



# Recruitment and Employment of Ex-Offenders Policy and Procedure

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# **Recruitment and Employment of Ex-Offenders Policy and Procedure**

## **1 Introduction**

- 1.1 York College has an obligation to take all necessary steps to ensure that employees recruited and employed by the College do not possess a criminal record which might render them unsuitable for employment. York College is a registered body of the Criminal Records Bureau and uses the Disclosure Service as part of its recruitment procedures to assess an applicant's suitability for employment in positions of trust.
- 1.2 The purpose of this policy is to ensure that (subject to the overriding consideration of protecting all people who access our premises, sites and services) those with a criminal record are not unfairly discriminated against, in breach of the College's Equality Policy or employment legislation.
- 1.3 Other linked policies are the Recruitment and Selection Policy and Procedure; the Criminal Records Bureau (CRB) Policy; the Equality Policy and the CRB Disclosure Security Policy. All policies, procedures and associated forms and documents referred to in this policy are available on the College intranet.

## **2 Background**

- 2.1 The Rehabilitation of Offenders Act (ROA) 1974 was introduced to ensure that ex-offenders who have not re-offended for a period of time following the date of their conviction are not discriminated against. Under the provisions of this Act job applicants do not have to declare a previous conviction after a 'rehabilitation' period has passed. The conviction becomes 'spent' after a prescribed period, depending on the seriousness of the offence. Most convictions become spent after five years. However, where a prison sentence of more than two-and-a-half years is imposed, the conviction is never considered as 'spent'.
- 2.2 In order to protect certain vulnerable groups there are a large number of posts and professions that are exempted from the Act. These include, but are not limited to, posts involving access to children, young people, the elderly and disabled. In such cases organisations are legally entitled to ask applicants for details of all convictions, cautions reprimands and final warnings, irrespective of whether they are 'spent' or 'unspent'. York College considers that it is appropriate to ask applicants to disclose all criminal convictions, regardless of whether or not they are 'spent'.

- 2.3 The Police Act 1997 allows organisations that recruit to positions that are exempted from the ROA to obtain information on the criminal record of prospective employees from a centralised source. Criminal records checks (known as Disclosures) are currently carried out by the Criminal Records Bureau (CRB). These Disclosures show spent and unspent convictions on the Police National Computer along with cautions, reprimands, final warnings and other information (acquittals and some bind-overs).
- 2.4 The College is registered with the CRB and follows a strict code of practice to ensure that Disclosure information is used fairly, sensibly and confidentially.

### **3 Criminal Record - interpretation**

- 3.1 A 'criminal record' is a far wider term than 'criminal conviction'. There are also police records and these are not criminal convictions. They include cautions, reprimands, final warnings and other information (acquittals and some bind-overs).
- 3.2 Cautions (for adults) are based on the seriousness of the offence. A caution is a warning about future conduct given by a senior police officer after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution. Reprimands and final warnings (for offenders under 18 years old) are issued by the police as an alternative to putting a young person before the courts.
- 3.3 References throughout this document to a conviction are deemed to include cautions, reprimands, final warnings and other information (acquittals and some bind-overs).

### **4 Policy Statement**

- 4.1 York College will not discriminate unfairly against applicants who have a criminal record. Only relevant convictions will be taken into account when assessing an applicant's suitability for a post.
- 4.2 Possession of a criminal record will not necessarily bar an applicant from employment; factors such as the nature of the conviction and the circumstances and background to the offence, the time that has elapsed since the offence/s, along with the relevance to the post will be considered.

- 4.3 Criminal records information will only be used to assess the applicant's suitability for employment insofar as it is relevant. Applicants will be considered on merit and ability and not discriminated against unfairly.
- 4.4 For those positions where a Disclosure is required, recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
- 4.5 If appropriate to the post, a Disclosure will be requested after a candidate has been provided with a provisional offer of employment. Further details can be found Section 10 of the Recruitment and Selection Policy.
- 4.6 As per 2.2. above, the College is entitled to ask applicants to disclose all convictions, whether spent or not. Applicants with a criminal record must therefore declare whether they have any previous convictions, regardless of whether they are spent or not. If applicants do not disclose any previous convictions, regardless of whether they are spent or not, and which are subsequently disclosed via a CRB Disclosure check, then any offer of employment may be withdrawn. If the applicant has commenced employment they may be dismissed on the grounds of deception.
- 4.7 The College complies fully with the CRB Code of Practice regarding the correct handling, use, storage, retention and disposal of CRB Disclosure information and will ensure that information contained in the CRB Disclosure is only available to those who need to have access to it in the course of their duties.
- 4.8 Those staff handling Disclosure information are trained and are required to abide by the CRB Code of Conduct and the requirements of the Data Protection Act. The College will also ensure that staff have been suitably trained to identify and assess the relevance and circumstances of offences and have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders e.g. Rehabilitation of Offenders Act 1974.

## **5 Procedure**

- 5.1 The Human Resources Countersignatory will make an initial assessment of the content of the Disclosure. If the Disclosure provides no evidence of convictions or any other related information, the applicant will be sent a letter confirming their appointment.
- 5.2 If the Disclosure confirms a conviction or any other related information, the Disclosure will be passed to a HR Advisor who will make an initial assessment of whether the information provided has any potential

relevance to the post. If there is clearly no potential relevance, the individual will be sent a letter confirming their appointment.

- 5.3 If the Disclosure confirms a potentially relevant conviction or any other potentially relevant information further exploration will be required and a meeting will be arranged with the applicant. The applicant's prospective line manager and a HR Advisor should conduct the meeting. The aim of this will be to achieve a structured, well-managed, open and honest discussion between the parties.
- 5.4 The suitability for employment of a person with a criminal record will vary, depending upon the nature of the job and the details and circumstances of any convictions. The discussion will cover these matters, in order that the applicant's criminal record and circumstances can be assessed in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out.
- 5.5 The College will consider the following points when deciding on the relevance of offences to particular posts:
- Does the post involve unsupervised contact with children or vulnerable adults;
  - Does the post involve direct contact with learners or the public;
  - The level of supervision that might be needed;
  - Whether the offence would create unacceptable risks for other employees, learners or customers of the College (for example, those with convictions for assault or sexual offences employed to work on a one-to-one basis);
  - Whether the post involves direct responsibility for finance or items of value (for example, those with convictions for theft employed looking after items of high value);
  - Whether the nature of the job is bound by legal constraints (for example, those with motoring convictions employed in a position which involves driving);
  - Whether the nature of the job will present opportunities for the applicant to re-offend in the course of their work.
- 5.6 It should be remembered that no two offences are exactly alike. For example, a premeditated burglary that involves extensive damage to property and the physical intimidation of the occupants ought not to be considered in the same light as someone convicted of an opportunist theft, for example reaching through an open window and stealing a purse on a whim. Whilst it is not possible to carry out a thorough risk assessment, the following issues will be taken into account when reaching a decision on the applicant's suitability for the post:

- Whether the offence or other matter revealed is relevant to the position to which they will be/have been appointed;
- The seriousness of the offence or any other matter revealed and its relevance to the safety of other employees, learners and other customers of the College;
- The length of time since the offence or other matter occurred;
- Whether the offence was a one-off, or part of a history of offending;
- Whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely (for example, improved personal circumstances);
- The country in which the offence was committed (for example, some activities are offences in Scotland and not in England and Wales, and vice versa);
- The circumstances surrounding the offence and the explanation(s) of the circumstances which led to the offence being committed, for example the influence of domestic or financial difficulties;
- Whether the offence has since been decriminalised by parliament;
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

5.7 Having considered all these matters carefully and thoroughly, the Human Resources Manager (or nominee) will make a balanced and objective judgement as to whether the applicant is suitable for the position applied for. The Human Resources Manager (or nominee) may consult with the College's Senior Management Team and/or take legal advice, before making a decision. Additional references may be sought. If the decision is that they are suitable then they will be sent a letter confirming their appointment. If the decision is not to appoint, a letter will be sent withdrawing the offer of appointment and confirming the reasons for this decision.

5.8 The College will ensure that appropriate safeguards are in place to support and protect both the applicant and the College. These will be discussed with the applicant and/or their line manager and will take into account the needs and circumstances of all parties. Such safeguards may include the provision of a support mentor.

## **6 Independent guidance for applicants with a criminal record**

Applicants who have a criminal record and who would like further advice or guidance may seek independent advice, such as that provided by NACRO.

## **7 Complaints Procedure**

- 7.1 Any employee or job applicant may raise, either informally or formally, complaints of bad practice, unfair and/or discriminatory treatment. The College will deal with all complaints fully and sensitively.
- 7.2 Complaints should be made in writing to the Human Resources Manager.

## **8 Review**

- 8.1 This policy will be reviewed in accordance with the department's policy review cycle, which will usually be every 3 years and in accordance with legislative developments.

## **Appendix A – Assessing the post for risk**

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### Questions to be considered

1. Will the nature of the post present any realistic opportunities for the applicant to re-offend at work? Nb. It is illegal to employ certain ex-offenders – (further details can be found in Section 1 of the guidance notes)
2. To what extent is the post bound by legal constraints? For example, those with motoring convictions applying for positions involving frequent driving.
3. Does the position involve any direct responsibility for finance or items of value? For example, those with convictions for theft employed looking after items of high value such as computer equipment.
4. Would the offence create unacceptable risks for other employees, learners or customers of the college? For example, those with convictions for assault or sexual offences employed to work on a one-to-one basis.
5. What could happen at work and how serious would that be? Consider the factors that might increase or decrease the risk, such as the level and closeness of supervision.

## **Appendix B – Assessing the applicant and the offences**

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### Questions to be considered

1. Is the offence or other matter revealed is relevant to the position?
2. How serious is the offence or any other matter revealed?
3. Is the offence relevant to the safety of other employees, learners and other customers of the College?
4. What is the length of time since the offence or other matter occurred?
5. Was the offence a one-off, or part of a history of offending?
6. Have the applicant's circumstances changed since the offence was committed, making re-offending less likely (for example, improved personal circumstances)?
7. Consider the country in which the offence was committed (for example some activities are offences in the UK but not in other countries and vice versa)
8. What were the circumstances surrounding the offence and the explanation(s) of the circumstances which led to the offence being committed?
9. Has the offence since been decriminalised by parliament
10. What is the degree of remorse, or otherwise, expressed by the applicant and their motivation to change
11. If the conviction(s) are relevant to the post, consider (in consultation with the HR Manager):
  - Withdrawal of the offer of employment
  - The introduction of safeguards
  - Dismissal

## Glossary

<b>Cautions</b>	Given when there is sufficient evidence for a conviction but it is not considered in the public interest to institute criminal proceedings. Cautions have traditionally been used for most juvenile and first-time orders
<b>Conviction(s)</b>	Arise from offences tried at court
<b>Police National Computer</b>	The central police database against which all checks will be made.
<b>Schedule Four Offences</b>	Under the Criminal Justice and Court Services Act 2000, adults convicted of a Schedule Four offence and given a hospital or guardianship order or a custodial sentence of 12 months or more are banned from working with children.