



Recruitment of Ex-Offenders Policy and Procedure

1. Purpose & Scope

The aim of this policy is to state our approach towards employing people who have criminal convictions, including those who volunteer their services.

We are committed to equality of opportunity for all job applicants and aim to select people for employment on the basis of their individual skills, abilities, experience, knowledge and, where appropriate, qualifications and training.

We take our responsibilities under the Rehabilitation of Offenders Act 1974 very seriously. However, some roles at the Yorkshire Brain Tumour Charity (YBTC) are exempt from the 1974 legislation as set out in the Exceptions Order 1975 and as such, we have a lawful basis for requesting an enhanced DBS disclosure certificate for some employees and volunteers. In addition, YBTC is a regulated activity provider and for a limited number of roles, we have a statutory duty to check that the individual is not barred from regulated work with adults (see appendix A).

The safeguarding of vulnerable people is of paramount importance to us and the scrutiny of any unspent cautions or convictions and those which would not be protected under the Ministry of Justice filtering rules is an essential and non-negotiable part of the pre-employment check process.

We will consider ex-offenders for employment or voluntary roles based on their individual merits. Our approach towards employing ex-offenders differs depending on whether the job is or is not exempt from the provisions of the Rehabilitation of Offenders Act 1974.

Jobs covered by the Rehabilitation of Offenders Act 1974

We will not automatically refuse to employ a particular individual just because they have a previous criminal conviction.

During the recruitment process, we will ask shortlisted job applicants to disclose any unspent cautions or convictions but will not ask job applicants questions about criminal history that would be filtered or protected, nor expect them to disclose any protected convictions. The successful applicant may be asked to apply for a basic DBS certificate.

If an applicant has a caution or conviction that is unspent and if the nature of the offence is relevant to their suitability for the job for which they have applied, we will review the individual circumstances of the case and may, at our discretion, decline to select the individual for employment.

Jobs that are exempt from the Rehabilitation of Offenders Act 1974

Some of the roles that YBTC recruits to are covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (roles in regulated positions and in Further Education provision). In these cases, YBTC will require shortlisted applicants to disclose all unspent convictions or cautions in addition to any criminal history that would not be filtered. Even in these circumstances, however, we will not refuse to employ a particular individual unless

the nature of the conviction has relevance to the job for which the individual has applied.

As a result of amendments to the Rehabilitation of Offenders Act in 2013 and 2020, cautions and convictions that meet specified criteria should not be disclosed by applicants and must not be taken into account by potential employers. We encourage all applicants to use the flowchart and guidance provided by Nacro and to seek legal or impartial advice before completing their self-disclosure. We will not take into account any criminal history that would be protected or filtered, even if it is subsequently disclosed on the DBS certificate.

YBTC will, once we have selected the person to whom we wish to offer employment, make a joint application to the Disclosure and Barring Service (DBS) for an enhanced certificate (with an adult DBS barred list check if the post is in regulated activity with adults). Where the individual is a member of the DBS update service in the relevant workforce and at the required level, the organisation will, with the individual's permission, carry out a status check on any current certificate instead of applying for a new DBS check.

YBTC is committed to ensuring that all information provided about an individual's criminal convictions, including any information released in disclosures, is used fairly and stored and handled appropriately and in accordance with the provisions of the General Data Protection Regulations and the Data Protection Act 2018. Data held on file about an individual's criminal convictions will be held only as long as it is required for employment and / or safeguarding purposes and will not be disclosed to any unauthorised person.

2. The Process

- As a Regulated Activity provider (RAP) a small number of our paid employees are in regulated activity and therefore subject to an enhanced DBS certificate with check of the DBS adult barred list (see appendix A for more information).
- In relation to volunteers, we only request a DBS certificate after a thorough risk assessment has indicated that a check is lawful and relevant to the position concerned.
- For those positions where an enhanced DBS check is required, all application forms, recruitment advertising and recruitment briefs will contain a statement that an enhanced DBS certificate (with adult barred list check where relevant) will be requested in the event of the individual being offered the position and an explanation of when in the recruitment process criminal information will be requested and considered.
- All shortlisted applicants are required to complete a criminal record self-disclosure to be returned no less than 1 day prior to the interview date. This information is to be sent to the business manager. Failure to return the self-disclosure will result in the offer of interview being withdrawn. We will ensure that the self-disclosure information will only be seen by those who need to see it as part of the recruitment process.
- The criminal record self-disclosure will include information for shortlisted applicants on the importance of seeking legal advice, and the contact details of organisations that can provide impartial advice.
- We ensure that those who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance on the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act

1974 (exceptions order 1975) (as amended 2013 & 2020) and know how to access advice and support (e.g. from our external adviser or NACRO) and relevant registered bodies.

- At interview, or in a separate discussion, the recruitment selection panel will ensure that an open and measured discussion takes place on the subject of any offences or related concerns that might be relevant to the position. Failure to reveal information that would not be filtered could lead to withdrawal of an offer of employment.
- All potential employees are guided to the Disclosure and Barring Service Code of Practice and a copy is made available on request.
- We undertake to discuss any relevant matter revealed on a DBS certificate with the person seeking the position before withdrawing a conditional offer of employment. This discussion and any subsequent risk assessment may be undertaken by the business manager or by another appointed person. If the DBS certificate reveals any matching information against the DBS adult barred list or any criminal conviction which precludes them from working with vulnerable adults, the applicant is deemed non appointable. In this circumstance, we would notify the Leeds City Council adult social care manager in line with the local multi-agency procedures.

3. Criminal checks on existing staff

In line with the DBS code of practice and Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012, we require an employee or regular volunteer to apply for a new enhanced DBS certificate in the following circumstances:

- There are concerns about an individual's suitability to work with vulnerable groups (e.g. there has been a local authority process, or the police or member of staff inform us that they have been cautioned or convicted for an offence during their employment with us)
- There has been a break in service of 3 months or more (NB: this would not include parental leave or furlough); or
- The individual changes from a role that was not in regulated activity with adults to a role that is regulated.

We may, at our discretion, ask an employee or volunteer to apply for a new DBS certificate in order to enable that person to register with the DBS update service. If an employee asks us to facilitate a new DBS application because they wish to register with the Update service, this will be at the employee's own cost.

We do not undertake routine renewals on existing staff in any circumstances.

4. Trustees

YBTC requests that all trustees apply for a basic DBS certificate unless their role involves regulated activity with adults, in which case an enhanced DBS certificate with adult barred list will be requested.

Where the trustee is already registered with the DBS update service, YBTC will, with the individual's permission, carry out a status check on any current certificate instead of applying for a new DBS check.

Appendix A: Regulated activity with adults

Regulated activity with adults (people over the age of 18) is defined as:

- Providing health care by, or under the direction or supervision of, a regulated health care professional
- Providing personal care (e.g. physical assistance with eating, drinking, toileting, washing, bathing, dressing) for adults who can't carry this out themselves because age, illness or disability
- Providing social work by a social care worker to an adult who is a client or potential client
- Assisting an adult with day to day running of their household who can't manage themselves because of their age, illness or disability (e.g. managing the person's cash)
- Assistance in the conduct of an adult's own affairs, e.g. Lasting or Enduring Power of Attorney, Mental Capacity advocate
- Conveying adults to, from or between health care, personal care and/or social work services who can't convey themselves because of their age, illness or disability
- Day to day management or supervision of anyone carrying out the above activities.

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



Appendix B: Criminal history self-declaration for shortlisted candidates (candidates subject to enhanced DBS only)

Insert YBTC logo

Congratulations on being shortlisted. Please return this disclosure to the business manager at least one day prior to interview. If we have not received this, we reserve the right to withdraw the offer of interview.

| | |
|-------------------|-------|
| POST APPLIED FOR: | Date: |
|-------------------|-------|

| | | | |
|------------------------|--|--|---------------|
| Surname: | | Any / all previous name(s): | |
| Forename(s): | | Preferred title: | Date of birth |
| National Insurance No: | Teacher Ref. No (if applicable): <i>*Or HCPC registration number, etc</i> | Date of recognition as qualified teacher, QTS (if applicable): | |

This post is exempt from the Rehabilitation of Offenders Act 1974; pre-employment checks will be carried out, references will be sought and successful candidates will be subject to an enhanced DBS check and other relevant checks with statutory bodies.

We comply with the Disclosure & Barring Service (DBS) code of practice and have a written policy on the recruitment of ex-offenders, both of which are available on request. As you have been shortlisted, you are required to declare any relevant convictions, adult cautions or other matters which may affect your suitability for the role you have applied for. As a result of amendments to the Rehabilitation of Offenders Act 1974 (exceptions order 1975) in 2013, 2020 and 2023, some minor offences are now protected (filtered) and should not be disclosed to potential employers, and employers cannot take these offences into account.

Please read the information [here](#) before answering the following questions. If you are unsure whether you need to disclose criminal information, you should seek legal advice or you may wish to contact Nacro or Unlock for impartial advice. There is more information on filtering and protected offences on the Ministry of Justice website.

Nacro - <https://www.nacro.org.uk/criminal-record-support-service/> or email helpline@nacro.org.uk or phone 0300 123 1999

Unlock – <http://hub.unlock.org.uk/contact/> phone 01634 247350 text 07824 113848

| |
|---|
| 1. Do you have any convictions or adult cautions that are unspent? Yes / No |
| If yes, please provide details here |



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| |
| 2. Do you have any other UK cautions or convictions that would not be filtered? Yes / No |
| If yes, please provide details here |
| 3. Have you been charged with any offence that is not yet concluded or are you currently under police investigation? Yes / No |
| If yes, please provide details here |
| 4. Have you been convicted for criminal offences in any other country which would be relevant to your suitability under English / Welsh law? Yes / No |
| If yes, please provide details here |
| <p>Please complete the declaration below:</p> <p>I declare that all the information I have provided in this disclosure is full and correct at the time of application and that I have not omitted anything that could be relevant to the appointment of someone who will work with children. I understand that the recruitment panel may be made aware of any relevant information that I have disclosed in order to discuss the matter(s) with me as part of the recruitment process and that, if my application is successful, a risk assessment of the disclosed information will be held securely on my personnel file. I understand that the declaration of a criminal record will not necessarily prevent me from being offered this role.</p> <p>Signed: _____ Date: _____</p> |

Please return this form to: [insert name]

Please note that, if you are unsuccessful, this disclosure form will be securely destroyed 6 months from the date of interview.

Appendix C: References / useful links

Disclosure & Barring Service

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

Detailed information, fact sheets and FAQs:

<https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>

Filtering guidance from 28/10/23

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

Ministry of Justice – guidance on the Rehabilitation of Offenders Act 1974 and the Exceptions Order 1975 (and self disclosure)

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

National Association for the Care and Resettlement of Offenders (Nacro)

Criminal record support service – advice for applicants and employers

<https://www.nacro.org.uk/criminal-record-support-service/>

Unlock – support and advocacy for people with criminal convictions <https://unlock.org.uk/>

Filtering flowchart

(ref: Dominic Headley Associates / Better Hiring Institute / DoHSC)

Self-disclosure rules - ROA Exceptions Order

