

## **Employment of People with a Criminal Record**

### **INTRODUCTION**

As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, the College will fully comply with the DBS Code of Practice and undertakes to treat all applications for positions fairly. It undertakes not to discriminate unfairly against any subject of a disclosure on the basis of a conviction or other information revealed.

The college as an employer operates within a framework of equality and diversity. We select all candidates for interview based on their skills, qualifications and experience and applications are welcomed from all.

However, the college has a duty of care towards its learners – specifically those under the age of 18 and those over the age of 18 who are considered vulnerable.

Therefore, whilst a criminal record will not necessarily be a bar to employment with us, our duty of care to learners will always be our priority.

### **PRE EMPLOYMENT CHECKS**

#### **Relevant legislation**

##### **The Rehabilitation of Offenders Act 1974**

Under this act an individual who has been convicted of an offence not excluded from rehabilitation is to be treated as a rehabilitated person and the conviction is to be treated as spent after the expiry of the applicable rehabilitation period.

Normally employers cannot ask prospective employees about any spent convictions they may have. Any conviction for a criminal offence can be regarded as spent provided:-

- it did not carry a sentence excluded from the Act, such as a custodial sentence of over two and a half years
- no further convictions occurred within the rehabilitation period.

However, this is subject to exceptions, which include work in a Further Education organisation, where the normal duties of that work involve regular contact with persons under the age of 18 and work that is concerned with the provision of care services to 'at risk' adults.

##### **The Criminal Justice and Immigration Act 2008**

This Act amends the Rehabilitation of Offenders Act 1974 bringing warnings, reprimands and cautions within its scope: reprimands and warning are 'spent' at the time they are given and conditional cautions are 'spent' after three months. They are however still recorded on the Police National Computer and will continue to be disclosed when required.

The Protection of Children Act 1999 introduced a list of all individuals who were considered unsuitable to work with children.

The Department for Children, Schools and Families and Employment list, which identifies individuals who are prohibited or restricted from being employed as teachers was included in this Act.

### **Safeguarding Vulnerable Groups Act 2006**

This Act introduced a new centralised vetting and barring scheme in England, Wales and Northern Ireland to improve the protection of children and 'at risk' adults.

From December 2012 DBS took over responsibility from ISA for making barring decisions on new referrals about people who work with children or 'at risk' adults.

### **Freedoms Act 2012**

The Disclosure and Barring Service (DBS) was formed from a merger between the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

The DBS was established under the Protection of Freedoms Act 2012 and will provide a joined up service to combine the criminal records and barring functions.

### **Disclosure and Barring Service Disclosures**

As the college welcomes learners under the age of 18 and learners classed as 'at risk' adults, we are eligible to seek information on a prospective employee's full criminal history, including **spent and unspent convictions and other relevant information. New starters at the college will pay for their own DBS checks.**

### **DISCLOSURES**

The College will assess which roles at the college require a disclosure and the level of disclosure required.

The College will not unfairly discriminate against an applicant on the basis of the disclosure information.

#### **Types of Disclosure:**

- **Standard Disclosures:** will either contain details of any spent and unspent convictions, as well as cautions, reprimands and warnings, recorded by the police centrally or will state convictions.
- **Enhanced Disclosures:** will contain the same details as a Standard Disclosure and may also contain non-conviction information from local police records that a Chief Police Officer thinks may be relevant in the connection with the matter in question. If eligible this level of check may also check the Children and Adults barred lists maintained by the DBS.

### **Prospective Employees**

Where disclosures are required, an offer of employment is subject to a satisfactory DBS disclosure.

If the disclosure reveals any information, these matters will be discussed with the individual by Human Resources as soon as the disclosure is received from the applicant. A risk assessment is completed before a final decision is made and the individual's manager will be informed of the risk assessment outcome.

Disclosure information will not be used as a substitute for any other pre-appointment checks.

## Existing Employees

The college may seek disclosure information in relation to existing employees where the college deems that it is necessary to do so, this includes if the college has particular concerns about the person's suitability to work with children; or if an individual moves into a new role within the college that involves providing education and regularly caring for, training, supervising or having sole charge of persons aged under 18 and adults who are 'at risk'.

If the disclosure reveals matters of concern to the college, which have not previously been disclosed by the individual, a risk assessment will be completed to establish if the disclosure presents a risk based on the role they are carrying out. If a risk is identified a meeting will take place between the individual and Human Resources, this meeting will explore the disclosure in order for a review and update of the risk assessment to take place. The member of staff can have a current workplace colleague or trade union representative present at the meeting. This **may** lead to disciplinary action being taken against the individual in accordance with the college's disciplinary procedure.

There may some instances where a recheck may be required, the college will bare the cost of carrying out these checks. An example of a need to re check would be where new information on an individual is declared.

## Assessing Disclosure Information

When assessing disclosure information for prospective and existing employees, we will take into account:

- The relevance of the convictions to the individual's existing or intended position.
- The seriousness of the offence(s) or other matters revealed and their relevance to the safety of other employees, learners, clients, property and the public.
- The length of time since the offence(s) or other matters occurred.
- Whether the offence(s) was/were a 'one off' or part of a history of offending.
- Whether the individual's circumstances have changed since the offence(s) or other matters occurred.
- The circumstances surrounding the offence(s) or other matters, including any information offered by the individual about those circumstances.
- Any explanation offered by the individual for the offence(s) or other matters given during the post interview process.
- Disclosure information will also be assessed in relation to the tasks that the individual will be/is expected to perform as part of his/her post.

## Confirmation of How to Proceed

Issues of concern will be raised and clarified with the Vice Principal: Human Resources & Organisational Development before an individual is confirmed in post or in the absence of the Vice Principal: Human Resources & Organisational Development, any other member of the college's Executive Team.

## **Confidentiality and Data Protection**

The College will comply with the DBS Code of Practice relating to the disclosure of information, specifically:

The College will ensure that information regarding previous convictions and other disclosure information is kept confidential and is provided on a 'need to know' basis.

- Disclosure information will be kept securely in lockable cabinets. Access to the keys to those cabinets will be restricted to those individuals employed within Human Resources.
- Disclosure information and any associated correspondence will be kept for a maximum of 6 months other than in very exceptional circumstances or where there is an ongoing dispute to which disclosure information is or may be relevant. A record that a check has been done will be recorded on the individual's HR record.
- Disclosure information will be destroyed effectively by the means of shredding or burning.

## **DBS Update Service**

The Disclosure and Barring Service (DBS) update service lets applicants keep their DBS certificates up to date online and allows employers to check a certificate online.

Individuals can register as soon as they receive their application form reference number or you can wait and register with your certificate number when you receive your DBS certificate. If so, this must be done within 19 days of the certificate being issued.

Registration lasts for 1 year and currently costs £13 (this would be payable by the individual). The college informs candidates of this service however this registration is not currently mandatory.

The update service allows employers to check someone's DBS certificate status online and receive a result straight away. In order for an employer to check a certificate online they must be legally entitled to do so and have the individual's permission.