

Medway Council Treatment of Ex-Offenders

Date of issue: 3 December 2015

Next review date: 3 December 2017

Lead Officer: Carrie McKenzie, Head of HR and Organisational Change



Index

| Section | Page No. |
|--|-----------------|
| 1. Introduction | 3 |
| 2. Equalities Statement | 3 |
| 3. Scope | 3 |
| 4. Criminal Disclosure | 3 - 4 |
| 5. Rehabilitation of Offenders Act 1974 | 4 |
| 6. Assessing the relevance of criminal records | 4 - 5 |
| 7. Inviting candidates for interview | 5 |
| 8. Disputing the contents of a Disclosure | 6 |
| 9. Security of Disclosure Information | 6 |
| 10. Existing Employees | 6 |

1. Introduction

- 1.1 Medway Council aims to promote equality of opportunity for all with the right mix of talent, skills and potential and welcomes applications from a diverse range of candidates including those who are ex-offenders.
- 1.2 This policy provides guidance to Managers, Assistant Director's, Deputy Director's and Director's on how to manage applications for employment from ex-offenders.
- 1.3 This policy should be read in conjunction with the following Council policies:
 - Recruitment and Selection Framework
 - Fair Access, Diversity and Inclusion
 - Disclosure and Barring Service

2. Equalities Statement

- 2.1 The Council is committed to providing equal opportunities and access for all. This policy embraces the spirit of managing a diverse workforces and those managing staff must ensure that no employee is discriminated against either directly or indirectly, harassed or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status, any stage of gender reassignment or any prohibited grounds.

3. Scope

- 3.1 This policy applies to all prospective and existing employees, permanent and temporary and those not employed by the Council where statute requires a criminal record to be disclosed (or checked) to enable them to undertake a specific role or duty.

4. Criminal Disclosure

- 4.1 Applicants for all posts will be required to disclose details of convictions, cautions, reprimands and final warnings that are not protected under The Rehabilitation of Offenders Act 1974 (as amended in 2013) "the Act".
- 4.2 Applicants for posts that are covered by the Exceptions Order within "the Act" will be required to disclose details of all unprotected convictions, cautions, reprimands and final warnings.

~~Posts requiring criminal disclosure checks~~

- 4.3 If a post is subject to a criminal disclosure check, this will be made clear on the advertisement together with the level of check required. A disclosure will only be requested when a job offer has been made and it will be made clear at the time that the offer will be subject to receipt of a satisfactory check. Any matters subsequently

revealed by the disclosure check will be discussed with the potential recruit before a decision to withdraw a job offer is made.

- 4.4 The check will disclose details of cautions, reprimands or final warnings, as well as convictions. ~~(Details regarding the various levels of criminal disclosure and their relevancy to posts within the council can be found in the councils Recruitment and Selection Code of Practice — see Medway Managers Personnel Handbook).~~
- 4.5 Criminal disclosure checks will be made every three years whilst the employee remains in a relevant post. If a criminal record is subsequently disclosed an investigation will be carried out to ascertain whether the employee is suitable for continued employment in the post.

5.0 Rehabilitation of Offenders Act 1973-1974 (as amended in 2013)

- 5.1 Certain posts are exempted under “the ~~Rehabilitation of Offenders Act~~” 1974 and, for these posts it will be made clear at the start of the recruitment process that the post requires the disclosure of all criminal record information, including details and dates of ‘spent’ convictions, cautions, reprimands and final warnings. Where the post is subject to an enhanced disclosure, other relevant non-conviction information, such as police enquiries and pending prosecutions will also be asked for.
- 5.2 For posts that are not exempted under “the ~~Rehabilitation of Offenders Act~~” 1974 criminal convictions will be taken into account only when they are relevant to the post. Unless the nature of the work demands it, applicants will not be asked to disclose convictions which are ‘spent’ under “the Rehabilitation of Offenders Act” 1974. Having an ‘unspent’ conviction will not necessarily bar applicants from employment, this will depend on the circumstances and background to the offences. Cautions, reprimands and final warnings are considered ‘spent’ immediately they are given.

6.0 Assessing the relevance of criminal records

- 6.1 The potential suitability for employment of a person with a criminal record will depend on the nature of the job and the details and circumstances of any convictions. Deciding on the relevance of convictions to a specific posts is a management judgement. An assessment of an applicant’s skills, experience and conviction circumstances will be weighed against the risk assessment criteria for the job. Employing people on the basis of information provided in an application form and at interview, irrespective of whether they have a criminal record or not, is never risk free and those responsible under recruitment will identify what risks could be involved and what precautions should be put in place in order to provide satisfactory safeguards.
- 6.2 An applicant’s criminal record will be assessed in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. Whilst it may not be possible to carry out a complete assessment on each individual, the council will ensure that the following issues are taken into account when assessing the suitability of an applicant for a vacancy:

- Whether the post involved one-to-one contact with children or other vulnerable groups as employees, customers or clients;
- The level of supervision the post holder will receive;
- Whether the post involves any direct responsibility for finance or items of value;
- Whether the post involves direct contact with the public;
- Whether the nature of the job will present any opportunities for the post holder to reoffend in the place of work.

~~4.3 This will help determine the relevance of convictions to specific posts.~~

6.3 In some cases, the relationship between the offence and the post will be clear enough to decide easily on the suitability of the applicant for the job. In other cases, the decision may not be so clear-cut. For short-listed applicants who are assessed as meeting the requirements of the person specification and who then disclose a criminal record that is not related directly to the post, the relevance of each offence should be discussed with the applicant. Each case will need to be considered individually.

6.4 Whilst it will not be possible to carry out a thorough risk assessment on each individual, the following issues will be taken into account as minimum requirement.

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property;
- The length of time since the offence occurred;
- Any relevant information offered by applicant about the circumstances which led to the offence being committed, for example the influence of domestic or financial difficulties;
- Whether the offence was a one-off, or part of a history of offending;
- Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely;
- The country in which the offence was committed, some activities are offences in Scotland and not in England and Wales, and vice versa;
- Whether the offence has since been decriminalised by Parliament;
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

7.0 Inviting candidates for interview

7.1 Candidates invited to interview will be told in writing that relevant criminal convictions and other associated information will be discussed at the interview in order to assess job-related risks. They will be asked to provide appropriate written details to a named personnel representative and will be invited to attach any other information which they wish to draw attention to that may improve understanding and decision-making.

7.2 The interview will provide an opportunity for the recruiting manager to raise issues concerning offences with applicants in open discussion. Interviews will be conducted by a manager who has been trained in interview skills in accordance with the council's recruitment and selection code of practice.

7.3 If necessary, applicants will be given the opportunity to discuss disclosure information before a final recruitment decision is made as part of a post-interview process.

8.0 Disputing the contents of a Disclosure

8.1 If a disclosure is issued and an individual wishes to query its accuracy, it is possible to do so through the ~~Criminal Records Bureau~~ Disclosure and Barring Service appeals procedure.

9.0 Security of Disclosure information

9.1 In accordance with the ~~Criminal Records Bureau~~ Disclosure and Barring Service Code of Practice the council has a policy for ensuring the security of disclosure information, this is available upon request.

10.0 Existing Employees

10.1 In cases where it is discovered ~~someone has been employed, or that during the course of their employment a colleague it is discovered that they have~~ failed to disclose an 'unspent' conviction, this will not necessarily lead to dismissal. ~~Existing employees should read the relevant statement in the Working For Medway Guidelines for Staff (see Medway Managers Personnel Handbook).~~ Only after a full appraisal of the situation, including the risks involved, will any action leading up to and including dismissal be considered. The recruiting manager with an HR Business Partner ~~personnel advisor~~ will first establish whether the conviction is relevant to the post. If an employee deliberately withholds or has withheld conviction information to gain employment in a non-risk area, appropriate disciplinary procedures should be considered (~~see Disciplinary procedure which can be found in the Medway Managers Personnel Handbook~~). Where it is considered there is a significant risk, consideration will be made for an appropriate safeguard, for example arrangements for closer supervision or alternatively consider redeployment to a more suitable job. Evidence of previous convictions will not be used to dismiss a person for other reasons, ~~including poor job performance.~~

~~10.2 More information on the disclosure service and treatment of ex-offenders can be obtained by visiting the CRB website: <http://www.crb.gov.uk> and Nacro (National Association for the care and Resettlement of Offenders: <http://www.nacro.org.uk>~~