

CRIMINAL RECORDS CHECK (DBS) POLICY

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1.0 Introduction

Posts at the College are exempt from the provisions of the Rehabilitation of Offenders Act, 1974 (Exceptions) Order 1975 therefore applicants for jobs at the College are asked to disclose any convictions, cautions, reprimands or warnings spent or unspent bearing in mind that 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 www.gov.uk/dbs.

It is necessary for all staff employed by the College to have an enhanced disclosure with a children's barred list check as the College is considered to be exclusively or mainly for teaching children on a full time basis which meets the criteria set out in The Police Act 1997(Criminal Records) Regulations and therefore we can apply for an enhanced check with a barred list check for all staff. This is in order that all necessary checks can be made to ensure staff are suitable to undertake work with children. Exceptions are Governors, Visiting Lecturers and Guests Speakers as they are not considered to be engaged in regulatory activity as they are accompanied and sign in as visitors at reception.

Legal entitlement to check the Adults Barred List only applies when an individual's job meets the specific activities for regulated activity such as Learning Support Assistants, Osteopathy, staff in the Preparation for Life and Work Department or any other appropriate staff.

2.0 Disclosure & Barring Scheme

- 2.1 The **Disclosure and Barring Service (DBS)** was established under the Protection of Freedoms Act 2012 and carries out the functions previously undertaken by the Criminal Records Bureau (CRB).
- 2.2 The primary role of the **DBS** is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children.
- 2.3 The DBS was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).
- 2.4 The DBS searches police records and, in relevant cases, barred list information, and then issues a DBS certificate to the applicant who must then show it to the employer to help them make an informed recruitment decision.
- 2.5 The checking service currently offers two levels of DBS check; standard and enhanced, as detailed below in the 'types of criminal record checks' section 3.0.
- 2.6 The DBS recognises that information released on DBS certificates can be extremely sensitive and personal. Therefore a code of practice for recipients of DBS certificates has been developed to ensure that any information they contain is handled fairly and used properly.

The legislative changes that amend the Safeguarding Vulnerable Groups Act 2006 (SVGA) and the Police Act 1997 regulations, which the DBS checking service is based on, were introduced through the Protection of Freedoms Act 2012 (POFA).

The DBS Privacy Policy is published under The Data Protection Act 1998. It explains how the DBS will comply with this Act when processing your personal data.

The DBS has two functions:

- Disclosure which searches police records and information held by the DBS barring function and issues a DBS certificate
- Barring to help safeguard vulnerable groups from those people who work or volunteer with them who pose a risk of harm

DBS checks provide access to a range of different types of information held by police forces and other agencies. Where the appointed person will work with vulnerable people, e.g. people with learning difficulties and disabilities or learners under the age of 18, they will not be allowed any one to one contact until a satisfactory disclosure is received. A Teachers Pension Online barred list check is completed for all staff, prior to the commencement of their employment. All teaching staff are also checked using the Employer Access Online Service to ensure that the teacher is not subject to any prohibition orders issued by the Secretary of State.

The DBS enables organisations to make safer recruitment decisions by identifying candidates who may be unsuitable for work that involves children or adults that require activities that consider them vulnerable.as part of good recruitment practice.

3 Types of criminal record check

The Disclosure and Barring Service (DBS) offers four types of criminal record check:-

3.1 Standard DBS check

Standard checks contain details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions. These are shown on a criminal records check.

3.2 Enhanced DBS check

An enhanced check contains the same details as a standard check; together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.

3.3 Enhanced DBS & barred list check (child)

An enhanced check with information from the DBS's children's barred list is only available for those individuals engaged in regulated activity with children.

3.4 Enhanced DBS & barred list check (adult)

An enhanced check with information from the DBS's adults barred list is only available for those individuals engaged in regulated activity with adults.

3.5 Enhanced DBS & barred list check (child and adult)

An enhanced check with information from the DBS's children and adults barred list is only available for those individuals engaged in regulated activity with both vulnerable groups including children.

4.0 Recruitment Process

Nescot aims to promote equality of opportunity for all with the right mix of talent, skills and potential. Criminal records will be taken into account for recruitment purposes only when the conviction is relevant. Having a conviction will not necessarily bar someone from employment as this would be dependent upon the circumstances and background to their offence(s) and the job to which they were applying.

All candidates should declare on their online application forms if they have any convictions, bind overs or cautions spent or unspent (taking into account paragraph 1.1). If this is not declared then potentially the College could withdraw any offer of employment due to falsification of the information on the application form, or if already employed then could result in dismissal.

We encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process on the application form. This can then be compared with the information on the DBS Disclosure. Any information will only be provided to those who need to see it as part of the recruitment decision.

The job applicant will make the application for disclosure at the job offer stage using the criminal record check online system. A copy of the disclosure is sent to the job applicant and the job applicant may be required to show this to the HR Department either before or on their first day or the next working day following receipt. Failure to do this will result in the offer being withdrawn or their employment terminated.

It is now possible to use a disclosure that has been obtained for a previous post if you subscribe to the DBS Update Service online at www.gov.uk/dbs-update-service. This also enables the College to carry out an online status check.

There is no requirement for Nescot to obtain a criminal record check if the applicant has an existing DBS issued by a school or college whilst working in a regulated activity, and that the candidate left that employment no longer than three months' prior to beginning work at Nescot, unless the College decides to do so.

If any information is revealed in the Disclosure it will be discussed with the person seeking the position by one of the Countersignatories, usually a senior member of the Human Resources Department. A risk assessment will then be carried out to decide if the convictions would bar that person from being employed and this risk assessment form will be kept on the individuals file. This is just one of the recruitment checks made as part of the College's robust recruitment and safeguarding practice, and candidates will be informed if any of the recruitment checks are unsatisfactory.

If an applicant commences employment prior to receipt of satisfactory DBS disclosure a teachers pension online barred list check is carried out and a risk assessment completed. No member of staff can have one to one contact with a learner unsupervised until a satisfactory DBS disclosure is received.

5.0 Policies regarding the Secure Storage, Handling, Use, Retention & Disposal of Disclosures and Disclosure Information

5.1 General Principles

The DBS Code of Practice is published under section 122 (2) of the Police Act 1997 and the DBS Privacy Policy explains your rights as a customer of the DBS under the Data protection Act 1998. It is intended to ensure - and to provide assurance to those applying for standard and enhanced DBS checks - that the information released will be used fairly.

These codes also seek to ensure that sensitive personal information is handled and stored appropriately and is kept for only as long as necessary. Anybody who receives a standard or enhanced DBS certificate must abide by the Code of Practice.

As an organisation, using the DBS service to make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children.

Nescot complies fully with the DBS Code of Practice regarding the management and use of Disclosure information.

It also complies fully with its obligations under the DBS Privacy Policy and the Data Protection Act 1998 and any other relevant legislation pertaining to the management and use of Disclosure information.

The policy regarding this is as set out below in section 5.2 of this policy on these matters, which is available on our recruitment site and the staff intranet (SharePoint).

5.2 Management and Use of Disclosure Information

Disclosure information is stored securely and for no longer than necessary and for a maximum of six months following the recruitment decision unless a dispute is raised or in exceptional circumstances where DBS agreement is secured.

Risk assessment forms will be kept on individual files but will not detail the convictions, if any.

It is an offence to disclose or share information contained within a disclosure to any member, officer or employee where it is not related to the individuals duties or relevant to recruitment and vetting processes. Normally the Director of Human Resources and/or the Human Resources Manager chair of recruitment panel and relevant Line Manager would see this information.

Disposing of Disclosure information in a secure manner. The DBS Certificate is the employee's property however, a record would be kept of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

Registered Bodies must provide sufficient and up-to-date information to the DBS to allow registration to proceed, and submit applications in the prescribed format, accurately and in full.

Registered Bodies must accurately and comprehensively verify the identity of the applicant prior to the submission of an application.

6.0 Recruitment of Ex-Offenders

As an organisation using the DBS Disclosure service to assess applicant's suitability for positions of trust, Nescot complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.

Nescot is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.

This written policy on the recruitment of ex-offenders is made available to all Disclosure applicants on our recruitment site.

We actively promote equality of opportunity 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 relevant to the job in question.

We encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process ie, with the application form. The detailed procedure is set out in section 4.0 of this policy.

Nescot is exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation Act 1974 (Exemptions) Order 1975. Applicants are therefore not entitled to withhold information about convictions, bind overs or cautions, including those which for all other purposes are spent under the provisions of the Act (with the exceptions as outlined in paragraph 1.1).

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 www.gov.uk/dbs

For those that work with under 8s they have to disclose to the College whether they have anyone that lives with them that has received a conviction, caution, court order, reprimand or warning that would affect their suitability to work with children that is spent or unspent, or been barred from working with children, or disqualified from working with children under the Childcare Act 2006. This could affect their employment with under 8s.

All staff at Nescot who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. They will have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, eg the Rehabilitation of Offenders Act 1974.

At interview, or in a separate discussion, we 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, if started, termination of employment.

We make every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and make a copy available on request, as set out in the standard offer letter or it can be obtained from www.gov.uk/dbs.

Having a criminal record will not necessarily bar an individual from working with Nescot. This will depend on the nature of the position applied for, the information given on the application form, and the circumstances and background of your offences and relevance to a particular post. We undertake to discuss any matter revealed in a DBS check with the person seeking the position before withdrawing a conditional offer of employment.

7.0 Duty to Refer

A referral is information regarding a person working in regulated activity with children or vulnerable adults which notifies us of concerns that harm or risk of harm has occurred to a child or vulnerable adult.

The Safeguarding Vulnerable Groups Act (SVGA) 2006, place a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

1. Been cautioned or convicted for a relevant offence; or
2. Engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or
3. Satisfied the Harm Test in relation to children and/or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists].

Penalties

- an employer or volunteer manager is breaking the law if they knowingly employ someone in a regulated activity with a group from which they are barred from working
- a barred person is breaking the law if they seek, offer or engage in regulated activity with a group from which they are barred from working, be it paid or voluntary

8.0 Disclosure during employment

It is the duty of all employees to inform a senior member of Human Resources immediately upon conviction or caution the fact that they have been convicted or cautioned of any offence during the period of their employment, whether or not arising out of their employment. Failure to comply with this requirement may be deemed as gross misconduct.

9.0 Students

Students who as part of their studies are required to attend work placements for work experience and will have contact with children or vulnerable adults are required to complete an online DBS Disclosure.

10.0 Overseas Criminal Record Checks

Any potential staff who have lived overseas or have spent six continuous months or more outside of the UK within the last five years prior to their employment with Nescot must provide evidence of a criminal record check or similar from the relevant country or countries. The checks need to cover the five years prior to their application.

Details of how to obtain such a check from the relevant authorities abroad are available online at: <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

If the country concerned is not listed, please contact the relevant embassy or consulate for further details. Contact details can be found online at: <https://www.gov.uk/government/publications/foreign-embassies-in-the-uk>