



Criminal Records Disclosure Policy

Date approved: 5 May 2015
Approved by: Executive Board
Review date: May 2018
Responsible Manager: Divisional HR Leads
Executive Lead: Group Director (HR and OD)
Accessible to Students: No

1. Consultation

Consultation undertaken with:

- Newcastle College Yes
- Group Services Yes
- West Lancashire College Yes
- Intraining Yes
- Rathbone Yes
- Newcastle Sixth Form College Yes
- Kidderminster College Yes

2. Applicability of Policy to Organisation

This policy applies to:

- Newcastle College Yes
- Group Services Yes
- West Lancashire College Yes
- Intraining Yes
- Rathbone Yes
- Newcastle Sixth Form College Yes
- Kidderminster College Yes

3. Scope and Purpose of Policy

This policy and procedure applies to staff employed within the relevant divisions of NCG under a contract of employment or any other designated person.

The purpose of this policy is to help assess the suitability of applicants for positions of trust and to confirm how positive disclosures and referrals to DBS/ Disclosure Scotland/AccessNI will be dealt with. The policy is aimed at safeguarding and promoting the welfare of children and young people, the elderly and vulnerable groups of people who employees may have contact with in their work.

The aim of this policy is to ensure that:

- Everyone is treated fairly and consistently.
- Everyone is treated equally regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- Everyone knows what to do and what will happen next.

4. Policy Statement

This policy is intended to satisfy the requirements of the Data Protection Act (1998) and is based on the principles of the relevant Code of Practice.

Having a criminal record will not necessarily prevent an applicant from working within a division of NCG. This will depend on the nature of the post they apply for, or are employed to do, and the circumstances and background of the offences. However the information confirmed in the disclosure might mean that a person presents a risk. In such cases an offer of employment may be withdrawn or employment terminated.

The statement on the Recruitment of Ex-Offenders is shown at Appendix 1

5. Equality and Diversity Statement

In accordance with NCG procedures an equality impact assessment has been undertaken for this policy on 10 March 2015.

6. Linked Policies

- Recruitment and Selection Policy (Divisional).
- Safeguarding Vulnerable Adults Policy (Divisional).
- Child Protection Policy (Divisional).
- Non Disciplinary Termination Policy (Divisional where applicable).
- Disciplinary Policy (Divisional).

7. Linked Procedures

- Recruitment and Selection Procedure (Divisional).
- Safeguarding Vulnerable Adults Procedure (Divisional).
- Child Protection Procedure (Divisional).
- Non Disciplinary Termination Procedure (Divisional- where applicable).
- Disciplinary Procedure (Divisional).

8. Location and Access to the Policy

The Criminal Records Disclosure Policy is located as follows:

- NCG Intranet: Group Services: Group Policies and Procedures
- NCG Website: Media Centre: Guide to Information: Our policies & procedures

9. Person Responsible for the Policy

Group Director (HR and OD)

10. Variations

No variations to this policy have been made in relation to any division of NCG to which it applies.

Criminal Records Disclosure Procedure

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Criminal Records Disclosure Procedure

1. Terminology

1.1 Regulated Activity - Adults

The Protection of Freedoms Act 2012 removes the definition of 'Vulnerable Adult' and now looks at the activities that are carried out when working with people with particular needs, The restrictions within the legislation includes reference to persons aged over 18 or whose activity is defined in the Paragraph 7(1) of Schedule 4 of the Safeguarding Vulnerable Groups Act (SVG).

Regulated activity in relation to adults focuses on the provision of personal care. An individual only needs to engage in the activities listed to be carrying out regulated activity relating to adults – no frequency test is applicable. The definition focuses on those activities which, should they be needed by any adult, mean that an adult is considered vulnerable at the point of receiving them.

Further information on the definition can be found on the www.gov.uk website.

1.2 Regulated Activity – Children

The following work falls under the scope of regulated activity relating to children:

- Work in a specified place. Specified places are named in the SVG Act and include 'an educational institution which is exclusively or mainly for the provision of full-time education to children'.
- Work of a specified nature. This includes: teaching, training, supervision, caring for children and providing advice or guidance to children.

Further information on the definition can be found on the www.gov.uk website.

1.3 Positive Disclosure

The term 'positive' disclosure refers to a disclosure containing information relating to convictions, caution, reprimands etc. plus 'soft information' relating to non-convictions, but which police deem relevant.

2. Obtaining a Disclosure Certificate

- 2.1 All applicants for employment must provide details of their criminal record on their application form. Applicants applying for a position that involves carrying out regulated activity or where the work is within a specified establishment

(i.e. working in an educational institute) must disclose information about any criminal conviction, including spent sentences, cautions and bind over orders on their application form, which would not be filtered in line with current guidance.

- 2.2 Applicants will be required to bring the required employment verification documentation to their interview.
- 2.3 NCG use the services of Criminal Records Checking bodies and individuals are required to comply with all requests relating to verification and completion of forms. For example the following checking bodies may be used:
 - Disclosure and Barring Service (DBS)
 - Disclosure Scotland
 - AccessNI
- 2.4 If an individual has signed up to the DBS or Disclosure Scotland Update Service they will be required to send/bring in the original Disclosure Certificate to the People Services Department for verification within 7 days of commencing employment. Failure to submit within 7 days may result in disciplinary action and/or failed probation. It is recommended that if employees are sending in their certificates by post, they use recorded delivery. The individual will also be required to give authorisation in writing to NCG, by the completion of the relevant form that will be sent to them, to carry out an online check.
- 2.5 If an individual has not signed up to the update service, they will be sent a link in order that they can complete an online criminal records application form. This must be completed within 7 days of having been sent the link. Failure to complete the online application form within 7 day may result in the withdrawal of the offer of employment, disciplinary action and/or failed probation.
- 2.6 NCG will be informed electronically from the checking body when a criminal records check has been completed and whether an individual has a positive disclosure. People Services will update the records with the date this information was supplied, certificate number and the status. The original Disclosure Certificate will be sent direct to the individual from the checking body.
- 2.7 If the individual has a 'clear' disclosure from the criminal records check there is no further action required for the individual.
- 2.8 If the individual has a positive disclosure, the individual is responsible for arranging to send/bring in the original certificate to the HR Department for verification within 7 days of having received it. It is recommended that if employees are sending in their certificates by post, they use recorded delivery. Failure to send/bring in the original disclosure certificate with a positive disclosure may result in disciplinary action and/or failed probation.

- 2.9 People Services will refer 'positive' disclosure to the appropriate Divisional representatives who will deal with them in line with section 4.0 of this procedure.

3. Commencing Employment

- 3.1 As part of NCG's duty towards safeguarding, the following checks will take place on all new appointments:
- Eligibility to work in the UK (Home office check).
 - Criminal records disclosure check.
 - List 99 check (for those in regulated activity).
 - Medical clearance.
 - Qualifications checks.
 - 2 Reference checks.
- 3.2 If a new employee is going to work in 'regulated activity' they must not commence employment within NCG until a criminal record's check has been carried out and clearance has been given or a formal risk assessment has been completed by the line manager and approved by a member of the appropriate divisional Management Team / Divisional Human Resources.

Key considerations when making this judgement are listed in Appendix 2.
The risk assessment is documented using the form attached at Appendix 3.

4. Procedure for Dealing with Positive Disclosure information

- 4.1 The term 'positive' disclosure refers to a disclosure containing information relating to convictions, caution, reprimands etc. plus 'soft information' relating to non-convictions, but which police deem relevant.
- 4.2 All 'positive' disclosures will be referred to the Divisional Human Resources counter signatories and all such disclosures will be dealt with in a highly confidential manner, either by a divisional Human Resources representative or an appropriate appointed representative.
- 4.3 On receipt of a 'positive' disclosure the nominated representative will invite the applicant/employee to a meeting to discuss the information on the disclosure. The meeting is an important part of verification, to ensure that the information contained on the disclosure relates to the individual concerned. At this meeting the nominated representative will ask the applicant/employee to discuss the background relating to the positive disclosure.
- 4.4 If the individual believes that the information released does not relate to them or elements of it are incorrect, the individual is responsible for informing NCG. The individual is then responsible for contacting the criminal records checking bodies' disputes team to attempt to resolve the matter. This must be done within 3 months of receipt of the Disclosure Certificate.

4.5 Following this meeting an assessment of the risk will be undertaken and a decision regarding the applicant/candidate's suitability for employment will be made. The nominated representative will carry out this assessment taking into consideration the following:

- The seriousness and nature of the offence(s).
- The nature of the appointment.
- Length of time since the offence(s) occurred.
- Number and pattern of offence(s).
- Explanation of the circumstances.
- Concealment of offence(s) at application stage.

The record of the meeting is made using the form in Appendix 4.

Further guidelines for carrying out a 'positive' disclosure meeting and assessing the level of risk of offences are detailed in Appendix 5.

4.6 The assessment must then be discussed with the Divisional Human Resources Lead (In Rathbone the assessment is also discussed with the National Safeguarding Advisor). The Divisional Human Resources Lead will then make the decision on whether to withdraw an offer of employment or to recommend terminating employment.

5. Access and Handling

5.1 In accordance with section 124 of the Police Act 1997, disclosure information is passed only to those who are authorised to receive it in the course of their duties. NCG recognises that it is a criminal offence to share this information with anyone who is not entitled to be privy to such information. However, it is recognised there will be times when a line manager should be advised of the information included on an individual's disclosure.

6 Use, Retention and Disposal

6.1 Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's consent has been given.

6.2 No photocopy or other image of the Disclosure Certificate or any copy or representation of the contents of a Disclosure Certificate will be made. However, notwithstanding the above, NCG will retain an electronic record of the date of issue of a Disclosure Certificate, the name of the subject, the reference number and the type of disclosure requested.

7. Eligibility for Criminal Record Checks

7.1 Employees

All individuals who accept an offer of employment will be required to undergo a criminal records check.

Enhanced criminal records check will be carried out for all employees working in Newcastle College, Newcastle Sixth Form College, Kidderminster College and West Lancashire College.

Within Rathbone and Intraining the role the employee will be carrying out will determine whether a standard or enhanced criminal check is carried out.

Checks against the Children and/or Adult barred lists will only be completed for those roles that undertake 'Regulated Activity'.

NCG has the discretion to seek a new Criminal Records check where there are grounds for concern about the suitability of an existing member of staff. Otherwise, employees are checked as detailed above or as detailed in section 9 of this procedure.

7.2 Agency Workers

HR is responsible for ensuring that any agency worker they use has had a criminal records check by the Agency and that the Agency can supply satisfactory references.

This confirmation from the Agency must be in writing, and clearly specify that the individual has a cleared criminal records check.

If the agency worker has not yet obtained a cleared disclosure, the risk assessment process must be completed for this individual – Appendix 2 & 3.

8. Portability of Disclosure

NCG does not accept disclosures from newly appointed employees that have been carried out by an external body e.g. a previous employer. Therefore, all new employees must undergo a new criminal records check unless they have signed up to the 'Update' service. Similarly, NCG will not 'share' disclosure information with any external body.

9. Updating Disclosures

Criminal Record checks have no period of validity as the information on the disclosure is a snap shot in time at the point that the disclosure was completed. NCG may request further checks during an employee's employment at the following intervals:

- Teaching staff – every 3 years.
- Support staff – every 3 years.
- Change of job role (from non-regulated activity to regulated activity).
- If concerns – immediately.

10. Charged or convicted of an offence whilst in employment

An employee must notify the relevant Divisional Human Resources Department if they are charged or convicted of an offence during their employment.

The notification to NCG must take place at the earliest opportunity to allow an appropriate assessment to be taken. Failure to notify, or to do so in a timely manner, may result in disciplinary action leading to dismissal.

11. Referrals to DBS/Disclosure Scotland/AccessNI

NCG will follow its Safeguarding Policy and Procedure where a relevant allegation is made against an employee.

If, following the initial investigation or evidence gathering there is a belief that there may have been relevant conduct or there is a risk of harm, there is a duty to refer to the DBS/Disclosure Scotland/AccessNI.

The DBS/Disclosure Scotland/AccessNI can only consider referrals relating to safeguarding children or vulnerable adults in the workplace. There are two conditions: both should normally be met to trigger a referral to the DBS/Disclosure Scotland.

A referral must be made to the DBS/Disclosure Scotland/AccessNI when NCG:

1. withdraws permission for an individual to engage in regulated activity (or would have done so had the individual not resigned, retired , been made redundant or been transferred to a position which is not regulated)
2. Because they think that the individual has:
 - engaged in 'relevant conduct'.
 - satisfied the 'Harm Test' or
 - received a caution or conviction for a relevant offence.

In all cases, the Divisional Human Resources Lead is responsible for making a decision to refer. A referral must be made to DBS/Disclosure Scotland/ AccessNI, using the appropriate referral Form.

If following a decision by DBS/Disclosure Scotland/AccessNI to 'bar' an individual, NCG will inform the individual and use the appropriate Divisional procedure to deal appropriately and fairly with the issue including the consideration of the employee's continued employment.

Appendix 1

Statement on the Recruitment of Ex-offenders

As an organisation using the Criminal Records checking services to assess applicants' suitability for a position of trust, NCG will fully comply with the relevant Codes of Practice and undertake to treat all applicants fairly. It undertakes not to discriminate unfairly against any subject of a disclosure on the basis of a conviction or other information revealed.

NCG is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities of dependants, age, physical/mental disability or offending background. NCG select candidates for interview based on their skills, qualification and experience.

NCG can only ask an individual to provide details of convictions and cautions that NCG are legally entitled to know about. The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account. Guidance and criteria on the filtering of these cautions and convictions can be found on the Disclosure and Barring Service website. Subject to the above, applicants are requested to list all such convictions, cautions, reprimands or other warnings on their application form.

At interview, or in a separate discussion, we wish to ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment or dismissal.

We undertake to discuss any matter revealed in a disclosure with the person seeking the position before withdrawing a conditional offer of employment or making a dismissal decision.

Appendix 2

Key Consideration when assessing a case for employment to commence prior to criminal records check clearance

Key Questions for Considerations

What is the reason for considering commencement prior to receiving clearance?
(Natural default is clearance must be obtained prior to commencement)

What would be the consequence to service delivery of waiting until clearance is obtained? (Impact must be a demonstrable substantial impact)

What is the level of access to children/vulnerable adults? *

- Supervised access one to one
- Supervised access group
- No direct access but based in premises

(*no unsupervised access is permissible until Clearance has been obtained)

Is the person currently working in a similar role within a similar environment?

Appendix 3

Regulated Activity Risk Assessment Consideration of Employment prior to Criminal Records Check Clearance

Name of Prospective Employee	
Position Applied for	
Department	
Date of Risk Assessment	

Record of Judgement

Reasons for considering commencement of employment prior to receiving clearance (i.e. the level of service delivery impact):		
Assessment of risk and controls		
Risk: 1:1 contact / Unsupervised contact	<p>Does the role require 1: 1 contact?</p> <p>Does the role involve unsupervised contact i.e. delivering tutorials or lessons</p> <p>Can appropriate supervisory arrangement be put in place to ensure no unsupervised 1:1 contact?</p> <p><u>Proposed controls/ arrangements</u> If yes, please specify:</p>	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p>
Risk: Travel	<p>Does the role involve travelling with or transporting students?</p> <p>Can appropriate supervisory arrangements be put in place?</p> <p><u>Proposed controls/ arrangements</u> If yes, please specify:</p>	<p>Yes/ No</p> <p>Yes/ No</p>
Risk: Access to Personal information	<p>Does the role involve access to learners personal information (i.e. e-mails, addresses)</p> <p>Can arrangements be put in place to ensure that no access is given to any learner's personal</p>	<p>Yes / No</p> <p>Yes / No</p>

	information? <u>Proposed controls/ arrangements</u> Please specify arrangements proposed:				
Risk: Overnight stays / Residential	Does the role involve any overnight trips? <u>Agreed controls/ arrangements</u> If yes, no overnight stays are permissible until Criminal Records clearance.	Yes / No			
Please detail any other risk / control measures required that are not detailed above:					
Checks: List 99 check completed (check with People Services)? Currently working in similar role? Gaps in employment history explained satisfactorily?		Please circle Y/N Y/N Y/N			
Assessment of risk after controls are implemented: (please circle)					
<table style="width: 100%; text-align: center;"> <tr> <td style="width: 33%;">High</td> <td style="width: 33%;">Medium</td> <td style="width: 33%;">Low</td> </tr> </table>			High	Medium	Low
High	Medium	Low			
Assessment carried out by:		Date:			

Authorisation

Name:

Position:

Signature:

Date:

Appendix 4

Disclosure Meeting

Record of meeting due to a return of a 'positive' disclosure

Disclosure No:

Date Obtained:

Name of Individual:

DOB:

Proposed Position:

Interview date:

Interviewed by:

Brief details of judgment of appointed representative following interview:

Signed:

Date:

Decision of Divisional Human Resources Lead

Withdraw offer/recommend to terminate employment

Cleared to work

Signed:

Date:

Appendix 5

Further guidelines for carrying out a positive disclosure meeting and assessing the level of risk of offences

Introduction

These guidance notes are for use when offences are self-declared, revealed by the Disclosure and Barring Service (DBS), Disclosure Scotland or any other criminal records checking body or information received from a third party.

All offences should be declared via the application form when applying for posts. Failure to do so would automatically trigger a formal interview and raise questions about why the offences were not disclosed earlier.

NCG is required under the Safeguarding Vulnerable Groups Act 2006 and the Rehabilitation of Offenders Act 1974 (as amended) to assess the suitability of applicants to work with young people. Having a conviction does not necessarily automatically bar someone from working with young people, and as an employer NCG undertakes not to discriminate unfairly against someone on the basis of convictions or information received.

Stage 1 – Obtain further information

- Seek advice if required from Human Resources (or the National Safeguarding Advisor in Rathbone).
- Arrange a suitable time for an interview.
- If the post involves regulated activity, explain to the applicant that because the nature of work involves direct contact with young people the post is exempt from the provisions of the Rehabilitation of Offenders Act 1974 and due to this exemption status the employer has the right to ask the applicant about spent convictions.

Questions to consider asking the applicant:

- Ask about the circumstances around the conviction (situation, who the offence was against – age/male/female, was it a one off).
- Confirm dates and sentence given for the offence.
- Make a note of the applicants attitude surrounding the events of the offence i.e. are they remorseful.
- Has there been any further involvement with the police or law enforcement agencies since that time. Are there any cases pending?
- Inform the applicant who in the organisation is aware of the conviction (Human Resources, Safeguarding Advisor).

Stage 2 - Carry out a risk assessment following a positive disclosure

An applicant's criminal record should be assessed in relation to the tasks they will be required to perform, the working environment and the degree of any potential risk to young people and staff. The Issues which need to be addressed in the risk assessment include:

- If the offences were discovered as a result of DBS /Disclosure Scotland disclosure, why did the applicant not disclose the offences on the application form?
- Consider the seriousness and nature of the offence. Did it involve violence, a sexual assault or young or vulnerable people. What is its relevance to the safety of others, including staff?
- Consider the time of the offence, date of conviction and sentence given.
- Consider the length of time that has elapsed since the offence occurred.
- Assess relevant information the applicant has offered about the circumstances which led to the offence, was the offence a one off?
- Does the post involve 1-1 contact with young people?
- Will the nature of the job present any opportunities for the post holder to re-offend within the work setting?
- What do you consider to be the likelihood of this happening (high, medium, low)?
- Have the personal circumstances of the applicant changed since the offence was committed making re-offending less likely?
- The degree of remorse expressed by the applicant (attitude towards the offence and its circumstances).
- What information will they have access to (i.e. learner info)?
- What level of supervision will be required?
- What is your assessment on the overall risk presented by the applicant: low, medium or high? What is the basis of your decision?

Complete the form in Appendix 4

Stage 3 Assessment

Once you have carried out the interview, the form/assessment (appendix 4) must be discussed with the Divisional Human Resources Lead (In Rathbone the assessment is also discussed with the National Safeguarding Advisor).

The Divisional Human Resources Lead will then make the decision on whether to withdraw an offer of employment or terminate employment