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# Recruiting safely and fairly

## A practical guide to employing ex-offenders



This publication has been produced by Nacro's Employer Advice Service with the support of the Chartered Institute of Personnel and Development (CIPD) and the Disclosure and Barring Service (DBS) and is primarily set within the context of the legal arrangements in England and Wales. It is a practical guide aimed at employers and recruiters of paid or voluntary staff to help them to understand their legal rights and responsibilities and good practice when employing staff with criminal records. The guidance outlines how to implement fair, safe and responsible policies and practices for employing ex-offenders, based upon a full understanding and assessment of risks involved.

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## Forewords

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Recruiting the best employees safely and fairly is one of the biggest challenges employers face. With over 20% of the working-age population recorded as having a criminal record, there is a significant talent pool that organisations cannot afford to ignore. However, we know that for many employers the legislation and practice around employing ex-offenders seems complex and daunting. Here at Nacro we are lucky enough to have expertise within the organisation in the form of our Employer Advice Service which advises our HR team and recruiting managers on all our resourcing activity relating to recruiting ex-offenders safely and fairly. This guidance has been compiled to give all employers the opportunity to access the same expertise.

A significant proportion of our workforce class themselves as ex-offenders, and what we do know from our own employee data is that compared to the rest of our workforce as a whole, they make up a significantly lower proportion of those who become involved in conduct or capability issues during their employment. This proves to us that, as well as being the right thing to do, it also makes good business sense to take the time to navigate the legislation and guidance around employing ex-offenders.

**Lucy Anderson**  
Director of HR and OD, Nacro



Many employers tend to be cautious about offering work to someone with a criminal record and some even operate blanket exclusion policies when recruiting. This approach is flawed. It results in a loss of talent that could add real value. At the same time it contributes unnecessarily to reoffending rates by those who cannot find work and, as a result, commit crime. In a society where a fear of crime prevails, this affects all of us.

Employers report (CIPD, 2013) that they increasingly struggle to find people with the right talent, skills, abilities and potential to fill their vacancies. Recognising the diversity of talent available and how to attract it by valuing difference and being more inclusive will help them to overcome these problems. Previous CIPD surveys (CIPD, 2007) of employers show that, contrary to common perceptions, their experiences of employing ex-offenders have been positive. Retention rates are high and ex-offenders make valuable and reliable employees.

So how can employers recruit the right people and minimise risk? The CIPD is pleased to support this practical guide which explains the legal duties employers have when it comes to dealing with people with histories of offending, the practices they can adopt to do so successfully and the protection which criminal record checks may or may not afford.

**Dianah Worman OBE Chartered FCIPD**  
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# CIPD

The DBS welcomes the opportunity to collaborate with Nacro and the CIPD. We are pleased to have been consulted on the guidance relating to DBS checks required for this document.

**Policy team, DBS**







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# Introduction

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It is vital that employers take the time to understand how to recruit safely and fairly. The law around criminal record checks is complex and recent changes to the legislation mean that many employers' policies and procedures are out of date. Ensuring the relevant staff have a thorough and working knowledge of the legislation means organisations can be assured that they have adequate protection in place for their business, staff and clients. The cost of not doing so could mean they are breaking the law and result in hefty fines.

There are now more than 11 million people recorded as having a criminal record on the Police National Computer (PNC) (Home Office, 2017). This equates to over 20% of the working-age population. Many employers who have knowingly hired ex-offenders reported a positive experience (Reed, 2013 and Working Links, 2010) and indicated that these employees worked as hard, if not harder, than those with no convictions.

Nonetheless, some employers have great and exaggerated concerns about recruiting people with criminal records. Research undertaken by [Working Links](#) in 2010 shows that many of these employers perceive ex-offenders as not having soft skills including honesty and reliability. Some actually believe that they cannot employ people with criminal records for legal reasons or insurance purposes. 75% of employers say they would use the declaration of a caution or conviction to discriminate against the applicant in favour of a candidate with no convictions; a number of employers would reject the candidate outright (Working Links, 2010). There has been no progress on this issue since 2001 when the Department for Work and Pensions (DWP) conducted its own research on employer attitudes towards ex-offenders. One of the key purposes of this guide is to set out exactly what the legal position is.

## The cost

Reoffending costs the UK up to £15 billion a year (Work and Pensions Committee, 2016). This is in addition to the social and economic costs caused by preventing otherwise suitably skilled, qualified, experienced and motivated applicants from having a fair opportunity to compete for gainful employment. Many of these individuals are consequently not in a position to provide for their families, pay taxes and contribute positively to society. Some face being confined to a life on benefits and a burden to the taxpayer.

The ripple effect of low employment rates among people with convictions can lead them to experience problems in other aspects of their lives such as an inability to secure and maintain adequate housing, unmanageable debt and expenditure issues, increased likelihood of developing substance or alcohol misuse or mental health problems and difficulty maintaining positive personal and family relationships.

Reoffending rates are greatly influenced by whether a person finds work or not. Employment is often quoted as the most important factor in helping to reduce reoffending. To address this, there have been a number of significant changes to legislation recently which aim to reduce or remove barriers faced by ex-offenders when seeking employment and thereby aim to benefit society as a whole.

## Relevant legislation

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### Protection of Freedoms Act 2012

In 2010, a review of the entire criminal record regime was carried out with the aim of reducing, to *common sense levels* (Home Office, 2011), the use of criminal records and re-examining the proposed Vetting and Barring Scheme, which was eventually scrapped. The review was carried out by an expert panel which included Nacro and other key stakeholders. It was led by an independent government adviser, Sunita Mason. Many of the panel's recommendations were accepted by the government and implemented through the [Protection of Freedoms Act 2012](#). The recommendations which were adopted and are relevant to the purposes of this guide include:

- the merger of the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) to create the Disclosure and Barring Service (DBS)
- a new definition of regulated activity focusing on work which involves close and unsupervised activity with children or vulnerable groups
- the disclosure certificate is now issued only to the applicant and is no longer copied to employers or registered bodies except in certain circumstances relating to the DBS update service (contact the DBS for more information)
- the launch of the [DBS update service](#) which enables portability of disclosure certificates between jobs in the same sector
- a minimum age (16) at which a person can apply for a DBS check
- a more rigorous relevancy test for when police can disclose other relevant information on an enhanced disclosure certificate
- barred list checks are now restricted to those working in accordance with the new definition of regulated activity and a small number of other defined roles
- police forces can no longer disclose 'additional information', also known as 'brown envelope information', about applicants directly to employers under the Police Act 1997, although they can still do so under common law powers
- a new representations process for individuals giving them the opportunity to challenge inaccurate information contained in their disclosure certificate, or other relevant information disclosed at the relevant chief police officer's discretion.

The [duty to refer](#) remains. Employers have a legal duty to refer to the DBS any person who has been removed by the employer (or would have been removed had the person not resigned, retired or left the workplace) from engaging in regulated activity because they:

- harmed or posed a risk of harm to a child or vulnerable adult or
- satisfied the harm test or
- received a caution or conviction for a relevant offence.

It is an offence for an employer to knowingly allow a barred person from engaging in regulated activity with the group with which they are barred from working (i.e. children or vulnerable groups, or both). It is also an offence for a barred person to seek work with the group with which they have been barred from working.

More detailed guidance on all the relevant changes can be found on the [DBS website](#).

## **The Rehabilitation of Offenders Act 1974**

The Rehabilitation of Offenders Act (ROA) allows people with convictions to be reintegrated into society by having the right to legally ignore their convictions. Cautions, convictions, reprimands and final warnings can be considered spent after a specified period of time known as the rehabilitation period which is decided by the sentence or out-of-court disposal (disposal) received. Once spent, the person is considered rehabilitated and the ROA treats the person as if they had never committed an offence. As a result, the conviction or caution in question does not need to be disclosed by the person when applying for insurance, housing, most paid or voluntary jobs, education or training courses, unless the particular role for which the application is being made is exempt from the ROA. Examples of roles which are exempt from the ROA include jobs involving regulated activity or childcare courses involving a work placement. If a role is covered by the ROA, it is unlawful for an employer to refuse to accept a person, or dismiss an existing employee, because the individual has a spent caution or conviction.

On 10 March 2014, changes to the ROA, as amended by [Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), were implemented in England and Wales. The changes reduced the length of time, in England and Wales only, that certain sentences, including fines, community sentences and short custodial sentences, become spent. They also increased the length of a custodial sentence which can never become spent from two and a half to four years.

See Appendix A for more details on rehabilitation periods. Comprehensive guidance on the ROA and rehabilitation periods can be found on the [Nacro website](#).

## **The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013**

Changes to the legislation, listing specific positions, professions, employment, offices, works and licences exempt from the ROA, as amended, came into force in England and Wales on 29 May 2013. As a result, the DBS introduced a system that removed certain minor cautions and convictions from standard or enhanced disclosure certificates, as they were deemed to be protected (i.e. eligible for filtering).

The changes in legislation made it unlawful for an employer to take into account a protected caution or conviction that would not be disclosed on a disclosure certificate, when making a decision to employ a person or dismiss an existing employee.

See Appendix B for more details on filtering. Comprehensive guidance can be found on the [Nacro website](#). There is also further information on the DBS website. Scotland and Northern Ireland have their own filtering arrangements.

## **Part V of the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013**

On 29 May 2013 changes were made to [Part V](#) of the Police Act 1997, the legislation that permits employers in England, Wales and Northern Ireland to ask exempted questions under the terms of the ROA, and to obtain information about an applicant's spent cautions and convictions through standard or enhanced disclosure checks. The definition of relevant matter in the Police Act 1997 was amended and sets out what information, which does not qualify for filtering, can be disclosed by the DBS in England and Wales, or by Access NI in Northern Ireland, when an individual applies for a standard or enhanced disclosure certificate. Section 123 of Part V of the Police Act 1997 makes it a criminal offence for an employer to knowingly carry out, or enable another person to obtain, a standard or enhanced disclosure check on a person in respect of a role which is not exempt from the ROA.



## Data Protection Act 1998

On 10 March 2015 Section 56 of the Data Protection Act 1998 (DPA) was fully implemented. This makes it a criminal offence for an employer to require an applicant, existing member of staff or third party, to make an enforced subject access request and then share the information with the employer. An enforced subject access request normally involves the person obtaining a copy of their full criminal record directly from the police, prison, probation service or courts. Employers who carry out an enforced subject access request may now face prosecution by the Information Commissioner's Office (ICO).

For further information, advice, support or training on the relevant legislation contact Nacro's Employer Advice Service on 0845 600 3194 or [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk) or visit the [Nacro website](#).

# Criminal record checks

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## Determining whether a check needs to be carried out

It is very important, before advertising for a role, that the employer establishes what level of disclosure is legally required for the role. Contrary to popular understanding, most jobs are actually covered by the ROA, and therefore the applicant is only legally required to declare, and the employer is only entitled to know about, unspent cautions or convictions. If the applicant has been charged with an offence, an employer may be entitled to know about pending prosecutions.

At present, a number of employers carry out standard or enhanced disclosure checks (commonly known as DBS checks) on posts that are not exempt from the ROA. This is illegal. Many employers consider jobs where employees go into people's homes, or have any form of contact with the public, to be exempt from the ROA, simply because the employer wrongly interprets the public as, by definition, including children and vulnerable groups. Taken to its logical conclusion, such a definition would include the vast majority of occupations because most people come into contact with the public at some point during the course of their employment. Such a wide definition is not what legislators intended. Common examples of roles on which employers should **not** be carrying out standard or enhanced disclosure checks but often do include:

- public bus drivers
- tradesmen (such as electricians, plumbers or gardeners) who visit people's homes
- customer service advisers
- bank clerks
- employment support advisers who are not working with those aged under 18
- housing officers
- firemen (unless they are first responders or regularly provide training in schools).

Standard or enhanced DBS checks should only be carried out for specific positions, professions, employment, offices, works and licences included in the ROA Exceptions Order. In the first instance, employers should use the DBS eligibility [decision tree](#) and [workforce guides](#) to establish whether the role is eligible for a standard or enhanced DBS check. After using these tools, if an employer is unsure about whether or not a role is eligible for a DBS check, they should contact DBS customer services on 03000 200 190 or email [customerservices@db.s.gsi.gov.uk](mailto:customerservices@db.s.gsi.gov.uk). In addition, the DBS newsletter, DBS News, will provide details of any updates to eligibility. Employers can also register their interest in receiving emails from the DBS. The DBS website provides guidance on the common types of positions which are eligible for DBS checks. Broadly, some of these positions or purposes include:

- those whose duties involve work, not merely having incidental contact, with children and vulnerable groups
- certain professions such as healthcare (nurses, doctors, care or social workers), accountancy and the law
- veterinary surgeons
- senior managers, controllers, directors for approved specified financial roles
- licensing of taxi or mini cab drivers (contact the DBS for more details)

- traffic wardens
- membership of the Master Locksmiths Association
- football stewards
- applying to be a prospective adopter, foster carer or special guardian
- obtaining a licence issued by the Security Industry Authority (SIA)
- obtaining or holding a personal or operating licence under Part 5 or Part 6 of the Gambling Act 2005.

Organisations which employ individuals in nurseries or schools need to take into account the [Childcare Disqualification Regulations 2009 statutory guidance](#) issued by the Department for Education in February 2015.

Employers should ensure that any questions they ask staff about the criminal record of a member or employee of their household complies with the DPA, the Human Rights Act 1998 and the ROA.

Employers should also ensure that they do not require staff to provide DBS certificates from third parties, or copies of a person's criminal record obtained directly from the police, prison, probation service or courts, as this would be considered an enforced subject access request which since 10 March 2015 has been a criminal offence.

Further guidance on Childcare Disqualification Regulations 2009 can be found on the [Nacro website](#).

### Determining which check to carry out

An employer is legally responsible for ensuring that they are entitled to receive a standard or enhanced disclosure certificate before submitting applications to the DBS. Employers must satisfy themselves that the positions are eligible for disclosure checks under current legal provisions. It is also important that the employer can demonstrate to an applicant (or existing employee) how the role or post is exempt from the ROA.

It is a criminal offence for an employer to obtain a standard or enhanced DBS check for a role that is not exempt from the ROA. Employers that do so are not only in breach of Part V of the Police Act 1997, but also the ROA and the DPA, which requires that data be processed fairly and lawfully.

An applicant (or existing employee) may pursue legal recourse in a civil court against an employer who has requested an unlawful check.

For further information, advice or support on when and which type of checks can be carried out, contact DBS customer services on 03000 200 190 or email [customerservices@dbs.gsi.gov.uk](mailto:customerservices@dbs.gsi.gov.uk). Alternatively, contact Nacro's Employer Advice Service on 0845 600 3194 or [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk) or visit the [Nacro website](#).

If an employer decides to carry out a criminal record check, they need to determine the level of disclosure for which the position is eligible. The main types available are:

**Basic disclosures** (basic checks) can be carried out for roles that are covered by the ROA, which includes most roles. Basic disclosures only contain details of unspent cautions or convictions. They are available from DBS for employers in England and Wales. With the

individual's consent, an employer can apply for a basic check with DBS through a Responsible Organisation registered to submit them. Individuals are also able to apply directly for a basic check. A basic disclosure should not be confused with a standard disclosure (standard DBS check), which can only be carried out on exempt roles.

**Standard disclosures** (standard DBS checks) are available from the DBS and contain details of all cautions, convictions, reprimands and final warnings which are not protected. See Appendix B which contains detailed guidance on filtering. Standard disclosures are available for jobs and activities listed in the ROA Exceptions Order.

**Enhanced disclosures** (enhanced DBS checks) are also available from the DBS and contain details of all cautions, convictions, reprimands and final warnings which are not protected, and may also include other relevant information. Other relevant information may be disclosed at the discretion of the chief police officer of the force that holds the information, if they reasonably believe it to be relevant to the role. Enhanced disclosures are only available for certain jobs and activities listed in both the ROA Exceptions Order and also the Police Act 1997 (Criminal Records) regulations.

**Enhanced disclosures with children's and/or adults' barred list check(s).** Enhanced disclosures with barred list checks include the same criminal record information as enhanced disclosures, but also detail whether the person is barred from working with either children or vulnerable groups or both. To be eligible to request a check of the children's or adults' barred list, the position must be eligible for an enhanced disclosure and also specifically listed in the Police Act 1997 (Criminal Records) regulations as eligible to check against the appropriate barred list(s).

Applications for standard and enhanced disclosures have to be made by the employer either directly, if they are a registered body, or through an umbrella body. The disclosure certificate is sent directly to the individual who must then hand it to the employer.

For further information about disclosures, contact DBS. Alternatively, contact Nacro's Employer Advice Service on 0845 600 3194 or [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk) or visit the [Nacro website](#).

#### **Northern Ireland**

[Access NI](#) provides basic, standard or enhanced disclosures for employers based in Northern Ireland. Certificates will be based on the ROA and the ROA Exceptions Order (as amended 2014) which is applicable in Northern Ireland.

#### **Scotland**

[Disclosure Scotland](#) provides a specific service for employers in Scotland. This service issues basic, standard or enhanced disclosures based on the ROA and the ROA Exceptions Order as applicable in Scotland.

### **How to ask about criminal records**

Criminal record checks should not be used as a blanket requirement for all jobs. The fact that a person has a criminal record is frequently irrelevant to the job for which they are applying. Employers who decide to ask applicants about criminal records should do so in a way which encourages honesty. Applicants should be informed at the outset exactly what information will be requested from them and why, and at which stage of the application this information will be requested. This will provide a basis for the applicant to decide whether or not to apply for the post. Employers should emphasise that this information will be used only to assess the applicant's suitability for employment where it is relevant. The applicant should be considered

first and foremost on skills, qualifications and ability to do the job and should not be unfairly discriminated against. Appendices C and D are template criminal record declaration forms that can be adapted to suit the needs of employers and include a suggested policy statement on recruiting applicants with criminal records.

### Asking the correct question for the role

If employers do decide to ask applicants about their criminal records and carry out criminal record checks, they should determine what level of disclosure is required and ensure they ask applicants the correct question that is appropriate for the role for which they have applied.

On many occasions, there can be a great deal of confusion for both applicants and recruiters, due to incorrect or confusing criminal record declarations that employers include on their application forms or online portal. This confusion can lead to the applicants failing to disclose their cautions or convictions, not providing sufficient details about their criminal record history, or providing details about their criminal record history to which the employer is not legally entitled.

Employers should update their application forms and recruitment policies to take into account the recent changes to disclosure legislation, and ensure that they are not asking applicants to declare any information to which they are not legally entitled and which would result in the employers breaching disclosure legislation (the ROA, the Police Act 1997), the DPA and the DBS code of practice. Employers who fail to ensure their application forms and online portals are in line with legal requirements could face an applicant pursuing a civil claim, or prosecution by the ICO. The ICO has the legal powers to impose unlimited financial penalties (usually in the region of £100,000s but could be more) against employers who breach data protection laws.

Simply asking a Yes/No question and/or providing the applicant with a couple of lines to give full details about their criminal record will not allow them to provide the level of useful detail for the employer to make an informed, evidence-based decision. Employers need to give applicants the opportunity to provide context surrounding their criminal record. The Ban the Box campaign led by the charity Business in the Community (BITC) highlights the negative ripple effect there is on society when employers apply a tick box approach to criminal record declarations.

In general, the question about criminal records on application forms or online portals serves no helpful purpose for employers or candidates. If used in the sifting process, it may well exclude suitable candidates, as there is rarely adequate opportunity for candidates to expand upon the circumstances that led to their offending behaviour, or demonstrate how they have moved on from their past mistakes. For those candidates with criminal records who do make it through the sift, they cannot compete on a level playing field as their application and ability for the role is always viewed in light of the fact that they have a criminal conviction.

Nacro and BITC advise employers to adapt their application forms, online portals and recruitment policies and procedures to ensure they do not inadvertently discriminate against people with criminal records. Employers should ideally remove criminal record disclosure questions from the first point of the recruitment process, instead asking questions in relation to criminal records at a later, more appropriate stage in the recruitment process. This ensures applicants are first assessed on their skills, qualifications and ability to do the job, and also gives applicants the opportunity to provide disclosure information to the employer in a way which better informs the employer's risk assessment.



It is best for applicants to make a disclosure statement in writing, as it is recognised that simply asking a Yes/No question does not provide any real useful information about the person behind the offence (see limitations of disclosures on pp16-18). The disclosure statement is helpful as it provides evidence of the exact information the applicant disclosed to the employer when applying for the role, which reduces the likelihood of disputes later on, e.g. if the original hiring manager leaves the organisation.

For further information, see Nacro's practical guide on [disclosing criminal records](#) to which employers should signpost applicants.

**Appendix C** is designed for roles that are covered by the ROA. Therefore, the criminal record declaration asks the question:

**Do you have any unspent convictions?**

**Appendix D** is designed for roles that are exempt from the ROA, and therefore eligible for either a standard or enhanced disclosure. The criminal record declaration form takes into account the filtering requirements, and therefore asks the question:

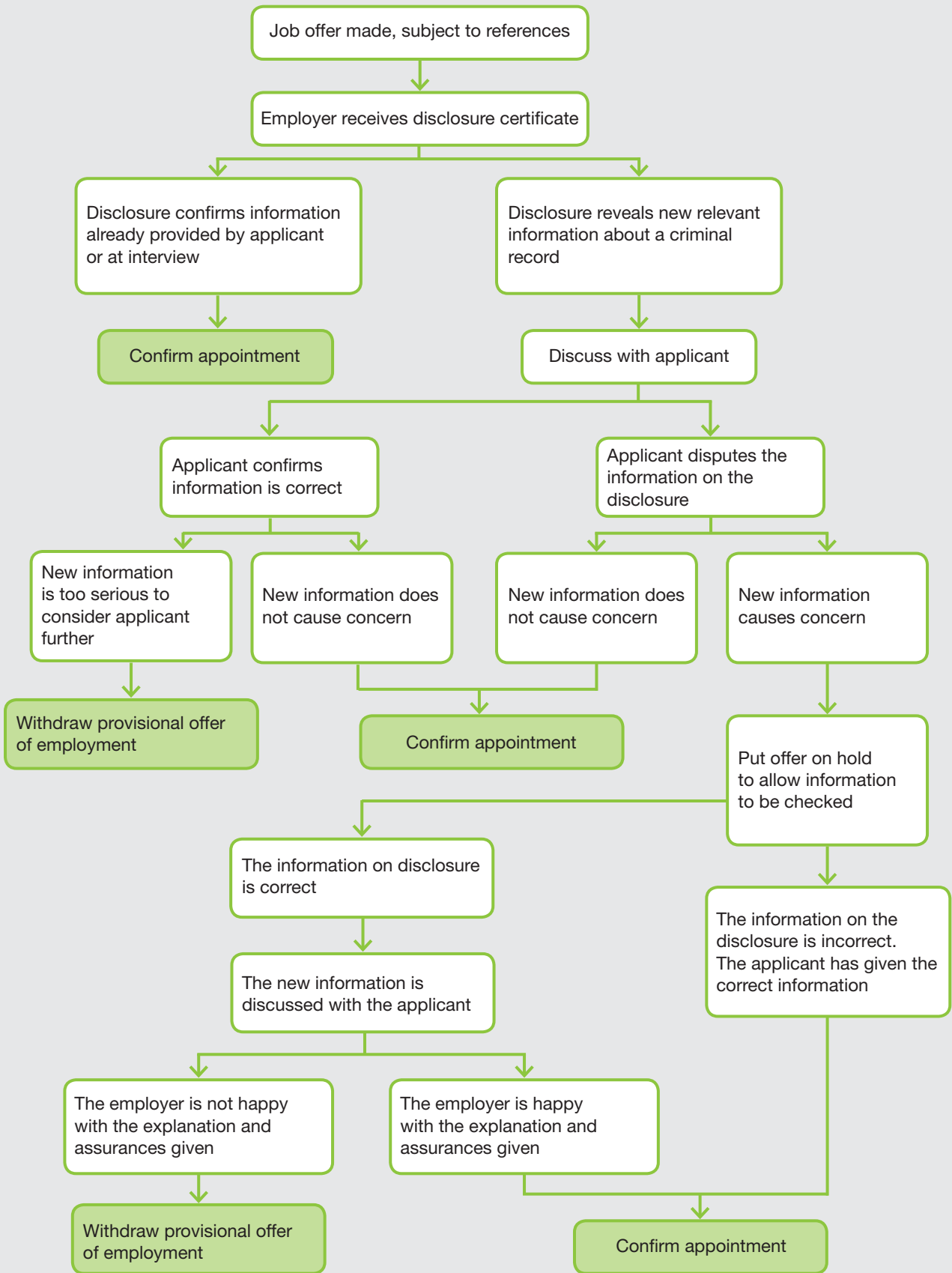
**Do you have any cautions, convictions, reprimands or final warnings which are not protected as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)?**

The flowcharts in **Figures 1 and 2** (see pages 13 and 14) outline the steps that we recommend employers take when gathering information about criminal records during the initial recruitment process and at the point of making a job offer.

**Figure 1: How to gather criminal record information**



Figure 2: Dealing with disclosure certificates



## What to do if a criminal record or allegation is revealed on a check

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If the applicant has satisfied all other pre-employment checks, and no criminal record or other relevant information (only applicable to enhanced disclosures) is revealed on a disclosure, the employer should confirm the offer of employment.

An enhanced disclosure with barred list check will reveal whether the person is barred from working in regulated activity with children or adults. If the person is barred, the employer should contact the police who will take appropriate action, as it is an offence for a person barred from working in regulated activity with children or adults to apply for such work. It is also an offence for an employer to knowingly employ a barred person in such a capacity.

If a disclosure confirms only criminal record information which has already been disclosed by the applicant and taken into account by the employer, the employer should confirm the offer of employment.

Some employers operate a system whereby offers of employment are subject at a later date to final approval by the head of human resources or another senior member of staff. If this is the case, offers of employment must not be made until final approval has been secured. It is extremely important that the applicant's disclosure statement, and any other relevant information, is provided to the panel or final decision maker to inform their decision and, where relevant, their risk assessment.

Some employers make their final recruitment decision based solely on the criminal record information or other relevant information contained in the disclosure in the absence of other key information provided about the applicant's suitability for the role, such as the applicant's CV, the application form filled out for the role, interview test scores and notes, details of qualifications, professional registration and references. Sometimes, the final decision maker is not provided with a copy of the applicant's disclosure statement and, therefore, has very little, or no understanding of the circumstances behind the applicant's offending behaviour. This is extremely bad practice, and is a key factor in many job offers being withdrawn. Employers should ensure that all the key information is made available to the final decision maker.

### What to do if there are discrepancies

If there are significant discrepancies between the information the applicant has provided, and the criminal record information contained in the disclosure, either because the employer did not ask, or the applicant failed to reveal it, further consideration of this new information will be necessary. Any concerns that have arisen should be discussed with the applicant. The [DBS code of practice](#) states that an employer should discuss any new matters (including other relevant information) revealed in the applicant's disclosure with the applicant in the form of a meeting, before making a final recruitment decision, in order to give the applicant the opportunity to address the employer's concerns. This same principle applies to roles which require a basic disclosure.

In the past, some employers have not given further consideration to anyone who failed to disclose an offence, no matter how irrelevant the offence was. This is unreasonable. Applicants should not be rejected outright, without the opportunity to make representations, especially if they have resigned from their previous employment in order to take up the new appointment. If there has been a failure to disclose, it is important that the employer establishes why.

In some cases, a discrepancy may have occurred because the applicants simply did not realise that they had a criminal record, or were mistaken about the type of sentence or disposal they received, because they have a limited understanding of how the criminal justice system works. The changes to disclosure legislation, including the ROA and the ROA Exceptions Order, are extremely complex. This, along with the fact that applicants will not know exactly what information is contained on their criminal record until they receive their disclosure certificate, means that an increasing number of applicants face getting it wrong. If it is completely clear, from an early stage, that an appointment is likely to be subject to a basic, standard or enhanced disclosure, applicants will be less willing to conceal their records deliberately.

Applicants are not legally required to disclose non-conviction disposals such as fixed penalty notices (FPNs) or penalty notices for disorder (PNDs) that have been paid on time, regardless of the type of disclosure applied for. Applicants are also not required to disclose other non-conviction disposals e.g. community resolution orders or anti-social behaviour orders (ASBOs), allegations, arrests, or charges and prosecutions that have been disposed of (i.e. did not result in the person receiving a caution or conviction).

Sometimes, it may be clear that the applicants are unsuitable for the posts because of their criminal record. However, in general, it will not be clear whether a person is suitable until questioned further. Therefore, it is important to carry out a risk assessment (see Appendix E for a template criminal record risk assessment form) to inform the final recruitment decision.

### Challenging inaccurate information on disclosures

While every effort is made by the DBS, Disclosure Scotland and Access NI to ensure that disclosures are accurate, mistakes can occur. If the discrepancy arising from an apparent mistake on a disclosure is serious enough to exclude the applicant from the post, a final decision about the appointment should be deferred until the person has had an opportunity to rectify the situation.

The applicant, or employer, can dispute the information on a disclosure which they consider to be incorrect by contacting the DBS, Disclosure Scotland, Access NI or whichever is the relevant organisation for the role applied for. If the organisation issuing the disclosure accepts a mistake has been made, a new disclosure certificate will be issued to the applicant to provide to the employer. If not, the applicant can lodge a formal complaint to the [ICO](#) to investigate.

### Limitations of disclosures

There is a limit to the usefulness of the information provided in disclosures. Offence codes often cover a broad range of behaviours which vary in terms of seriousness. They are rarely self-explanatory and often make offences sound more serious. A disclosure will not explain what particular offences mean and will not provide any context, which is why disclosure statements are so important. Where information is revealed, the disclosure will generally only provide basic facts such as:

- Details of the applicant (i.e. name, date of birth and home address)
- Date of offence(s)
- Date of conviction(s)
- Offence code(s) (e.g. battery, robbery, shoplifting)



- The Act that offence code(s) relates to (e.g. Offence against the Person Act 1968, Theft Act 1968)
- Sentence or disposal received (e.g. caution, fine, imprisonment for six months)
- Details of the court where sentence was imposed

If the role requires an enhanced disclosure, then it may include other relevant information, which can consist of more descriptive information about the alleged incident or the concerns of the relevant police force providing the information.

If the role requires an enhanced disclosure with barred list check, it would indicate whether or not the person is barred from working with children or vulnerable groups, or both.

A disclosure may not provide information on people convicted abroad, or even people convicted in the other countries of the UK. Employers should therefore be cautious about relying on disclosures from those with little, if any, residence in the country the disclosure relates to (i.e. England and Wales for the purposes of this guide). Employers should also exercise caution in respect of those with gaps in their employment history and obtain the local equivalent of a disclosure from the applicant's home country or country of last residence, whichever is appropriate.

The introduction of the filtering system has led to certain offences being disclosed on an applicant's disclosure due to legal technicalities rather than any adequate assessment of risk. For example, an individual may have committed an offence that warranted a charge of common assault, but is instead arrested and charged for the offence of actual bodily harm; as there is a lack of consistency in police recording practices. The offence code 'actual bodily harm' appears on the DBS list of specified offences that will never qualify for filtering and so will always be disclosed; whereas the offence code 'common assault' does not appear on the DBS list of specified offences and may be filtered from a disclosure if all filtering criteria are met.

#### **Scenario 1**

John received a caution for common assault at the age of 18 in September 2014. His caution is eligible for filtering after six years and will not appear on an enhanced disclosure after September 2020.

However, if John had received a caution for actual bodily harm, instead of common assault, his caution would never be eligible for filtering, and would always be disclosed on an enhanced disclosure until he reached the age of 100.

As a result of the changes to the ROA, certain sentences such as conditional discharge orders, which are traditionally viewed as less serious than fines or community orders, now have the potential to have a greater impact on an individual's ability to obtain employment, as they can be disclosed on a basic disclosure for a longer period of time depending on the length of the order imposed.

Nacro has raised concerns with the Ministry of Justice about this issue, and also the fact that changes to the ROA have resulted in driving endorsements (endorsements) having a longer rehabilitation period than all non-custodial sentences and also custodial sentences of less than one year.

#### **Scenario 2**

Mike receives a six-month custodial sentence for burglary (as an adult). His sentence may become spent after two and a half years. After this time, his conviction may not be disclosed on a basic disclosure.

**Scenario 3**

Sandra receives a three-year conditional discharge order for shoplifting (as an adult). Her sentence may become spent after three years. After this time, her conviction may not be disclosed on a basic disclosure.

**Scenario 4**

Kate receives a fine, three penalty points and an endorsement for speeding (as an adult). As the endorsement has a rehabilitation period of five years, her sentence may become spent after five years. After this time, her conviction may not be disclosed on a basic disclosure.

The scenarios above demonstrate that the impact of a person's criminal record on their ability to obtain employment may often be determined by how an offence is actually recorded on the PNC, and how a sentence or disposal received by the individual is now treated by the ROA or ROA Exceptions Order. In addition, sentencing practices vary across the UK. As a result, the inclusion of cautions or convictions in disclosures is not necessarily determined by the seriousness of the offence committed.

Good robust recruitment policies in general will often provide a better guide to an applicant's suitability for the role. By carefully scrutinising applicants at earlier stages in the recruitment process, looking for inconsistencies and gaps in the information they provide, asking the right questions in interview in relation to their suitability for the role, taking up references and where necessary carrying out a risk assessment and questioning referees, an employer will be in a much better position to determine whether they are suitable for the vacancy.

For further information, contact Nacro's Employer Advice Service on 0845 600 3194 or [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk) or visit the [Nacro website](#).

## Reviewing policies and procedures

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Many employers face increasing pressures in implementing vetting procedures and applying complex changes in the law to their employment practices. The onus is on employers to adopt policies that ensure information on criminal records is used in a way that protects the organisation and vulnerable people, but is also fair to applicants, and improves overall recruitment and retention processes. In order for a policy on employing people with criminal records to gain widespread acceptance within an organisation, it is vital to involve managers, employees and their representatives in its development. In particular, employers should:

- review new roles to assess what types of risks they may involve and complete a criminal record risk hazard form (an example is included on page 47 in Section D of Appendix E) if required.
- have a written policy and guidance on the recruitment of people with a criminal record, and provide a copy to applicants. The policy should make clear that the organisation is committed to the principle of equality of opportunity and, as such, will make all efforts to prevent unfair discrimination against those with criminal records, to ensure that suitable applicants are not refused posts because of offences which are not relevant to the role, and which do not make them a risk in the role.
- ensure staff involved in recruitment are provided with all relevant Nacro guidance on the employment of ex-offenders, including whether and which criminal record checks can be carried out, and information on the ROA, filtering and disclosing criminal records.
- provide relevant training, including risk assessment training, to staff involved in safer recruitment.
- provide all unsuccessful applicants with relevant feedback relating to their criminal record.
- ensure that all applicants' personal and sensitive information is treated confidentially. Applicants' criminal record information should be either stored securely, if appointed, or destroyed, if the applicant is not appointed.

### Safer recruitment checklist

The safer recruitment checklist in the table on page 20 is designed to help employers ensure they follow a clear process when recruiting for a role. It covers the whole process including recruitment, job applications, interviewing and the post-application follow-up. The checklist is mainly aimed at roles which involve safeguarding children or vulnerable groups, but can be adapted according to the requirements of the organisation.

## Safer recruitment checklist

| Activity   | Currently in place<br>Yes/No | Recommended action |
|--|------------------------------|--------------------|
| Ensure job descriptions, person specifications and application forms are clear, unambiguous, and reflect the requirements of the role and the organisation's commitment to safeguarding, if relevant to the role.                                  |                              |                    |
| Send candidates information about what is expected of employees, and what level of criminal record checks may be carried out and when.   |                              |                    |
| Identify and train staff who will be involved in the selection process.  |                              |                    |
| Develop clear interview questions and selection tools.   |                              |                    |
| Ensure a minimum of two people shortlist applications using agreed criteria and identify any gaps.   |                              |                    |
| Assess candidates using a range of selection methods where possible.   |                              |                    |
| Ask candidates to declare any cautions or convictions, appropriate for the role applied for, as part of the application process. Obtain disclosure statements and, if required, carry out the appropriate type of criminal record checks.          |                              |                    |
| Probe attitudes and values towards children or vulnerable people, if relevant, as part of the interview process.   |                              |                    |
| Check ID documents and qualifications, if relevant, of every applicant. Only accept originals.   |                              |                    |
| Obtain a minimum of two references and follow up vague references (e.g. references which only give the dates of employment or are extremely brief) by phone.   |                              |                    |
| Carry out a risk assessment on an applicant, if concerns arise from a criminal record check. Store copy of risk assessment, which should include any recommended safeguards to minimise risk, securely together with copy of disclosure statement. |                              |                    |
| Make all appointments subject to a probationary period.  |                              |                    |
| During induction of all new staff set clear expectations of acceptable behaviour and the boundaries of their role.   |                              |                    |
| Ensure staff have all the relevant training they require to be safe and effective in their role.   |                              |                    |
| Carry out regular one-to-one supervision meetings with all staff and focus on their attitudes, values and behaviours as well as what they do.  |                              |                    |
| Ensure clear policies and procedures which explain what staff should do if they have concerns about the behaviour of another member of staff exist and are accessible.   |                              |                    |
| Respond quickly and appropriately to any allegations about the behaviour of a member of staff, in particular concerning behaviour towards a child or vulnerable person.  |                              |                    |

# Assessing the risk and relevance of criminal records

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It should be noted that this section should not be used to determine whether or not a role is eligible for a DBS check. (For information about determining whether a check needs to be carried out see page 8.)

## Best practice guide to assessing risk

The suitability for employment of a person with a criminal record may vary, depending on the nature of the job and the details and circumstances of any convictions. An assessment of an applicant's skills, qualifications, experience and conviction circumstances should be weighed up against the risk assessment criteria for the job. An applicant's criminal record should be assessed in relation to the tasks to be performed and the circumstances in which the work is to be carried out. Employers should consider the following points when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with employees, customers or clients who are children or other vulnerable groups? What is the nature of the one-to-one contact? For example, in respect of children, one-to-one contact is especially relevant if it occurs on a regular basis, away from the child's home, or separate from other adults or children. Children may be particularly vulnerable if they are living away from home, but less so if they are living at home or where contact with the post-holder is intermittent. Younger children and those with social or behavioural problems may be considered more vulnerable than older children and those from stable home backgrounds.
- What level of supervision will the post-holder receive? Is it unsupervised? Does it involve working in an isolated situation? For example, a person barred from working with children or vulnerable groups would not be legally prevented from working in a public area which is frequented by children or vulnerable adults e.g. a supermarket or a restaurant.
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct, regular and unsupervised contact with the public?
- Will the nature of the job present any opportunities for the post-holder to reoffend in the course of work?
- Are there any safeguards which can be put in place to minimise any potential risks?

Appendix E contains a template criminal record check risk assessment form which can be adapted to the employer's needs.

For shortlisted applicants who have met the requirements of the person specification and then disclose a criminal record that is not related directly to the post, the employer should conduct a risk assessment if necessary which includes meeting with the applicants to discuss the relevance of the criminal record with them. The employer will need to take into account the issues below.

## Nature of offence(s)

What type of offence or offences did the individual commit i.e. theft, fraud, violence, possession of drugs, supply of drugs, inchoate offences, sexual offences, public order or other offences? Did the offender commit one type of offence or a range of different offences?



## Relevance

Employers should consider whether the offence(s) or other relevant information disclosed on an enhanced disclosure are relevant to the position applied for. Serious violent, sexual and supply of drugs offences are generally considered relevant when considering suitability of applicants to work unsupervised with children. Younger children may be more at risk of sexual abuse; whilst older more susceptible to becoming involved with drugs. Offences relating to dishonesty e.g. benefit fraud are not generally considered relevant to positions involving work with children.

For vulnerable adults, the relevant categories are generally considered to be violent and sexual offences. Minor drug offences are probably less relevant as, for instance, vulnerable older people are not generally susceptible to illegal drug use. Offences of dishonesty such as fraud may be more relevant in relation to them because older people may have money and valuables. However, even here one should distinguish between offences. An offence of shoplifting, for instance, might not be a particular cause for concern, though an offence of theft from an individual very likely would be. Beyond these offences, there are a wide variety of offences that have little relevance, such as public order offences.

Drink-driving offences are not generally considered relevant unless the job itself involves driving e.g. taxi driver or bus driver. A conviction for a serious violent or sexual offence may not be particularly relevant if the position applied for does not involve contact with people in the normal course of duties.

## Seriousness

Employers should consider the seriousness of any offence or other relevant information disclosed. This is important because all offence codes cover a very wide range of offences that vary in terms of seriousness. A sexual offence, for instance, covers everything from young men sleeping with their underage girlfriends to indecent assault and rape.

Violence covers everything from slaps and smacks, normally recorded as battery or common assault, to grievous bodily harm and murder. Drug offences cover everything from possession of small amounts of cannabis for personal use to possession of class A drugs with intent to supply. Burglary covers everything from taking goods from shop storerooms to entering the homes of elderly people, leaving them in fear. Arson ranges from a person setting fire to litter bins to a person destroying property and endangering lives. Offence codes can often make the incident sound more serious; which is why it is extremely important to gain further details of what actually took place. A Crown Court would normally deal with more serious offences than a magistrates' court, but some individuals elect for their case to be heard in a Crown Court if it is a triable either way offence.

Offence circumstances Who was involved? What happened? Where did it happen? When did it happen? How did it happen? Why did it happen?

Employers should look at the applicant's circumstances at the time of offending including the applicant having previous issues with accommodation, education, employment, management of finances and income, lifestyle and associates, relationships, drugs and alcohol, emotional wellbeing or health.

They should consider whether there were any aggravating or mitigating circumstances. What was the applicant's attitude to their offending? Did they show any remorse or take responsibility for their actions? Did the applicant try to make reparation to any victim?

Employers should look for openness and honesty, rather than denial and minimisation. They

should consider the applicants' insight into their own behaviour, any indication of changed thinking, changes in their circumstances and, where relevant, victim empathy, not victim blame or shared responsibility.

An explanation of the circumstances surrounding an offence will often be plausible and reassuring. For instance, the person who explains that, in fear and panic, they ended up assaulting someone who was threatening them during a bar fight, may not be as culpable as an individual who caused serious injury with intent during an armed robbery. It is important to bear in mind that only a small minority of offences take place in a work setting. It is also important to consider that a person convicted of a serious offence may have completely changed their life around for the better.

### Age of offences

Employers should consider the length of time that has passed since the offence or 'other relevant information' that appears on the disclosure. Cautions or convictions that appear on a disclosure may be very old, for example, dating back to when the person was growing up. They may not be relevant in many instances because applicants have put their past behind them.

The government recognises that people can and do put their offending behind them. This recognition is embodied in the ROA, and by the introduction of the filtering system for positions subject to standard or enhanced disclosure checks. Reoffending statistics in the UK indicate that if individuals go a little more than two years without reoffending, they are no more likely to offend than those who have never offended.

### Pattern of offending

Employers should consider whether the applicant committed a single offence, or whether there has been a pattern of offending behaviour or allegations. Is there a big gap between offences, or is there a cluster? People who have a pattern of offending right up to the present date may clearly not have put their offending behind them. Those people with gambling, drink or drug-related convictions, in particular, may remain a risk unless there is evidence of a clear break in the pattern of their offending. Nevertheless, many offenders, including repeat offenders, do eventually give up crime and settle down, and often there will be clear evidence shown throughout the other aspects of the recruitment process and on the disclosure statement itself.

### Changed circumstances

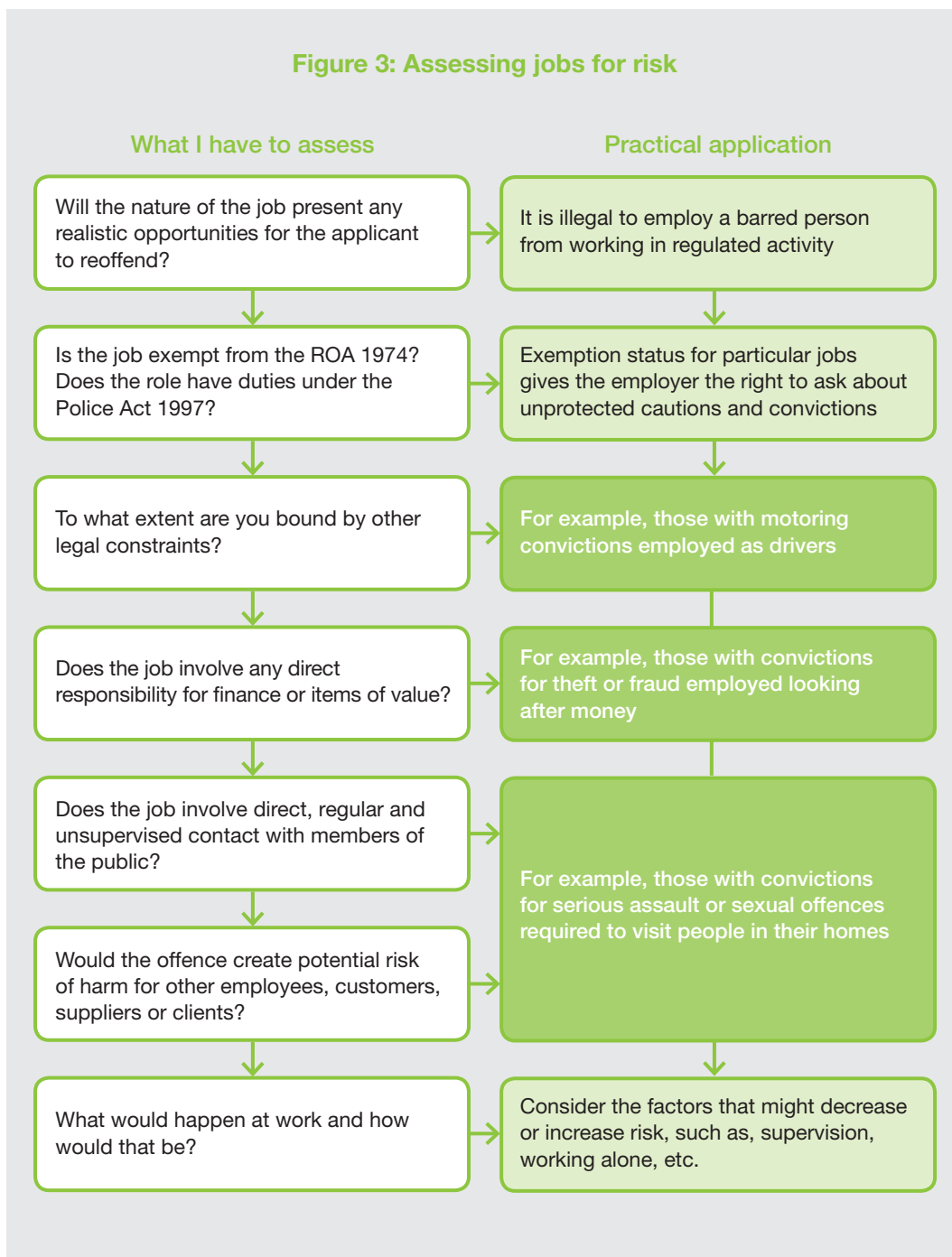
Employers should consider whether the applicant's circumstances have changed since the offending or other relevant information took place. For instance, those convicted when young, perhaps as juveniles, often do not reoffend once they have family or mortgage responsibilities, because they have too much to lose by getting into trouble. As previously mentioned, many offenders, even those with long and serious records, can eventually change, as they simply grow out of a period of offending or seek help to address related problems.

As part of the risk assessment process, an employer should try to establish the applicant's attitude at the time of the offence. What is their attitude now? How do they now feel about what happened? How do they feel about their part in what happened? Do they show remorse? Do they blame others? Do they feel a victim of injustice? How genuine is their expression? What efforts have they made not to reoffend? If they have one, can a reference be sought from their probation officer or support worker?

Having reviewed the circumstances at the time of the offence, the employer should then compare the applicant's circumstances at the time of them applying for the role. It may be that the applicant

can provide the necessary reassurance that past issues have been resolved. However, many people with more recent convictions will also have reached the point where they want to put their offending behind them and put their talents to constructive use. If the offence is not work-related or if the post is at a level of responsibility which means that the applicant does not pose a risk, the employer could consider recruiting them if in all other respects they are suitable for the job.

Figure 3 outlines the questions that we recommend employers consider when assessing a job for risk. It should be noted that this diagram should not be used to determine whether or not a role is eligible for a DBS check.



## The risk assessment interview

The employer should conduct any interview with the applicant with sensitivity and empathy, as discussing past convictions might be a great source of anxiety and embarrassment for the person concerned. The employer should think carefully about the questions to ask, and keep the discussion focused on the individual, their feelings, and their attitudes. If possible, it is best not to conduct the meeting alone; instead invite a colleague who was involved in the recruitment process to provide support and take notes. It is also important to remember it is not the employer's responsibility to decide whether the court's decision or police course of action was the right or fair one. The purpose of the interview is to help the employer to gather the necessary information to assess whether the individual may pose a risk in the position applied for. In addition to the interviews with the applicants, and other pre-employment checks, employers should consider whether they need to obtain any other information to inform their risk assessment decision e.g. a probation reference.

## How to manage sensitive information

Information about an applicant's criminal record should not be disclosed to anyone in the organisation apart from those who have a genuine need to know. This may include people directly responsible for the recruitment decision or the applicant's line manager, but only if the offence is relevant to the applicant's role. For further information on data protection contact the [ICO](#).

The applicant should also be told who in the organisation knows about their record, as they need to feel confident that their personal and sensitive information will not be disclosed to anyone unless there is a specific reason for doing so.

The reasons for the final decision should be based on an objective, common-sense, and rational approach. It is best to have a formal record of the decision and provide clear reasons to appoint or reject the applicant, which is kept securely. The decision will then need to be communicated to the applicant.

Appendix E contains a template criminal record check risk assessment form which can be adapted to an employer's needs.

## Dealing with convictions or allegations relating to current staff

Figure 4 outlines how to deal with convictions or allegations concerning existing members of staff.



For further information, advice, operational support or training on safer recruitment, assessing and managing risk contact Nacro's Employer Advice Service on 0845 600 3194 or [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk) or visit the [Nacro website](#).

## Useful contacts

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### **Nacro**

First Floor, 46 Loman Street, London SE1 0EH  
Tel: 0845 600 3194 Email: [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk)  
[www.nacro.org.uk](http://www.nacro.org.uk)

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### **Chartered Institute of Personnel and Development (CIPD)**

151 The Broadway, London SW19 1JQ  
Tel: 020 8612 6210  
[www.cipd.co.uk](http://www.cipd.co.uk)

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### **Disclosure and Barring Service (DBS)**

#### **For customer services**

PO Box 3961, Wootton Bassett SN4 4HF  
Tel: 03000 200 190 Email: [customerservices@db.s.gsi.gov.uk](mailto:customerservices@db.s.gsi.gov.uk)

#### **For barring referrals**

PO Box 181, Darlington DL1 9FA  
Tel: 01325 953 795 Email: [db.s.dispatch@db.s.gsi.gov.uk](mailto:db.s.dispatch@db.s.gsi.gov.uk)  
[www.gov.uk/government/organisations/disclosure-and-barring-service](http://www.gov.uk/government/organisations/disclosure-and-barring-service)

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### **Advisory, Conciliation and Arbitration Service (ACAS)**

Euston Tower, 286 Euston Road, London NW1 3JJ  
Tel: 0300 123 1100  
[www.acas.org.uk](http://www.acas.org.uk)

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### **Access NI**

PO Box 1085, Belfast BT5 9BD  
Tel: 0300 200 7888  
[www.nidirect.gov.uk](http://www.nidirect.gov.uk)

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### **Business in the Community**

137 Shepherdess Walk, London N1 7RQ  
Tel: 020 7566 6611 Email: [banthebox@bitc.org.uk](mailto:banthebox@bitc.org.uk)  
[www.bitc.org.uk](http://www.bitc.org.uk)

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### **Disclosure Scotland**

PO Box 250, Glasgow G51 1YU  
Tel: 0870 609 6006 Email: [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk)  
[www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

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### **Information Commissioner's Office (ICO)**

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
Tel: 0303 123 1113 Email: [casework@ico.org.uk](mailto:casework@ico.org.uk)  
[www.ico.org.uk](http://www.ico.org.uk)

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# Glossary

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## **Buffer period**

The rehabilitation periods for custodial and community sentences include an additional buffer period that runs from the end of the sentence. This buffer period is determined by the total length of the sentence imposed.

## **Criminal Records Bureau (CRB)**

In 2012 the CRB and the ISA merged to become the DBS. CRB checks are now called DBS checks.

## **Disclosure and Barring Service (DBS)**

In 2012 the CRB and the ISA merged to become the DBS. CRB checks are now called DBS checks.

## **Driving endorsements (endorsements)**

Penalty points given for motoring offences.

## **Eligibility**

The process of establishing what level of criminal record check can be carried out.

## **Exempted question**

An exempted question is a valid request for a person to reveal their full criminal history except for protected cautions or convictions, and is made possible by virtue of the ROA Exceptions Order.

## **Filtering**

The filtering system allows certain cautions and convictions to be removed from standard and enhanced disclosure certificates.

## **Harm test**

Someone who may harm or pose a risk of harm to a child or vulnerable adult will satisfy the harm test. They will be referred to the DBS to be considered for inclusion on the child or adult barred list or both. Those on these lists are barred from working in regulated activity with these groups.

## **Independent Safeguarding Authority (ISA)**

In 2012 the CRB and the ISA merged to become the DBS. CRB checks are now called DBS checks. The ISA maintained a list of people barred from working with children or vulnerable adults.

## **Licence period**

The period of time between being released from custody and finishing a custodial sentence and during which individuals are subject to certain conditions.

## **Other relevant information**

Other relevant information may be disclosed on an enhanced DBS certificate at the discretion of the chief police officer of the force that holds the information, if they reasonably believe it to be relevant to the role. It includes information about allegations, arrests, matters that resulted in no further action or not guilty verdicts.

## **Out-of-court disposals (disposals)**

Out-of-court disposals allow the police to deal quickly and proportionately with low-level, often first-time offending which does not merit prosecution at court. Community resolution orders, cannabis warnings, penalty notices for disorder and cautions are all out-of-court disposals.



**Police intelligence**

See other relevant information.

**Police National Computer (PNC)**

A police database which holds criminal record information.

**Public protection sentence**

A sentence imposed for specified sexual or violent offences.

**Purposes of the establishment**

Activity which is carried out for the purposes of the establishment is activity which is fundamental to the running of that establishment e.g. teaching is fundamental in a school.

**Protected**

Cautions, convictions, final warnings and reprimands that are protected are eligible for filtering.

**Registered body**

An organisation which has registered with the DBS to carry out standard and enhanced checks and has the right to ask an exempted question.

**Rehabilitation period**

The Rehabilitation of Offenders Act 1974 allows cautions, convictions, reprimands and final warnings in respect of a certain offence to be considered spent after a specified period of time known as the rehabilitation period which is decided by the sentence or disposal received.

**Regulated activity**

Work (paid or voluntary) which involves close and unsupervised activity with children or vulnerable groups. Someone who is barred from working with children or vulnerable groups cannot carry out regulated activity with these groups. Further information about regulated activity with vulnerable groups can be found [here](#). Further information about regulated activity with children can be found [here](#).

**Relevant matter**

Information which does not qualify for filtering and therefore can be disclosed when an individual applies for a standard or enhanced disclosure certificate.

**Spent**

Once a caution, conviction, reprimand or final warning becomes spent, it does not need to be disclosed to most employers, or when applying for most courses, insurance or other purposes (e.g. applying for housing). It is against the law for an organisation to obtain information about an individual's spent cautions or convictions unless the law specifically states that they can ask an exempted question; usually when someone is applying for a job or role that is exempt from the ROA.

**Umbrella body**

An organisation which has registered with the DBS to carry out standard and enhanced checks on behalf of other organisations which have the right to ask an exempted question.

## References

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Reed in Partnership (2013). *Providing a working chance: Breaking barriers to employment for ex-offenders*. Available at: [www.reedinpartnership.co.uk](http://www.reedinpartnership.co.uk)

Work and Pensions Committee (2016). *Oral evidence: Support for ex-offenders*. London, House of Commons. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/support-forexoffenders/oral/42417.pdf>

Working Links (2010). *Prejudged: Tagged for Life*. London: Working Links.

## Web links

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### **Access NI: Criminal record checks**

<http://www.nidirect.gov.uk/accessni-criminal-record-checks>

### **Ban the Box**

<http://www.bitc.org.uk/programmes/ban-box?gclid=CLG635GqkL8CFWkOwwod4X0Arw>

### **Childcare Disqualification Regulations 2009 statutory guidance**

<https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006>

### **Data Protection Act 1998**

<http://www.legislation.gov.uk/ukpga/1998/29/section/56>

### **DBS checks**

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

### **DBS code of practice**

<https://www.gov.uk/government/publications/dbs-code-of-practice>

### **DBS filtering guide**

<https://www.gov.uk/government/publications/dbs-filtering-guidance>

### **DBS guide to eligibility**

<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

### **DBS news**

<https://www.gov.uk/government/collections/dbs-news--2>

### **DBS referrals**

<https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>

### **DBS update service**

<https://gov.smartwebportal.co.uk/public/dbs-subscriber.asp>

### **Disclosure Scotland**

<http://www.disclosurescotland.co.uk/>

### **Eligibility decision tree**

<https://www.gov.uk/find-out-dbs-check>

### **ICO**

<https://ico.org.uk/>

### **Legal Aid, Sentencing and Punishment of Offenders Act 2012**

<http://www.legislation.gov.uk/ukpga/2012/10/part/3/chapter/8/enacted>

### **Nacro guidance on asking about criminal records**

<https://www.nacro.org.uk/resettlement-advice-service/support-for-employers/asking-about-criminal-records/>

**Nacro guidance on carrying out criminal record checks**

<https://www.nacro.org.uk/resettlement-advice-service/support-for-employers/carrying-out-criminal-records-checks/>

**Nacro guidance on Childcare Disqualification Regulations 2009**

<https://www.nacro.org.uk/resettlement-advice-service/support-for-individuals/jobs-and-volunteering/how-different-sectors-deal-with-job-applications-from-people-with-criminal-records/#teacher>

**Nacro guidance on filtering**

[https://3bx16p38bchl32s0e12di03h-wpengine.netdna-ssl.com/wp-content/uploads/2016/05/Practical-guidance-on-DBS-filtering\\_2016.pdf](https://3bx16p38bchl32s0e12di03h-wpengine.netdna-ssl.com/wp-content/uploads/2016/05/Practical-guidance-on-DBS-filtering_2016.pdf)

**Nacro guidance on disclosing criminal records**

<https://3bx16p38bchl32s0e12di03h-wpengine.netdna-ssl.com/wp-content/uploads/2016/05/Disclosing-criminal-records-RAS-Guide.pdf>

**Nacro guidance on employing someone with a criminal record**

<https://www.nacro.org.uk/resettlement-advice-service/support-for-employers/employing-someone-with-a-criminal-record/>

**Nacro guidance on the ROA**

<https://www.nacro.org.uk/wp-content/uploads/2017/05/Rehabilitation-of-Offenders-Act-1974-Guide-2017.pdf>

**Nacro's Employer Advice Service**

<https://www.nacro.org.uk/resettlement-advice-service/support-for-employers/>

**Protection of Freedoms Act 2012**

<http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

**Register an interest in receiving emails from the DBS**

<https://qbaseprojects.co.uk/public/dbs-subscriber.asp>

**Regulated activity with adults**

<https://www.gov.uk/government/publications/new-disclosure-and-barring-services>

**Regulated activity with children**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550197/Regulated\\_activity\\_in\\_relation\\_to\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf)

**The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013**

<http://www.legislation.gov.uk/uksi/2013/1200/contents/made>

**Workforce guidance**

<https://www.gov.uk/government/publications/dbs-workforce-guidance>

# Appendices

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A Rehabilitation periods

B Filtering

C Criminal record declaration form for jobs covered by the ROA

D Criminal record declaration form for jobs exempt from the ROA

E Criminal record check risk assessment form

Editable versions of Appendices C, D and E can be downloaded from [www.nacro.org.uk/recruitingsafelyguide](http://www.nacro.org.uk/recruitingsafelyguide).

Individual organisations will need to complete the editable sections before using these forms.

The forms contained in Appendices C and D should be sent (ideally by email as they contain hyperlinks to Nacro and DBS guidance) to candidates short-listed for interview.

## Appendix A

### Rehabilitation periods

The Rehabilitation of Offenders Act 1974 (ROA) enables certain convictions to become spent (or legally ignored) after a rehabilitation period. After this period, a person with a spent conviction is not required to declare it when applying for most jobs, unless the role is exempt from the Act.

The tables below detail the rehabilitation periods of the more common sentences. For custodial and community sentences the rehabilitation period includes an additional buffer period that runs from the end of the sentence. This buffer period is determined by the total length of the sentence imposed.

#### Rehabilitation periods for custodial sentences and community sentences (which have buffer periods)

| Sentence/disposal   | Rehabilitation period for adults (aged 18 or over at the time of conviction) from end of sentence including licence period | Rehabilitation period for young people (aged under 18 at the time of conviction) from end of sentence including licence period |
|---|--|--|
| Community order or youth rehabilitation order   | Total length of order plus 1 year  | Total length of order plus 6 months  |
| Prison sentence or detention in a young offender institution for 6 months or less   | Total length of sentence (including licence period) plus 2 years   | Total length of sentence (including licence period) plus 18 months   |
| Prison sentence or detention in a young offender institution for over 6 months and up to and including 30 months (2½ years) | Total length of sentence (including licence period) plus 4 years   | Total length of sentence (including licence period) plus 2 years   |
| Prison sentence or detention in a young offender institution for over 30 months (2½ years) and up to 48 months (4 years)    | Total length of sentence (including licence period) plus 7 years   | Total length of sentence (including licence period) plus 3½ years  |
| Prison sentence or detention in a young offender institution for over 48 months (4 years) or a public protection sentence   | Never spent  | Never spent  |

#### Examples of spent periods for custodial sentences:

- John receives a three-month custodial sentence as an adult (he is aged 18 or over when convicted). His sentence may become spent after two years and three months: the rehabilitation period is the total sentence of three months (including the licence period) and the additional buffer period of two years as he received a total sentence of six months or less.

#### Examples of spent periods for community sentences:

- Michelle receives a one-year youth rehabilitation order (she is under 18 when convicted). Her sentence may become spent after 18 months: the rehabilitation period is the total length of the order (one year) plus the additional buffer period of six months.

**Rehabilitation periods for sentences which start from the date of conviction (and which do not have buffer periods)**

| <b>Sentence/disposal</b>                      | <b>Rehabilitation period for adults (aged 18 or over at the time of conviction or at the time the disposal is administered)</b> | <b>Rehabilitation period for young people (aged under 18 at the time of conviction or at the time the disposal is administered)</b> |
|---|---|---|
| Simple caution/youth caution                  | Spent immediately   | Spent immediately   |
| Conditional caution/youth conditional caution | 3 months or when caution ceases to have effect if earlier   | 3 months or when caution ceases to have effect if earlier   |
| Absolute discharge                            | Spent immediately   | Spent immediately   |
| Reparation order                              | Spent immediately   | Spent immediately   |
| Bind over                                     | At the end of the order   | At the end of the order   |
| Conditional discharge order                   | At the end of the order   | At the end of the order   |
| Fine  | 1 year  | 6 months  |
| Compensation order                            | When paid in full   | When paid in full   |
| Hospital order (with or without restriction)  | At the end of the order   | At the end of the order   |
| Referral order                                | At the end of the order   | At the end of the order   |
| Relevant order                                | When the order ceases to have effect  | When the order ceases to have effect  |
| Endorsements                                  | 5 years   | 2½ years  |

Comprehensive guidance on the ROA and other rehabilitation periods can be found on the [Nacro website](#).

For further advice, support and training contact Nacro's Employer Advice Service on 0845 600 3194 or [employeradvice@nacro.org.uk](mailto:employeradvice@nacro.org.uk).



## Appendix B

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### Filtering

Filtering is only relevant when a standard or enhanced DBS check can be carried out.

#### What are the filtering rules?

##### For adults

The conviction will be filtered or removed from a DBS certificate only if:

- 11 years have elapsed since the date of conviction
- It is the person's only conviction
- The conviction did not result in a custodial or suspended sentence
- The conviction does not appear on the [list of specified offences](#)

An adult caution will be removed after six years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the amount of cautions that can be filtered.

##### For those aged 18 or under

The conviction will be filtered or removed from a DBS certificate only if:

- Five and a half years have elapsed since the date of conviction
- It is the person's only conviction
- The conviction did not result in a custodial or suspended sentence
- The conviction does not appear on the [list of specified offences](#)

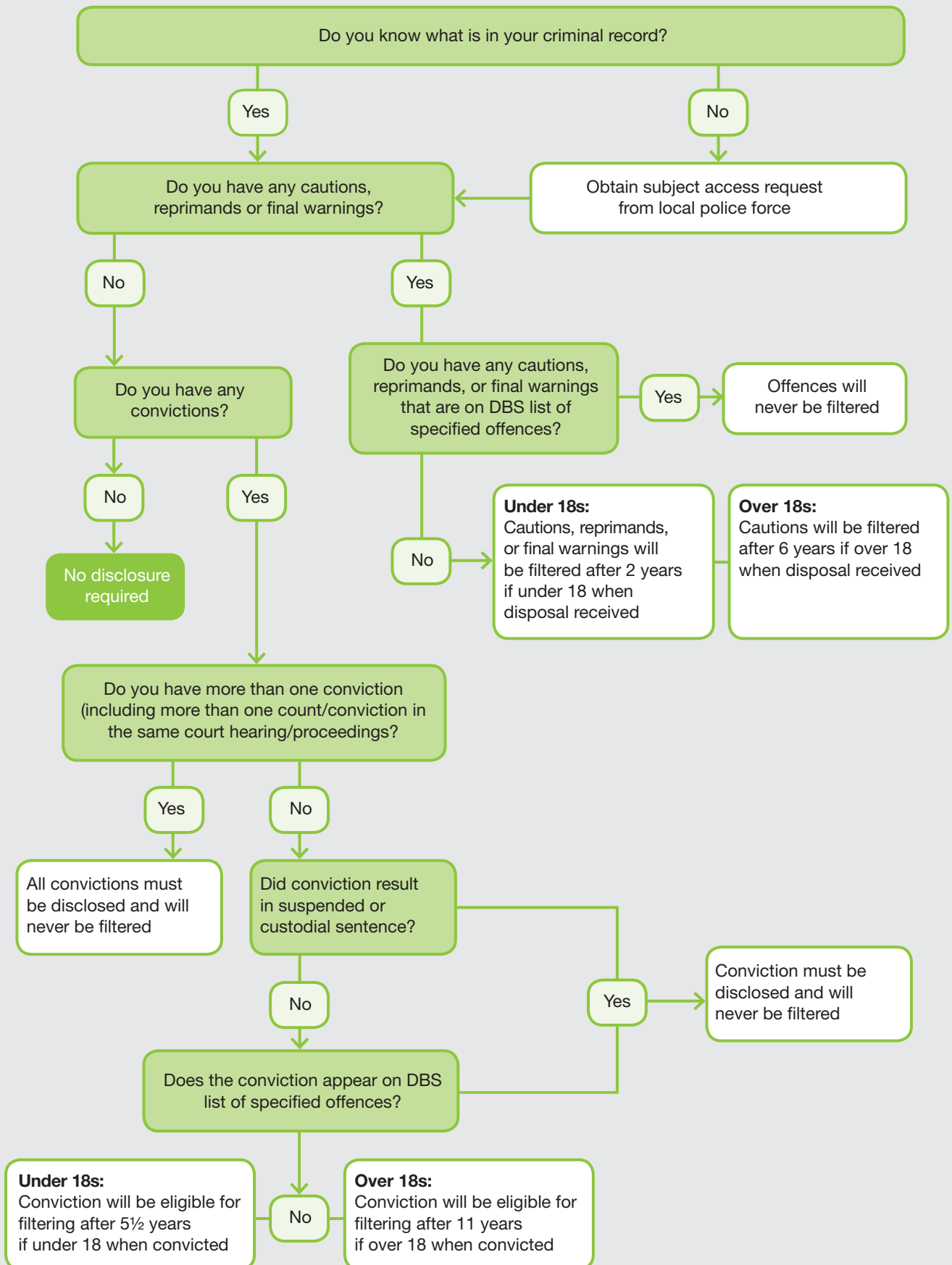
A youth caution, reprimand or final warning will be removed after two years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the amount of cautions, reprimands or final warnings that can be filtered.

#### Key considerations for employers

- It is unlawful to carry out a standard or enhanced DBS check for a role which is covered by the ROA and therefore not eligible for a DBS check.
- It is unlawful to require an applicant to disclose a protected caution, conviction, reprimand or final warning, which would be filtered off a DBS check.
- It is unlawful to require an applicant or existing employee to carry out an enforced subject access request i.e. provide a copy of their full criminal record directly from the police, prison, probation service or courts.
- Applicants are not legally required to disclose fixed penalty notices (FPNs), penalty notices for disorder (PNDs) or other disposals that are not cautions, convictions, reprimands or final warnings.
- Applicants are not legally required to disclose allegations, arrests or not guilty verdicts.

Comprehensive guidance on filtering can be found on the [Nacro website](#).

## The filtering process



## Appendix C

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### Criminal record declaration form for jobs covered by the ROA

This form must be completed by all applicants. The information disclosed on this form will not be kept with your application form during the application process.

#### **Policy statement on recruiting applicants with criminal records**

We recognise the contribution that ex-offenders can make as employees and volunteers and welcome applications from them. A person's criminal record will not, in itself, debar that person from being appointed to this post. Suitable applicants will not be refused posts because of offences which are not relevant to, and do not place them at or make them a risk in, the role for which they are applying.

All cases will be examined on an individual basis and will take the following into consideration:

- Whether the conviction is relevant to the position applied for.
- The seriousness of any offence revealed.
- The age of the applicant at the time of the offence(s).
- The length of time since the offence(s) occurred.
- Whether the applicant has a pattern of offending behaviour.
- The circumstances surrounding the offence(s) and the explanation(s) offered by the person concerned.
- Whether the applicant's circumstances have changed since the offending behaviour.

It is important that applicants understand that failure to disclose all unspent convictions could result in disciplinary proceedings or dismissal. Further advice and guidance on disclosing a criminal record can be obtained from [Nacro](#).

To access an editable copy of Appendix C, go to [www.nacro.org.uk/recruitingsafelyguide](http://www.nacro.org.uk/recruitingsafelyguide)



## Appendix D

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### Criminal record declaration form for jobs exempt from the ROA

This form must be completed by all applicants. The information disclosed on this form will not be kept with your application form during the application process.

#### **Policy statement on recruiting applicants with criminal records**

This post is exempt from the Rehabilitation of Offenders Act 1974 and therefore applicants are required to declare any cautions, convictions, reprimands and final warnings that are not protected (i.e. that are not filtered out) as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013).

For further information on filtering please refer to [Nacro guidance](#) and the [DBS website](#).

We recognise the contribution that ex-offenders can make as employees and volunteers and welcome applications from them. A person's criminal record will not, in itself, debar that person from being appointed to this post. Any information given will be treated in the strictest confidence. Suitable applicants will not be refused posts because of offences which are not relevant to, and do not place them at or make them a risk in, the role for which they are applying.

All cases will be examined on an individual basis and will take the following into consideration:

- Whether the conviction is relevant to the position applied for.
- The seriousness of any offence revealed.
- The age of the applicant at the time of the offence(s).
- The length of time since the offence(s) occurred.
- Whether the applicant has a pattern of offending behaviour.
- The circumstances surrounding the offence(s), and the explanation(s) offered by the person concerned.
- Whether the applicant's circumstances have changed since the offending behaviour.

It is important that applicants understand that failure to disclose all cautions, convictions, reprimands or final warnings that are not protected could result in disciplinary proceedings or dismissal. Further advice and guidance on disclosing a criminal record can be obtained from [Nacro](#).

To access an editable copy of Appendix D, go to [www.nacro.org.uk/recruitingsafelyguide](http://www.nacro.org.uk/recruitingsafelyguide)



## Appendix E

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### Criminal record check risk assessment form

This form is to be completed and used for the following purposes:

- 1 When a successful candidate has been offered a role.
- 2 When an existing employee has transferred to a role that requires a disclosure.
  - Where required, the risk assessment needs to be completed before candidates can commence employment.
  - If further action is necessary, this should be agreed between the relevant member of the HR team and the line manager.
  - Once completed this form should be signed by both the relevant member of the HR team and the line manager and sent to the HR department to be stored on file.
  - A review of the risk assessment should be carried out whenever a risk is presented.

To access an editable copy of Appendix E, go to [www.nacro.org.uk/recruitingsafelyguide](http://www.nacro.org.uk/recruitingsafelyguide)



**Section A To be completed by the relevant member of the HR team and the line manager**

Please complete in full:

|                                      |   |                                      |                                      |                                   |
|--------------------------------------|---|--------------------------------------|--------------------------------------|-----------------------------------|
| Name of applicant:                   |   |                                      |                                      |                                   |
| Post applied for/current post:       |   |                                      |                                      |                                   |
| Level of disclosure required:        | Enhanced and barred<br><input type="checkbox"/> | Enhanced<br><input type="checkbox"/> | Standard<br><input type="checkbox"/> | Basic<br><input type="checkbox"/> |
| Directorate:                         |   |                                      |                                      |                                   |
| Date of assessment:                  |   |                                      |                                      |                                   |
| Name of assessor one (HR team):      |   |                                      |                                      |                                   |
| Name of assessor two (line manager): |   |                                      |                                      |                                   |

| Question   | Yes/No | Please provide details |
|--|--------|------------------------|
| Has the applicant declared any cautions, convictions, reprimands, final warnings or bind overs in the UK or any other country, or are they under police investigation? |        |                        |
| Is this a single offence or has there been more than one offence?  |        |                        |
| Has any police intelligence been disclosed at chief police officer discretion which causes concern (if applicable)?  |        |                        |
| <b>Nature of conviction(s) or police intelligence disclosed (Continue on separate sheet if necessary)</b>  |        |                        |
| Offence(s):  |        |                        |
| Date of conviction(s):   |        |                        |
| Sentence(s) received:  |        |                        |
| Age at time of offence(s):   |        |                        |
| Length of time since conviction(s):  |        |                        |

**Section B To be completed by line manager and individual during risk assessment meeting**

|   |               |                               |
|---|---------------|-------------------------------|
| <b>Question (Please provide details)</b>  |               |                               |
| What were the circumstances surrounding the offence(s)?   |               |                               |
| Attitude to the offence(s)  |               |                               |
| Efforts made to not reoffend  |               |                               |
| <b>Question</b>   | <b>Yes/No</b> | <b>Please provide details</b> |
| Have the individual's circumstances changed since the offence(s)? If so, how?                                 |               |                               |
| Are the offence(s) relevant to the post?  |               |                               |
| Is the individual taking part in a specific remedial/action programme?  |               |                               |
| Does the nature of the role present any opportunities for the post-holder to reoffend in the place of work?   |               |                               |
| Does the post involve regular one-to-one/unsupervised contact with vulnerable people?                         |               |                               |
| Does the post involve direct contact with the public?   |               |                               |
| Does the post involve direct responsibility for finance or items of value?                                    |               |                               |
| Does the post involve a significant level of trust i.e. nursing or caring for people?                         |               |                               |
| Is the individual barred from working in regulated activity? (If applicable)                                  |               |                               |
| Were suitable references obtained and ID checked? (If references gave cause for concern please state details) |               |                               |
| What level of supervision does the post-holder receive?   |               |                               |

**Enter below any further questions you feel may be relevant to the post in relation to criminal convictions.**

| Question | Please provide details |
|----------|------------------------|
|          |                        |
|          |                        |
|          |                        |
|          |                        |
|          |                        |

|         |  |             |  |       |  |
|---------|--|-------------|--|-------|--|
| Signed: |  | Print name: |  | Date: |  |
|---------|--|-------------|--|-------|--|

**Section C To be completed by line manager after risk assessment meeting has taken place**

Please enter below any precautionary measures recommended for the individual in light of the above information to minimise the risk of any reoccurrence of any potential criminal activity or associated behaviour. This can be expanded on as necessary for the particular role as required.

|    |  |
|----|--|
| 1. |  |
| 2. |  |
| 3. |  |
| 4. |  |
| 5. |  |

## Section D Criminal record risk hazard form

Please record below any organisational risk of harm. This should relate specifically to the impact on the organisation and not the individual.

|  |
|--|
| <b>Nature of hazard?</b><br>e.g. reputational risk, risk of sexual harm, risk of theft   |
|  |
| <b>Who might be harmed?</b>  |
|  |
| <b>What is already/will be done to minimise risk?</b>  |
|  |
| <b>Likelihood of hazard/risk occurring? Please select from:</b><br>1 = Very unlikely   2 = Fairly unlikely   3 = Fairly likely   4 = Very likely |
|  |
| <b>Impact of hazard/risk? Please select from:</b><br>1 = Minor impact   2 = Fairly serious impact   3 = Very serious impact                      |
|  |
| <b>What is the remaining risk based on likelihood and impact? e.g. low/medium/high</b>   |
|  |
| <b>What further action is required?</b>  |
|  |
| <b>Who is responsible for taking this action and by when?</b>  |
|  |

**Section E To be completed by all parties carrying out the risk assessment**

The information above has been considered and we are/are not satisfied that it is safe to allow the named applicant/employee to commence/continue work.

Detail action to be taken below:

|   |              |
|---|--------------|
| <b>Signed:</b><br>Relevant member of HR team/<br>line manager |              |
| <b>Print name and job title</b>                               | <b>Date:</b> |
| <b>Signed:</b><br>Relevant member of HR team/<br>line manager |              |
| <b>Print name and job title</b>                               | <b>Date:</b> |





