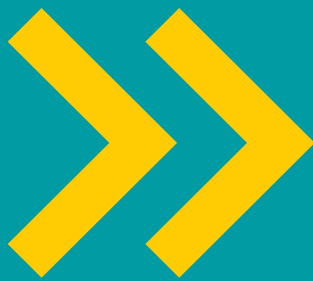


Nacro >

**Employer Advice
Service**



Recruiting Safely and Fairly

**A practical guide to employing people
with convictions**

nacro.org.uk

Registered charity no. 226171

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This publication has been produced by Nacro's [Employer Advice Service](#) with the support of the Chartered Institute of Personnel and Development (CIPD) and the Disclosure and Barring Service (DBS) and is primarily set within the context of the legal arrangements in England and Wales. It is a practical guide aimed at employers and recruiters of paid or voluntary staff to help them to understand their legal rights and responsibilities and good practice when employing staff with criminal records now commonly referred to as people with convictions. The guidance outlines how to implement fair, safe and responsible policies and practices for employing people with convictions., based upon a full understanding and assessment of risks involved.

Main contributor to this guidance: [Dominic Headley](#), Consultant, Nacro

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Every reasonable effort has been made to check that the information in this guidance is as accurate as possible. However, we cannot guarantee its accuracy or completeness, and any liability for it is expressly excluded and disclaimed by Nacro.

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Foreword

Recruiting the best employees safely and fairly is one of the biggest challenges employers face. With over 25% of the working-age population recorded as having a criminal record, there is a significant talent pool that organisations cannot afford to ignore. However, we know that for many employers the legislation and practice around employing a person with a criminal record seems complex and daunting. Here at Nacro we are lucky enough to have expertise within the organisation in the form of our Employer Advice Service which advises our HR team and recruiting managers on procedures for recruiting people with convictions safely and fairly, with a significant proportion of our workforce having a criminal record. This guidance has been compiled to give all employers the opportunity to access the same expertise. Nacro understands the value of supporting and retaining a diverse workforce, including those with a criminal record. Given the current challenges in recruitment, that in part can be attributed to Brexit, not only is this the right thing to do but it also makes good business sense.

Andrew Hodges Director of Finance and Corporate Services Nacro



Foreword

Many employers tend to be cautious about offering work to someone with a criminal record and some even operate blanket exclusion policies when recruiting. This approach is flawed. It results in a loss of talent that could add real value. At the same time it contributes unnecessarily to reoffending rates by those who cannot find work and, as a result, commit crime. In a society where a fear of crime prevails, this affects all of us.

Employers report (CIPD, 2013) that they increasingly struggle to find people with the right talent, skills, abilities and potential to fill their vacancies.

Recognising the diversity of talent available and how to attract it by valuing difference and being more inclusive will help them to overcome these problems. Previous CIPD surveys (CIPD, 2007) of employers show that, contrary to common perceptions, their experiences of employing people with convictions (previously referred to as ex-offenders) have been positive. Retention rates are high and people with convictions make valuable and reliable employees.

So how can employers recruit the right people and minimise risk? The CIPD is pleased to support this practical guide which explains the legal duties employers have when it comes to dealing with people with histories of offending, the practices they can adopt to do so successfully and the protection which criminal record checks may or may not afford.

**Dianah Worman OBE Chartered FCIPD Public Policy Adviser,
Diversity, CIPD**

CIPD

The DBS welcomes the opportunity to collaborate with Nacro and the CIPD. We are pleased to have been consulted on the guidance relating to DBS checks required for this document.

Policy team, DBS



Disclosure &
Barring Service

Introduction

It is vital that employers take the time to understand how to recruit safely and fairly. The law around criminal record checks is complex and recent changes to the legislation mean that many employers' policies and procedures are out of date. Ensuring that relevant staff have a thorough and working knowledge of the legislation means organisations can be assured that they have adequate protection in place for their business, staff and clients. The cost of not doing so could mean they are breaking the law and result in hefty fines.

There are now more than 12.3 million people recorded as having a criminal record on the Police National Computer (PNC) (Home Office, 2023). This equates to over 25% of the working-age population. Many employers who have knowingly hired people with convictions reported a positive experience (Reed, 2013, Working Links, 2010 and Working Chance, 2022) and indicated that these employees worked as hard, if not harder, than those with no convictions.

Nonetheless, some employers have great and exaggerated concerns about recruiting people with convictions. Research undertaken by Working Chance in 2022 shows that employer attitudes towards hiring people with convictions have changed over recent years, with 45% stating they would hypothetically hire a person with a criminal record in comparison to 25% of employers that were surveyed in 2010 (Working Links). However, some employers believe that they cannot employ people with convictions for legal reasons or insurance purposes. 30% of employers say they would use the declaration of an unspent conviction to exclude a candidate (Working Chance), in comparison to 2010 where 75% of employers stated they would use the declaration of a caution or conviction to discriminate against an applicant in favour of a candidate with no convictions (Working Links). Although there has been progress since 2010, further work is needed in this area. One of the key purposes of this guide is to set out exactly what the legal position is.

The cost

Reoffending costs the UK up to £18 billion a year (Home Office, 2019). This is in addition to the social and economic costs caused by preventing otherwise suitably skilled, qualified, experienced and motivated applicants from having a fair opportunity to compete for gainful employment. Many of these individuals are consequently not in a position to provide for their families, pay taxes and contribute positively to society. Some face being confined to a life on benefits and a burden to the taxpayer.

The ripple effect of low employment rates among people with convictions can lead them to experience problems in other aspects of their lives such as an inability to secure and maintain adequate housing, unmanageable debt and expenditure issues, increased likelihood of developing substance or alcohol misuse or mental health problems and difficulty maintaining positive personal and family relationships.

Reoffending rates are greatly influenced by whether a person finds work or not. Employment is often quoted as the most important factor in helping to reduce reoffending. To address this, there have been a number of significant changes to legislation recently which aim to reduce or remove barriers faced by people with convictions when seeking employment and thereby aim to benefit society as a whole.

Relevant legislation

Protection of Freedoms Act 2012

In 2010, the entire criminal record regime was reviewed by an expert panel which included Nacro and other key stakeholders. Many of the panel's recommendations were accepted by the government and implemented through the [Protection of Freedoms Act 2012](#).

The recommendations which were adopted and are relevant to the purposes of this guide include:

- > The merger of the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) to create the Disclosure and Barring Service (DBS).
- > A new definition of regulated activity focusing on work which involves close and unsupervised activity with children or vulnerable groups.
- > The disclosure certificate is now issued only to the applicant and is no longer copied to employers or registered bodies except in certain circumstances relating to the DBS update service (contact the DBS for more information).
- > The launch of the [DBS update service](#) which enables portability of disclosure certificates between jobs in the same sector.
- > A minimum age (16) at which a person can apply for a DBS check
- > A more rigorous relevancy test for when police can disclose other relevant information on an enhanced disclosure certificate.
- > Barred list checks are now restricted to those working in accordance with the new definition of regulated activity and a small number of other defined roles.

- > Police forces can no longer disclose ‘additional information’, also known as ‘brown envelope information’, about applicants directly to employers under the Police Act 1997, although they can still do so under common law powers.
- > A new representations process for individuals giving them the opportunity to challenge inaccurate information contained in their disclosure certificate, or other relevant information disclosed at the relevant chief police officer’s discretion.

The [duty to refer](#) remains. Employers have a legal duty to refer to the DBS any person who has been removed by the employer (or would have been removed had the person not resigned, retired or left the workplace) from engaging in regulated activity because they:

- > harmed or posed a risk of harm to a child or vulnerable adult or
- > satisfied the harm test or
- > received a caution or conviction for a relevant offence.

It is an offence for an employer to knowingly allow a barred person from engaging in regulated activity with the group with which they are barred from working (i.e. children or vulnerable groups, or both). It is also an offence for a barred person to seek work with the group with which they have been barred from working.

More detailed guidance on all the relevant changes can be found on the [DBS website](#).

The Rehabilitation of Offenders Act 1974

The [Rehabilitation of Offenders Act 1974 \(ROA\)](#) primarily exists to support the rehabilitation into employment of people with convictions who have stopped offending and wish to turn their lives around. The Act allows all cautions and most convictions to be considered ‘spent’ after a specified period of time, legally referred to as the rehabilitation period – but in practice it is a disclosure period. The length of the rehabilitation period varies according to the sentence or disposal given.

Once ‘spent’, the Act treats the person as if they had never been convicted of the offence. As a result, the caution or conviction in question does not need to be disclosed by the person when applying for most jobs, educational courses, insurance, housing applications or other purposes, unless the role applied for is ‘exempt’ from the Act (see ‘Exceptions to the Act’). If a role is covered by the Act, the organisation is only legally entitled to carry out a basic DBS check which will reveal all ‘unspent’ cautions and/convictions.

It is unlawful for an organisation to knowingly carry out (or enable someone else to obtain) a higher-level (standard, enhanced or enhanced with barred list check) Disclosure and Barring Service check (DBS check) on a person for a role which is covered by the Act. It is also unlawful for an employer to refuse to employ a person, or dismiss an existing employee, because of the 'spent' caution or conviction – unless an exception applies.

To work out when a caution or conviction may become 'spent' one can use the [Ministry of Justice \(MoJ\) Disclosure Checker](#)

See Appendix A for more details on rehabilitation periods. Comprehensive guidance on the ROA and rehabilitation periods can be found on the [Nacro website](#).

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order as amended in 2013 and 2020

Changes to the legislation, listing specific positions, professions, employment, offices, works and licences exempt from the ROA came into force in England and Wales on 29 May 2013. As a result, the DBS introduced a system that removed certain minor cautions and convictions from standard or enhanced disclosure certificates, as they were deemed to be protected (i.e. eligible for filtering).

The changes in legislation made it unlawful for an employer to take into account a protected caution or conviction that would not be disclosed on a disclosure certificate, when making a decision to employ a person or dismiss an existing employee.

On 28 November 2020, significant changes to the ROA Exceptions order came into force affecting both what an employer can ask and the information the individual is required to declare. Youth cautions, reprimands and final warnings are no longer automatically disclosed on standard or enhanced DBS checks.

In addition, multiple convictions can now be 'protected' (i.e. filtered) as long as all other the criteria have been met.

See Appendix B for more details on filtering. Comprehensive guidance can be found on the [Nacro website](#). There is also further information on the [DBS website](#). Scotland and Northern Ireland have their own filtering arrangements.

Part V of the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Orders 2013, 2020 and 2023

On 29 May 2013 changes were made to Part V of the Police Act 1997, the legislation that permits employers in England and Wales to ask exempted questions under the terms of the ROA, and to obtain information about an applicant's spent cautions and convictions through standard or enhanced disclosure checks. The definition of relevant matter in the Police Act 1997 was amended in 2020.

Important additional amendments were made in [2023](#) to align the information disclosed on standard and enhanced DBS certificates with the self-disclosure rules under the ROA Exceptions Order. It sets out what information, which does not qualify for filtering, can be disclosed by the DBS in England and Wales, or when an individual applies for a standard or enhanced disclosure certificate.

Section 123 of Part V of the Police Act 1997 makes it a criminal offence for an employer to knowingly carry out, or enable another person to obtain, a standard or enhanced disclosure check on a person in respect of a role which is not exempt from the ROA.

Data Protection Act 2018

[Section 184](#) of the Data Protection Act 2018 (DPA) makes it a criminal offence for an employer to require an applicant, existing member of staff or third party, to make an enforced subject access request and then share the information with the employer. An enforced subject access request normally involves the person obtaining a copy of their full criminal record directly from the police, prison, probation service or courts. Employers who carry out an enforced subject access request may now face prosecution by the Information Commissioner's Office (ICO).

For further information, advice, support or training on the relevant legislation contact Nacro's Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk or visit the [Nacro website](#).

Criminal record checks

Determining whether a check needs to be carried out

It is very important, before advertising for a role, that the employer establishes what level of disclosure is legally required for the role. Contrary to popular understanding, most jobs are actually covered by the ROA, and therefore the applicant is only legally required to declare, and the employer is only entitled to know about, unspent cautions or convictions. These roles are eligible for basic disclosure checks. If the applicant has been charged with an offence, an employer may be entitled to know about pending prosecutions.

At present, a number of employers carry out standard or enhanced disclosure checks (commonly known as higher-level DBS checks) on posts that are not exempt from the ROA. This is illegal. Many employers consider jobs where employees go into people's homes, or have any form of contact with the public, to be exempt from the ROA, simply because the employer wrongly interprets the public as, by definition, including children and vulnerable groups. Taken to its logical conclusion, such a definition would include the vast majority of occupations because most people come into contact with the public at some point during the course of their employment. Such a wide definition is not what legislators intended. Common examples of roles on which employers should not be carrying out standard or enhanced disclosure checks but often do include:

- > public bus drivers
- > tradesmen (such as electricians, plumbers or gardeners) who visit people's homes
- > customer service advisers
- > bank clerks
- > employment support advisers who are not working with those aged under 18
- > housing officers

Standard or enhanced DBS checks should only be carried out for specific positions, professions, employment, offices, works and licences included in the ROA Exceptions Order. In the first instance, employers should use the [DBS eligibility tool](#) and [workforce guides](#) to establish whether the role is eligible for a standard or enhanced DBS check. After using these resources, if an employer is unsure about whether or not a role is eligible for a DBS check, they should contact DBS customer services on 03000 200 190 or email customerservices@dbs.gov.uk.

The DBS website provides guidance on the common types of positions which are eligible for DBS checks. Broadly, some of these positions or purposes include:

- > those whose duties involve work, not merely having incidental contact, with children and vulnerable groups
- > certain professions such as healthcare (nurses, doctors, care or social workers), accountancy and the legal profession
- > veterinary surgeons
- > senior managers, controllers, directors for approved specified financial roles
- > licensing of taxi or mini cab drivers (contact the DBS for more details)
- > traffic wardens
- > membership of the Master Locksmiths Association
- > football stewards
- > applying to be a prospective adopter, foster carer or special guardian
- > obtaining a licence issued by the Security Industry Authority (SIA)
- > obtaining or holding a personal or operating licence under Part 5 or Part 6 of the Gambling Act 2005.

Determining which check to carry out

An employer is legally responsible for ensuring that they are entitled to receive a standard or enhanced disclosure certificate before submitting applications to the DBS. Employers must satisfy themselves that the positions are eligible for disclosure checks under current legal provisions. It is also important that the employer can demonstrate to an applicant (or existing employee) how the role or post is exempt from the ROA.

It is a criminal offence for an employer to obtain a standard or enhanced DBS check for a role that is not exempt from the ROA. Employers that do so are not only in breach of Part V of the Police Act 1997, but also the ROA and UKGDPR/DPA 2018, which requires that data be processed fairly and lawfully.

An applicant (or existing employee) may pursue legal recourse in a civil court against an employer who has requested an unlawful check.

For further information, advice or support on when and which type of checks can be carried out, contact DBS customer services on 03000 200 190 or email customerservices@db.gov.uk. Alternatively, contact Nacro's Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk or visit the [Nacro website](#).

If an employer decides to carry out a criminal record check, they need to determine the level of disclosure for which the position is eligible. The main types available are:

Basic disclosures (basic checks) can be carried out for roles that are covered by the ROA, which includes most roles. Basic disclosures only contain details of unspent cautions or convictions. They are available from DBS for employers in England and Wales. With the individual's consent, an employer can apply for a basic check with DBS through a Responsible Organisation registered to submit them. Individuals are also able to apply directly for a basic check. A basic disclosure should not be confused with a standard disclosure (standard DBS check), which can only be carried out on exempt roles.

Standard disclosures (standard DBS checks) are available from the DBS and contain details of all unspent cautions and convictions (including youth conditional cautions); as well as adult cautions and spent convictions which are not protected. See Appendix B which contains detailed guidance on filtering. Standard disclosures are available for jobs and activities listed in the ROA Exceptions Order.

Enhanced disclosures (enhanced DBS checks) are also available from the DBS and contain the same criminal record information as the standard DBS check and may also include other relevant information. Other relevant information may be disclosed at the discretion of the chief police officer of the force that holds the information, if they reasonably believe it to be relevant to the role. Enhanced disclosures are only available for certain jobs and activities listed in both the ROA Exceptions Order and also the Police Act 1997 (Criminal Records) regulations.

Enhanced disclosures with children's and/or adults' barred list check(s). Enhanced disclosures with barred list checks include the same criminal record information as enhanced disclosures, but also detail whether the person is barred from working with either children or vulnerable groups or both. To be eligible to request a check of the children's or adults' barred list, the position must be eligible for an enhanced disclosure and also specifically listed in the Police Act 1997 (Criminal Records) regulations as eligible to check against the appropriate barred list(s).

Applications for standard and enhanced disclosures have to be made by the employer either directly, if they are a registered body, or through an umbrella body. The disclosure certificate is sent directly to the individual who must then hand it to the employer.

For further information about disclosures, contact DBS. Alternatively, contact Nacro's Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk or visit the [Nacro website](#).

Northern Ireland

[Access NI](#) provides basic, standard or enhanced disclosures for employers based in Northern Ireland. Certificates will be based on the ROA and the ROA Exceptions Order (as amended 2014) which is applicable in Northern Ireland.

Scotland

[Disclosure Scotland](#) provides a specific service for employers in Scotland. This service issues basic and higher-level disclosures based on the ROA and the ROA Exceptions Order as applicable in Scotland.

How to ask about criminal records

Criminal record checks should not be used as a blanket requirement for all jobs. The fact that a person has a criminal record is frequently irrelevant to the job for which they are applying. Employers who decide to ask applicants about criminal records should do so in a way which encourages honesty.

Applicants should be informed at the outset exactly what information will be requested from them and why, and at which stage of the application this information will be requested. This will provide a basis for the applicant to decide whether or not to apply for the post. Employers should emphasise that this information will be used only to assess the applicant's suitability for employment where it is relevant. The applicant should be considered first and foremost on skills, qualifications and ability to do the job and should not be unfairly discriminated against. Appendices C and D are template criminal record declaration forms that can be adapted to suit the needs of employers and include a suggested policy statement on recruiting applicants with criminal records.

Asking the correct question for the role

If employers do decide to ask applicants about their criminal records and carry out criminal record checks, they should determine what level of disclosure is required and ensure they ask applicants the correct question(s) that is/are appropriate for the role for which they have applied.

On many occasions, there can be a great deal of confusion for both applicants and recruiters, due to incorrect or confusing criminal record declarations that employers include on their application forms or online portal. This confusion can lead to the applicants failing to disclose their cautions or convictions, not providing sufficient details about their criminal record history, or providing details about their criminal record history to which the employer is not legally entitled.

Employers should update their application forms and recruitment policies to take into account the recent changes to disclosure legislation, and ensure that they are not asking applicants to declare any information to which they are not legally entitled and which would result in the employers breaching disclosure legislation (the ROA, the Police Act 1997), UKGDPR/DPA 2018 and the [DBS code of practice](#). Employers who fail to ensure their application forms and online portals are in line with legal requirements could face an applicant pursuing a civil claim, or prosecution by the ICO. The ICO has the legal powers to impose unlimited financial penalties (usually in the region of £100,000s but could be more) against employers who breach data protection laws.

Simply asking a Yes/No question and/or providing the applicant with a couple of lines to give full details about their criminal record will not allow them to provide the level of useful detail for the employer to make an informed, evidence-based decision. Employers need to give applicants the opportunity to provide context surrounding their criminal record. The [Ban the Box campaign](#) highlights the negative ripple effect there is on society when employers apply a tick box approach to criminal record declarations.

In general, the question about criminal records on application forms or online portals serves no helpful purpose for employers or candidates. If used in the sifting process, it may well exclude suitable candidates, as there is rarely adequate opportunity for candidates to expand upon the circumstances that led to their offending behaviour, or demonstrate how they have moved on from their past mistakes. For those candidates with criminal records who do make it through the sift, they cannot compete on a level playing field as their application and ability for the role is always viewed in light of the fact that they have a criminal conviction.

Employers should adapt their application forms, online portals and recruitment policies and procedures to ensure they do not inadvertently discriminate against people with criminal records. Employers should ideally remove criminal record disclosure questions from the first point of the recruitment process, instead asking questions in relation to criminal records at a later, more appropriate stage in the recruitment process. This ensures applicants are first assessed on their skills, qualifications and ability to do the job, and also gives applicants the opportunity to provide disclosure information to the employer in a way which better informs the employer's risk assessment.

It is best for applicants to make a disclosure statement in writing, as it is recognised that simply asking a Yes/No question does not provide any real useful information about the person behind the offence (see limitations of disclosures on pp24-26). The disclosure statement is helpful as it provides evidence of the exact information the applicant disclosed to the employer when applying for the role, which reduces the likelihood of disputes later on, e.g. if the original hiring manager leaves the organisation.

For further information, see Nacro's guidance on [disclosing criminal records](#) to which employers should signpost applicants.

Appendix C is designed for roles that are covered by the ROA. Therefore, the criminal record declaration asks the question:

1. Do you have any unspent cautions or convictions?

Appendix D is designed for roles that are exempt from the ROA, and therefore eligible for either a standard or enhanced disclosure. The criminal record declaration form takes into account the filtering requirements, and therefore asks the questions:

1. Do you have any unspent cautions or convictions?
2. Do you have any adult cautions or spent convictions that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)?

The flowcharts in Figures 1 and 2 (see pages 20 and 21) outline the steps that we recommend employers take when gathering criminal record information during the initial recruitment process and at the point of making a job offer.

PRISIM Model of Safer Employment

Important note: As result of the recent changes to criminal record disclosure laws, significantly less criminal record information is shared with employers. In the past many employers have over relied on criminal checks when determining the suitability of the applicant, but now more than ever, they will be reliant upon all the information gathered within the recruitment process to determine the suitability of the applicant – and their fitness to do the role

Criminal record checks remain a vital tool, but an effective, safe and fair recruitment process will now include a range of robust vetting checks, including a focused comprehensive application form or online-process, values-based recruitment, criminal record self-declaration, and sharing detailed effective references. This ensures that as much relevant information as possible is gathered about conduct and suitability from as many sources as possible about prospective employees.

What is the PRISIM Model of Safer Employment?

Safer recruitment and robust vetting provide organisations with the first opportunity to deter and prevent those who may be unsuitable for work with vulnerable people from securing a role with them.

However, it is just one of many barriers organisations can and must put in place as part of their commitment to a safeguarding culture. It is equally important to embed a culture that applies a 360° approach to safeguarding in employment. This makes best use of the induction, probationary period, and effective supervision as part of an ongoing culture of safeguarding and vigilance to identify for all staff or volunteers any behaviours or attitudes which may cause concern, and which may not have been shared in criminal record checks or references.

The PRISIM model of safer employment is a framework that encompasses this 360° approach to safeguarding in employment. It supports employers to embed a safeguarding mindset at every stage of the employment journey – from planning recruitment through to managing leavers.

It also supports employers move beyond compliance, encouraging organisations to be ‘curious’ about their own organisational culture and their approach to gathering, recording, and sharing conduct information in order to fulfil their responsibilities to keep everyone safe.



What is a safeguarding mindset?

A safeguarding mindset is the difference between compliance and curiosity.

Compliance is when we meet the minimum standards and tick all the right boxes, but do not explore or consider anything that sits outside of that process.

Curiosity is when we go beyond compliance and are actively curious about the information we do and don't have. We know from many inquiries and serious case reviews that a culture of compliance alone does not keep people safe. For curious recruiters, when something does not seem right, they seek additional information to validate or challenge that mindset. This means they will have the evidence they need to make the right decision.

More information on the PRISIM Model of safer employment and gathering, recording and sharing conduct information is available in the [Sharing effective references and conduction information toolkit](#) published by the Better Hiring Institute.

Figure 1: How to gather criminal record and conduct information

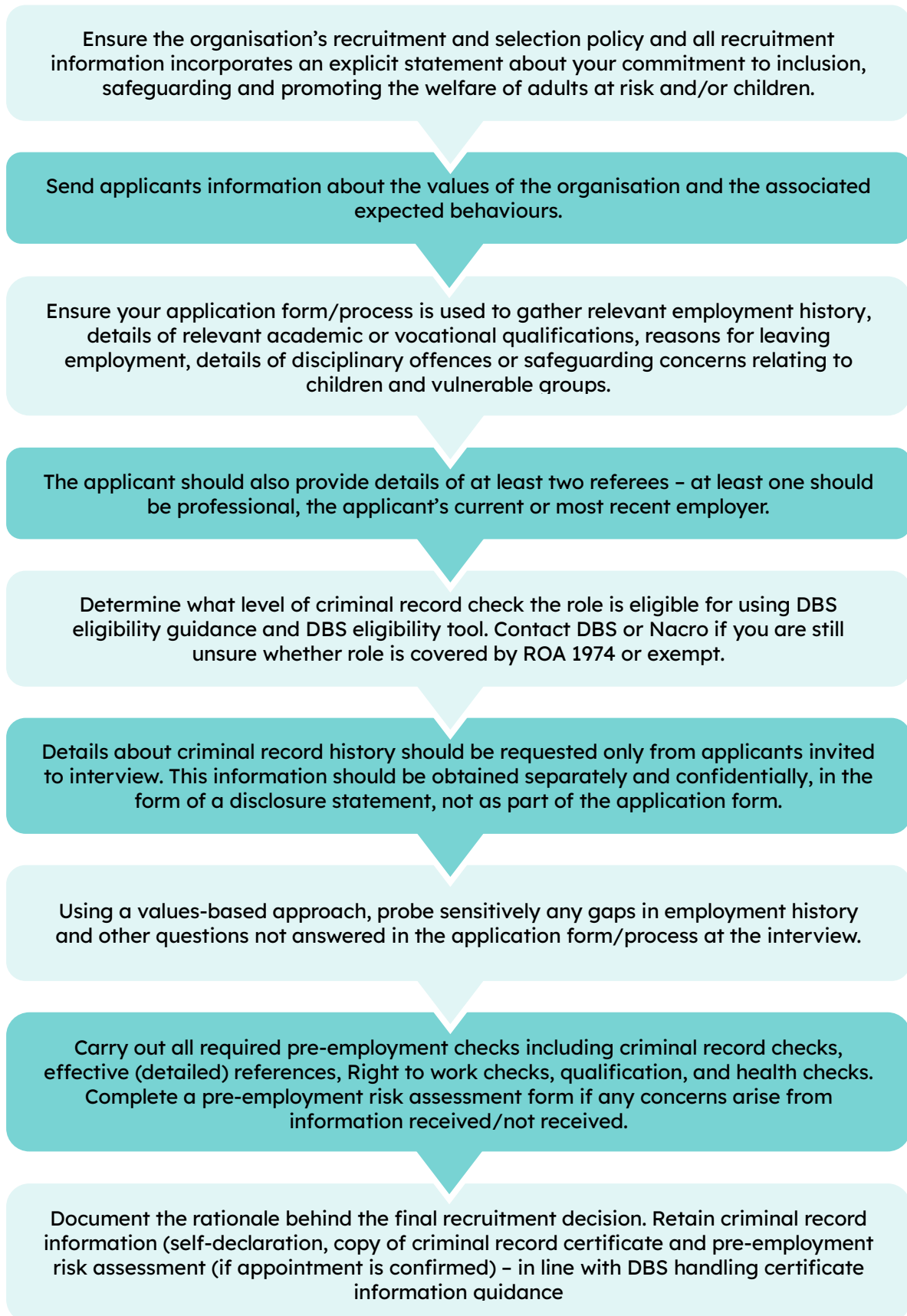
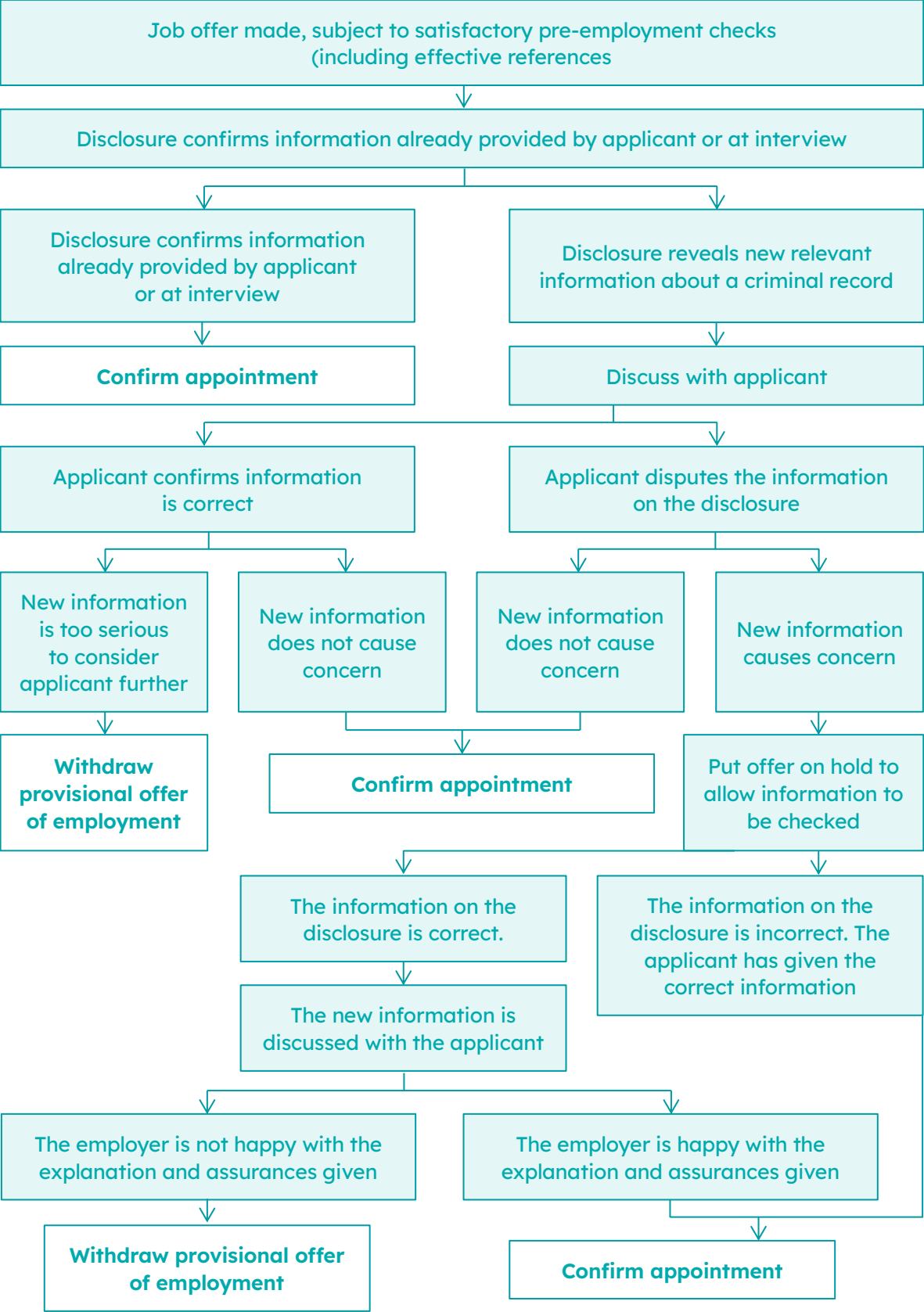


Figure 2: Dealing with disclosure certificates



What to do if a criminal record or allegation is revealed on a check

If the applicant has satisfied all other pre-employment checks (see PRISIM Model of safer employment), and no criminal record or other relevant information (only applicable to enhanced disclosures) is revealed on a disclosure, the employer should confirm the offer of employment.

An enhanced disclosure with barred list check will reveal whether the person is barred from working in regulated activity with children or adults. If the person is barred, the employer should contact the police who will take appropriate action, as it is an offence for a person barred from working in regulated activity with children or adults to apply for such work. It is also an offence for an employer to knowingly employ a barred person in such a capacity.

If a disclosure confirms only criminal record information which has already been disclosed by the applicant and taken into account by the employer, the employer should confirm the offer of employment.

Some employers operate a system whereby offers of employment are subject at a later date to final approval by the head of human resources or another senior member of staff. If this is the case, offers of employment must not be made until final approval has been secured. It is extremely important that the applicant's disclosure statement, and any other relevant information, is provided to the panel or final decision maker to inform their decision and, where relevant, their risk assessment.

Some employers make their final recruitment decision based solely on the criminal record information or the other relevant information contained in the disclosure in the absence of other key information provided about the applicant's suitability for the role (see PRISIM Model of safer employment), such as the applicant's CV, the application form filled out for the role, interview test scores and notes, values based recruitment, details of qualifications, professional registration and effective references. Sometimes, the final decision maker is not provided with a copy of the applicant's disclosure statement and, therefore, has very little, or no understanding of the circumstances behind the applicant's offending behaviour. This is extremely bad practice, and is a key factor in many job offers being withdrawn. Employers should ensure that all the key information is made available to the final decision maker.

What to do if there are discrepancies

If there are significant discrepancies between the information the applicant has provided, and the criminal record information contained in the disclosure, either because the employer did not ask, or the applicant failed to

reveal it –further consideration of this new information will be necessary. Any concerns that have arisen should be discussed with the applicant. The DBS code of practice states that an employer should discuss any new matters (including other relevant information) revealed in the applicant’s disclosure with the applicant in the form of a meeting, before making a final recruitment decision, in order to give the applicant the opportunity to address the employer’s concerns. This same principle applies to roles which require a basic disclosure.

In the past, some employers have not given further consideration to anyone who failed to disclose an offence, no matter how irrelevant the offence was. This is unreasonable. Applicants should not be rejected outright, without the opportunity to make representations, especially if they have resigned from their previous employment in order to take up the new appointment. If there has been a failure to disclose, it is important that the employer establishes the reasons why.

In some cases, a discrepancy may have occurred because the applicants simply did not realise that they had a criminal record, or were mistaken about the type of sentence or disposal they received, because they have a limited understanding of how the criminal justice system works. The changes to disclosure legislation, including the ROA and the ROA Exceptions Order, are extremely complex. This, along with the fact that applicants will not know exactly what information is contained on their criminal record until they receive their disclosure certificate, means that an increasing number of applicants face getting it wrong. If it is completely clear, from an early stage, that an appointment is likely to be subject to a basic, standard or enhanced disclosure, applicants will be less willing to conceal their records deliberately.

Applicants are not legally required to disclose non-conviction disposals such as fixed penalty notices (FPNs) or penalty notices for disorder (PNDs) that have been paid on time, regardless of the type of disclosure applied for. Applicants are also not required to disclose other non-conviction disposals e.g. community resolution orders or anti-social behaviour orders (ASBOs), allegations, arrests, or charges and prosecutions that have been disposed of (i.e. did not result in the person receiving a caution or conviction).

Sometimes, it may be clear that the applicants are unsuitable for the posts because of their criminal record or conduct information that has been revealed.

However, in general, it will not be clear whether a person is suitable until questioned further. Therefore, it is important to carry out a pre-employment risk assessment (see Appendix E for a template criminal record risk assessment form) to inform the final recruitment decision.

Challenging inaccurate information on disclosures

While every effort is made by the DBS, Disclosure Scotland and Access NI to ensure that disclosures are accurate, mistakes can occur. If the discrepancy arising from an apparent mistake on a disclosure is serious enough to exclude the applicant from the post, a final decision about the appointment should be deferred until the person has had an opportunity to rectify the situation.

The applicant, or employer, can dispute the information on a disclosure which they consider to be incorrect by contacting the DBS, Disclosure Scotland, Access NI or whichever is the relevant organisation for the role applied for.

If the organisation issuing the disclosure accepts a mistake has been made, a new disclosure certificate will be issued to the applicant to provide to the employer. If not, the applicant can lodge a formal complaint to the ICO to investigate.

Limitations of disclosures

There is a limit to the usefulness of the information provided in disclosures. Offence codes often cover a broad range of behaviours which vary in terms of seriousness. They are rarely self-explanatory and often make offences sound more serious. A disclosure will not explain what particular offences mean and will not provide any context, which is why disclosure statements are so important. Where information is revealed, the disclosure will generally only provide basic facts such as:

- > Details of the applicant (i.e. name, date of birth and home address)
- > Date of offence(s)
- > Date of conviction(s)
- > Offence code(s) (e.g. battery, robbery, shoplifting)
- > The Act that offence code(s) relates to (e.g. Offence against the Person Act 1968, Theft Act 1968)
- > Sentence or disposal received (e.g. caution, fine, imprisonment for six months)
- > Details of the court where sentence was imposed

If the role requires an enhanced disclosure, then it may include other relevant information, which can consist of more descriptive information about the alleged incident or the concerns of the relevant police force providing the information.

If the role requires an enhanced disclosure with barred list check, it would indicate whether or not the person is barred from working with children or vulnerable groups, or both.

A disclosure may not provide information on people convicted abroad, or even people convicted in the other countries of the UK. Employers should therefore be cautious about relying on disclosures from those with little, if any, residence in the country the disclosure relates to (i.e. England and Wales for the purposes of this guide). Employers should also exercise caution in respect of those with gaps in their employment history and obtain the local equivalent of a disclosure from the applicant's home country or country of last residence, whichever is appropriate.

The introduction of the filtering system has led to certain offences being disclosed on an applicant's disclosure due to legal technicalities rather than any adequate assessment of risk. For example, an individual may have committed an offence that warranted a charge of common assault, but is instead arrested and charged for the offence of actual bodily harm; as there is a lack of consistency in police recording practices. The offence code 'actual bodily harm' appears on the DBS list of specified offences that will never qualify for filtering and so will always be disclosed; whereas the offence code 'common assault' does not appear on the DBS list of specified offences and may be filtered from a disclosure if all filtering criteria has been met.

Scenario 1

John received a caution for common assault at the age of 18 in September 2020. His caution is eligible for filtering after six years and will not appear on an enhanced disclosure after September 2026.

However, if John had received a caution for actual bodily harm, instead of common assault, his caution would never be eligible for filtering, and would always be disclosed on an enhanced disclosure until he reached the age of 100.

As a result of the changes to the ROA, certain sentences such as conditional discharge orders, which are traditionally viewed as less serious than fines or community orders, now have the potential to have a greater impact on an individual's ability to obtain employment, as they can be disclosed on a basic disclosure for a longer period of time depending on the length of the order imposed.

Nacro has raised concerns with the Ministry of Justice about this issue, and also the fact that changes to the ROA have resulted in driving endorsements having a longer rehabilitation period than all non-custodial sentences – and custodial sentences of up to one year.

Scenario 2

Mike receives a 12-month custodial sentence for burglary (as an adult). His sentence may become spent after two years. After this time, his conviction may not be disclosed on a basic disclosure.

Scenario 3

Sandra receives a three-year conditional discharge order for shoplifting (as an adult). Her sentence may become spent after three years. After this time, her conviction may not be disclosed on a basic disclosure.

Scenario 4

Kate receives a fine, three penalty points and an endorsement for speeding (as an adult). As the endorsement has a rehabilitation period of five years, her sentence may become spent after five years. After this time, her conviction may not be disclosed on a basic disclosure.

The scenarios above demonstrate that the impact of a person's criminal record on their ability to obtain employment may often be determined by how an offence is actually recorded on the PNC, and how a sentence or disposal received by the individual is now treated by the ROA, or ROA Exceptions Order. In addition, sentencing practices vary across the UK. As a result, the inclusion of cautions or convictions in disclosures is not necessarily determined by the seriousness of the offence committed.

Good robust recruitment policies in general (See PRISIM Model of safer employment) will often provide a better guide to an applicant's suitability for the role. By carefully scrutinising applicants at earlier stages in the recruitment process, looking for inconsistencies and gaps in the information they provide, asking the right questions in interview in relation to their suitability for the role, taking up effective references and where necessary carrying out a risk assessment and questioning referees, an employer will be in a much better position to determine whether they are suitable for the vacancy.

For further information, contact Nacro's Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk or visit the [Nacro website](#).

Reviewing policies and procedures

Many employers face increasing pressures in implementing vetting procedures and applying complex changes in the law to their employment practices. The onus is on employers to adopt policies that ensure information on criminal records is used in a way that protects the organisation and vulnerable people, but is also fair to applicants, and improves overall recruitment and retention processes. In order for a policy on employing people with criminal records to gain widespread acceptance within an organisation, it is vital to involve managers, employees and their representatives in its development. In particular, employers should:

- > review new roles to assess what types of risks they may involve and complete a criminal record risk hazard form (an example is included on page 52 in Section D of Appendix E) if required.
- > have a written policy and guidance on the recruitment of people with a criminal record, and provide a copy to applicants. The policy should make clear that the organisation is committed to the principle of equality of opportunity and, as such, will make all efforts to prevent unfair discrimination against those with criminal records, to ensure that suitable applicants are not refused posts because of offences which are not relevant to the role, and which do not make them a risk in the role.
- > ensure staff involved in recruitment are provided with all relevant Nacro guidance on the employment of people with convictions, including which level of criminal record checks can be carried out, and information on the ROA, filtering and disclosing criminal records.
- > provide relevant training, including risk assessment training, to staff involved in safer recruitment.
- > provide all unsuccessful applicants with relevant feedback relating to their criminal record.
- > ensure that all applicants' personal and sensitive information is treated confidentially. Applicants' criminal record information should be either stored securely, if appointed, or destroyed, if the applicant is not appointed.

Safer recruitment checklist

The safer recruitment checklist in the table on pages 28-29 is designed to help employers ensure they follow a clear process when recruiting for a role. It covers the whole process including recruitment, job applications, interviewing and the post-application follow-up. The checklist is mainly aimed at roles which involve safeguarding children or vulnerable groups, but can be adapted according to the requirements of the organisation.

Safer recruitment checklist

| Activity | Currently in place Yes/No | Recommended action |
|---|------------------------------|--------------------|
| Ensure job descriptions, person specifications and application forms are clear, unambiguous, and reflect the requirements of the role and the organisation's commitment to safeguarding, if relevant to the role. | | |
| Send candidates information about what is expected of employees, and what level of criminal record checks may be carried out and when. | | |
| Identify and train staff who will be involved in the selection process. | | |
| Develop clear interview questions and selection tools. | | |
| Ensure a minimum of two people shortlist applications using agreed criteria and identify any gaps. | | |
| Assess candidates using a range of selection methods (including values-based recruitment) where possible. | | |
| Ask candidates to declare any cautions or convictions, appropriate for the role applied for, as part of the application process. Obtain disclosure statements and, if required, carry out the appropriate type of criminal record checks. | | |
| Probe attitudes and values towards children or vulnerable people, if relevant, as part of the interview process. | | |
| Check ID documents and qualifications, if relevant, of every applicant. Only accept originals. | | |
| Obtain a minimum of two references. Once a reference has been received, ensure it is scrutinised, and follow up employment verification references (e.g. basic references which only give the | | |

| | | |
|--|--|--|
| dates of employment or are extremely brief) by phone. | | |
| Carry out a risk assessment on an applicant, if concerns arise from a criminal record check or references. Store copy of risk assessment, which should include any recommended safeguards to minimise risk, securely together with copy of disclosure statement. | | |
| Make all appointments subject to a probationary period. | | |
| During induction of all new staff set clear expectations of acceptable behaviour and the boundaries of their role. | | |
| Ensure staff have all the relevant training they require to be safe and effective in their role. | | |
| Carry out regular one-to-one supervision meetings with all staff and focus on their attitudes, values and behaviours as well as what they do. | | |
| Ensure clear policies and procedures which explain what staff should do if they have concerns about the behaviour of another member of staff exist and are accessible. | | |
| Respond quickly and appropriately to any concerns or allegations about the behaviour of a member of staff, in particular concerning behaviour towards a child or vulnerable person. | | |

Assessing the risk and relevance of criminal records

It should be noted that this section should not be used to determine whether or not a role is eligible for a DBS check. (For information about determining whether a check needs to be carried out see page 12.)

Best practice guide to assessing risk

The suitability for employment of a person with a criminal record may vary, depending on the nature of the job and the details and circumstances of any convictions. An assessment of an applicant's skills, qualifications, experience and conviction circumstances should be weighed up against the risk assessment criteria for the job. An applicant's criminal record should be assessed in relation to the tasks to be performed and the circumstances in which the work is to be carried out. Employers should consider the following points when deciding on the relevance of offences to particular posts:

- > Does the post involve one-to-one contact with employees, customers or clients who are children or other vulnerable groups? What is the nature of the one-to-one contact? For example, in respect of children, one-to-one contact is especially relevant if it occurs on a regular basis, away from the child's home, or separate from other adults or children. Children may be particularly vulnerable if they are living away from home, but less so if they are living at home or where contact with the post-holder is intermittent. Younger children and those with social or behavioural problems may be considered more vulnerable than older children and those from stable home backgrounds.
- > What level of supervision will the post-holder receive? Is it unsupervised? Does it involve working in an isolated situation? For example, a person barred from working with children or vulnerable groups would not be legally prevented from working in a public area which is frequented by children or vulnerable adults e.g. a supermarket or a restaurant.
- > Does the post involve any direct responsibility for finance or items of value?
- > Does the post involve direct, regular and unsupervised contact with the public?
- > Will the nature of the job present any opportunities for the post-holder to reoffend in the course of work?
- > Are there any safeguards which can be put in place to minimise any potential risks?

Appendix E contains a template criminal record check risk assessment form which can be adapted to the employer's needs.

For shortlisted applicants who have met the requirements of the person specification and then disclose a criminal record that is not related directly to the post, the employer should conduct a risk assessment, if necessary, which includes meeting with the applicant to discuss the relevance of the criminal record with them. The employer will need to take into account the issues below.

Nature of offence(s)

What type of offence or offences did the individual commit i.e. theft, fraud, violence, possession of drugs, supply of drugs, inchoate offences, sexual offences, public order or other offences? Did the offender commit one type of offence or a range of different offences?

Relevance

Employers should consider whether the offence(s) or other relevant information disclosed on an enhanced disclosure are relevant to the position applied for. Serious violent, sexual and supply of drugs offences are generally considered relevant when considering suitability of applicants to work unsupervised with children. Younger children may be more at risk of sexual abuse; whilst older more susceptible to becoming involved with drugs. Offences relating to dishonesty e.g. benefit fraud are not generally considered relevant to positions involving work with children.

For vulnerable adults, the relevant categories are generally considered to be violent and sexual offences. Minor drug offences are probably less relevant as, for instance, vulnerable older people are not generally susceptible to illegal drug use. Offences of dishonesty such as fraud may be more relevant in relation to them because older people may have money and valuables.

However, even here one should distinguish between offences. An offence of shoplifting, for instance, might not be a particular cause for concern, though an offence of theft from an individual very likely would be. Beyond these offences, there are a wide variety of offences that have little relevance, such as public order offences.

Drink-driving offences are not generally considered relevant unless the job itself involves driving e.g. taxi driver or bus driver. A conviction for a serious violent or sexual offence may not be particularly relevant if the position applied for does not involve contact with people in the normal course of duties.

Seriousness

Employers should consider the seriousness of any offence or other relevant information disclosed. This is important because all offence codes cover a very wide range of offences that vary in terms of seriousness. A sexual offence, for instance, covers everything from a young adult engaging in a sexual relationship/sexual activity with an underage young person to indecent assault and rape.

Violence covers everything from slaps and smacks, normally recorded as battery or common assault, to grievous bodily harm and murder. Drug

offences cover everything from possession of small amounts of cannabis for personal use to possession of class A drugs with intent to supply. Burglary covers everything from taking goods from shop storerooms to entering the homes of elderly people, leaving them in fear. Arson ranges from a person setting fire to litter bins to a person destroying property and endangering lives. Offence codes can often make the incident sound more serious; which is why it is extremely important to gain further details of what actually took place. A Crown Court would normally deal with more serious offences than a magistrates' court, but some individuals elect for their case to be heard in a Crown Court if it is a triable either way offence.

Offence circumstances

Who was involved? What happened? Where did it happen? When did it happen? How did it happen? Why did it happen?

Employers should look at the applicant's circumstances at the time of offending including the applicant having previous issues with accommodation, education, employment, management of finances and income, lifestyle and associates, relationships, drugs and alcohol, emotional wellbeing or health.

They should consider whether there were any aggravating or mitigating circumstances. What was the applicant's attitude to their offending? Did they show any remorse or take responsibility for their actions? Did the applicant try to make reparation to any victim?

Employers should look for openness and honesty, rather than denial and minimisation. They should consider the applicants' insight into their own behaviour, any indication of changed thinking, changes in their circumstances and, where relevant, victim empathy, not victim blame or shared responsibility.

An explanation of the circumstances surrounding an offence will often be plausible and reassuring. For instance, the person who explains that, in fear and panic, they ended up assaulting someone who was threatening them during a bar fight, may not be as culpable as an individual who caused serious injury with intent during an armed robbery. It is important to bear in mind that only a small minority of offences take place in a work setting. It is also important to consider that a person convicted of a serious offence may have completely changed their life around for the better.

Age of offences

Employers should consider the length of time that has passed since the offence or 'other relevant information' that appears on the disclosure. Cautions or convictions that appear on a disclosure may be very old, for example, dating back to when the person was growing up. They may not be

relevant in many instances because applicants have put their past behind them.

The government recognises that people can and do put their offending behind them. This recognition is embodied in the changes to both the ROA and the DBS filtering rules.

Pattern of offending

Employers should consider whether the applicant committed a single offence, or whether there has been a pattern of offending behaviour or allegations. Is there a big gap between offences, or is there a cluster? People who have a pattern of offending right up to the present date may clearly not have put their offending behind them. Those people with gambling, drink or drug-related convictions, in particular, may remain a risk unless there is evidence of a clear break in the pattern of their offending. Nevertheless, many offenders, including repeat offenders, do eventually give up crime and settle down, and often there will be clear evidence shown throughout the other aspects of the recruitment process and on the disclosure statement itself.

Changed circumstances

Employers should consider whether the applicant's circumstances have changed since the offending or other relevant information took place. For instance, those convicted when young, perhaps as juveniles, often do not reoffend once they have family or mortgage responsibilities, because they have too much to lose by getting into trouble. As previously mentioned, many offenders, even those with long and serious records, can eventually change, as they simply grow out of a period of offending or seek help to address related problems.

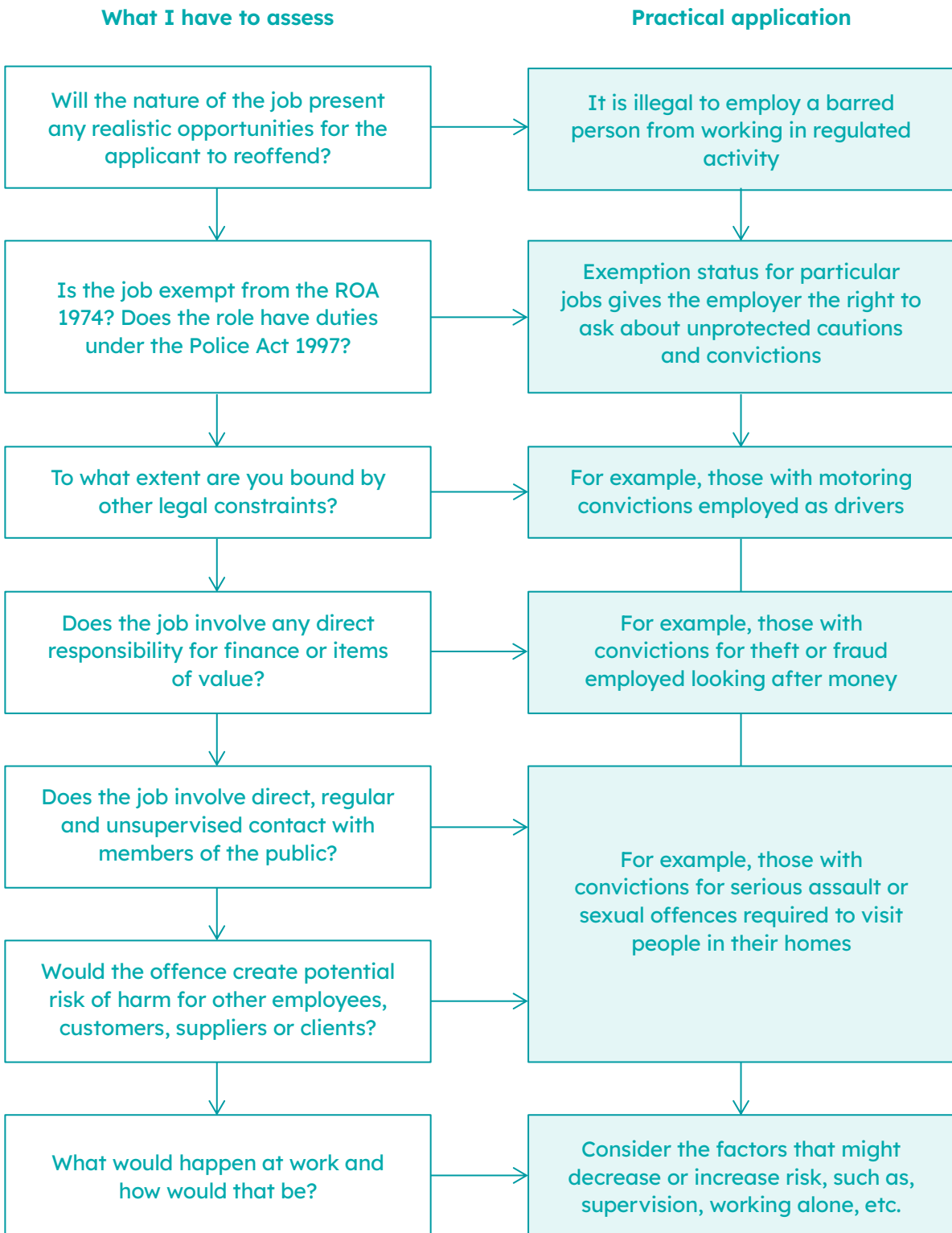
As part of the risk assessment process, an employer should try to establish the applicant's attitude at the time of the offence. What is their attitude now? How do they now feel about what happened? How do they feel about their part in what happened? Do they show remorse? Do they blame others? Do they feel a victim of injustice? How genuine is their expression? What efforts have they made not to reoffend? If they have one, can a reference be sought from their probation officer or support worker?

Having reviewed the circumstances at the time of the offence, the employer should then compare the applicant's circumstances at the time of them applying for the role. It may be that the applicant can provide the necessary reassurance that past issues have been resolved. However, many people with more recent convictions will also have reached the point where they want to put their offending behind them and put their talents to constructive use. If the offence is not work-related or if the post is at a level of responsibility

which means that the applicant does not pose a risk, the employer could consider recruiting them if in all other respects they are suitable for the job.

Figure 3 outlines the questions that we recommend employers consider when assessing a job for risk. It should be noted that this diagram should not be used to determine whether or not a role is eligible for a DBS check.

Figure 3: Assessing jobs for risk



The risk assessment interview

The employer should conduct any interview with the applicant with sensitivity and empathy, as discussing past convictions might be a great source of anxiety and embarrassment for the person concerned. The employer should think carefully about the questions to ask, and keep the discussion focused on the individual, their feelings, and their attitudes. If possible, it is best not to conduct the meeting alone; instead invite a colleague who was involved in the recruitment process to provide support and take notes. It is also important to remember it is not the employer's responsibility to decide whether the court's decision or police course of action was the right or fair one. The purpose of the interview is to help the employer to gather the necessary information to assess whether the individual may pose a risk in the position applied for. In addition to the interviews with applicants, and other pre-employment checks, employers should consider whether they need to obtain any other information to inform their risk assessment decision e.g. a probation reference.

How to manage criminal record information

The UK General Data Protection Regulation (UKGDPR) and the Data Protection Act 2018 (DPA 2018) gives extra protection to [criminal offence data](#) which includes cautions, convictions, and allegations relating to criminal conduct/behaviour. This type of data is likely to be high risk to individuals, and so the organisation should have in place an appropriate policy document, [identify a lawful basis](#), and complete a data protection impact assessment (DPIA) when processing this information.

An applicant's criminal record information (including self-declaration form/disclosure statement, risk assessment and criminal record certificate) mustn't be shared with anyone in the organisation apart from those who have a genuine 'need to know' as part of their duties – to do so is a criminal offence. This may include people directly responsible for making the final recruitment decision or the applicant's line manager, but only if the offence is relevant to the applicant's role.

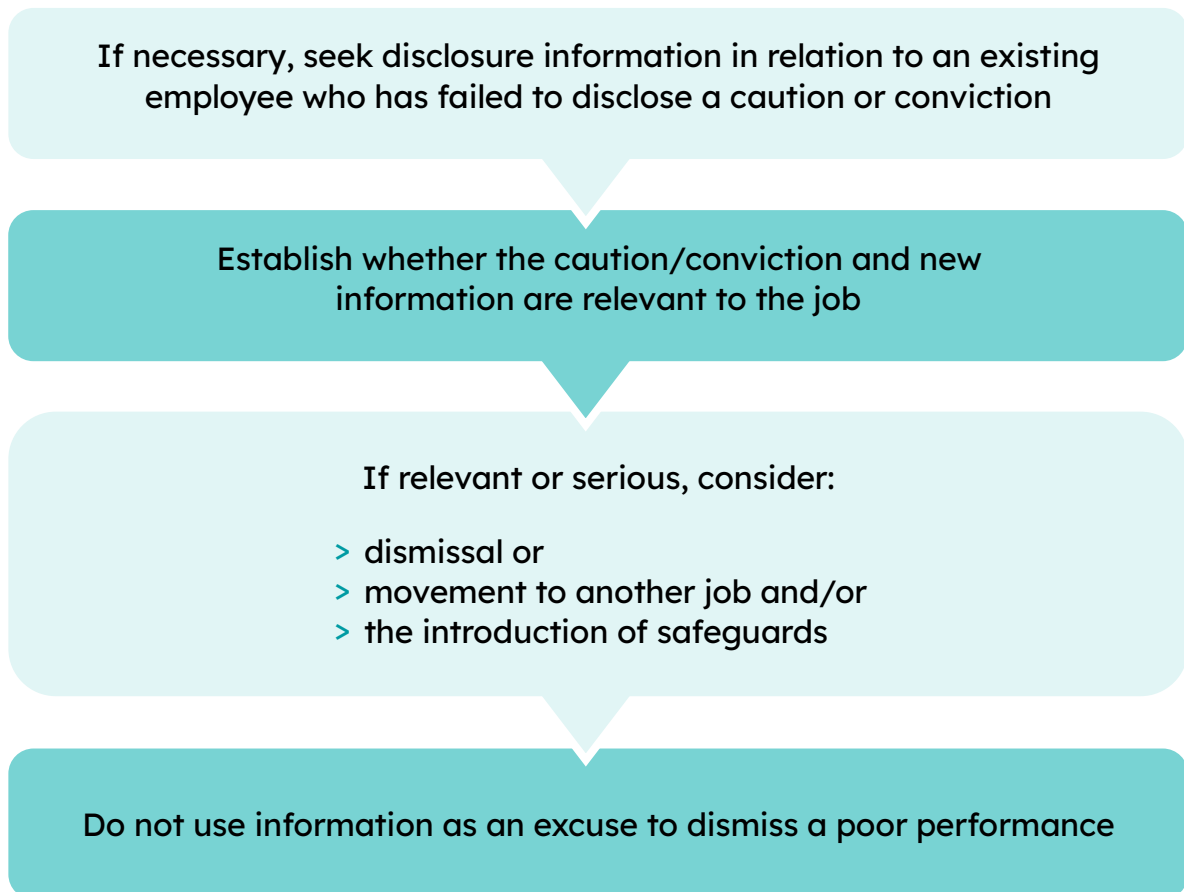
It's good practice to maintain a record of who the criminal record information has been shared with. The applicant should also be told who knows about their record. as they need to feel confident that their personal and sensitive information will not be disclosed to anyone unless there is a specific reason for doing so.

The reasons for the final decision should be based on an objective, common-sense, and rational approach. It is best to have a formal record of the decision and provide clear reasons to appoint or reject the applicant, which is kept securely. The decision will then need to be communicated to the applicant.

Appendix E contains a template criminal record check risk assessment form which can be adapted to an employer's needs.

Dealing with convictions or allegations relating to current staff

Figure 4: What to do if a conviction or allegation concerning an existing member of staff comes to light



For further information, advice, operational support or training on safer recruitment, assessing and managing risk contact Nacro's Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk or visit the [Nacro website](https://www.nacro.org.uk).

Useful contacts

Nacro

Walkden House, 16–17 Devonshire Square, London EC2M 4SQ

Tel: 0845 600 3194

Email: employeradvice@nacro.org.uk

www.nacro.org.uk

Chartered Institute of Personnel and Development (CIPD)

151 The Broadway, London SW19 1JQ Tel: 020 8612 6210

www.cipd.co.uk

Disclosure and Barring Service (DBS)

For customer services

PO Box 3961, Royal Wootton Bassett SN4 4HF

Tel: 03000 200 190

Email: customerservices@dbb.gov.uk

For barring referrals

PO Box 3963, Royal Wootton Bassett SN4 4HH

Tel: 01325 953 795 Email: contactus@dbb.gov.uk

www.gov.uk/government/organisations/disclosure-and-barring-service

Advisory, Conciliation and Arbitration Service (ACAS)

Euston Tower, 286 Euston Road, London NW1 3JJ

Tel: 0300 123 1100

www.acas.org.uk

Access NI

PO Box 1085, Belfast BT5 9BD

Tel: 0300 200 7888

www.nidirect.gov.uk

Disclosure Scotland

PO Box 250, Glasgow G51 1YU

Tel: 0870 609 6006

Email: info@disclosurescotland.co.uk www.disclosurescotland.co.uk

Information Commissioner's Office (ICO)

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Tel: 0303 123 1113

Email: casework@ico.org.uk www.ico.org.uk

Glossary

Buffer period

The rehabilitation periods for custodial sentences include an additional buffer period that runs from the end of the sentence. This buffer period is generally determined by the total length of the sentence imposed.

Criminal Records Bureau (CRB)

In 2012 the CRB and the ISA merged to become the DBS. CRB checks are now called DBS checks.

Disclosure and Barring Service (DBS)

In 2012 the CRB and the ISA merged to become the DBS. CRB checks are now called DBS checks.

Driving endorsements (endorsements)

Penalty points given for motoring offences.

Eligibility

The process of establishing what level of criminal record check can be carried out.

Exempted question

An exempted question is a valid request for a person to reveal their full criminal history except for unspent cautions and convictions; and also protected cautions or convictions – as determined by the ROA Exceptions Order.

Filtering

The filtering system allows certain cautions and convictions to be removed from standard and enhanced disclosure certificates.

Harm test

Someone who may harm or pose a risk of harm to a child or vulnerable adult will satisfy the harm test. They will be referred to the DBS to be considered for inclusion on the child or adult barred list or both. Those on these lists are barred from working in regulated activity with these groups.

Independent Safeguarding Authority (ISA)

In 2012 the CRB and the ISA merged to become the DBS. CRB checks are now called DBS checks. The ISA maintained a list of people barred from working with children or vulnerable adults.

Licence period

The period of time between being released from custody and finishing a custodial sentence and during which individuals are subject to certain conditions.

Other relevant information

Other relevant information may be disclosed on an enhanced DBS certificate at the discretion of the chief police officer of the force that holds the information, if they reasonably believe it to be relevant to the role. It includes information about allegations, arrests, matters that resulted in no further action or not guilty verdicts.

Out-of-court disposals (disposals)

Out-of-court disposals allow the police to deal quickly and proportionately with low-level, often first-time offending which does not merit prosecution at court. Community resolution orders, cannabis warnings, penalty notices for disorder and cautions (including diversionary cautions/conditional cautions/youth conditional cautions) are all out-of-court disposals.

Police intelligence

See other relevant information.

Police National Computer (PNC)

A police database which holds criminal record information.

Public protection sentence

A sentence imposed for specified sexual or violent offences.

Purposes of the establishment

Activity which is carried out for the purposes of the establishment is activity which is fundamental to the running of that establishment e.g. teaching is fundamental in a school.

Protected

Cautions, convictions, final warnings and reprimands that are protected are eligible for filtering.

Registered body

An organisation which has registered with the DBS to carry out standard and enhanced checks and has the right to ask an exempted question.

Rehabilitation period

The Rehabilitation of Offenders Act 1974 allows most cautions and convictions to be considered spent after a specified period of time known as the rehabilitation period which is generally decided by the sentence or disposal received.

Regulated activity

Work (paid or voluntary) which involves close and unsupervised activity with children or vulnerable groups. Someone who is barred from working with children or vulnerable groups cannot carry out regulated activity with these groups. Further information about regulated activity with vulnerable groups can be found [here](#). Further information about regulated activity with children can be found [here](#).

Relevant matter

Information which does not qualify for filtering and therefore can be disclosed when an individual applies for a standard or enhanced disclosure certificate.

Spent

Once a caution or conviction, becomes spent, it does not need to be disclosed to most employers, or when applying for most courses, insurance or other purposes (e.g. applying for housing).

It is against the law for an organisation to obtain information about an individual's spent cautions or convictions unless the law specifically states that they can ask an exempted question; usually when someone is applying for a job or role that is exempt from the ROA.

Umbrella body

An organisation which has registered with the DBS to carry out standard and enhanced checks on behalf of other organisations which have the right to ask an exempted question.

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Web links

Access NI: Criminal record checks

<http://www.nidirect.gov.uk/accessni-criminal-record-checks>

Ban the Box

<http://www.bitc.org.uk/programmes/ban-box?gclid=CLG635GqkL8CFWkOww>

Childcare Disqualification Regulations 2009 statutory guidance

<https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006/disqualification-under-the-childcare-act-2006>

Data Protection Act 2018

<https://www.legislation.gov.uk/ukpga/2018/12/section/184>

DBS checks

<https://www.gov.uk/disclosure-barring-service-check/overview>

DBS code of practice

<https://www.gov.uk/government/publications/dbs-code-of-practice>

DBS filtering guide

<https://www.gov.uk/government/publications/dbs-filtering-guidance>

DBS guide to eligibility

<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

DBS news

<https://www.gov.uk/government/collections/dbs-news--2>

DBS referrals

<https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>

Disclosure Scotland

<http://www.disclosurescotland.co.uk/>

ICO

<https://ico.org.uk/>

Legal Aid, Sentencing and Punishment of Offenders Act 2012

<http://www.legislation.gov.uk/ukpga/2012/10/part/3/chapter/8/enacted>

Nacro guidance on asking about criminal records

<https://www.nacro.org.uk/nacro-services/advice/advice-for-employers/asking-about-criminal-records/>

Nacro guidance on carrying out criminal record checks

<https://www.nacro.org.uk/nacro-services/advice/advice-for-employers/dbs-checks-for-employers/>

Nacro guidance on filtering

<https://www.nacro.org.uk/nacro-services/advice/advice-for-individuals/what-is-filtering/>

Nacro guidance on disclosing criminal records

<https://www.nacro.org.uk/nacro-services/advice/advice-for-individuals/understanding-whats-on-your-criminal-record/>

Nacro guidance on employing someone with a criminal record

<https://www.nacro.org.uk/nacro-services/advice/advice-for-employers/employing-someone-with-a-criminal-record/>

Nacro's Employer Advice Service

<https://www.nacro.org.uk/nacro-services/advice/advice-for-employers/>

Protection of Freedoms Act 2012

<http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

Regulated activity with adults

<https://www.gov.uk/government/publications/new-disclosure-and-barring-services>

Regulated activity with children

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf

The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013

<http://www.legislation.gov.uk/uksi/2013/1200/contents/made>

Workforce guidance

<https://www.gov.uk/government/publications/dbs-workforce-guidance>

Appendices

A: Rehabilitation periods

B: Filtering

C: Criminal record declaration form for jobs covered by the ROA

D: Criminal record declaration form for jobs exempt from the ROA

E: Criminal record check risk assessment form

Editable versions of Appendices C, D and E can be downloaded from www.nacro.org.uk/recruitingsafelyguide.

Individual organisations will need to complete the editable sections before using these forms.

The forms contained in Appendices C and D should be sent (ideally by email as they contain hyperlinks to Nacro and DBS guidance) to candidates shortlisted for interview.

Appendix A: Rehabilitation periods

The Rehabilitation of Offenders Act 1974 (ROA) enables certain convictions to become spent (or legally ignored) after a rehabilitation period. After this period, a person with a spent conviction is not required to declare it when applying for most jobs, unless the role is exempt from the Act.

The tables below detail the rehabilitation periods of the more common sentences. For custodial sentences the rehabilitation period includes an additional buffer period that runs from the end of the sentence. This buffer period is determined by the total length of the sentence imposed.

Rehabilitation periods for custodial sentences (which have buffer periods)

| Sentence/disposal | Rehabilitation period for adults (aged 18 or over at the time of conviction) from end of sentence including licence period | Rehabilitation period for young people (aged under 18 at the time of conviction) from end of sentence including licence period |
|---|--|--|
| Prison sentence or detention in a young offender institution for 12 months or less | Total length of sentence (including licence period) plus 1 year | Total length of sentence (including licence period) plus 6 months |
| Prison sentence or detention in a young offender institution for over 12 months and up to and including 48 months (4 years) | Total length of sentence (including licence period) plus 4 years | Total length of sentence (including licence period) plus 2 years |
| Prison sentence or detention in a young offender institution for over 48 months (4 years) | Total length of sentence (including licence period) plus 7 years | Total length of sentence (including licence period) plus 3½ years |

| | | |
|--|-------------|-------------|
| Imprisonment or detention in a young offender institution for over 48 months (4 years) following a conviction for any serious violent, sexual, or terrorist offences listed in Schedule 18 of the Sentencing Act 2020, or a public protection sentence (of any length) | Never spent | Never spent |
|--|-------------|-------------|

Examples of spent periods for custodial sentences:

- > Michelle receives a 12-month/1-year custodial sentence as an adult (she is aged 18 or over when convicted). Her sentence may become ‘spent’ after two years: the rehabilitation period is the total sentence of 12 months/1-year (including the licence period) and the additional ‘buffer period’ of 1-year as she received a total sentence of 12 months/1-year or less.
- > Jamie receives a 7-year custodial sentence as an adult (he is aged 18 or over when convicted) for supply of class A drugs. His sentence may become ‘spent’ after 14-years: the rehabilitation period is the total sentence of 7-years (including the licence period) and the additional ‘buffer period’ of 7-years.
- > John receives a 5-year custodial sentence as an adult (he is aged 18 or over when convicted) for wounding with intent to cause grievous bodily harm. His sentence may never become ‘spent’ as it is for a conviction of over 48-months/4-years for a serious violent offence listed in Schedule 18 of the Sentencing Act 2020.
- > If, John had instead received a 4-year custodial sentence for wounding with intent to cause grievous bodily harm his sentence may become ‘spent’ after 8-years: the rehabilitation period is the total sentence of 4-years (including the licence period) and the additional ‘buffer period’ of 8-years.

Rehabilitation periods for non-custodial sentences which start from the date of conviction

| Sentence/disposal | Rehabilitation period for adults (aged 18 or over at the time of conviction or at the time the disposal is administered) | Rehabilitation period for young people (aged under 18 at the time of conviction or at the time the disposal is administered) |
|--|--|--|
| Caution/youth caution | Spent immediately | Spent immediately |
| Diversionary/Conditional caution/youth conditional caution | 3 months or when caution ceases to have effect if earlier | 3 months or when caution ceases to have effect if earlier |
| Absolute discharge | Spent immediately | Spent immediately |
| Reparation order | Spent immediately | Spent immediately |
| Bind over | At the end of the order | At the end of the order |
| Conditional discharge order | At the end of the order | At the end of the order |
| Fine | 1 year | 6 months |
| Compensation order | When paid in full | When paid in full |
| Hospital order (with or without restriction) | At the end of the order | At the end of the order |
| Referral order | N/A | At the end of the order |
| Relevant order | When the order ceases to have effect | When the order ceases to have effect |
| Endorsements | 5 years | 2½ years |
| Community order/youth rehabilitation order | At the end of the order | At the end of the order |

Comprehensive guidance on the ROA and other rehabilitation periods can be found on the [Nacro website](#).

The MoJ Disclosure Checker www.gov.uk/tell-employer-or-college-about-criminal-record/check-your-conviction-caution can help applicants work out when/if their caution(s) and/or convictions may become spent.

For further advice, support and training contact Nacro's Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk.

Appendix B: Filtering

Filtering is only relevant when a standard or enhanced DBS check can be carried out.

What are the filtering rules?

For adults

The conviction will be filtered or removed from a DBS certificate only if:

- > The conviction is 'spent' under the Rehabilitation of Offenders Act 1974
- > 11 years have elapsed since the date of conviction
- > The conviction did not result in a custodial or suspended sentence
- > The conviction does not appear on the list of specified offences

An adult caution will be removed after six years have elapsed since the date of the caution and if it does not appear on the [DBS list of specified offences](#). There is no limit to the number of cautions that can be filtered.

For those aged under 18

The conviction will be filtered or removed from a DBS certificate only if:

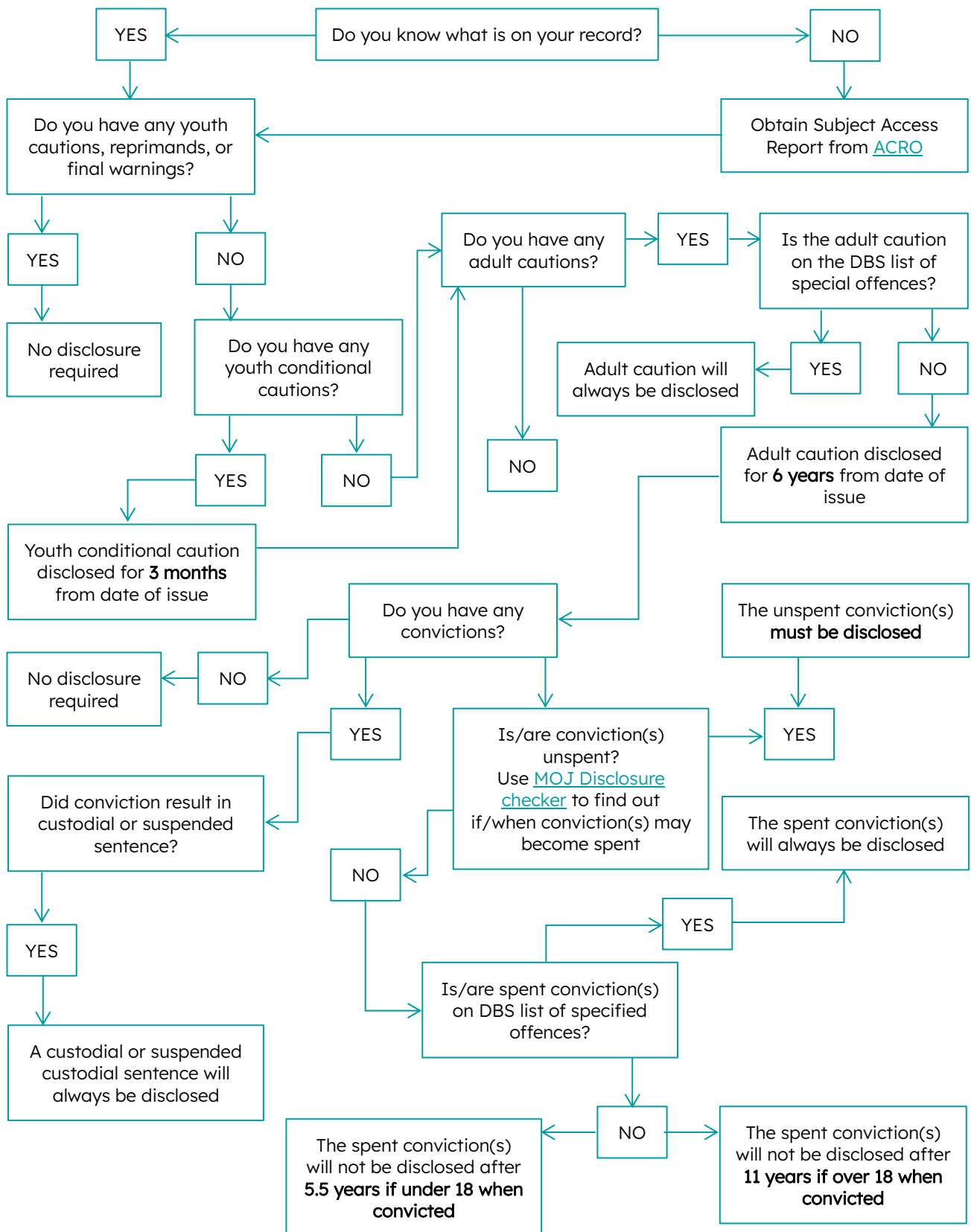
- > The conviction is 'spent' under the Rehabilitation of Offenders Act 1974
- > 5 ½ years have elapsed since the date of conviction. The conviction did not result in a custodial or suspended sentence The conviction does not appear on the DBS list of specified offences
- > Youth cautions, reprimands and final warnings are no longer disclosed on any level of DBS check. Youth conditional cautions are automatically disclosed until they are 'spent' under the Rehabilitation of Offenders Act 1974. Once 'spent' they are no longer automatically disclosed, even if they are for offences on the list of specified offences.

Key considerations for employers

- > It is unlawful to carry out a standard or enhanced DBS check for a role which is covered by the ROA and therefore not eligible for a DBS check.
- > It is unlawful to require an applicant to disclose a protected caution, conviction, which would be filtered off a DBS check.
- > It is unlawful to require an applicant or existing employee to carry out an enforced subject access request i.e. provide a copy of their full criminal record directly from the police, prison, probation service or courts.
- > Applicants are not legally required to disclose fixed penalty notices (FPNs), penalty notices for disorder (PNDs) or other disposals that are not cautions, convictions, reprimands or final warnings.
- > Applicants are not legally required to disclose allegations, arrests or not guilty verdicts.

Comprehensive guidance on filtering can be found on the [Nacro website](#).

The filtering rules



Appendix C

Criminal record declaration form for jobs covered by the ROA

You have been asked to complete this form because the role you have applied for is covered by the Rehabilitation of Offenders Act 1974. The information disclosed on this form will not be kept with your application form during the application process.

Policy statement on recruiting applicants with criminal records

This post is covered by the Rehabilitation of Offenders Act 1974 and therefore applicants are required to declare:

- > All unspent cautions and/or unspent convictions

For further information on how long it takes for cautions and convictions cautions to become spent, please refer to our guide on the [Rehabilitation of Offenders Act 1974](#).

We recognise the contribution that people with criminal records can make as employees and volunteers and welcome applications from them. A person's criminal record will not, in itself, debar that person from being appointed to this post. Any information given will be treated in the strictest confidence. Suitable applicants will not be refused posts because of offences which are not relevant to, and do not place them at or make them a risk in, the role for which they are applying.

All cases will be examined on an individual basis and will take the following into consideration:

- > Whether the caution or conviction is relevant to the position applied for.
- > The seriousness of any offence revealed.
- > The age of applicant at the time of the offence(s).
- > The length of time since the offence(s) occurred.
- > Whether the applicant has a pattern of offending behaviour.
- > The circumstances surrounding the offence(s), and the explanation(s) provided.
- > Whether the applicant's circumstances have changed since the offending behaviour.

It's important that applicants understand that failure to disclose all **unspent cautions or convictions** - regardless of whether they're convicted in the UK or abroad; and/or unspent criminal convictions or relevant service discipline convictions received within the Service Justice System (e.g. through Summary Hearing or Court Martial) - could result in disciplinary proceedings or dismissal.

You can use the MoJ Disclosure Checker www.gov.uk/tell-employer-or-college-about-criminal-record/check-your-conviction-caution to find out whether your caution(s) and/or convictions are spent.

Further advice and guidance on disclosing criminal records can be obtained from [Nacro's Criminal Record Support Service](#).

If you are unsure about how to answer the questions on this form, please contact Nacro's Criminal Record Support Service on 0300 123 1999 or helpline@nacro.org.uk. You can also use [MoJ Disclosure Checker](#).

| | |
|--|-------------|
| Surname: | First name: |
| <p>Do you have any unspent cautions or convictions? Yes No</p> <p>If you have answered yes, you now have two options for disclosing your criminal record.</p> <p>Option 1: You can disclose your criminal record on a separate sheet provided that you mark a cross on the line below and attach the details in an envelope stapled to this form. The envelope should be marked CONFIDENTIAL and state your name and details of the post.</p> <p>I have attached details of my conviction separately _____ (please mark with an X if appropriate.)</p> <p>Option 2: Please provide details in the space below.</p> | |
| <p>DECLARATION</p> <p>I declare that the information provided on this form is correct. I understand that the declaration of a criminal record will not necessarily prevent me from being offered this role at_____.</p> <p>Signed: Date:</p> | |

Please return this form to:

Appendix D: Criminal record declaration form for jobs exempt from the ROA

You have been asked to complete this form because the role you have applied for is exempt from the Rehabilitation of Offenders Act 1974. The information disclosed on this form will not be kept with your application form during the application process.

Policy statement on recruiting applicants with criminal records

This post is exempt from the Rehabilitation of Offenders Act 1974 and therefore applicants are required to declare:

- > All unspent cautions and convictions
- > All adult cautions and spent convictions that are not protected (i.e. that are not filtered out) as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2020).

For further information on filtering please refer to [Nacro guidance](#), the [Disclosure and Barring Service \(DBS\) guidance](#) or [Ministry of Justice \(MOJ\) guidance](#) (see, in particular, the section titled 'Exceptions Order').

We recognise the contribution that people with criminal records can make as employees and volunteers and welcome applications from them. A person's criminal record will not, in itself, debar that person from being appointed to this post. Any information given will be treated in the strictest confidence. Suitable applicants will not be refused posts because of offences which are not relevant to, and do not place them at or make them a risk in, the role for which they are applying.

All cases will be examined on an individual basis and will take the following into consideration:

- > Whether the caution or conviction is relevant to the position applied for.
- > The seriousness of any offence revealed.
- > The age of applicant at the time of the offence(s).
- > The length of time since the offence(s) occurred.
- > Whether the applicant has a pattern of offending behaviour.
- > The circumstances surrounding the offence(s), and the explanation(s) provided.
- > Whether the applicant's circumstances have changed since the offending behaviour.

It is important that applicants understand that failure to disclose all unspent cautions and convictions; and also, any adult cautions and spent convictions that are not protected - regardless of whether they're convicted in the UK or abroad; and/or relevant service discipline convictions received within the Service Justice System (e.g., through Summary Hearing or Court Martial) - could result in disciplinary proceedings or dismissal.

You can use the [self-disclosure rules flowchart](#) to work out which offences you may need to disclose.

Further advice and guidance on disclosing criminal records can be obtained from [Nacro's Criminal Record Support Service](#).

Criminal record declaration form (exempt positions)

If you are unsure about how to answer the questions on this form, please contact Nacro's Criminal Record Support Service on 0300 123 1999 or helpline@nacro.org.uk. All enquiries to this service are confidential. You will not be asked for any personal details, unless you want information or advice sent to you.

| | |
|--|-------------|
| Surname: | First name: |
| <p>Do you have any unspent cautions or convictions? Yes No</p> <p>Do you have any adult cautions or spent convictions that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)? Yes No</p> <p>If you are not sure whether your caution(s) or conviction(s), should be disclosed please use the self-disclosure rules flowchart and/or contact Nacro for further advice. If you have answered yes to either question, you now have two options for disclosing your criminal record.</p> <p>Option 1: You can disclose your criminal record on a separate sheet provided that you mark a cross on the line below and attach the details in an envelope stapled to this form. The envelope should be marked CONFIDENTIAL and state your name and details of the post. I have attached details of my conviction separately _____ (please mark with an X if appropriate.)</p> <p>Option 2: Please provide details in the space below.</p> | |
| <p>DECLARATION</p> <p>I declare that the information provided on this form is correct. I understand that the declaration of a criminal record will not necessarily prevent me from being offered this role at_____.</p> <p>Signed: _____ Date: _____</p> | |

Please return this form to:

Appendix E: Criminal record check risk assessment form

Section A:

To be completed by the relevant Line Manager/Hiring Manager and Human Resources

Please complete in full:

Name of applicant:

Post applied for/current post:

| Level of disclosure required | Enhanced and barred | Enhanced | Standard | Basic |
|--------------------------------------|---------------------|----------|----------|-------|
| Division/Department: | | | | |
| Date of assessment: | | | | |
| Name of assessor one (HR Team): | | | | |
| Name of assessor two (Line Manager): | | | | |

Section B:

Pre-employment checks completed

| Nature of check | Yes | No | Pending | N/A |
|---|-----|----|---------|-----|
| Identity checks completed | | | | |
| Right to work check completed | | | | |
| Overseas criminal record check | | | | |
| Reference requests completed (Please also complete section D) | | | | |
| Occupational health check completed | | | | |
| Evidence of professional registration received and validated | | | | |
| Does the applicant have an existing subscription to DBS Update Service for the same workforce as the role applied for? | | | | |
| Have you established any issues or concerns from the pre-employment checks carried out or the initial interview? | | | | |
| If yes, please give details | | | | |
| Has the applicant declared any criminal convictions or cautions in the UK or any other country, or are they under police investigation? If 'No, please go to section D | | | | |

Section C:

Nature of convictions or police intelligence disclosed – (to be completed by the Hiring Manager/Line Manager and Human Resources during risk assessment meeting)

| Question | Yes/No | Please provide details |
|---|--------|------------------------|
| Nature of caution(s) conviction(s) and other relevant information (Continue on separate sheet if necessary) | | |
| Offence: Date of caution: | | |
| Offence: Date of conviction: Sentence: | | |
| Offence: Date of conviction: Sentence: | | |
| Offence: Date of conviction: Sentence: | | |
| Has any other relevant information been disclosed by the police which causes concern? (if applicable) | | |
| Is the person barred from working in regulated activity? (if applicable) | | |
| Age at time of offence(s) | | |
| Length of time since offence(s) | | |
| Seriousness of offence(s) | | |

| | | |
|---|--|--|
| Does the person have a pattern of offending or other relevant behaviour? | | |
| Are the offences relevant to the role applied for? | | |
| What were the circumstances surrounding the offence(s)? | | |
| Attitude to the offence(s) | | |
| Efforts made to not reoffend | | |
| Is the applicant taking part in a specific remedial/action programme? | | |
| Have the individual's circumstances changed since the offence(s)? If so, how? | | |
| Does the nature of the job present any opportunities for the post holder to re-offend in the place of work? | | |
| Does the post involve regular one-to-one unsupervised contact with vulnerable people? | | |
| Does the post involve direct contact with the public? | | |
| What level of supervision does the post holder receive? | | |
| Does the position involve direct responsibility for finance or items of value? | | |
| Does the position involve a significant level of trust? | | |

Section D:

References and evidence of fitness for the role

| | | |
|--|--|--|
| <p>Has applicant provided evidence of their conduct in previous employment in health or social care with children or vulnerable adults, and the reasons why that employment ended (if applicable)?</p> | | |
| <p>Has applicant declared any disciplinary offences relating to adults at risk and/children (including any conduct related to safeguarding concerns which the penalty is 'time expired') (if applicable)?</p> | | |
| <p>Are there any gaps in the applicants' employment and/training history?</p> | | |
| <p>Has applicant provided satisfactory written explanation for all gaps in employment and/training history?</p> | | |
| <p>Have references been obtained and checked to ensure that all specific questions have been answered satisfactorily?</p> | | |
| <p>If references are vague or unspecific, has the referee been contacted and asked to provide written answers or clarification as appropriate?</p> | | |
| <p>Has the information provided by the referee been compared with the application form to ensure that the information provided about the applicant and his/her previous</p> | | |

| | | |
|--|--|--|
| employment by the referee is consistent with the information provided by the applicant on the form? | | |
| Has the applicant been the subject of any safeguarding related investigations or concerns? If yes, what was the outcome? | | |
| Has the applicant been referred to DBS, other professional body or the Police? If yes, what was the outcome? | | |
| If satisfactory references were not obtained, please outline all efforts made to obtain references | | |
| Do you have satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment (if applicable) ? | | |
| Have you followed up any discrepancies or concerns with any of the information provided directly with the candidate)? | | |
| Do you have sufficient evidence gathered throughout the recruitment process as to the suitability of the applicant and their fitness to carry out the role. | | |
| Any other relevant questions (please state) | | |

Section E:

Risks of harm identified

Please record below any organisational risk of harm. This should relate specifically to the impact on the organisation and not the individual.

| |
|--|
| Nature of hazard? e.g. reputational risk, risk of sexual harm, risk of theft |
| |
| Who might be harmed? |
| |
| What is already/will be done to minimise risk? |
| |
| Likelihood of hazard/risk occurring? Please select from: 1 = Very unlikely 2 = Fairly unlikely 3 = Fairly likely 4 = Very likely |
| |
| Impact of hazard/risk? Please select from: 1 = Minor impact 2 = Fairly serious impact 3 = Very serious impact |
| |
| What is the remaining risk based on likelihood and impact? e.g. low/medium/high |
| |
| What further action is required? |
| |
| Who is responsible for taking this action and by when? |
| |

Section F:

Please detail any additional measures that will be put in place to ensure new staff are adequately supported and sufficiently supervised so that people are safe, if any concerns were identified, or the applicant is commencing work prior to receipt of any recruitment information (e.g. lack of references), .

| | |
|----|--|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |

Section G:

To be completed by all parties carrying out the assessment

Declaration by HR Team and Relevant Manager. (Tick as appropriate)

The information below has been fully considered and we are satisfied that it is safe to allow the named individual to commence/continue work.

Detail action to be taken below

The information has been considered above and we are/are not* satisfied that it is safe to allow the named individual to commence/continue work.

*Delete as appropriate

| HR Team | Relevant Manager |
|------------|------------------|
| Signed | Signed |
| Print name | Print name |
| Date | Date |

We see your future, whatever the past

Need more help?

Contact our Employer Advice Service

Telephone: 0845 600 3194

(Monday–Thursday, 9am–5pm and Friday 1pm–5pm)

Email: employeradvice@nacro.org.uk

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