

DIGITAL HEALTH AND CARE WALES

EMPLOYING EX OFFENDERS AND PEOPLE WITH A CRIMINAL RECORD

This policy outlines the management of applications from ex-offenders or those with a criminal record.

Document Version	1
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Status	Approved
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Document author:	Velindre NHS Trust
Approved by:	Velindre NHS Trust
Date approved:	25/04/2018
Review date:	31/03/2022

STRATEGIC OBJECTIVE	Delivering High Quality Digital Services
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WELL-BEING OF FUTURE GENERATIONS ACT	A healthier Wales
If more than one standard applies, please list below:	

DHCW QUALITY STANDARDS	N/A
If more than one standard applies, please list below:	

HEALTH CARE STANDARD	Staff & Resources
If more than one standard applies, please list below:	

EQUALITY IMPACT ASSESSMENT STATEMENT	Date of submission:09/04/2018
Yes, applicable	Outcome: Approved
<p>Statement:</p> <p>Digital Health and Care Wales (DHCW) is committed to ensuring that, as far as is reasonably practicable, the way it provides services to the public and the way it treats its employees reflects their individual needs and does not discriminate against individuals or groups. An Equality Impact Assessment (EQIA) has been undertaken on this policy and the way it operates. The Organisation wanted to know of any possible or actual impact that this policy may have on any groups in respect of gender (including maternity and pregnancy as well as marriage or civil partnership issues) race, disability, sexual orientation, welsh language, religion or belief, gender identity, age or other protected characteristics.</p> <p>The assessment found that there was no impact to the equality groups mentioned and this policy will have a positive impact on all the 'protected characteristic' groups. Where appropriate, the Organisation will make plans for the necessary actions required to minimise any stated impact to ensure that it meets its responsibilities under the equalities and human rights legislation.</p>	

APPROVAL/SCRUTINY ROUTE:		
Person/Committee/Group who have received or considered this paper prior to this meeting		
COMMITTEE OR GROUP	DATE	OUTCOME
Local Partnership Forum	23/03/2021	Approved

IMPACT ASSESSMENT	
QUALITY AND SAFETY IMPLICATIONS/IMPACT	No, there are no specific quality and safety implications related to the activity outlined in this report.
LEGAL IMPLICATIONS/IMPACT	Yes, please see detail below
	This policy will ensure there is clear guidance to reduce the likelihood of any legal ramifications.
FINANCIAL IMPLICATION/IMPACT	No, there are no specific financial implication related to the activity outlined in this report
WORKFORCE IMPLICATION/IMPACT	Yes, please see detail below
	This will ensure due process is followed and any workforce implications are fully mapped.
SOCIO ECONOMIC IMPLICATION/IMPACT	Yes, please detail below
	This policy proactively ensures applicants are not unfairly unsuccessful in being considered for positions within the organisation.

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1 DOCUMENT HISTORY

1.1 REVISION HISTORY

Date	Version	Author	Revision Summary
25/04/2018	1	Velindre NHS Trust	Policy Finalised

1.2 REVIEWERS

This document requires the following reviews:

Date	Version	Name	Position
25/04/2018	1	Velindre NHS Trust	Host organisation until 31/03/2021

1.3 AUTHORISATION

Signing of this document indicates acceptance of its contents.

Author's Name:	Velindre NHS Trust		
Role:	Velindre NHS Trust		
Signature:	N/A	Date:	25/04/2018

Approver's Name:	Velindre NHS Trust		
Role:	Velindre NHS Trust		
Signature:	N/A	Date:	25/04/2018

1.4 DOCUMENT LOCATION

Type	Location
Electronic	Integrated Management System

2 POLICY STATEMENT

Digital Health and Care Wales Special Health Authority (SHA) provides equality of opportunity for all job applicants with the required qualifications, experience skills, knowledge and personal qualities as outlined in the job description and person specification for the post. Therefore, the SHA welcomes applications from a diverse range of applicants, including ex-offenders and those with a spent or unspent criminal record.

In accordance with the Rehabilitation of Offenders Act 1974, an applicant's criminal convictions will only be taken into account during the recruitment process, where it is relevant to the post applied for. As the SHA has an exemption order under the above Act, any cautions, reprimands or final warnings, which are not criminal convictions, will also be considered as part of this process.

Having a conviction will not necessarily prevent applicants from being appointed to posts within the SHA. This will depend on the nature of the post that the applicant has applied for and the circumstances and background to their offence(s).

3 SCOPE

This policy applies to all applicants who apply for a post within the SHA. As the SHA has an exemption order, which overrules the employment rights of ex-offenders, as outlined in the Rehabilitation of Offenders Act 1974 i.e. they do not have the right to conceal information in respect of spent convictions when applying for jobs within the National Health Service (NHS). All applicants are therefore required to disclose on their application form, any information regarding spent or unspent criminal convictions, cautions, bind overs, reprimands, or final warnings.

The SHA uses the Disclosure and Barring Service (DBS), as part of its recruitment process to help it to assess the suitability of applicants appointed to posts, which will require them to work with vulnerable groups, including children in the course of their normal duties, or those to be employed in a financial role.

Please visit the Government website for further information on this service:

<https://www.gov.uk/disclosure-barring-service-check/overview>

Digital Health and Care Wales is an equal opportunities employer, which is committed to the fair treatment of all job applicants, regardless of their:

- Age
- Convictions Background (criminal or otherwise)
- Ethnic Origin
- Gender Identity
- Gender
- Physical or Mental Disability Race
- Religion / Belief
- Responsibilities for Dependents
- Sexual Orientation

The SHA is committed to not discriminating unfairly against any applicant, where they disclose an unspent or spent criminal conviction, a caution, bind over, reprimand or final warning.

All candidates shortlisted for interview will be selected based on their qualifications, experience, skills, knowledge, and personal qualities as specified in the post's job description and person specification. The declaration of a conviction etc. will not necessarily prevent applicants from being shortlisted for interview or appointed to a post within the SHA. Conviction information will only be considered, to determine the candidate's suitability in respect of the post applied for.

4 ROLES AND RESPONSIBILITIES

4.1 Recruiting Manager

The recruiting manager has a responsibility to ensure that they are up to date with the recruitment and selection guidance and processes.

If the recruiting manager wishes to consider an applicant who has disclosed a conviction, caution, bind over, reprimand or final warning they must undertake a risk assessment, to assess the relevance of the conviction etc. against the post the individual is applying for. This risk assessment must be considered and signed off by the relevant Head of Service / Director before an offer of employment is made. In such circumstances advice should be sought from the Workforce Department.

4.2 Workforce Department

The Workforce Department is required to:

- Provide accurate and up to date advice on the legislation and principles that govern the recruitment and selection process for ex-offenders and individuals with a criminal record.
- Ensure that managers have adequate information, guidance and support to fulfil their role in the fair recruitment and selection of staff.

5 REHABILITATION OF OFFENDERS ACT 1974

The Rehabilitation of Offenders Act was introduced to help restore the reputation of individuals who had been convicted of an offence but have since reformed and not committed any further offences. The Act specifies the period of time that an offender is required to disclose previous convictions etc., including when applying for a job. The Act was extended to cover [police cautions](#) in 2008. (A caution is considered to be spent as soon as it is given).

Amendments to the Rehabilitation of Offenders Act 1974 were also made by the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) in England and Wales and came into effect during March 2014. This Act changed the way some rehabilitation periods are set, so that they are fairer and better to reflect the seriousness of the sentences imposed.

Details of specific sentences / periods are set out within **Appendix A** of this policy.

5.1 Exceptions Orders 1975

There is an Exceptions Order within the Act, which sets out when the non-disclosure of an offence does not apply. The Order covers posts that involve risks, such as those working with vulnerable children or adults within the healthcare sector and financial services. Where applicants are applying for a post that will require them to work with vulnerable patients or deal with financial matters, they are required to disclose all their previous convictions, whether they are 'spent' or 'unspent'. A list of Excepted Professions, Offices, Employment and Work is set out in **Appendix B**.

The majority of SHA posts are exempt from the Act, as this legislation sets out that:

"Where a post is concerned with the provision of health services and it is of such of a kind that requires the post holder to have access to persons in receipt of healthcare services, in the course of their normal duties"

Extract based on wording taken from the Exceptions Order (1975)

In such instances the applicant is required to disclose 'spent' as well as 'unspent' convictions on their application form.

Should applicants require any additional information regarding how this act applies to their application, they should contact their local Probation Officer, Citizen Advice Bureau, solicitor, or consult the Home Office's rehabilitation document <http://www.homeoffice.gov.uk/justice>

6 DISCLOSURES

To ensure that all job applicants are familiar with the SHA's policy in relation to disclosure of convictions etc. all job advertisements will clearly state if a Standard, Enhanced or Enhanced with barred lists DBS Check is a requirement for the post. The NHS Wales application form will also contain a statement that will inform applicants that they are required to disclose any unspent or spent criminal convictions, cautions, bind overs, reprimands or final warnings, as part of the recruitment process.

7 USE OF DISCLOSURE INFORMATION

The SHA provides recruitment interview training for all its managers, which covers the Rehabilitation of Offenders Act 1974 and the DBS Code of Practice, in relation to employing ex-offenders. Managers are also provided with relevant information regarding this aspect of the recruitment process in the SHA's policy and procedure for dealing with disclosure of a criminal background for those employed to work with patients and children. This training and information ensure that all interview panel members are able to identify and assess the relevance of convictions, cautions, reprimands and final warnings and explore the circumstances and background sensitively of such convictions etc. with candidates who are shortlisted for interview.

Where an applicant discloses information regarding convictions etc. on their application form, the

SHA will ensure that this information is treated confidentially and only divulged to those who need to access it for recruitment processes i.e. interview panel members and Workforce Department.

Lead Interview panel member will hold an open discussion with candidates who disclose that they have a spent or unspent conviction, caution, bind over, reprimand or final warning at interview. The purpose of this discussion is to explore the circumstances and background to their conviction etc. and their rehabilitation, to assess their suitability for employment in the post.

8 WITHDRAWING AN OFFER OF EMPLOYMENT

It is against the law to refuse someone a job because they have got a spent conviction or caution, unless it is because the DBS check shows that they are unsuitable for the post they have applied for (see Exemptions **Appendix B**).

Where an applicant has a conviction, caution, bind over, reprimand or final warning and they fail to disclose this information on their application form, it could result in the withdrawal of an offer of employment

The SHA reserves the right to withdraw an offer of employment following a Disclosure and Barring Service (DBS) check (Standard or Enhanced), where it reveals a conviction etc. which renders the appointee unsuitable to work directly or indirectly with vulnerable patients / children or a finance related post.

In such circumstances, the lead interview panel member will contact the appointee to discuss the information divulged in the DBS Check and explain why the offer of employment is being withdrawn.

In accordance with the Rehabilitation of Offenders Act (1974) Exception Order, all applicants are required to disclose information in respect of unspent and spent convictions, cautions, reprimands and final warnings on their application form. Where applicants fail to disclose this information and it is later found that they have a conviction, etc. it could result in disciplinary action, including dismissal.

9 GETTING HELP

Further information and support are available from the Workforce and Organisational Department.

Appendix A

REHABILITATION PERIOD PER SENTENCE

Sentence	Period of Good Conduct Needed for Conviction to become 'Spent'	
	Aged 17 and Under	Aged 18 and over
Prison for more than 4 years Imprisonment for Life Preventative Detention Detention during her Majesty's Pleasure or for Life	Never Spent	Never Spent
Youth Custody Detention in a Young Offenders Institution or Corrective Training for a period of more than 4 Years	Never Spent	Never Spent
Prison more than 30 months and less than (or equal to) 4 years	Sentence + 3 ½ years	Sentence + 7 years
Prison for more than 6 months but less than (or equal to) 30 months	Sentence + 2 years	Sentence + 4 Years
Prison for 6 months or less	sentence + 18 months	Sentence + 2 Years
Detention and Training Order (over 6 months)	As prison sentences	
Detention and Training Order (6 months but not exceeding 30 months)	As prison sentences	
Sentence of Detention (over 6 months but not exceeding 30 months)	As prison sentences	As prison sentences
Sentence of Detention for 6 months or less	A prison sentence	As prison sentences
Youth Rehabilitation Order	6 months	
A Community Service Order	6 months	1 year
An Absolute Discharge	Spent immediately	Spent immediately
A Conditional Discharge, binding over, Care Order, Supervision Order, Reception Order	End of the Order	End of the Order
Sentence	Period of Good Conduct Needed for Conviction to become 'Spent'	

	Aged 17 and Under	Aged 18 and over
Service detention	6 months	1 year
Dismissal with disgrace from HM Service	6 months	1 year
Dismissal from HM Service	6 months	1 year
A Fine	6 months	1 year
Hospital Order (Under the Mental Health Act 1983)	End of the order	End of the order
Compensation Order	Once paid in full	Once paid in full
Disqualification	End of disqualification	End of disqualification
Relevant Order	End of the order	End of the order
Caution, Warning, Reprimands	Once conditions end	Once conditions end
Conditional Cautions	Once conditions end	Once conditions end

N.B. Sentences exceeding 4 years are never spent. In such cases it is the sentence imposed by the court which is relevant and not the length of time served in prison / young offenders' institution. A sentence counts in the same way, whether an individual is sent to prison or the sentence is suspended.

Where an individual received two or more prison sentences during the same court case, the rehabilitation period depends on whether the sentences are ordered to take effect concurrently (at the same time) or consecutively (one after the other).

For example, if two, six-month sentences are to be served concurrently, the convictions are treated separately, giving each conviction a rehabilitation period of seven years (aged 18 years and over).

If the sentences are to be served consecutively, they are treated as a single term of 12 months, with a rehabilitation period of 10 year (aged 18 years and over).

Source: *The Liberty Guide to Human Rights - Spent Convictions and the Rehabilitation of Offenders* (2002)

Appendix B

EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS AND WORK

Listed below are the relevant excepted NHS professions set out in the Act:

- Medical practitioner;
- Chartered accountant, certified accountant;
- Dentist, dental hygienist, dental auxiliary;
- Nurse, midwife;
- Ophthalmic optician, dispensing optician;
- Pharmaceutical chemist;
- Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act;
- Registered osteopath;
- Registered chiropractor; or
- Chartered psychologist.

Listed below are the relevant NHS excepted offices, employment and work set out in the Act:

Any employment or other work which is concerned with the provision of care services to vulnerable adults and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to vulnerable adults in receipt of such services in the course of his normal duties.

Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of his normal duties.

Appendix C

Digital Health and Care Wales

Guidance on Posts Requiring Disclosure and Barring Service Checks

POST	Enhanced Check (With Barred List - Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	No DBS Check Required
Administrative Staff (Ward/clinical area based – including coordinating clinics)			YES	
Administrative Staff (Not based on a ward/clinical area)				NONE
Allied Health Professionals (Other allied health professional staff who practice healthcare)	YES			
Biomedical Scientists (With patient contact)	YES			
Biomedical Scientists (No patient contact)				NONE
Clinic Collection Assistants	YES			
Clinic Support Assistants	YES			
Clinical Scientists (With patient contact)	YES			
Clinical Scientist (No patient contact)				NONE
Catering Staff (Required to work on ward/clinical area(s))			YES	

POST	Enhanced Check (With Barred List Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	No DBS Check Required
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Catering Staff (Not Required to work on ward/clinical area(s))				NONE
Counsellors	YES			
Dieticians	YES			
Drivers (Not required to transport patients)				NONE
Drivers (Required to transport patients)	YES			
Estates and Maintenance Staff (Required to work on / have access to ward/clinical area(s))			YES	
Estates and Maintenance Staff (Not required to work on / have access to ward/clinical area(s))				NONE
Finance Staff (Chartered / Certified accountants)		YES		
Finance Staff (undertaking administrative related finance work)				NONE
Healthcare Science Practitioners (with patient contact) <i>Formerly known as MTOs</i>	YES			

POST	Enhanced Check (With <i>Barred List Regulated Activity</i>)	Enhanced Check (Without <i>Barred List</i>)	Standard Check	No DBS Check Required
Healthcare Science Practitioners (No patient contact) <i>Formerly known as MTOs</i>				NONE
Healthcare Support Workers	YES			
Healthcare Support Workers (WBS Laboratories no patient contact)				NONE
Housekeeping Staff (Required to work			YES	

on ward/clinical area(s))				
Housekeeping Staff (Not required to work on ward/clinical area(s))				NONE
Management Staff (Required to work or access ward/ clinical area(s))/patient contact.			YES	
Management Staff (Not required to work or access ward / clinical area(s)).				NONE
Medical Secretaries			YES	
Medical Record Staff (Required to visit wards/clinical areas/patient contact)			YES	
Medical Record Staff (Not required to visit wards/clinical areas)				NONE

POST	Enhanced Check (With Barred List Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	<u>No</u> DBS Check Required
Medical Staff	YES			
Nurses (Qualified)	YES			
Nurses (Unqualified)	YES			
Occupational Therapists	YES			
Pharmacists	YES			
Pharmacy Technical Officers (With direct patient contact)	YES			
<i>Assistant</i> Pharmacy Technical Officer (With direct patient contact)	YES			
Phlebotomists	YES			
Psychologists	YES			
Porters (Who are involved in			YES	

transferring patients)				
Porters (Not involved in transferring patients)				NONE
Physiotherapists	YES			
Radiographers	YES			
Scientists (With patient contact)	YES			
Security Staff		YES		
Speech and Language Therapists	YES			

POST	Enhanced Check (With Barred List Regulated Activity)	Enhanced Check (Without Barred List)	Standard Check	<u>No</u> DBS Check Required
Volunteers (Not required to work on ward / clinical area(s))				NONE
Volunteers (Required to provide personal care to patients)	YES			
Volunteers (Required to assist with shopping for patients)	YES			
Volunteers (Required to transfer patients)			YES	

STANDARD CHECKS

A standard check contains details of both spent (old) and unspent (current) convictions, including cautions, reprimands and final warnings held in England and Wales on the Police National Computer (PNC). Most of the relevant convictions in Scotland and Northern Ireland may also be included.

Eligibility for Standard Checks

Employers may carry out standard level DBS Checks to assess a person's suitability for work listed in

the Exceptions Order i.e. where the type of work enables the person to have '*access to persons in receipt of such services in the course of [their] normal duties*'. The term 'access' only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is no contact with patients. **Please note** that positions that purely involve having access to records are not covered under the terms of the Exceptions Order and therefore employers cannot obtain a standard or enhanced DBS Check for these positions

ENHANCED CHECKS

An enhanced check contains the same information as a standard check but also includes any non-conviction information held by local police, where they consider it to be relevant to the post. This information is referred to as 'approved information' on the enhanced check certificate.

There are two levels of enhanced check – an enhanced disclosure check for regulated activity i.e. *with* barred list information (Regulated Activity) and an enhanced disclosure *without* barred list information.

Eligibility for Enhanced Checks for Regulated Activity (is work that involves close and unsupervised contact with vulnerable groups including children, and which cannot be undertaken by a person who is on the Disclosure and Barring Services Barred List)

Individuals seeking work in a regulated activity position must be checked against the DBS lists of those barred from working in regulated activity. This check is accessed through the process of applying for an Enhanced DBS Check for regulated activity.

Eligibility for an Enhanced DBS Check

Following recent changes to the eligibility criteria, there are some positions which are no longer eligible for an enhanced disclosure *with* a barred list check. Employers may continue to obtain an enhanced DBS check i.e. *without* a barred list check for those positions that were previously eligible under the Safeguarding Vulnerable Groups Act (SVGA) before 10 September 2012 but no longer fall within the new definition of regulated activity.