

## **8.2 Assessing criminal record information**

8.2.1 In all cases, a DBS disclosure will only provide the basic facts about the date of a conviction or other offence, the offence committed, the court, and the sentence or disposal. It will not provide any information about the circumstances surrounding the offence.

8.2.2 Employers will need to carefully consider the situation before offering any form of appointment to an individual who is:

- on probation (in a legal sense)
- under a suspended prison sentence
- released from prison on parole
- still under a conditional discharge
- subject to terrorism prevention and investigation measures.

8.2.3 Any risk assessment should carefully consider the individual's skills, experience and ability to do the type of role being offered against the offences disclosed, taking into account the following points:

- The relevancy of any offences to the role being appointed to. It is essential that any assessment considers offences that are relevant to the nature of the role and where there may be ongoing concerns about the individual's conduct or behaviour.
- Any legal or regulatory requirements. For example, where appointing to a regulated activity, you must not allow an individual to engage with vulnerable groups (adults, children or both adults and children) where the DBS have made a barring decision which would prevent them from working or volunteering with that specific group or groups.
- The nature and seriousness of the offence(s). This is important because all offence codes cover a broad range of crimes that significantly vary in terms of seriousness.
- The age of the applicant at the time of the offence(s). Crimes that date back to when the individual was growing up may not be relevant because applicants have put their past behind them.

- If there is a repeat or pattern of offending behaviour. Patterns of offending behaviour or repeated allegations may indicate that they have not put their offending behind them.
- The circumstances surrounding the offending behaviour and the explanation offered by the individual. Consideration should be given to any change in the applicant's circumstances since the offence/s or took place. For instance, those who were convicted when they were young, often do not reoffend once they have family or financial responsibilities. It may be helpful to reflect on the applicant's attitude at the time of the offence and now.
- Any life experiences they may have had since the offending behaviour to evidence their rehabilitation. Many people reach a point where they want to put their offending behind them and can demonstrate how they have put their talents to more constructive use. For example, volunteering activities or work in the community they have undertaken, or evidence they can provide which demonstrates a change in their home and personal circumstances.

8.2.4 Any discussions at interview should be handled sensitively. The purpose of the interview is to gather information from the applicant to assess whether they may pose an ongoing risk if appointed to the role. Employers may find it useful to refer to our positive disclosure – a discussion guide which is intended to help recruiting managers follow best practice when having a conversation with an applicant who declares something on their criminal record.

8.2.5 Employers should in all cases, balance the risks associated with a criminal offence with the wider range of information obtained at the application, interview and pre-employment checking stage before making their final recruitment decision.

8.2.6 All discussions must be recorded on file; alongside clear reasons reached to appoint or reject the applicant. Information should be stored securely in line with the DBS code of practice and in accordance with data protection and GDPR requirements.

8.2.7 Information about an applicant's criminal record should not be disclosed to anyone other than those who have a legitimate reason to

know. This may include people directly responsible for the recruitment decision or the applicant's line manager, if the offence has a bearing on their suitability to continue in their current role.

## 8.3 Discrepancy in information provided

8.3.1 Firstly, you need to consider whether reasonable opportunity was given to enable the individual to make a self-disclosure during the recruitment process. There is no legal duty for applicants to provide information if they are not specifically asked to do so by an employing organisation. Model declaration form A and model declaration form B will help you to ask the right questions, at the right time and seek confirmation that individuals have understood what information is required of them, or have taken opportunity to seek advice, if that is not the case.

8.3.2 If there are significant discrepancies between the information the applicant has provided and that contained in any subsequent DBS check, it is important for the employing organisation to establish why this might be the case. The DBS code of practice states that an employer should conduct a meeting to discuss any new matters including other relevant information revealed in the DBS check with the applicant in a face to face meeting, prior to making a final recruitment decision. Any discussion must be handled sensitively and fairly without pre-judgement.

8.3.3 Given the complexity of the criminal justice system, it is easy for applicants to misunderstand what offences might be on a criminal record or the implications of those when applying for employment until a DBS check is conducted.

8.3.4 If it becomes clear from the additional information provided that the individual is unsuitable for the role being offered, then the employer will need to follow the organisations local policy on managing the withdrawal of an offer of appointment in consultation with the HR department.

8.3.5 In cases of serious misdirection, for example, if the applicant is applying for a role which involves a regulated activity from which they are

barred, the employing organisation has a legal duty to make a referral to the DBS.