

**** Note:** Items in blue are guidance notes and should not be left in the final policy.



Guidance notes (to be deleted):

As set out below, the Rehabilitation of Offenders Act (1974) was introduced to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law. It enables many offences to become 'spent', or disregarded, after a set rehabilitation period has been completed.

Once a caution or conviction has become spent under the 1974 Act, a person does not have to reveal it or admit its existence in most circumstances. This includes on application forms and at job interviews.

Details of when convictions become spent can be found here:
<https://www.gov.uk/exoffenders-and-employment>

An employer cannot dismiss someone or refuse to employ them because he or she has a spent caution or conviction unless they are applying for or carrying out a job for which an 'exception' applies (see below).

There are certain exceptions where the employer can ask an individual to disclose their caution or conviction even if it is spent. These are set out in the Rehabilitation of Offenders Act (Exceptions) Order 1975 (the "Exceptions Order") which lists exceptions to the 1974 Act in recognition that there are certain activities for which fuller disclosure of a person's criminal record history is relevant.

The positions listed in the Exceptions Order mainly relate to particularly sensitive areas such as work with children or other people in vulnerable circumstances.

Employers can also carry out Disclosure and Barring Service (DBS) Checks. These can be at different levels: basic, standard, enhanced or enhanced with barred lists.

Only roles which are exempt from the Rehabilitation of Offenders Act (i.e. covered by the Exceptions Order as described above) are eligible

for standard or enhanced disclosure checks. However, an employer can ask applicants for any post to undertake a Basic Disclosure application.

Details on which jobs qualify for standard or enhanced disclosures can be found here: <https://www.gov.uk/government/collections/dbs-eligibility-guidance>. The Safeguarding Vulnerable Groups Act (2006) requires employers to perform DBS checks for certain occupations, including those working with children or vulnerable adults.

Please note: This policy only covers the Council's approach to employing ex-offenders. If your organisation is going to require applicants/employees to undertake a Disclosure you must have a separate policy on this. South West Councils can provide a template policy for you to adapt.

1. Aims of the policy

The aim of this policy is to set out the Association's approach towards employing people who have criminal convictions.

DAPTC is committed to being an effective Equal Opportunities employer. This means that the Association will provide equality of opportunity for all job applicants and aims to select people for employment on the basis of their individual skills, abilities, experience, knowledge and, where appropriate, qualifications and training.

The Association will consider ex-offenders for employment, taking into account the criteria above as well as the facts and circumstances relating to their criminal record.

2. Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act (1974) was introduced to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law. It enables many offences to become 'spent', or disregarded, after a set rehabilitation period has been completed.

For most purposes the Act treats a rehabilitated person as if he or she had never committed an offence and, as such, they are not obliged to declare their caution(s) or conviction(s), for example when applying for employment.

However, some jobs are exempt from the Rehabilitation of Offenders Act, due to the nature of the role: for example jobs working with children or vulnerable individuals. In this situation the individual is required to disclose both spent and unspent convictions.

3. Establishing Whether Jobs Are Exempt From the Rehabilitation of Offenders act 1974

The Council will determine which, if any, of its jobs are exempt from the Rehabilitation of Offenders Act. Using this information a decision can be made:

- Whether to ask prospective employees to disclose spent and/or unspent convictions on their job application documents.
- Whether to request a Disclosure and Barring Service check for the successful applicant and, if one is requested, what category of check should be made.

4. For Jobs That Are Not Exempt from the Rehabilitation of Offenders Act 1974

During the application process, the Association may ask applicants for these jobs to disclose any unspent convictions, but will not ask about spent convictions.

The Council may decide on this basis whether to proceed with the application. See section 7 below.

Once the Association has selected the person to whom it wishes to offer employment, it may also seek the applicant's agreement to make a joint application to the Disclosure and Barring Service (DBS) for a basic disclosure check.

The DBS basic check will provide the Council with documentary evidence about the individual's convictions and conditional cautions considered to be 'unspent' under the terms of the Rehabilitation of Offenders Act 1974.

If the Council undertakes Disclosure and Barring Service checks at any level, then further information regarding this process can be found in the Association's Criminal Records Check Policy.

5. For Jobs That Are Exempt from the Rehabilitation of Offenders Act 1974

If the job into which the Association is seeking to recruit is one of the excluded jobs listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Association will require the job applicant to disclose all convictions, whether spent or unspent (other than where protected cautions and protected convictions do not need to be disclosed, depending on the job concerned).

The Association may decide on this basis whether to proceed with the application. See section 7 below.

Once the Association has selected the person to whom it wishes to offer employment, it may also seek the applicant's agreement to make a joint application to the Disclosure and Barring Service (DBS) for a standard, enhanced or enhanced with DBS barred lists check (as appropriate). The

DBS check will provide the Association with documentary evidence about the person's criminal convictions. Further information regarding this process can be found in the Association's Criminal Records Check Policy.

6. Training for Recruiters

The Association will ensure that Chief Executive and any other employee has the required knowledge to identify and assess the relevance and circumstances of offences. The Association will also ensure that they have received or have access to appropriate advice and guidance on the relevant legislation relating to the employment of ex-offenders.

7. Consideration of Applicants With Criminal Convictions

In accordance with the Rehabilitation of Offenders Act 1974 the Association will not automatically refuse to employ an individual just because they have a previous criminal conviction.

If the applicant declares any convictions on their application form and they meet the criteria to be interviewed then the Council will arrange for an open and measured discussion with the job applicant. This may take place at the interview, or in a separate discussion. This discussion will cover any offences or other matters declared which may be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of any offer of employment.

After considering the information provided the Council will decide whether or not to proceed with the application process.

Further information regarding the DBS process can be found in the Association's Criminal Records Check Policy.

8. Data Protection

The Association processes information about an individual's criminal convictions in accordance with its Data Protection Policies and, where these are undertaken, as set out in the Criminal Records Check Policy. In particular, data collected during recruitment is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the recruitment process. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported immediately in accordance with the Association's data protection policy. It may also constitute a disciplinary offence, which will be dealt with under the Council's disciplinary procedure.