



Recruitment and Employment of Ex- Offenders Policy and Procedure

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Policy / Procedure Title: Recruitment 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 Disclosure Barring Service 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 treated in the recruitment and selection process. The College will always strive to strike a fair and reasonable balance between helping to rehabilitate ex-offenders and protecting students from unsuitable individuals.
- 1.3 Other linked policies are the Recruitment and Selection Policy and Procedure; Staff Conduct Policy; the Safer Recruitment Policy; the Equality Policy, and the DBS Disclosure Security Policy. All policies, procedures and associated forms and documents referred to in this policy are available on the Human Resources site of 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 specified period of time since the date of their conviction are not discriminated against when applying for a job. 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. It is the responsibility of the applicant to clarify whether a conviction is spent or unspent. The length of time required for an ex-offender to become rehabilitated depends on the sentence received and their age when convicted. All cautions and convictions may eventually become spent, with the exception of prison sentences, or sentences of detention for young offenders, of over four years and all public protection sentences regardless of the length of sentence.
- 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, and cautions irrespective of whether they are 'spent' or 'unspent'. Based upon this exemption, York College considers that it is appropriate to ask all 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 Disclosure and Barring Service (DBS). Disclosures show spent and unspent convictions and cautions on the Police National Computer. Information obtained thereby will only be used to assess an individual's suitability for employment, where relevant, and will not be used to unlawfully discriminate.

- 2.4 From 29 May 2013 the DBS removed certain specified old and minor offences from criminal record certificates issued from this date.

For those 18 or over at the time of the offence: an adult conviction will be removed from a DBS criminal record certificate if:

- 11 years have elapsed since the date of conviction; and
- it is the person's only offence, and
- it did not result in a custodial sentence.

Even then, it will only be removed if it does not appear on the list of offences relevant to sexual offending, violent offending and/or safeguarding. If a person has more than one offence, then details of all their convictions will always be included. In addition, all convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.

An adult caution will be removed after 6 years have elapsed since the date of the caution if it does not appear on the list of offences relevant to safeguarding.

For those under 18 at the time of the offence: the same rules apply as for adults, except that the elapsed time period for convictions is 5.5 years and cautions 2 years

Applicants are therefore required to inform the College of any convictions or cautions that do not fall under the definition of "specified old and minor offences" above, even those convictions/cautions that are "spent".

- 2.5 The College is registered with the DBS and follows a strict code of practice to ensure that Disclosure information is used fairly, sensibly and confidentially

3 Criminal Record - interpretation

- 3.1 References throughout this document to a conviction are deemed to include cautions. Reprimands and warnings were abolished in April 2013 and a reprimand or warning given before that date is now to be treated as a youth caution.

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 Recruitment advertisements will contain a statement informing applicants that a Disclosure will be requested in the event of the individual being offered the position. Further details can be found in the Recruitment and Selection Policy.
- 4.5 As per 2.2. above, the College is entitled to ask applicants to disclose all convictions, whether spent or not, unless the filtering rules as outlined 2.4 above apply. Failure to reveal information relating to unspent convictions (and spent convictions in the case of excluded jobs and professions under the Rehabilitation of Offenders Act) could lead to withdrawal of an offer of employment or disciplinary action which could lead to termination of employment if employment has commenced.
- 4.6 The College complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosure information and will ensure that information contained in the Disclosure is only available to those who need to have access to it in the course of their duties. Further details can be found in the Disclosure Security Policy.
- 4.7 The College will only share disclosed information with those who legitimately need to see it as part of the recruitment process.
- 4.8 Those staff handling Disclosure information are trained and are required to abide by the DBS Code of Conduct and the requirements of the Data Protection Act. The College will ensure that all those who are involved in the recruitment process 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 the HR Director (or nominee) who will make an initial assessment of whether the information provided has any potential relevance to the post. For example, the HR Director (or nominee) can legitimately take the view that a minor offence such as being drunk and disorderly, committed many years previously is no justification for

determining that the individual is unsuitable for the role. If, in the opinion of the HR Director (or nominee), 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, a discussion will take place with the applicant regarding the offence and its relevance to the position, to help assess the suitability of the applicant for the job. The applicant's prospective line manager and an HR Director (or nominee) will conduct the meeting. The aim of this is 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 students or the public;
 - The level of supervision that might be needed;
 - Whether the offence would create unacceptable risks for other employees, students 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. 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, students 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 HR Director (or nominee) will make a balanced and objective judgement as to whether the applicant is suitable for the position applied for. The HR (or nominee) may consult with the College's Senior Leadership Team and/or take legal advice, before confirming a decision. Additional references may be sought. If the decision is that they are suitable 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, i.e. that the individual's police record is such that the College considers them unsuitable for appointment to the role.

6 Current Staff and Criminal Convictions

- 6.1 As per 2.4 above employees who are charged or convicted of a criminal offence during the course of their employment must inform the College's HR Director.
- 6.2 An employee who is charged or convicted of a criminal offence during the course of their employment will not be automatically dismissed or disciplined for the offence.
- 6.3 The HR Director (or nominee), in consultation with the employee's line manager, will consider the details of the offence before making a decision as to whether the employee's conduct merits further investigation under the remit of the Disciplinary policy because of its employment implications. In these circumstances, it may be appropriate for the College to suspend the employee pending further investigation. In making such decisions, the safety of children and vulnerable adults will be paramount.

7 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.

8 Complaints Procedure

- 8.1 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.
- 8.2 Complaints should be made in writing to the HR Director.

9 Review

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

Appendix A – Assessing the post for risk

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 exoffenders – (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, students 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

Questions to be considered

1. Is the offence or other matter revealed 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, students 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. Another factor that will be taken into account includes 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 Director):
 - Withdrawal of the offer of employment
 - The introduction of safeguards
 - Dismissal

Glossary

Cautions	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
Conviction(s)	Arise from offences tried at court
Police National Computer	The central police database against which all checks will be made.
Schedule Four Offences	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.