



Policy on the Employment of Ex-Offenders and Criminal Records Bureau Checks.

Principles

1. Oxfordshire County Council supports and seeks to promote the rehabilitation of offenders and to treat ex-offenders fairly in accordance with its Comprehensive Equalities Policy. The Council recognises that many people with past criminal records do not present a risk in employment but work as responsible and productive members of the workforce.
2. The Council also has a duty of care to protect those who use its services, the public and public funds from criminal activity and abuse, and a duty to comply with relevant legislation, codes of practice and national standards.
3. An applicant for employment or voluntary work with criminal convictions will be assessed on their relevant skills, qualifications and experience and will only be prevented from taking a job with the Council where past offences are directly relevant to the job concerned and where it is judged that the applicant, if appointed, would pose a significant risk to the public, clients, property or public funds.
4. The Council undertakes to operate effective and appropriate systems to comply with and fulfil these principles and requirements.

Definition of “Conviction”

5. In this policy the term “conviction” relates to a finding of guilt following a hearing in a court of law, including Courts Martial. Prospective employees for jobs exempt from the Rehabilitation of Offenders Act working with children or vulnerable adults will also be asked to declare official warnings, reprimands, registration as a sex offender, cautions, bind-overs and other relevant matters as set out in Annex 1 and these will be taken into consideration. Where “soft information” is made available by the Criminal Records Bureau, the police or other relevant organisations this will also be taken into consideration.

Employees, Volunteers and Contractors

6. Existing employees of the Council will not be asked to declare convictions nor will checks be undertaken unless this is required by law, they change their role or job to a relevant role, or there are particular reasons which make this necessary.

Employees are required to notify the Council if they are the subject of police investigations while in the Council's employment. In this case a risk assessment will be undertaken and appropriate action will be taken in accordance with the spirit of this policy and under the Council's agreed employment procedures where deemed necessary.

7. All applicants for employment, voluntary work or to deliver Council services under contract such as taxi and bus drivers and long-term contractors, including agency staff and interims, will be asked to declare any un-spent convictions, cautions, warnings, reprimands, bind-overs and any cases pending, in Great Britain or elsewhere, when applying to the Council. See Paragraph 12. Further particulars supplied to applicants for all jobs will indicate where the job is exempt from the Rehabilitation of Offenders Act 1974 and where appointment will be subject to a satisfactory CRB check.
8. All applicants for relevant employment as a uniformed fire-fighter will undergo checks through the Criminal Records Bureau.
9. Where the Council enters into contracts with external organisations who employ staff for the provision of services on the Council's behalf, it will ensure that the contractor's employment systems comply with this policy.
10. **Work which involves substantial access to children and vulnerable adults or their records has special requirements and applicants for this type of work will be treated as set out in paragraphs 18-24 of this policy.**

Spent Convictions

11. Managers will not ask about or take into consideration an applicant's spent convictions unless the application relates to a job which is exempt from the provisions of the Rehabilitation of Offenders Act or is covered by the legislation relating to the protection of children and vulnerable adults. See Paragraphs 18-24.
12. Convictions become 'spent' after a 'rehabilitation period' has passed. The length of the rehabilitation period depends on the sentence given – not the offence committed or, in the case of a custodial sentence, the sentence served. Please see Annex 3 for rehabilitation periods. **N.b. In the case of work with children, young people and vulnerable adults or their records, or for custodial sentences of more than 2.5 years, convictions can never become spent.**

Convictions which are not Spent – Risk Assessment

13. All convictions which are not spent must be declared by applicants for work or volunteering. See Paragraph 12. In all cases, where an applicant with un-spent convictions fulfils the requirements for a job sufficient to be short-listed or is seriously considered for voluntary work the appointing manager will, before deciding whether to shortlist the applicant, undertake and record a risk assessment, taking into consideration the advice at Annex 1, the nature, severity, frequency and timing of the convictions and the nature and requirements of the work. Advice on undertaking risk assessments is at Annex 2.

14. Applicants for work and voluntary service with the Council who have declared un-spent convictions will only be short-listed or appointed where the risk assessment carried out by the appointing manager indicates that the risks are judged to be low or where adequate supervision and management arrangements can be put in place to bring the risks down to an acceptable level. In all cases where appointments are made subject to conditions the appointing manager will obtain **prior** written agreement from the Deputy Director, Head of Service or Headteacher.
15. The appropriateness and consistency of managerial decision making is very important, so if in any doubt the appointing manager must seek advice prior to the invitation for interview from senior management, the Human Resources Management Advisory Team (HRMAT) or Schools H.R. Team in Customer Services or Legal Services, as appropriate. In some cases it will be appropriate to discuss the convictions with the applicant to determine background information.
16. The line manager of the employee or supervisor of the volunteer will monitor conditional arrangements and review them during the probationary period and afterwards, at least annually. The appointing manager will, in the case of employees, inform the Human Resources Management Advisory Team (HRMAT) or Schools H.R Team in Customer Services, as appropriate, who will ensure a note is placed on the personal file. In the case of volunteers, he/she will keep a record of the conditions on another appropriate file. In each case a copy should be sent to the H.R. Vetting and CRB team.

Criminal Cases Pending

17. Where an applicant has criminal proceedings pending at the time an application for a job is made, full consideration will be given to the individual case before deciding on any offer of employment.

Special Checking Requirements for Employment and Voluntary Work with Children, Young People and Vulnerable Adults.

18. All applicants, including casual, agency and interim workers, and volunteers who are selected to undertake work concerning **children, young people and vulnerable adults or their records** will be required to undergo a fresh check by the Criminal Records Bureau (CRB) in accordance with the Disclosure Code of Practice and in addition to declaring any spent and un-spent convictions. Where an applicant has been living abroad checks will be carried out with the relevant countries. The types of work where applicants must be subjected to a CRB check are listed in the Criminal Justice Act 2003.
19. Appointees to employment or voluntary work with **children, young people and vulnerable adults** or with their records will not normally start work until a fresh satisfactory disclosure has been received from CRB. This will include anyone who works or volunteers in schools, similar institutions and the Children, Young People and Families Directorate. See 20 below.

20. Where it is necessary to allow service provision to continue, an appointee to work or volunteer with **children and young people or their records** is permitted to start work prior to receipt of the fresh disclosure **ONLY** where a previous satisfactory CRB disclosure is available and where a risk assessment has been undertaken by the appointing manager and the appropriate senior line manager for the job– see Paragraph 23;. The risks must be judged to be low with adequate supervision, management and monitoring arrangements in place to minimise the risks. This will include checking List 99 for all persons working in and with schools. **Due to the high risks involved appointees to work in one to one situations or in residential care or similar environments must not start work until the fresh CRB disclosure has been received.**
21. **Employees working with children will be re-checked through the CRB every 3 years. An employee or volunteer whose re-check lapses will normally be suspended without pay until the re-check has been received. Employees will be warned that their checks are due for renewal.**
22. An appointee to work with **vulnerable adults or their records** can only start work prior to receipt of the fresh disclosure where a risk assessment has been undertaken by the appointing manager and the appropriate senior line manager for the job – see Paragraph 23; the risks must be judged to be low with adequate supervision, management and monitoring arrangements in place to minimise the risks. **Due to the high risks involved appointees to work in one to one situations or in residential care or similar environments must not start work until the fresh CRB disclosure has been received.**
23. In all cases where the appointing manager requires an appointee who satisfies the conditions in Paragraph 20 to start work prior to the receipt of the fresh CRB disclosure he/she will obtain written agreement from the Deputy Director or the Headteacher prior to commencement of work. The manager will inform the Recruitment Team in Customer Services who will ensure that a suitable conditional contract of employment is issued and a note is placed on the personal file.
24. In all cases where an appointee has started work subject to special conditions, as soon as the CRB disclosure is obtained the appointing manager will assess the appointee's suitability to continue in the appointment in accordance with this policy. Where the employee's suitability is confirmed the appointing manager will notify the employee and Recruitment Team in Customer Services who will record this decision. In cases where information is disclosed by CRB which the appointing manager judges renders the appointee unsuitable for work with vulnerable groups he/she will immediately discuss the disclosure with the appointee and take into consideration what he/she has to say on the matter. Where appropriate the manager will, in discussion with Human Resources Management Advisory Team (HRMAT) or Schools H.R. Team, as appropriate, re-deploy or suspend the appointee from this type of work. Where the appointing manager judges, after proper consideration – including taking into account the employee's comments and representations - that the CRB disclosure renders him/her unsuitable to work with vulnerable groups he/she will agree with Human Resources Management Advisory Team (HRMAT) or Schools H.R. Team in Customer Services, as appropriate, an

appropriate course of action which may lead to dismissal or redeployment of the employee concerned.

25. In cases where the CRB advise that a crime is currently under investigation, or if 'soft' information is disclosed which cannot be shared with the employee, special arrangements will be discussed and agreed with senior management, the police, Solicitor to the Council and Human Resources Management Advisory Team (HRMAT) or Schools H.R. Team in Customer Services, as appropriate.

Schools.

26. Schools are responsible for ensuring that their employees, governors, volunteers, visitors, contractors and others who have access to children are adequately checked and appropriate records are in place. Although the Council recognises that it does not have power to insist that schools apply this procedure it strongly recommends them to do so.
27. All tenants of County Council accommodation on sites where services are provided to children, eg schools, and all adult members of their household will be asked to undergo CRB checks.

Elected Members

28. In accordance with the Council's decision on 6 April 2004 all Councillors and other persons co-opted onto a County Council Committee will be required immediately after their election or appointment to undergo a CRB check. The Monitoring Officer will coordinate these checks. All Councillors and co-opted members will comply with the requirements of the Monitoring Officer and the Bureau in relation to such checks. No County Councillor or Co-opted member shall be required to undergo checking if he/she has been the subject of a CRB check within the previous twelve months of his/her election or appointment. Where this is the case, that person shall notify the Monitoring Officer of the outcome of such a check immediately after his/her election or co-option.

Foster Carers

29. The Fostering Services Regulations 2002 provide that Disclosure checks must be obtained on those working for any fostering agency. The Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 provide for the CRB to carry out a check on the prospective foster carers themselves and anyone living in the same household. The Council will obtain Enhanced Disclosure checks on prospective foster carers, and Standard Disclosure checks on adult members of their households,

Dishonesty in Making a Declaration

30. Where a prospective employee is not able to verify that his/her declaration of convictions is exhaustive he/she must obtain a schedule of these from CRB and submit this before appointment can take place.
31. Where a CRB check discloses convictions which have not been declared by an appointee the appointing manager will consider whether it is necessary to redeploy or suspend the employee from working. He/she will discuss the disclosures with the appointee and take into consideration what he/she has to say on the matter. Where the appointing manager judges, after proper consideration, that the appointee has acted dishonestly in not making a full declaration he/she will agree with Human Resources Management Advisory Team (HRMAT) or Schools H.R. Team in Customer Services, as applicable, an appropriate course of action which may lead to the dismissal of the appointee.
32. Where it becomes known that an employee may have a criminal record which he/she did not declare when asked, the line manager will consider whether to redeploy or suspend the employee and act accordingly. Where it becomes known that an employee who works with children, young people or vulnerable adults has failed to disclose offences with respect to these vulnerable groups, this will normally lead to summary dismissal. The manager will agree with Human Resources Management Advisory Team (HRMAT) or Schools H.R. Team in Customer Services, as appropriate, to take appropriate action to check the validity of this information and, where appropriate, take action under either the Probationary Procedures or Disciplinary procedures.
33. Where the line manager judges that service users, the public, Council funds or property may have been subject to significant risk of criminal action or abuse by an individual an appropriate investigation must be undertaken. The line manager must bear in mind that secrecy from the individual may be important in investigating or detecting a crime and must straight away seek advice from Child Protection¹, Human Resources Management Advisory Team (HRMAT) or Schools H.R. Team in Customer Services, as appropriate, Finance Section and Solicitor to the Council as appropriate.

Records

34. The Council will keep all records confidential and disclose them only on a need to know basis to appropriate persons in accordance with the Policy on Secure Storage, Handling, Use, retention and Disposal of Disclosures and Disclosure Information.
35. The Council will comply with the Data Protection Act in respect of all records of criminal convictions. Where there is a conflict between disclosing information in possible contravention of the Data Protection Act and the safety of vulnerable groups a course of action will be agreed with the Solicitor to the Council.

¹ Current contact is Barry Armstrong

Review of this Policy

36. This policy replaces that of March 2010 and will be reviewed within three years.

**Head of Human Resources
February 2011**

Alternative formats of this publication can be made available on request. These include other languages, large print, Braille, audio cassette, computer disk or email.

Annex 1

Guidance on the categories of offences which may lead to refusal to appoint or require a risk assessment before appointment can take place.

This advice cannot be exhaustive. If you are in doubt consult the Recruitment Team in Customer Services or the Solicitor to the Council.

1. Employment and voluntary work with children, young people and vulnerable adults. (See paragraphs 12-17 of the Policy)

a) Sexual offences.

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any sexual offence involving a child or a vulnerable adult, but see a) (v) below.
- II. Any sexual offence involving violence.
- III. Any sexual offence involving the misuse of drugs.
- IV. Any sexual offence involving organising sexual activity.

An assessment of risk needs to be undertaken when considering applicants with convictions for the following offences:

- V. Where an applicant was convicted of sex with an under age person when they themselves were of a similar age.
- VI. Other sexual offences.

b) Violent offences.

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any violent offence against a child or vulnerable adult will normally disqualify.
- II. Murder, manslaughter, grievous bodily harm, aggravated bodily harm.
- III. See a) (II) for violent sexual offences.

An assessment of risk needs to be undertaken when considering applicants with convictions for the following offences:

- IV. Actual bodily harm, wounding, assault and battery
- V. Possessing an offensive weapon.
- VI. Death by reckless or dangerous driving.
- VII. Any other violent offence.

c) Offences relating to alcohol and drugs.

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any offence relating to dealing, cultivating or supplying controlled drugs or substances.

An assessment of risk needs to be undertaken when considering applicants with convictions for the following offences:

- II. Possession of a class A, B or C drugs.
- III. Offences involving supplying alcohol to young people and children
- IV. Repeated offences involving alcohol.
- V. Being drunk or under the influence of drugs in charge of a motor vehicle.
This will be a serious matter where jobs involves transporting others.
- VI. Other offences involving alcohol or drugs.

d) Offences involving theft and dishonesty.

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any offence involving theft or dishonesty with a child or vulnerable adult
- II. Any offence involving theft or dishonesty, including benefit fraud, and associated violence.
- III. Burglary, aggravated burglary, robbery, blackmail, going equipped to commit burglary.

Other convictions involving dishonesty will be subject to a risk assessment.

e) Offences relating to misuse of the Intranet

Convictions for misuse of the internet, including for child or other illegal pornography, or involving violence or racism will normally disqualify an applicant for appointment.

f) Other relevant matters which relate to children and young people.

The following will normally disqualify an applicant from appointment:

- I. Any offence against children, young people or other vulnerable adults.

An assessment of risk needs to be undertaken when considering applicants who declare the following:

- II. Where he/she has had a child taken into care, placed under a safety order for reasons relating to abuse or neglect.
- III. He/she has been dismissed from employment due to misconduct.
- IV. He/she has been convicted of the mis-use of information.

2. Other Employment and voluntary work

Only un-spent offences can be taken into consideration when deciding on the appointment of an applicant for jobs which do **not** involve children, young people or vulnerable adults.

It is not possible to give detailed advice for the huge variety of jobs within the Council. However, the principle applies that in all cases the offence must be directly relevant to the duties and responsibilities of the job applied for or the environment in which the work takes place. Annex 2 goes into details of undertaking a risk assessment in order to come to a conclusion on whether to appoint an individual with convictions to a particular post.

Certain offences will usually debar an applicant from work in the Council including the following:

- Murder
- Offences involving serious violence or threats of violence
- Offences involving serious theft or fraud where duties allow access to substantial financial resources
- Serious burglary, arson, where duties involve substantial responsibility for security of buildings or equipment

Annex 2

Guidance on Undertaking a Risk Assessment

The following guidance is to assist managers in assessing the risks of re-offending at work associated with different types of job and criminal convictions.

The risk assessment process consists of the following steps:

Step 1:

Assess the category of risk associated with the job and the opportunity for re-offending.

Step 2:

Assess the type of offence and the risk of re-offending in the job under consideration.

Step 3:

Consider if protective measures can be reasonably put in place to bring the risk down to an acceptable level.

Step 4: If the risk cannot be rendered acceptable

You cannot offer the appointment to this applicant. Discuss this with your HR Officer

Step 5: If the risk can be rendered acceptable record

Record the measures required to render the risk acceptable. Discuss these with your HR officer. Discuss them with the applicant and secure their agreement to abide by the measures. Make the appointment subject to these conditions.

Step 6:

Monitor the appointment during the probationary period and at least annually afterwards to ensure the measures are working adequately.

General Guidance on the level of risk associated with different categories of jobs.

Category 1 Risk Jobs:

The highest degree of risk is in jobs where:

1. There is one to one access to children or vulnerable adults, especially where those service recipients cannot look after their own interests and rely on the service provider.
2. Work in residential setting.

Category 2 Risk Jobs:

Second degree of risk involves the following work with children and vulnerable adults where supervision is not constant and the opportunity to exploit might be developed.

Category 3 Risk Jobs:

Third degree of risk involves jobs where there is an opportunity to commit crime because of the availability of money, valuables, property.

Category 4 Risk Jobs:

Fourth degree of risk involves jobs which are generally low risk but which may have particular features relating to certain convictions, for example cleaners and caretakers and arson, passport fraud and working with asylum seekers.

Category 5 Risk Jobs:

Other jobs may be regarded as low risk.

Questions to consider in assessing risks associated with a particular job.

- a. Does the post involve one to one contact with children or other vulnerable groups?
- b. What level of supervision will the post holder receive?
- c. Does the post involve direct responsibility for finance or items of value?
- d. Does the post involve direct contact with the public?
- e. Will the nature of the job present any opportunities for the post-holder to re-offend in the place of work?

Considerations in assessing risks associated with a particular offence:.

- a. The seriousness of the offence in its relevance to the safety of other employees, customers, clients and property.
- b. The length of time since the offence occurred. ²
- c. The age of the applicant when the offence occurred.
- d. Any relevant information offered by the applicant about the circumstances, which led the offence being committed. For example the influence of domestic and financial difficulties.
- e. Whether the offence was a one off or part of a history of offending.
- f. Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely.
- g. The country in which the offence was committed. Some activities are offences in Scotland but not in England or Wales and vice-versa.

² Specific advice should be sought from Child Protection when considering sexual offences. Current contacts are Damian Griffiths or Barry Armstrong.

- h. Whether the offence has since been decriminalised by Parliament.
- i. The degree of remorse or otherwise expressed by the applicant and the motivation to change, although bear in mind the possibility for attempts to deceive.

Annex 3

Under the Rehabilitation of Offenders Act 1974 criminal convictions can become spent or ignored after a rehabilitation period, although they remain on the Police National Computer. The rehabilitation period varies depending on the sentence or order imposed by the court - not the offence. Custodial sentences of more than two and half years can never become spent. The following sentences become spent after fixed periods from the date of conviction:

Sentence	Rehabilitation period Age 18 or over when convicted	Rehabilitation period Age 17 or under when convicted
Prison sentences of 6 months or less, including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution	7 years	3 and half years
Prison sentences of more than 6 months to 2 and half years, including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution	10 years	5 years
Borstal (abolished in 1983)	7 years	7 years
Detention Centres (abolished in 1988)	3 years	3 years
Fines (even if subsequently imprisoned for fine default), compensation, probation (for convictions on or after 3 February 1995), community service, combination, action plan, curfew, drug treatment and testing and reparation orders	5 years	2 and half years
Absolute discharge	6 months	6 months

With some sentences, the rehabilitation period varies:

Sentence	Rehabilitation Period
Conditional discharge or bind-over, probation (for convictions before 3 February 1995), supervision, care-orders	1 year or until the order expires (whichever is longer)
Attendance centre orders	1 year after the order expires
Hospital orders (with or without a restriction order)	5 years or 2 years after the order expires (whichever is longer)
Referral Order	Once the order expires