



POLICY STATEMENT ON THE RECRUITMENT OF EX-OFFENDERS

- 1.1** As an organisation using the Criminal Records Bureau (CRB) Disclosure service to assess applicants' suitability for positions of trust, Barnsley Hospital NHS Foundation Trust (BHNFT) complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions with equity. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
- 1.2** BHNFT is committed to the fair treatment of its staff, potential staff or users of its services, regardless of sex, race, colour, nationality, ethnic or national origin, religion or belief, marital status, sexual orientation, mental or physical disability and age.
- 1.3** This policy statement is made available to all Disclosure applicants at the outset of the recruitment process.
- 1.4** BHNFT actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records. BHNFT selects all candidates for interview based on their ability to meet the requirements laid down in the Job Description and Person Specification.
- 1.5** A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms, job adverts and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
- 1.6** Where a Disclosure is to form part of the recruitment process BHNFT encourages all applicants called for interview to provide details of their criminal record at an early stage in the application process. BHNFT requests that this information is provided within the NHS Jobs application form. This information will be treated confidentially and we guarantee that this information is only seen by those who need to see it as part of the recruitment process.
- 1.7** Unless the nature of the position allows (as in direct patient contact roles) BHNFT will not ask questions about your entire criminal record we only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act 1974.
- 1.8** BHNFT ensures that all those who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. BHNFT also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

1.9.1 Having a criminal record will not necessarily bar you from working with the BHNFT.

This will depend on the nature of the position and the circumstances and background of your offences.

DEFINITIONS

Bind-over

A bind-over is an order about future conduct designed to reduce crime and increase public safety. The individual concerned is required to keep the peace for a fixed period of time as specified by the court.

Caution

A caution is a formal warning about future conduct given by a senior police officer, usually in a police station, after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution, generally used for juvenile or first-time offences. Basically there are two types of caution:

Simple caution - previously known as a formal caution - is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from appearing in court and to reduce the likelihood of them offending again.

Conditional caution - introduced by the Criminal Justice Act 2003, differs from a simple caution in that the offender must comply with certain conditions to receive the caution and to avoid prosecution for the offence they have committed. Like simple cautions, conditional cautions aim to keep lower level offenders out of court. The conditions are usually in the form of rehabilitation or reparation where the offender is requested to repair/or make good the damage caused. The offender may be requested to pay financial compensation.

Child

A child is defined under the safeguarding vulnerable Groups Act 2006 as “A person who has not yet attained the age of 18”.

Conditional Discharge

Conditional discharge is where no further action is taken against an offender unless they commit a further offence within a given period (no more than 3 years).

Court Conviction

Arises from offences tried at Court.

Criminal Record

A record of convictions held on the Police National Computer (PNC) for individuals convicted of crimes (includes information on cautions, reprimands, final warnings and bind-overs).

Disclosure & Barring Service (DBS)

The DBS provides access to information about criminal convictions and other police records to help employers make an informed decision when recruiting staff across England and Wales.

General Data Protection Regulations (GDPR)

The General Data Protection Regulations (GDPR) regulates the use of information about an individual and requires that any person, or organisation, who is to use information about an individual, uses it in accordance with the Data Protection principles. The Act also introduces safeguards in relation to sensitive personal data which may include information on ethnic or racial origin; political opinions; religious beliefs; physical or mental health; and criminal records.

Disclosure

Disclosure is the term that is used to describe the service provided by the Disclosure & Barring Services (DBS) and the document issued to the applicant and Registered Body when a DBS check has been completed.

Disclosure Scotland

Disclosure Scotland is part of the Scottish Criminal Record Office and provides access to criminal conviction data in Scotland. They can provide a basic disclosure service to employers within England and Wales. A basic disclosure is an application for details about 'unspent' convictions only. All applications for standard and enhanced disclosures for England and Wales must still be obtained from the DBS in Liverpool.

Exceptions Order

The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 sets out those occupations and positions exempt from the provisions of the ROA. These are generally positions of trust; where there is a valid need to see a person's full criminal history in order to assess their suitability for a position. This information is intended as general guidance only. It must not be regarded as a definitive interpretation of the Act. Anyone requesting further guidance should seek legal advice.

Exempted Question

An exempted question is a valid request for a person to reveal their full criminal history (including spent convictions) and is made possible by virtue of the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974.

Final Warning

A formal verbal warning given by a police officer to a young person who admits their guilt for a first or second offence. However, unlike a reprimand, the young person is also assessed to determine the causes of their offending behaviour and a programme of activities is identified to address them.

Children's Barred List

Children's List (formerly known as the Protection of Children Act (POCA) List). This is a list, managed by the Disclosure & Barring Services on behalf of the Secretary of State, of people who have committed serious offences and are barred from working or engaging in regulated activity with children.

Police National Computer (PNC)

The central police database against which all criminal record checks will be made.

Vulnerable Adult's Barred List

Vulnerable Adults List (formerly the Protection of Vulnerable Adults (POVA List)). This is a list, managed by the Disclosure & Barring Service on behalf of the Secretary of State, of people who have committed offences are barred from working or engaging in regulated activity with vulnerable adults.

Rehabilitation of Offenders Act (ROA) 1974

The Rehabilitation of Offenders Act (ROA) 1974 enables some criminal convictions to become 'spent', or ignored, after a 'rehabilitation period' (see below).

Rehabilitation Period

A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a job or when involved in criminal or civil proceedings (see *further details under 'spent conviction'*).

Reprimand

A reprimand is given to young offenders (aged 17 and under) who have committed their first offence.

Spent conviction

The Rehabilitation of Offenders Act (ROA) 1974 sets out to make life easier for many people who have been convicted of a criminal offence and who have since lived on the right side of the law. A person convicted of all but the most serious criminal offences and who receives a sentence less than 2.5 years in prison, benefits from the Act if they are not convicted again during a specified period. This is called the rehabilitation period (*as described above*). In general terms, the more severe a penalty is, the longer the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'. In most circumstances an employer cannot refuse to employ someone, or dismiss them, on the basis of a spent conviction. Generally, spent convictions do not have to be declared, unless the individual is applying for a position of trust. In such circumstances, an employer is entitled to ask a candidate to reveal details of all convictions, whether spent or not. This is, in part, to ensure that children and other vulnerable groups are adequately protected from those in positions of authority over them. These positions of trust, or 'excepted' professions, are set out in the Rehabilitation of Offenders Act (Exceptions) Order.

Suspended sentence

A suspended sentence is when a person sentenced to prison is not actually sent to prison - provided they keep out of trouble for the period of the suspension

Volunteer

Volunteers should undergo the same pre-employment checks as for a paid staff. The definition of a volunteer throughout these standards refers to:

“A person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than/or in addition to close relatives”

Vulnerable Adult

A vulnerable adult is defined under the SVG Act (2006) as:

“a person under the age of 18, or a person aged 18 or over who is receiving services of a type listed in paragraph (1) below and in consequence of a condition of a type listed in paragraph (2) below has a disability of a type listed in paragraph (3) below.

NB: a vulnerable adult must meet one of the criteria in each of the three paragraphs below

(1) An individual receiving one of the following services:

- (a) accommodation and nursing or personal care in a care home*
- (b) personal care or nursing or support to live independently in his own home*
- (c) any services provided by an independent hospital, independent clinic, independent medical agency or NHS body*
- (d) social care services;*
- or (e) any services provided in an establishment catering for a person with learning difficulties*

(2) As a result of one of the following conditions:

- (a) a learning or physical disability*
- (b) a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs*
- (c) a reduction in physical or mental capacity*

(3) Who has one of the following disabilities:

- (a) a dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions*
- (b) severe impairment in the ability to communicate with others; or*
- (c) impairment in a person's ability to protect himself from assault, abuse or neglect*

"Care position" means where:

- a) accommodation and nursing or personal care in a care home is provided (where "care home" has the same meaning as in the Care Standards Act 2000);*
- b) personal care or nursing or support is provided for a person to live independently in his own home;*
- c) social care services; or*
- d) any services are provided in an establishment catering for a person with learning difficulties.*

Please note that this definition of vulnerable adult exists only for the purpose of eligibility for an enhanced disclosure. It has no relevance to the protection of vulnerable adults scheme (PoVA) which has not been introduced in the NHS.

Warning

A final warning is given to young offenders (aged 17 and under) who have committed a second offence. Police will refer the young offender to a youth offending team.

Useful guidance

If you have a criminal history, it will be important for you to refer to the easy to read [guidance documents](#) provided on the Unlock website.

Unlock is a charity body that provides information and advice to individuals to help them gain a greater understanding about the type of information employers are likely to seek about their criminal history, which convictions and cautions are protected under the Exceptions Order (i.e. will never be disclosed as part of a DBS check and do not need to be declared when completing this form) and their rights.