

 GIG CYMRU NHS WALES	Reference Number: PHW80 Version Number: 1 Date of next review: 08/11/26
<p align="center">EMPLOYING EX-OFFENDERS AND PEOPLE WITH A CRIMINAL RECORD POLICY</p>	
<p>Policy Statement</p> <p>This policy aims to ensure that the organisation has a transparent and consistent approach to employing ex-offenders and people with a criminal record.</p>	
<p>Policy Commitment</p> <p>Public Health Wales NHS Trust (the organisation) provides equality of opportunity for all job applicants with the required qualifications, experience, skills, knowledge and qualities as outlined in the job description and person specification for the post. Therefore, the organisation welcomes applications from a diverse range of applicants, including ex-offenders and those with a spent or unspent criminal record.</p> <p>In accordance with the Rehabilitation of Offenders Act 1974, an applicant's criminal convictions will only be taken into account during the recruitment process, where it is relevant to the post applied for. As the organisation has an exemption order under the above Act, any cautions, reprimands or final warnings, which are not criminal convictions, will also be considered as part of this process.</p> <p>Having a conviction will not necessarily prevent applicants from being appointed to posts within the organisation. This will depend on the nature of the post that the applicant has applied for and the circumstances and background to their offence(s).</p>	
<p>Supporting Procedures and Written Control Documents</p> <p>All corporate policies and procedures are available on the Public Health Wales website</p> <p>Other related documents are:</p> <ul style="list-style-type: none"> • Recruitment and Selection Policy (nhs.wales) 	

Scope

This policy applies to all applicants who apply for a post within the organisation.

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

Equality and Health Impact Assessment	An Equality, Welsh Language and Health Impact Assessment has been completed and can be viewed on the policy webpages.
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Accountable Executive Director/Director	Neil Lewis Director of People and Organisational Development
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Disclaimer:

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Board Business Unit](#)

Summary of reviews/amendments

Version number	Date of Review	Date of Approval	Date published	Summary of Amendments
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V1	June 2023	08/11/23	10/01/24	New policy developed

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1. Policy Statement

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

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

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

2. Scope

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

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

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

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

Public Health Wales is an equal opportunities employer, which is committed to the fair treatment of all job applicants. The organisation is committed to not discriminating unfairly against any applicant, where they disclose an unspent or spent criminal conviction, a caution, bind over, reprimand or final warning.

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

3. Roles and Responsibilities

3.1 Recruiting Manager

The recruiting manager has a responsibility to ensure that they are up to date with the Recruitment and Selection Policy and related guidance.

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

3.2 People and OD

The People and OD Team will provide accurate and up to date advice on the legislation and principles that govern the recruitment and selection process for ex-offenders and individuals with a criminal record.

The People and OD Team will also ensure that managers have adequate information, guidance and support to fulfil their role in the fair recruitment and selection of staff.

4. Rehabilitation of Offenders Act 1974

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

Amendments to the Rehabilitation of Offenders Act 1974 were also made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in England and Wales and came into effect during March 2014. This Act changed the way some

rehabilitation periods are set, so that they are fairer and better to reflect the seriousness of the sentences imposed.

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

4.1 Exceptions Orders 1975

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

There will be a number of posts within our organisation that are exempt from the Act, as this legislation sets out that:

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

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

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

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

5. Disclosures

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

6. Use of Disclosure Information

Where an applicant discloses information regarding convictions etc. on their application form, the organisation will ensure that this information is treated confidentially and only divulged to those who need to access it for recruitment processes, i.e. interview panel members and People and OD.

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

7. Withdrawing an Offer of Employment

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

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

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

In such circumstances, the lead interview panel member will contact the appointee to discuss the information divulged in the DBS Check and explain why the offer of employment is being withdrawn. In such circumstances advice should be sought from the People and OD Team, PeopleSupport.PHW@wales.nhs.uk.

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

8. Implementation

All staff need to be made aware of the existence of this procedure which can be obtained on the Public Health Wales Policies Intranet page, and will be publicised via the staff intranet.

Line managers should bring the guidance to the attention of their staff for information only.

Whilst training is not offered on this procedure, we encourage staff to seek guidance on this procedure from the People and OD team by contacting PeopleSupport.PHW@wales.nhs.uk

9. Equality and Welsh Language

This policy is available in Welsh on the Public Health Wales Policies Intranet page. Correspondence can be made available in Welsh should a staff member so request.

10. Audit

The named lead will monitor this policy to ensure it is compliant with current legislation, to ensure it is effectively implemented, and ensure that it is reviewed in accordance with the timetable for review.

11. Distribution

All staff will be made aware of this policy upon commencement with Public Health Wales and when approved. Copies can also be viewed on Public Health Wales Internet or obtained via the People and OD department by contacting PeopleSupport.PHW@wales.nhs.uk

12. Review

This policy will be reviewed in 3 years' time or sooner if required.

We are continually looking to improve our employment practices and welcome any feedback you may have in relation to this policy. Feedback can be provided by emailing PeopleSupport.PHW@wales.nhs.uk

Appendix A - REHABILITATION PERIOD PER SENTENCE

The full list of rehabilitation periods can be found at:
<https://www.gov.uk/guidance/rehabilitation-periods>

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

Where an individual received two or more prison sentences during the same court case, the rehabilitation period depends on whether the sentences are ordered to take effect concurrently (at the same time) or consecutively (one after the other). For example, if two, six-month sentences are to be served concurrently, the convictions are treated separately, giving each conviction a rehabilitation period of seven years (aged 18 years and over).

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

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

Appendix B - EXCEPTED PROFESSIONS, OFFICES, EMPLOYMENTS AND WORK

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

1. Medical practitioner.
2. Barrister (in England and Wales), advocate (in Scotland), solicitor.
3. Chartered accountant, certified accountant.
4. Dentist, dental hygienist, dental auxiliary.
5. Veterinary surgeon.
6. Nurse, midwife.
7. Ophthalmic optician, dispensing optician.
8. Pharmaceutical chemist.
9. Registered teacher (in Scotland).
10. Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act.

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

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

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

Appendix C - Guidance on Posts Requiring Disclosure and Barring Service Checks

Guidance on DBS check eligibility can be found on the [NHS Employers website](#).

STANDARD CHECKS

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

Eligibility for Standard Checks

Employers may carry out standard level DBS Checks to assess a person's suitability for work listed in the Exceptions Order i.e. where the type of work enables the person to have '*access to persons in receipt of such services in the course of [their] normal duties*'. The term 'access' only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is no contact with patients.

Please note that positions that purely involve having access to records are not covered under the terms of the Exceptions Order and therefore employers cannot obtain a standard or enhanced DBS Check for these positions

ENHANCED CHECKS

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

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

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

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

Eligibility for an Enhanced DBS Check

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