.
**Suspended Sentences**: A suspended prison sentence is treated as one that has taken effect and the rehabilitation period is the same as for the full sentence.

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### Filtering of old and minor cautions and convictions

Filtering is the term the DBS use to describe the process which will identify protected convictions and cautions and ensure that they are not disclosed on a DBS certificate.

Since 2013, under a change to the Rehabilitation of Offenders Act 1974 (Exceptions), certain old and minor cautions and convictions will no longer be disclosed on a DBS certificate.

For those 18 years or over at the time of committing an offence the conviction will be removed from a DBS record if:

- 11 years have elapsed since the date of conviction, and
- it is the person’s only offence, and
- it did not result in a custodial sentence.

However, it will not be removed if it appears on the list of offences relevant to safeguarding.

If a person has more than one offence, then details of all their convictions will always be included.

A caution issued to an adult will be removed after six years have elapsed since the date of the caution and if it does not appear on the list of offences relevant to safeguarding.

For those under 18 years at the time of committing the offence:

- The same rules apply as for adult convictions, except that the elapsed time period is five and a half years.
- The same rules apply as for adult cautions, except that the elapsed time period is two years.

There is a long list of convictions that will never be removed on the DBS website.

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Related policies and documents:

- Policy Statement: Recruitment of Ex-offenders
- Policy Statement: Secure Storage, Handling, Use, Retention & Disposal of Disclosures and Disclosure Information
- DBS Check Procedure Flow Chart

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<thead>
<tr>
<th>Policy Author</th>
<th>Emily Thomas</th>
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<tr>
<td>Date of approval</td>
<td>16 May 2016</td>
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<td>Date for review</td>
<td>16 May 2017</td>
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