



Blood and Transplant

Human Resources Policies and Procedures

**Employment of Ex-Offenders
and Referrals to the
Independent Safeguarding
Authority (ISA) Policy**

UCD/HRO/Ex-Offenders/043

Policy:	UCD/HRO/Ex-Offenders/043
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1. Scope

This policy applies to all NHS Blood and Transplant (NHSBT) Managers and Staff participating in recruitment and selection and the fair assessment of any Criminal Record in relation to:

- Direct employees or those on honorary contracts
- All vacancies irrespective of whether the role is subject to a Disclosure and Barring Service (DBS) Check (previously known as Criminal Records Bureau – CRB)

It covers all stages of recruitment from the assessment of the eligibility of posts for DBS checks through to the assessment of relevance of any criminal convictions declared during the process.

2. Purpose

The purpose of this policy is to provide a clear and consistent approach to the fair consideration of candidates, including those with criminal records, avoiding discrimination against anyone who is the subject of a disclosure on the basis of their criminal record or other information revealed. It will also ensure that, as an organisation using the Disclosure and Barring Service (DBS) to help assess applicants' suitability for positions of trust, NHSBT complies with all relevant codes of practice and legislation inclusive of storage and confidentiality.

3. Responsibility

3.1 Recruitment and Resourcing Department

The Recruitment and Resourcing Department is responsible for ensuring the consistent application of this policy, and for advising managers and candidates in this respect.

The Recruitment Team will work with managers to administer the recruitment process for each vacancy, ensuring that issues relating to the declaration of any criminal records are flagged to appropriate people at the relevant times whilst maintaining confidentiality throughout.

Senior Recruitment Department staff are responsible for advising managers and working with them to facilitate meetings with candidates where appropriate. This will involve assisting recruiting managers in assessing the relevance of any declared criminal record and ensuring that they are able to make a fair recruitment decision prior to any final offer of appointment being made to a successful candidate.

3.2 Human Resources Operations

HR representatives will be in attendance at panels as and when required when assessing the relevance of criminal records of candidates

3.3 Recruiting Managers

Recruiting Managers should take relevant advice, working in partnership with the Recruitment Department, regarding the relevant and appropriate assessment of the information revealed to ensure a fair decision is taken whether or not to appoint. Managers are responsible for maintaining confidentiality on all information they are party to and for ensuring that they comply with relevant codes of practice and legislation at all times.

3.4 Candidates

Candidates are responsible for declaring honestly all information requested of them in respect of criminal records as required by the Rehabilitation of Offenders Act (ROA) 1974

and the ROA 1974 (Exceptions) Order 1975. This may be in writing or at meetings considered necessary to assess suitability for the post in the light of any criminal record that has been declared.

3.5 Employees

If an employee is charged with, cautioned for, or convicted of a criminal offence, whether committed during work time or outside work, under the terms of this policy and the individual contract of employment, they must declare this to their line manager who will take appropriate action in accordance with the NHSBT Code of Conduct and Disciplinary Policy available on the Intranet.

4. Equal Opportunity and Diversity

NHSBT needs to recruit, develop and retain a workforce that is able to deliver high quality services that are fair accessible, appropriate and responsive to the diverse needs of different groups and individuals.

As outlined in the Dignity at Work Policy the Organisation will ensure that people are treated fairly on the basis of their abilities and potential regardless of race, colour, nationality, ethnic origin, religious or political belief or affiliation, trade union membership, age, gender, gender expression, marital status, civil partnership status, sexual orientation, disability socio-economic background, work patterns, offending background or any other inappropriate distinction. No job applicant or employee will be discriminated against or treated less favourably on these or any other unjustifiable grounds.

Therefore NHSBT welcomes applications from a wide range of candidates, including those with criminal records. Candidates are selected for interview and appointment based on their skills, qualifications and experience. Having a criminal record will not necessarily bar an ex-offender from employment with NHSBT. **This will depend on the nature of the position and the circumstances and background of the offence(s).**

This policy complies with all legislation as laid out in the NHSBT Recruitment and Induction Policy and with the NHSBT Code of Practice.

5. Recruitment of Ex-Offenders

5.1 The requirement to declare Criminal Records

In order to protect and safeguard certain vulnerable groups within society, there are a number of posts and professions that are exempt from the provisions of the Rehabilitation of Offenders Act 1974. These include posts where, in the normal course of their duties, successful applicants will have access to persons in receipt of health services. If the post applied for falls within the above category, it will be exempt from the provisions of the ROA by virtue of the ROA (Exceptions Order) 1975. Applicants are therefore not entitled to withhold any information about convictions which for other purposes are 'Spent' under the provisions of the Act. In such cases a relevant DBS Disclosure will be sought.

Where the above is not the case NHSBT will only ask candidates about any "unspent" convictions as defined in the ROA 1974.

In either case NHSBT requests all applicants to provide the relevant details of their criminal record at an early stage in the application process, initially on their application form.

5.2 Requests for DBS Disclosures

Some posts involve work which under safeguarding legislation is designated Regulated Activity (RA). NHSBT must ensure that any employee involved in RA has not been barred from working with children or adults who are deemed to be vulnerable e.g. blood donors, families of organ donors. All such employees are required to agree to NHSBT obtaining an Enhanced Disclosure including Barred Lists checks from the Disclosure and Barring Service.

Employees not engaged in RA may also be required to agree to apply for a DBS Disclosure, the type being dependent on the nature of their work. List of Posts Requiring Disclosure and Barring Service (DBS) Checks prescribes which types of Disclosure are required. There are three types:

- | | |
|--------------------------------|--|
| Standard: | This lists cautions and convictions including those which are “spent” |
| Enhanced: | This includes the information on the Standard Disclosure plus Any police information which the relevant Chief Constable Reasonably believes to be relevant |
| Enhanced & Barred Lists Check: | This includes the information on the Enhanced Disclosure plus The outcome of a check on one or both Barred Lists |

For those positions where a Disclosure is required, a statement will be included on the advert informing the candidate of this.

Once a decision to employ has been made the Recruitment and Resourcing Department will initiate the DBS application process ensuring that the correct category of DBS Disclosure is requested.

In the case of internal candidates a DBS Disclosure Application Form will need to be completed if they are applying for a post requiring a DBS check unless they have been subject to the relevant level of DBS check within the organisation within the previous 3 years.

If a conviction, caution, police information or bar appears on the Disclosure then the procedure set out in Appendices 1a and 1b of the UCD/HRO/Ex-offenders/043 should be followed.

NHSBT ensures that all applicants subject to a DBS Disclosure are made fully aware of the existence of the DBS Code of Practice, and Employment of Ex-Offenders and Referrals to the Independent Safeguarding Authority (ISA) Policy and makes copies available on request.

5.3 Self Declaration Questionnaires

In support of the checking process a separate declaration is also issued to successful candidates in order to assess relevant issues prior to confirmation of appointment. The content of these is governed by NHS Employers and model versions of these questionnaires can be seen on the NHS Employers website.

5.4 Portability of DBS disclosures

NHSBT does not accept disclosures undertaken by other organisations for any candidates however recent they may be except in some cases of honorary contracts where evidence is obtained.

5.5 Starting work prior to the return of a disclosure

Only under exceptional circumstances will individuals be able to commence their employment before receipt of a satisfactory DBS disclosure. It is recognised however that in certain circumstances this may be necessary for example where the length of time taken to gain a disclosure has been excessive causing significant operational difficulty. In these circumstances it may be possible to allow the individual to commence work but the managers must ensure that measures are put in place such that the individual will not be working unsupervised at any time and sign a declaration to confirm this.

Under no circumstances however will an individual be allowed to commence unless the Disclosure Application Form has been completed and sent to the DBS.

5.6 Consideration of Criminal Records or issues arising from the Self Declaration Questionnaire.

Irrespective of whether the vacancy is subject to a DBS check or not the relevance of any criminal record required to be declared by the candidate will need to be assessed.

Appendix 1a and 1b provide flowcharts to demonstrate the process which will be followed.

NHSBT ensures that opportunity is provided for an open and measured discussion to take place on the subject of any offences or other matter that might be relevant to the position. Where a criminal record is declared or identified then this assessment will take place following interview at provisional offer stage. This applies equally to cautions or criminal convictions declared in the course of an individual's employment with NHSBT as outlined in the Code of Conduct.

Guidance on undertaking these interviews and making a decision will be made available to the Recruiting Manager. They will also receive support throughout the process from a representative from Human Resources.

6. Referrals to the Independent Safeguarding Authority (ISA)

The ISA is the statutory body which decides who should be placed on and who removed from two lists it maintains of people barred from working in Regulated Activity (RA) with children and vulnerable adults.

NHSBT has a legal duty to make a referral to the ISA if two conditions are met:

1. A person must have harmed or posed a risk of harm to a child or vulnerable adult including involving sexual material relating to children

AND

2. NHSBT has dismissed that employee or volunteer. The duty to refer is not restricted to circumstances of formal dismissal. It includes circumstances in which the organisation would have dismissed if the person had not resigned, retired, been made redundant, left via a compromise agreement or been transferred to a position which is not formal RA. Further guidance and full details of how a referral should be made is on the ISA website at www.isa.homeoffice.gov.uk

A person should not be referred when an allegation is first made. Allegations or concerns should be escalated in line with MPD 961– Safeguarding Adults and Children. NHSBT should investigate (in consultation with the local statutory services if need be) and gather sufficient evidence and information to establish if the allegation has foundation. Investigations and any disciplinary processes following the Disciplinary Policy should, as far as possible, be completed before the referral is made. This is important because the ISA has no investigatory powers and relies on the evidence provided with referrals and any other relevant evidence it can gather to make its barring decisions. Suspension is not, in itself, a ground for referral.

7. Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information

7.1 Storage and Access

Disclosure information should be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

7.2 Handling and Usage

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. A record will be maintained of all those to whom Disclosures or Disclosure information has been revealed and it is a **criminal offence** to pass this information to anyone who is not entitled to receive it. Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given. Any action contravening this will be dealt with as appropriate under the Disciplinary Policy.

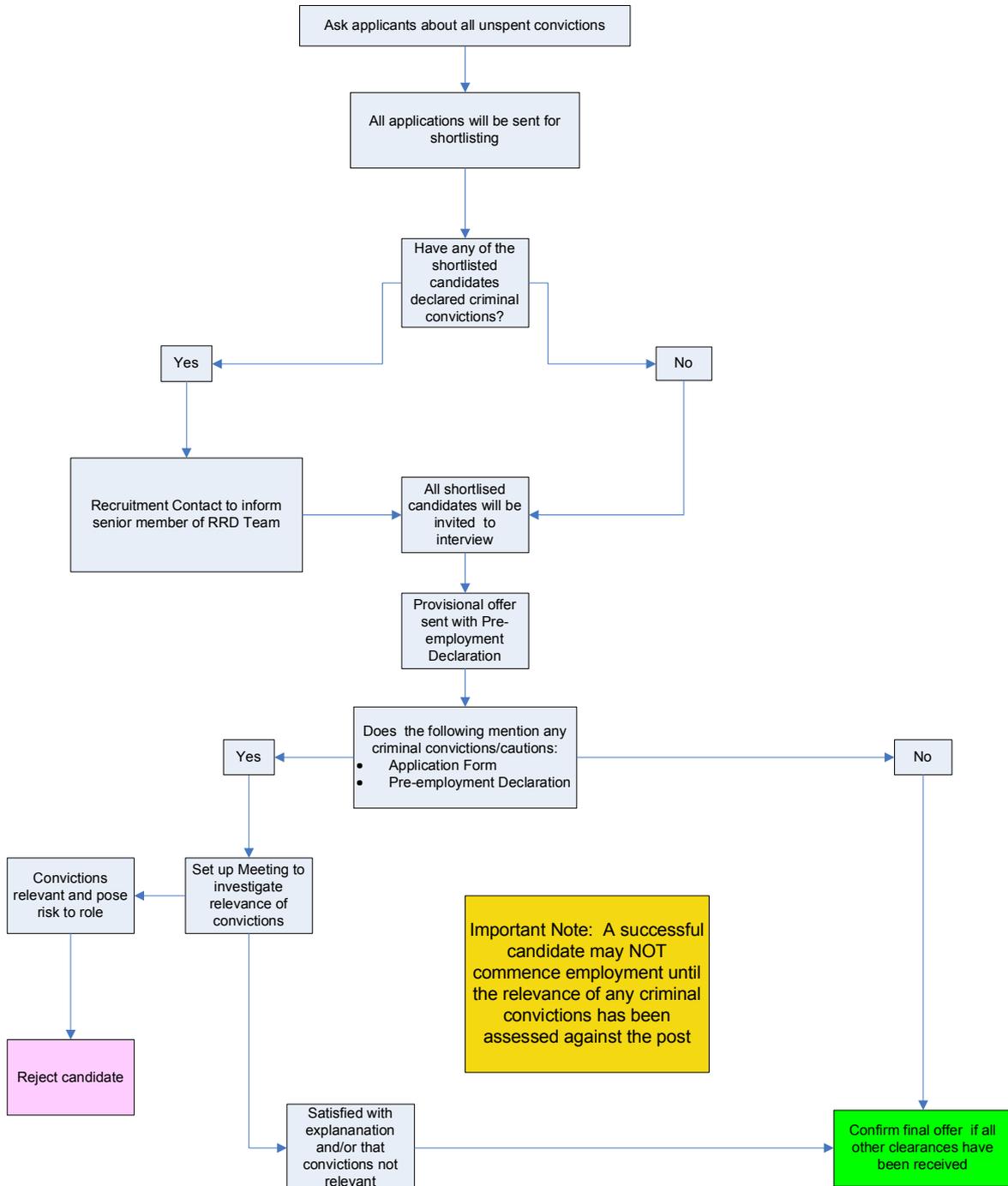
7.3 Retention

Once a recruitment (or other relevant) decision has been made, no Disclosure information is kept for any longer than is necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six months, full consideration will be given to the data protection and human rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

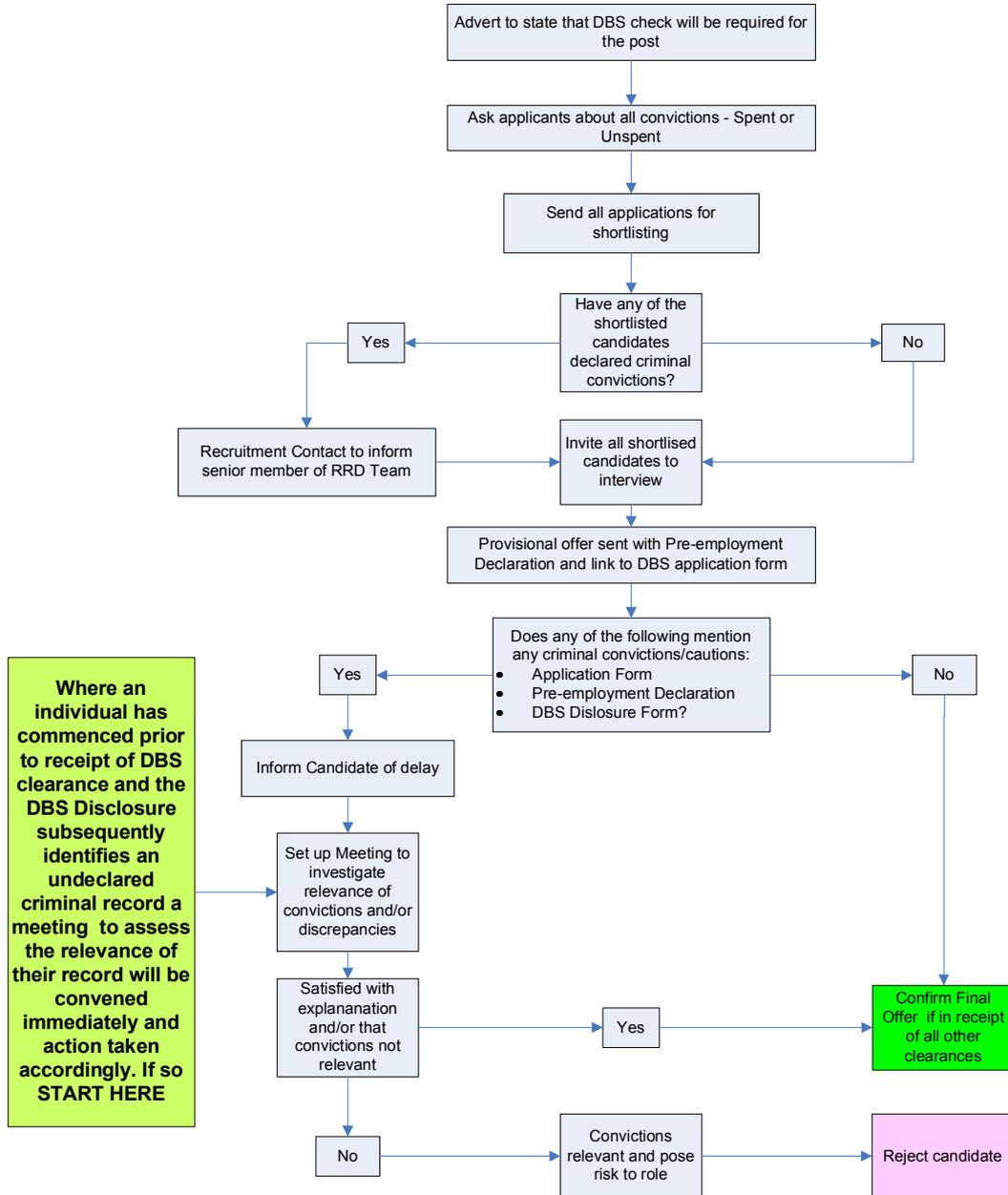
7.4 Disposal

Once the retention period has elapsed in line with Criminal Records Bureau guidelines, any Disclosure information will be destroyed by secure means, i.e. by shredding, pulping or burning by members of the Recruitment and Resourcing Department. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). NHSBT will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, notwithstanding the above, a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken may be kept.

Posts Not Requiring DBS Checks



Posts Requiring DBS Checks



Important Note: In exceptional circumstances, prior to receipt of the DBS Disclosure form a successful candidate may commence employment provided:

- DBS Disclosure has been requested
- Application Form does not disclose any cautions or criminal convictions
- Pre-employment Declaration Form does not disclose any criminal convictions
- All other pre-employment checks have been satisfactorily completed
- "Risk Assessment Declaration – Pending DBS Disclosure" has been completed and signed by the Recruiting Manager