

Prepared:	April 19	Prepared by:	Amy Sheehan Daly, Ops Mgr	Issued:	20/08/19
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A. Policy

1. Introduction

- 1.1. Lancashire Mind is committed to the fair treatment of its staff, potential staff, volunteers and users of its services regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background. 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.
- 1.2. Lancashire Mind stresses that having a criminal record will not necessarily prevent someone from working for us. This will depend on the nature of the position, the circumstances and background of the prospective employee's offences. We do not discriminate unfairly against any subject of a disclosure based on conviction or other information revealed.
- 1.3. The organisation has followed the terms outlined in The Rehabilitation of Offenders Act (ROA) 1974 which ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. *Please see Appendix A for full details of the ROA

2. Scope

This policy applies to:

- 2.1. All prospective or existing employees and volunteers who have been convicted of a criminal offence in the past or during employment.
- 2.2. Any employee or manager involved in the recruitment process.

3. Objectives

- 3.1. To eliminate unlawful discrimination of prospective or existing employees during the recruitment process or during employment.
- 3.2. To ensure that all prospective and existing employees are treated fairly, consistently and with dignity.
- 3.3. To ensure that all prospective employees have equal opportunity to employment where appropriate.
- 3.4. To provide those with recruitment responsibilities with a framework and clear guidance on how to manage the recruitment of ex-offenders in line with The Rehabilitation of Offenders Act (ROA) 1974.
- 3.5. To ensure that all employees are aware of their contractual obligations to adhere to the organisations recruitment of ex-offenders policy and to ensure that all staff are aware of the reporting requirements under the policy.

4. Principles

- 4.1. The organisation will provide training in equal opportunities, including the recruitment of ex-offenders, to managers and others likely to be involved in recruitment or any decision making where equal opportunities issues are likely to arise to enable them to recruit and manage employees fairly.
- 4.2. The organisation will ensure that recruitment is fair and transparent and based solely on the person's ability to meet the person specification for the post. Person and job specifications will be limited to those requirements that are necessary for the effective performance of the job.
- 4.3. Lancashire Mind uses the DBS disclosures system to assess applicants' suitability for positions of trust and fully complies with the DBS Code of Practice. The organisation treats all applicants for positions fairly.
- 4.4. The organisation will only request a disclosure when it is legal to do so. For those positions where a disclosure is required, all job adverts, application forms, and recruitment material will contain a statement that a disclosure will be requested before an appointment is made. Unless the nature of the position allows the organisation to ask questions about a person's entire criminal record we only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act (1974).
- 4.5. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place surrounding any offences or other matter that might be relevant to the position before any offer of employment is considered.
- 4.6. The unauthorised disclosure of information about a spent conviction is illegal. Unauthorised disclosure is where an official with access to information about the person's criminal record discloses this information other than in the course of official duties. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.
- 4.7. Where a self-disclosure is to form part of the recruitment process, we ask all applicants to voluntarily provide details of their criminal record at an early stage in the application process. We guarantee that this information will be treated as sensitive personal data and therefore only be seen by those who need to see it as part of the recruitment process as outlined in Lancashire Mind's Confidentiality and Information Governance policies. This information will be treated in strict confidence, will be securely stored and kept for the time necessary. Failure to disclose convictions on an application form that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
- 4.8. Following appointment, employees have a responsibility to report any relevant changes of circumstance to the organisation. These include any criminal investigations, convictions or warnings they may become the subject of, or any other relevant information which a reasonable employer might consider could impact on the employment of that individual. Employees should always discuss with their line manager any difficulties or problems that may impact on their suitability to work with children and adults so that appropriate support can be provided, or action taken. Failure to disclose convictions with the line manager may result in disciplinary action.
- 4.9. Any existing employee may be asked to undertake a DBS re-check if any concerns are raised. Refusing to comply with such a request may result in the employee being subject to formal disciplinary action for deliberate and/or unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager.
- 4.10. Confidentiality cannot be guaranteed where concerns arise about the welfare or safety of children or adults but any information sharing will be in accordance with relevant legislation and policy and only as is necessary in the circumstances.
- 4.11. Anyone within the organisation found not to be adhering to the recruitment of ex-offenders policy may be dealt with under the disciplinary procedure as appropriate.

5. Responsibilities

5.1. It is the responsibility of:

5.1.1. Lancashire Mind

- a) To ensure the policy and procedures are readily available to all staff
- b) To provide support and guidance to managers on applying the policy
- c) To monitor and review the implementation and effectiveness of the policy
- d) To ensure the recruitment of ex-offenders is managed appropriately
- e) To ensure references to DBS checks are visible on all job adverts where they will be required

5.1.2 Managers

- a) To implement the policy
- b) To support staff to understand and correctly follow the policy
- c) To recruit and manage staff in appropriate and fair manner

5.1.2. Staff

- a) To understand the Recruitment of Ex-Offenders policy and follow procedural guidelines
- b) To correctly notify the organisation of any relevant convictions at application stage if necessary, in accordance with The Rehabilitation of Offenders Act (ROA) 1974
- c) To fully cooperate in the process of investigating any equality and diversity related concerns.
- d) Employees can be held personally liable as well as, or instead of, Lancashire Mind for any act of unlawful discrimination. Employees who commit serious acts of harassment may be guilty of a criminal offence.

For related policies and procedures including the Recruitment policy and Equality & Diversity policy, look in the Policies folder on Lancashire Mind's SharePoint site in Office 365.

Appendix A

Rehabilitation of Offenders Act (ROA) 1974

Introduction

The Rehabilitation of Offenders Act (ROA) 1974 ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment.

Under the 1974 Act, following a specified period of time which varies according to the disposal administered or sentence passed, cautions and convictions (except those resulting in prison sentences of over four years and all public protection sentences*) may become spent. As a result the offender is regarded as rehabilitated.

Generally the more severe the penalty the longer the rehabilitation period. Please refer to Appendix B: Rehabilitation Periods for further information.

*A public protection sentence, the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006, means a sentence of imprisonment or detention imposed for specified sexual and violent offences.

Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be "spent". Once a conviction has been spent, generally the convicted person does not have to reveal it or admit its existence. There are, however, exceptions.

Exceptions to the Act

Lancashire Mind has a duty of care to protect the safety and wellbeing of the public and people who use our services, in particular children and adults who considered to be especially vulnerable or at risk. The Exceptions Order (1975) overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Where an exception to the 1974 Act exists, ex-offenders must disclose information about all cautions and convictions even if they are spent, other than protected cautions and convictions (See Modifications to the Act).

Exempted occupations fall into the following categories:

- Work that brings the person into contact with groups such as the infirm, elderly, mentally ill and young people under the age of 18.
- Professionals that have legal protection, for example, nurses, doctors, dentists, chemists, accountants.
- Posts concerned with the administration of justice, for example, police officers, lawyers, probation officers, and traffic wardens.
- Health service appointments.

Pre-employment checks and other safe recruitment practices are a requirement to ensure that people who may pose a threat to children and adults are not given positions of trust where they could exploit those entrusted to their care in most circumstances, including when applying for a job. In most circumstances, an employer cannot refuse to employ someone, or dismiss them, based on a spent conviction.

Modifications to the Act

The Amendment Order (2013) introduces provisions into the Exceptions Order so that some spent convictions and cautions, which would otherwise be covered by the Exceptions Order, do not have to be disclosed and cannot be considered in employment decisions. The Exceptions Order currently provides for full disclosure of a person's criminal history, regardless of how old or minor the disposal.

The Court of Appeal has found that this blanket disclosure of all cautions and convictions is incompatible with Article 8 of the European Convention on Human Rights. The purpose of this amendment is, therefore, to remedy this incompatibility by 'filtering' certain cautions and convictions, which are sufficiently old and minor to have no bearing on an employment decision. This means that the individual will no longer have to reveal these cautions and convictions nor will they appear on standard and enhanced disclosure certificates.

The filtering rules will apply in the following circumstances:

The rules as to when a conviction or caution will be filtered are set out in legislation. This states that a standard or enhanced disclosure certificate must include the following:

The rules as to when a conviction or caution will be filtered are set out in legislation. This states that a standard or enhanced disclosure certificate must include the following:

- All cautions given for a specified list of offences– see below
- Cautions given less than 6 years ago (where the person was 18 or over at the time of caution)
- Cautions given less than 2 years ago (where the person was under 18 at the time of caution)
- All convictions for a specified list of offences - see below
- All convictions that result in a custodial sentence
- Convictions given less than 11 years ago (where the person was 18 or over at the time of conviction)
- Convictions given less than 5½ years ago (where the person was under 18 at the time of conviction)

- Where the person has more than one conviction then all convictions will be included on the certificate (no conviction will be filtered)
- Where a person is convicted of multiple offences, then the conviction will be included on the certificate, as each offence is treated as if it were a separate conviction

In order to maintain public protection, the amendment lists offences which must always be disclosed. These offences are serious violent and sexual offences and other offences of specific relevance for posts concerned with safeguarding children and vulnerable adults.

The list includes a range of offences which are serious, and which relate to sexual offending, violent offending and/or safeguarding. It would never be appropriate to filter offences on this list. A list of offences which will never be filtered has been derived from the legislation and is available here:

<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

Appendix B

Rehabilitation Periods

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the <u>end date of the sentence</u> (including the licence period).	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the <u>end date of the sentence</u> (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order**	1 year	6 months

*Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the
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Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

**In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

The following table sets out the rehabilitation period for sentences which do not have “buffer periods” and for which the rehabilitation period runs from the date of conviction:

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered).	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional	months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order*	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

Suspended sentences

A suspended sentence is a sentence of imprisonment and the rehabilitation period is therefore determined by the custodial sentence, regardless of the period for which it is suspended.

Consecutive and concurrent sentences

An offender may be sentenced at one time for several offences. If the court decides that imprisonment is the right penalty for more than one offence, it can order that these run concurrently or consecutively. If a person is sentenced to two terms of imprisonment of six months each, to run concurrently, the person will be subject to a rehabilitation period of seven years. If they were ordered to run consecutively, they would be subject to a rehabilitation period of ten years.

Extension of rehabilitation periods

Rehabilitation periods may be extended if a person receives further convictions while an original rehabilitation period is still running. If the second conviction is for a summary offence, i.e. an offence that can be tried only in a Magistrates’ Court, then the first rehabilitation period is not affected and both rehabilitation periods will run their separate course. If, however, the second conviction is more serious and could be tried in a Crown Court, then neither conviction will become spent until the longer rehabilitation period has expired.

Where the original sentence resulted in a disqualification, probation or other penalty, the rehabilitation period will not be affected if the person is convicted of a further offence