



Wirral Met College

Risk Assessing DBS Disclosure Checks for Prospective Employees

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RISK ASSESSING DBS DISCLOSURE CHECKS FOR PROSPECTIVE EMPLOYEES

This document outlines the procedure for assessing potential and existing employees' disclosure checks, should they be returned with criminal convictions listed.

Underpinning Legislation

When taking into account criminal convictions, it is important to be aware of the relevant legislation that makes up the Rehabilitation of Offenders Act (1974) (ROA). The main purpose of the ROA is to ensure that a person who has been convicted of a criminal offence in the past and who has not re-offended in a specified period is, so far as possible, freed from the stigma of that conviction and is treated as if the offence and the conviction had never occurred. Therefore, the Act provides that in certain circumstances it will be unlawful to take into account 'spent' convictions in recruitment, promotion and dismissal situations.

Rehabilitation periods

Rehabilitation periods are defined in law by the Rehabilitation of Offenders Act 1974 (ROA) and section 139 of the Legal Aid, Sentencing and Punishment Act 2012, and specify the point at which a conviction must be considered as 'spent'.

The rehabilitation periods are set out in the table below:

Custodial Sentences:

Sentence Length	Rehabilitation period is the period of sentence, plus the 'buffer' period below (which applies from the end of the sentence)	
	People aged 18 or over when convicted	People aged 17 or under when convicted
0 - 6 months	2 years	18 months
6 – 30 months	4 years	2 years
30 months to 4 years	7 years	3½ years
Over 4 years	Never spent	Never spent

Non-Custodial Sentences:

Sentence	Buffer period (will apply from the end of the sentence)	
	People aged 18 or over when convicted	People aged 17 or under when convicted
Community Order (and youth rehabilitation order)	1 year	6 months
Fine	1 year (from date of conviction)	6 months(from date of conviction)
Absolute Discharge	n/a	n/a
Conditional discharge, referral order, reparation order, action plan order, supervision order, bind over order, hospital order	Period of Order	Period of Order

Exceptions to the Act

There are certain exceptions to the ROA, as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order. These exceptions require people entering in to certain roles to disclose all convictions, including those that are spent. This includes:

‘Any employment as a teacher in a school or establishment for further education and any other employment which is carried out wholly or partly within the precincts of a school or establishment for further education, being employment which is of such kind as to enable the holder to have access to persons under the age of 18 in attendance at the school or establishment for further education in the course of his normal duties’

Furthermore, the Police Act 1997 (Criminal Records) regulations make provision for employers to request Disclosure and Barring Service (DBS) checks for staff if their specific role meets the criteria of being a member of either the ‘Adult workforce’ or the ‘Child Workforce’ (see the ‘Regulated activity with adults in England’ and ‘Regulated activity with children in England’ leaflets from the DBS for details. In such cases, the above rehabilitation periods do not apply and the College must be in possession of a satisfactory disclosure check before the person begins working at College.

Results of the DBS check showing a conviction

If the DBS check discloses a criminal conviction the following considerations should be taken into account when deciding whether to withdraw the offer of employment:

- ✓ The nature of the offence
- ✓ Its relevance to the post, position or profession in question
- ✓ How long ago the offence took place
- ✓ The person’s age at the time
- ✓ Whether it is an isolated offence or part of a pattern of offending
- ✓ What is known about the person’s conduct or behaviour before or since
- ✓ Whether the individual’s circumstances have changed

Procedure to be followed

In the first instance, a decision with regard to whether an offer of employment is to be subject to further deliberation will be made by the Director of People and Organisational Development, taking into account the above points.

Where the conviction poses a **low level of risk** that doesn’t affect the appointment decision (for example, a speeding offence), this will be documented and placed on the individual’s personal file.

Where the conviction poses a **medium or high level of risk** (for example, drug use, recent offences, assault, sex offences) the person is formally invited, in writing, to meet with a panel consisting of the Director- People and Organisational Development, Assistant Principal-Student Support and the relevant Assistant Principal or Director for the area. The candidate should be made aware at this stage that a possible outcome is that the offer of employment with Wirral Met College could be withdrawn. The prospective employee should be given the opportunity to discuss the offence and put forward any information they believe to be relevant. Based on this meeting, the panel will deliberate the case in private and reach a decision. The individual must

be informed of the decision by recalling them in the first instance, and confirming the decision in writing within 10 working days.

If a satisfactory explanation is provided, this should be documented and confirmation of a formal offer should be made

If no satisfactory explanation is given, then the conditional offer of employment should be withdrawn in writing to the candidate. The decision of the panel will be final.

Existing Employees

Please see current policy and process

Agency/ Casual Staff

There is a requirement that any agency staff will have all the pre-requisite checks in place prior to being placed at the College.

External Contractors, Trainers and Visitors (includes taxi companies)

Wirral Met College has a duty to reduce the risks associated with “providers of services” who come into the College to conduct their business. Where required, we will request from the providing organisation written declaration that staff coming onto Wirral Met College premises have had a DBS check conducted.

Where the Company cannot, or declines to make such a declaration, the College will conduct a Risk Assessment (see Appendix 1) which could result in:

1. Low risk determined – no further action
2. Medium – High risk determined leading to
 - a. Sourcing an alternative provider who is able to declare their staff are DBS checked
 - b. Allowing a period of grace for the Company to comply