

Recruitment of Ex-Offenders Policy

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A. Policy

1. Introduction

- 1.1. Lancashire Mind is committed to the fair treatment of its staff, potential staff, volunteers, and people who use our services regardless of age, disability, gender reassignment, marriage & civil partnerships, pregnancy & maternity, race, religion or belief, sex or sexual orientation or offending background. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications, and experience.
- 1.2. Lancashire Mind stresses that having a criminal record will not necessarily prevent someone from working for us. This will depend on the nature of the position, the circumstances and background of the prospective employee's offences. We do not discriminate unfairly against any subject of a disclosure based on conviction or other information revealed.
- 1.3. The organisation has followed the terms outlined in The Rehabilitation of Offenders Act (ROA) 1974 which ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. *Please see Appendix A for full details of the ROA
- 1.4 Under the General Data Protection Regulation and the Data Protection Act, information about a job applicant's criminal convictions is dealt with differently to other personal data.

2. Scope

This policy applies to:

- 2.1. All prospective or existing employees and volunteers who have been convicted of a criminal offence in the past or during employment.
- 2.2. Any employee or manager involved in the recruitment process.

3. Objectives

- 3.1. To eliminate unlawful discrimination of prospective or existing employees during the recruitment process or during employment.
- 3.2. To ensure that all prospective and existing employees are treated fairly, consistently and with dignity.

- 3.3. To ensure that all prospective employees have equal opportunity to employment where appropriate.
- 3.4. To provide those with recruitment responsibilities with a framework and clear guidance on how to manage the recruitment of ex-offenders in line with The Rehabilitation of Offenders Act (ROA) 1974.
- 3.5. To ensure that all employees are aware of their contractual obligations to adhere to the organisation's recruitment of ex-offenders' policy and to ensure that all staff are aware of the reporting requirements under the policy.

4. Principles

- 4.1. The organisation will provide training in equal opportunities, including the recruitment of ex-offenders, to managers and others likely to be involved in recruitment or any decision making where equal opportunities issues are likely to arise to enable them to recruit and manage employees fairly.
- 4.2. The organisation will ensure that recruitment is fair and transparent and based solely on the person's ability to meet the person specification for the post. Person and job specifications will be limited to those requirements that are necessary for the effective performance of the job.
- 4.3. Lancashire Mind uses the DBS disclosures system to assess applicants' suitability for positions of trust and fully complies with the DBS Code of Practice. The organisation treats all applicants for positions fairly.
- 4.4. Lancashire Mind will only request a disclosure when it is legal to do so. For those positions where a disclosure is required, all job adverts, application forms, and recruitment material will contain a statement that a disclosure will be requested before an appointment is made. Unless the nature of the position allows the organisation to ask questions about a person's entire criminal record we only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act (1974).
- 4.5. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place surrounding any offences or other matter that might be relevant to the position before any offer of employment is considered.
- 4.6. The unauthorised disclosure of information about a spent conviction is illegal. Unauthorised disclosure is where an official with access to information about the person's criminal record discloses this information other than in the course of official duties. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.
- 4.7. Where a self-disclosure is to form part of the recruitment process, we ask all applicants to voluntarily provide details of their criminal record at an early stage in the application process. We guarantee that this information will be treated as sensitive personal data and therefore only be seen by those who need to see it as part of the recruitment process as outlined in Lancashire Mind's Confidentiality and Information Governance policies. This information will be treated in strict confidence, will be securely stored, and kept for only the time necessary. Failure to disclose convictions on an application form that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
- 4.8. From 28 November 2020, individuals with more than one minor conviction no longer need to disclose this to organisations.
- 4.9. Following appointment, employees have a responsibility to report any relevant changes of circumstance to the organisation. These include any criminal investigations, convictions or

warnings they may become the subject of, or any other relevant information which a reasonable employer might consider could impact on the employment of that individual. Employees should always discuss with their line manager any difficulties or problems that may impact on their suitability to work with children and adults so that appropriate support can be provided, or action taken. Failure to disclose relevant convictions with the line manager may result in disciplinary action.

- 4.10. Any existing employee may be asked to undertake a DBS re-check if any concerns are raised. Refusing to comply with such a request may result in the employee being subject to formal disciplinary action for deliberate and/or unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager.
- 4.11. Confidentiality cannot be guaranteed where concerns arise about the welfare or safety of children or adults, but any information sharing will be in accordance with relevant legislation and policy and only as is necessary in the circumstances.
- 4.12. Anyone within the organisation found not to be adhering to the recruitment of ex-offenders' policy may be dealt with under the disciplinary procedure as appropriate.

5. Responsibilities

5.1. It is the responsibility of:

5.1.1. Lancashire Mind

- a) To ensure the policy and procedures are readily available to all staff
- b) To provide support and guidance to managers on applying the policy
- c) To monitor and review the implementation and effectiveness of the policy
- d) To ensure the recruitment of ex-offenders is managed appropriately
- e) To ensure references to DBS checks are visible on all job adverts where they will be required

5.1.2 Managers

- a) To implement the policy
- b) To support staff to understand and correctly follow the policy
- c) To recruit and manage staff in appropriate and fair manner

5.1.2. Staff & Volunteers

- a) To understand the Recruitment of Ex-Offenders policy and follow procedural guidelines
- b) To correctly notify the organisation of any relevant convictions at application stage if necessary, in accordance with The Rehabilitation of Offenders Act (ROA) 1974
- c) To fully cooperate in the process of investigating any equality and diversity related concerns.
- d) Employees & volunteers can be held personally liable as well as, or instead of, Lancashire Mind for any act of unlawful discrimination. Employees or volunteers who commit serious acts of harassment may be guilty of a criminal offence.

For related policies and procedures including the Recruitment policy and Equality, Diversity & Inclusion policy, look in the Policies folder on Lancashire Mind's SharePoint site in Office 365.

Appendix A

Rehabilitation of Offenders Act (ROA) 1974

Introduction

The Rehabilitation of Offenders Act (ROA) 1974 ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment.

Under the 1974 Act, following a specified period of time, which varies according to the disposal administered or sentence passed, cautions and convictions (except those resulting in prison sentences of over four years and all public protection sentences*) may become spent. As a result, the offender is regarded as rehabilitated.

Generally, the more severe the penalty the longer the rehabilitation period. Please refer to Appendix B: Rehabilitation Periods for further information.

*A public protection sentence, the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006, means a sentence of imprisonment or detention imposed for specified sexual and violent offences.

Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be “spent”. Once a conviction has been spent, generally the convicted person does not have to reveal it or admit its existence. There are, however, exceptions.

Exceptions to the Act

Lancashire Mind has a duty of care to protect the safety and wellbeing of the public and people who use our services, in particular children and adults who considered to be especially vulnerable or at risk. The Exceptions Order (1975) overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Where an exception to the 1974 Act exists, ex-offenders must disclose information about all cautions and convictions even if they are spent, other than protected cautions and convictions (See Modifications to the Act).

Exempted occupations fall into the following categories:

- Work that brings the person into contact with groups such as the infirm, elderly, mentally ill and young people under the age of 18.
- Professionals that have legal protection, for example, nurses, doctors, dentists, chemists, accountants.
- Posts concerned with the administration of justice, for example, police officers, lawyers, probation officers, and traffic wardens.
- Health service appointments.

Pre-employment checks and other safe recruitment practices are a requirement to ensure that people who may pose a threat to children and adults are not given positions of trust where they could exploit those entrusted to their care in most circumstances, including when applying for a job. In most circumstances, an employer cannot refuse to employ someone, or dismiss them, based on a spent conviction.

Modifications to the Act

The Amendment Order (2013) introduces provisions into the Exceptions Order so that some spent convictions and cautions, which would otherwise be covered by the Exceptions Order, do not have to be disclosed and cannot be considered in employment decisions. The Exceptions Order currently provides for full disclosure of a person's criminal history, regardless of how old or minor the disposal.

The Court of Appeal has found that this blanket disclosure of all cautions and convictions is incompatible with Article 8 of the European Convention on Human Rights. The purpose of this amendment is, therefore, to remedy this incompatibility by 'filtering' certain cautions and convictions, which are sufficiently old and minor to have no bearing on an employment decision. This means that the individual will no longer have to reveal these cautions and convictions nor will they appear on standard and enhanced disclosure certificates.

The filtering rules will apply in the following circumstances:

The rules as to when a conviction or caution will be filtered are set out in legislation. This states that a standard or enhanced disclosure certificate must include the following:

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- All cautions given for a specified list of offences– see below
- Cautions given less than 6 years ago (where the person was 18 or over at the time of caution)
- Cautions given less than 2 years ago (where the person was under 18 at the time of caution)
- All convictions for a specified list of offences - see below
- All convictions that result in a custodial sentence
- Convictions given less than 11 years ago (where the person was 18 or over at the time of conviction)
- Convictions given less than 5½ years ago (where the person was under 18 at the time of conviction)
- Where the person has more than one conviction then all convictions will be included on the certificate (no conviction will be filtered)
- Where a person is convicted of multiple offences, then the conviction will be included on the certificate, as each offence is treated as if it were a separate conviction

In order to maintain public protection, the amendment lists offences which must always be disclosed. These offences are serious violent and sexual offences and other offences of specific relevance for posts concerned with safeguarding children and vulnerable adults.

The list includes a range of offences which are serious, and which relate to sexual offending, violent offending and/or safeguarding. It would never be appropriate to filter offences on this list. A list of offences which will never be filtered has been derived from the legislation and is available here:

<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

Appendix B

Rehabilitation Periods table

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
<ul style="list-style-type: none">• Sentence of imprisonment for life• Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over four years• Sentence of preventive detention• Sentence of detention at Her Majesty's Pleasure• Sentence of custody for life• Public protection sentences* (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders) <p>*A public protection sentence (the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006 means a sentence of imprisonment or detention, as detailed above,</p>	<p>These sentences are excluded from rehabilitation and so will always be disclosed</p>	<p>These sentences are excluded from rehabilitation and so will always be disclosed</p>

imposed for specified sexual and violent offences.

A custodial sentence of over 2 years 6 months but not exceeding 4 years	7 years from the date on which the sentence (including any licence period) is completed	3 years 6 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of over 6 months but not exceeding 2 years 6 months*	4 years from the date on which the sentence (including any licence period) is completed	2 years from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months*	2 years from the date on which the sentence (including any licence period) is completed	1 year 6 months from the date on which the sentence (including any licence period) is completed
A sentence of service detention	1 year from the date on which the sentence was completed	6 months from the date on which the sentence was completed
Dismissal from Her Majesty's Service	1 year from the date of conviction	6 months from the date of conviction
Fine	1 year from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order or youth rehabilitation order	1 year from the last day on which the order has effect	6 months from the last day on which the order has effect
Driving endorsements	5 years from the date of conviction	2 years 6 months from the date of conviction
Driving disqualification	When the period of the disqualification has passed	When the period of the disqualification has passed

Simple caution, youth caution	Spent immediately	Spent immediately
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
Compensation order	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required
Absolute discharge	Spent immediately	Spent immediately
Relevant orders** (orders that impose a disqualification, disability, prohibition or other penalty)	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent

*Suspended custodial sentences are treated the same as custodial sentences for this purpose. It will be the length of the sentence imposed by the court, not the period it is suspended for that dictates when it will become spent.

**Relevant orders include conditional discharge orders, restraining orders, hospital orders, bind overs, referral orders, care orders and any order imposing a disqualification, disability, prohibition or other penalty not mentioned in the table.

Example scenarios

What if multiple sentences were given simultaneously?

If there is more than one sentence or disposal given for an offence, or multiple offences within the same proceedings, the rehabilitation period applied to the conviction(s) will be the one with the latest date.

Example

Anthony was convicted of burglary on 1 February 2018. He received a 6 month custodial sentence and was also ordered to pay a fine of £300. Anthony was over 18 at the time of his conviction.

The rehabilitation period for the 6 month custodial sentence would end 2 years from the completion of his sentence on 1 August 2020. The rehabilitation period for the fine would end 1 year from the date of his conviction on 1 February 2019.

However, because they were both given for the same conviction, the whole conviction would not become spent until the later date of 1 August 2020.

What if there is more than one conviction?

If there is more than one conviction but the rehabilitation periods do not overlap, there is no change.

If an individual is convicted again within the rehabilitation period of another conviction, in most instances this will affect when the convictions become spent i.e. neither conviction will become spent until the rehabilitation period with the latest date has ended.

Example 1

Sandra, age 19, was convicted of theft on 20 May 2015 and received a 4 month custodial sentence. This conviction would become spent on 20 September 2017.

On 1 February 2017, she is convicted of battery and receives a 3 month suspended custodial sentence. This conviction would become spent on 1 May 2019.

Both offences will remain unspent until the later date of 1 May 2019, because she was convicted of a further offence while within the rehabilitation period of the first offence.

In this case, both convictions would be disclosed on a basic DBS certificate issued before 1 May 2019.

Example 2

Ranjit, age 32, was convicted of fraud on 20 May 2015 and received a 3 month custodial sentence. This conviction would become spent on 20 August 2017.

On 1 February 2018 he was convicted of a further offence for which he was given a fine of £200. This conviction would become spent on 1 February 2019.

Although he has been convicted of a further offence, the first conviction had reached the end of the rehabilitation period before he received the second conviction.

In this case, only the later conviction would be disclosed on a basic DBS certificate issued between 21 August 2017 and 1 February 2019.

Exceptions

When considering the impact of an offence on the rehabilitation periods of other offences, relevant orders* won't be taken into account. They could however still be extended with reference to any other sentence that may have been passed at the same time that the order was imposed.

Example 1

On 1 August 2009, Marcus, age 26, was convicted of assault and given a 3 month suspended custodial sentence. This would become spent on 1 November 2011.

Marcus was then convicted of battery on 10 June 2011. He was sentenced to:

- a 6 month custodial sentence
- a restraining order until further order
- a fine of £50

The conviction for battery will remain unspent until further notice, due to the restraining order, and will be disclosed on a basic DBS certificate.

The earlier conviction for assault will have its rehabilitation period extended until 10 December 2013, when it will become spent. This is because Marcus was convicted of the second offence during the rehabilitation period of the earlier offence, so the rehabilitation period is extended according to the rehabilitation periods for the custodial sentence and fine he received following his battery conviction.

The restraining order until further order should not be used to extend a rehabilitation period of any other offence. This applies to all relevant orders.

Example 2

Andrea, age 38, was convicted on 2 August 2015 of assaulting a supporter at a football match. As a result, she received a 4 month custodial sentence and a football banning order lasting 6 years. This conviction would become spent on 2 August 2021.

On 5 February 2018, she was convicted of criminal damage and received a fine of £100.

Although the criminal damage conviction overlaps with her first conviction it will still become spent on 5 February 2019 as it only overlaps with the football banning order.

The football banning order is a relevant order so it will not be used to extend the rehabilitation order of the second conviction.

What if one of my convictions is excluded from rehabilitation?

If you have a conviction that is excluded from rehabilitation, then previous convictions that were unspent at the time would also never be spent.

Any further convictions after the conviction which is excluded for rehabilitation however can become spent once the normal rehabilitation periods have passed.

Example 1

Darren was convicted of attempted murder on 12 September 2004. He was sentenced to 5 years in prison. This conviction will never be spent. He had 2 previous convictions:

- 10 August 1998 - he was convicted of assault resulting in a 12 month community order and a fine. This was spent prior to the attempted murder conviction so it will not be disclosed on a basic certificate
- 10 July 2004 - he was convicted of harassment resulting in a fine of £100 which would have become spent on 10 July 2005, however because it was unspent at the time of the attempted murder conviction it will now never be spent

Several years after his custodial sentence ended, Darren received a further conviction for a separate incident. On 7 February 2012 he was convicted of theft, resulting in a 6 month suspended sentence. This would become spent on 7 August 2014 as long as he is not convicted of a further offence during this time.