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# Policy: Criminal records information

Updated December 2019

1. As an employer, Transform obtains, processes and stores information about the criminal records history of applicants and employees where it is relevant to the role which they undertake (or would undertake) for us.
2. Information about criminal records history may be sought direct from the individual or via the Disclosure and Barring Service (DBS).
3. As an organisation using the DBS to assess applicants’ suitability for positions of trust, Transform complies with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. We also comply with our data protection obligations in the handling of any criminal records information.
4. This policy sets our position on the recruitment of ex-offenders, the continued employment of existing employees who gain a criminal record whilst working for us, and our data protection obligations. It is made available to all applicants at the outset of the recruitment process, and at any other time
upon request.

**Employment of those with criminal convictions**

1. We undertake not to discriminate unfairly against anyone who discloses a criminal conviction or
who is the subject of a DBS disclosure which reveals a conviction or other information. We are committed to the fair treatment of all employees and potential employees regardless of any
offending background.
2. Only posts with specific functions and sensitivities are subject to an enhanced DBS disclosure;
such posts are identified only after a thorough risk assessment has indicated that one is lawful, proportionate and relevant to the position concerned. For all of our other roles, where we consider
it appropriate, we seek a basic DBS disclosure. Our job adverts also state the level of disclosure required. Once someone has joined us as an employee, we may seek updated DBS checks periodically.
3. We make every subject of a DBS check aware of the existence of the DBS Code of Practice and make a copy available on request. 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 decision on their continued employment. Having a criminal record will not necessarily bar applicants from working, or continuing to work, with Transform. This will depend on the nature of the position and the circumstances and background of their offences.

**Recruitment (including existing employees applying for new roles where a higher level
check is required)**

1. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience, as set out in our person specifications.
2. We request all applicants called for interview to complete, and bring with them, a declaration form providing relevant details of their criminal record, if any. We have different declaration forms for roles requiring an enhanced or basic DBS certificate. Any information provided on declaration forms is only shared on a ‘need to know basis’, and only after a candidate has been actively considered for a post.
3. Unless the nature of the position allows questions to be asked about applicants’ entire criminal record (i.e. convictions, cautions, reprimands or final warnings which are not ‘protected’ as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)) we will only ask about “unspent” convictions as defined in the Rehabilitation of Offenders Act 1974.
4. At the point at which a conditional offer of employment is made, we will then verify the information we have been provided with by the selected applicant by undertaking a DBS check. This will require the applicant to complete an application form. If the applicant is signed up to the DBS Update Service then we may be able to use that as a means of verification.
5. We ensure that all those who are involved in the recruitment and selection process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders e.g. the Rehabilitation of Offenders Act 1974.

**Existing employees**

1. We may periodically seek repeat DBS checks once an employee has been appointed. Normally these will take place every three years but Transform reserves the right to seek a repeat check at any time during the employment relationship.
2. If an employee refuses to do anything necessary to enable a repeat check to be carried out then Transform will have to consider whether the employment relationship can continue. The employee will have the opportunity to explain their reasons before any decision is made.

**Where a conviction (or other information) is disclosed**

1. We use information about criminal convictions to:
	1. check if someone is permitted to undertake the role for which they are/wish to be employed
	2. assess suitability for appointment/continued employment, either with or without measures being put in place to mitigate the risk(s) of someone being employed by us if they do have a conviction on their records.
2. We use a third party body to submit enhanced level checks to the DBS. We have data security arrangements in place with them which mean they must only process the data we send to them in accordance with our instructions and must have in place adequate safeguards to protect the data against unauthorised disclosure.
3. The results of any DBS check are sent to the individual who then needs to share that information
with us.
4. We will 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.
5. If an applicant has failed to disclose a conviction when asked earlier in the recruitment process, or an employee has failed to disclose a conviction at the time received to their line manager or HR, then Transform may have to assess what this means for the trust that we can have in the individual. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment, or termination of employment.
6. Where information is disclosed, an individual risk assessment will be undertaken focussing on the precise nature of any previous convictions and their impact on the ability of the individual to undertake the required role. This risk assessment will focus on the type, frequency and seriousness of any convictions, the possibility of repetition in the prescribed post, the potential impact on client and staff welfare, and the reputation of the organisation.
7. If it is felt that the risk of employment/continued employment is too great then the job offer may be withdrawn/a process started to determine whether the employment relationship can continue.

**Data protection**

1. Transform complies with the Data Protection Act 2018 regarding the handling, storage, access, retention and disposal of personal data. Please see our Data Protection Policy for more information.
2. Transform complies with the data protection principles specifically in relation to its handling of criminal records information by:
	1. only asking and/or processing information about criminal convictions where we have a lawful ground to do so. We have a legitimate interest in ensuring that the people who work for us are suitable to do so. In most cases, our ground for processing will be that:
		1. we have the individual’s explicit consent; or
		2. it is necessary for the purposes of rights or obligations imposed or conferred on Transform or the individual in the context of employment. We are legally required by the Care Quality Commission to carry out criminal record checks for those carrying out particular roles in order to show that we are appointing people who satisfy the ‘**Fit and proper persons**’ test. Some roles are also listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (*SI 1975/1023*) the Police Act 1997 (Criminal Records) Regulations (*SI 2002/233*) and so are eligible for checks from the Disclosure and Barring Service.

Less commonly, we may use information in relation to criminal convictions where it is necessary in relation to legal claims, or where you have already made the information public. If we are going to rely upon any other ground then we will ensure that the individual is told of this.

* 1. only asking for information from people applying to work for us, where it is relevant to the role being applied for and only asking at the [interview stage] of any recruitment process;
	2. only asking for information from existing employees, where it is relevant to the role being undertaken and only doing repeat DBS checks where we have cause or as part of our regular review process;
	3. not undertaking a DBS check without the individual’s knowledge and having explained to them why we consider it necessary to obtain one.
	4. only using criminal records information for the purposes for which we said it would be used;
	5. limiting the sharing of criminal records information only to those who are authorised to receive it. The information will be initially received by HR and may then be shared with the (prospective) line manager for the purposes of any risk assessment that needs to be undertaken. Alternatively the information may be initially received by the line manager and shared with HR for the same reason. If the risk assessment needs signing off at a more senior level then the information may also be shared with that person. Transform will keep a record of who such information has been shared with.
	6. informing individuals (by way of this Policy) of their rights to challenge the accuracy of any information received from the DBS. This can be done by contacting the DBS. If the information is subsequently updated by the DBS then we will only process the updated information and will destroy any inaccurate information which we hold.
	7. storing information received through recruitment/offer/renewal or self-disclosure and information received to undertake the DBS check securely. This information is stored on the HR system.
	8. only retaining criminal records information for a period up to six months. Once the retention period has elapsed, any DBS documentation or any information provided about criminal convictions will be destroyed by secure means. No photocopy or any copy or representation of the disclosure or criminal convictions disclosed will be retained. We will though keep a record of the date of the issue of a certificate, the type of certificate, the positions for which the disclosure was requested and if there was a disclosure. If a risk assessment was undertaken, reference will be made to this and the date it was done.

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