



Chartered Institute
of Personnel and
Development

Employing ex-offenders A practical guide



Criminal Records Bureau

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Introduction

The competitive advantage of UK business depends on its ability to tap into the skills and inventiveness of the labour market as a whole. Due to rapid technological change and global competition, the characteristics of the labour market have changed radically over the past two decades. As traditional manual occupations have declined in importance, part-time workers, women and older workers have become an increasingly prominent part of the workforce.

More recently, unemployment has fallen. Some organisations that have faced difficulties recruiting new employees have begun to focus on groups that, traditionally, for one reason or another, have been marginalised from mainstream employment.

Employers do have concerns about the risks involved in employing ex-offenders and need to minimise these with appropriate safeguards. They can ask people to volunteer information about criminal convictions which have not been spent but when a conviction has become spent, an ex-offender can decline to volunteer such information unless the employer has special rights to ask for it. Because some employers have a legal duty to make sure they don't employ people who have committed certain sexual offences which might endanger children or vulnerable adults, they can verify conviction information from a central source – the Disclosure Service, offered by the Criminal Records Bureau.

This practical guide is concerned with this significant and hidden group within the workforce, namely ex-offenders. Part 1 sets out the legislative acts that are relevant to the employment of ex-offenders, while Part 2 offers guidance for implementing fair and responsible policy and practice for employing ex-offenders, based on a full assessment of the risks involved.

This publication provides employers with a 'how to' guide on employing people with criminal records and covers the job application, recruitment, interviewing and post-application process.

There are 7.3 million people in England and Wales (around 20 per cent of the working-age population) on the Home Office Offenders Index, the official register of all those with criminal convictions. The index shows that one in three men and almost one in ten women born in 1953 had been convicted of an offence before the age of 46.

However, few of these offenders will ever have been 'inside'. Half the 1953 cohort of male offenders and three-quarters of females have just one conviction, typically for an offence committed in their teens or early 20s.

Most offenders sentenced to imprisonment receive short sentences. By far the majority of prisoners – 66 per cent of all adult prisoners in 1999 – serve sentences less than 12 months long.

In 1992, around 90 per cent of offenders faced unemployment on release from prison. Most offenders are male, with the peak offending age being 18. The majority of offenders cease to offend after the age of 25. Research by the CIPD revealed that employment is the single most important factor in reducing reoffending. Of the 144 HR professionals who have knowingly employed ex-offenders, only 8 have reported cases of reoffending. In addition, two-thirds of HR managers state that employing ex-offenders has been a 'positive' experience.

The Rehabilitation of Offenders Act (ROA) 1974

The ROA was introduced in 1974 to ensure that ex-offenders who have not reoffended for a period of time since the date of their conviction are not discriminated against when applying for jobs. The ROA enables ex-offenders to 'wipe the slate clean' of their criminal records in the sense that they are no longer legally required to disclose to organisations convictions that are 'spent', unless the job they are applying for is exempted from the Act. A range of different types of work, occupations, employment and professions are exempted and are contained in the Exemptions Order of the ROA. This includes work that involves access to children, young people, the elderly, disabled people, alcohol or drug misusers and the chronically sick. In such cases, organisations are legally entitled to ask applicants for details of convictions, irrespective of whether they are 'spent' or 'unspent' under the Act. The length of time required for an ex-offender to become 'rehabilitated' depends on the sentence received and the age when convicted. Custodial sentences of more than two-and-a-half years can never become 'spent' (see Appendix B for more detail on rehabilitation periods).

The Police Act 1997

Part V of the Police Act 1997 allows all those organisations in England and Wales that are entitled to ask exempted questions under the terms of the ROA to obtain information on the criminal records of prospective employees and volunteers from a centralised source. Since March 2002, criminal record checks (known as Disclosures) have been carried out by the Criminal Records Bureau (CRB).

In Scotland, the Scottish Criminal Record Office performs the same function. Arrangements for Northern Ireland are yet to be finalised.

There are two kinds of Disclosure currently relevant to employers:

Standard Disclosure applies to posts exempted under the ROA and relates particularly to certain sensitive areas of employment, such as jobs involving regular contact with children and vulnerable adults. Standard Disclosure contains details of both spent and unspent convictions, as well as cautions, reprimands and final warnings held on the Police National Computer. If the post involves working with children or vulnerable adults, the lists held by other government departments of those banned from, or restricted in, working with these groups are also searched.

Enhanced Disclosure applies to posts involving greater contact with children or vulnerable adults (for example, jobs involving caring for, supervising, training or being in sole charge of children and vulnerable adults). Enhanced Disclosure contains the same information as Standard Disclosure but also includes non-conviction information from local police records if it is thought to be relevant to the position being applied for.

Applications for Standard and Enhanced Disclosures can be made only by organisations that have registered with the CRB or through other specific organisations that are registered with the CRB. Applications must be made with the express agreement of the individual concerned and signed by both the applicant and the registered body.

Organisations that register with the CRB to obtain Standard and Enhanced Disclosures are required to adhere to a strict code of practice, designed specifically to ensure that Disclosure information is used fairly, sensibly and confidentially.

Part 2 of this practical guide to employing ex-offenders offers advice and guidance on how organisations can implement fair and effective policy and practice for recruiting people with a criminal record based on a full assessment of the risks involved. This recruitment process covers the job application, recruitment, interviewing and post-appointment process.

Organisations that are eligible to make use of the CRB to obtain criminal record information need to decide how to handle sensibly and responsibly the increased flow of information on criminal records, taking into account legal obligations and good practice.

The following framework gives you a good foundation on which to base your actions.

Gathering information about criminal records

At the outset, organisations need to decide whether, given the nature of the job they are trying to fill, it is appropriate to ask about criminal records and obtain a Disclosure. Organisations should seek a Disclosure where the position to be

filled involves a degree of risk or where there is a legal requirement to do so. Disclosure should not be used as a blanket requirement in all circumstances. The fact that a person has a criminal record is frequently irrelevant to the job for which they are applying.

Organisations that decide to ask applicants about criminal records should do so in such a way as to encourage honesty. Applicants should be informed at the outset if criminal record information will be requested from them. This will provide a basis for the applicant to decide whether or not to apply for the post. Organisations should emphasise that this information will be used only to assess the applicant's suitability for employment insofar as it is relevant, and that they will be considered on merit and ability and not discriminated against unfairly.

The flow charts in Figures 1 and 2 outline the steps that we recommend employers take when gathering information about criminal records during the initial recruitment process and at the point of offering the job.

Figure 1: How to gather criminal record information

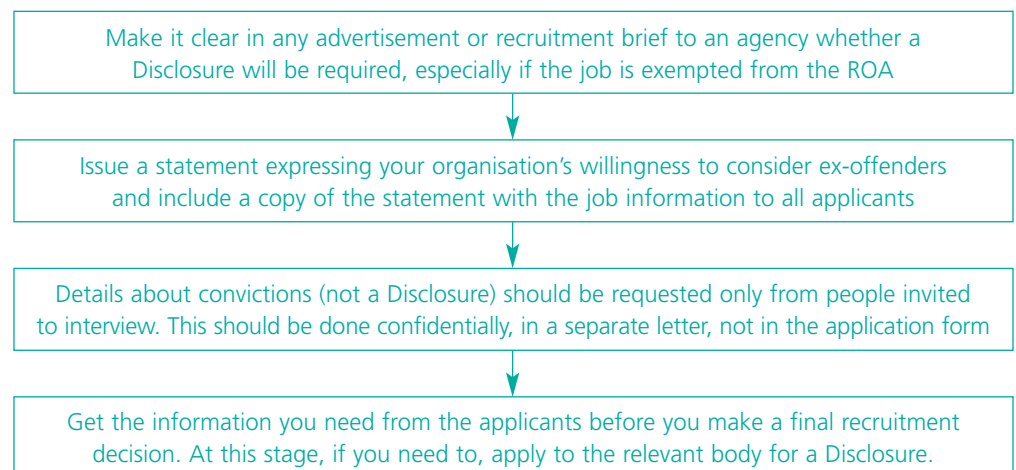
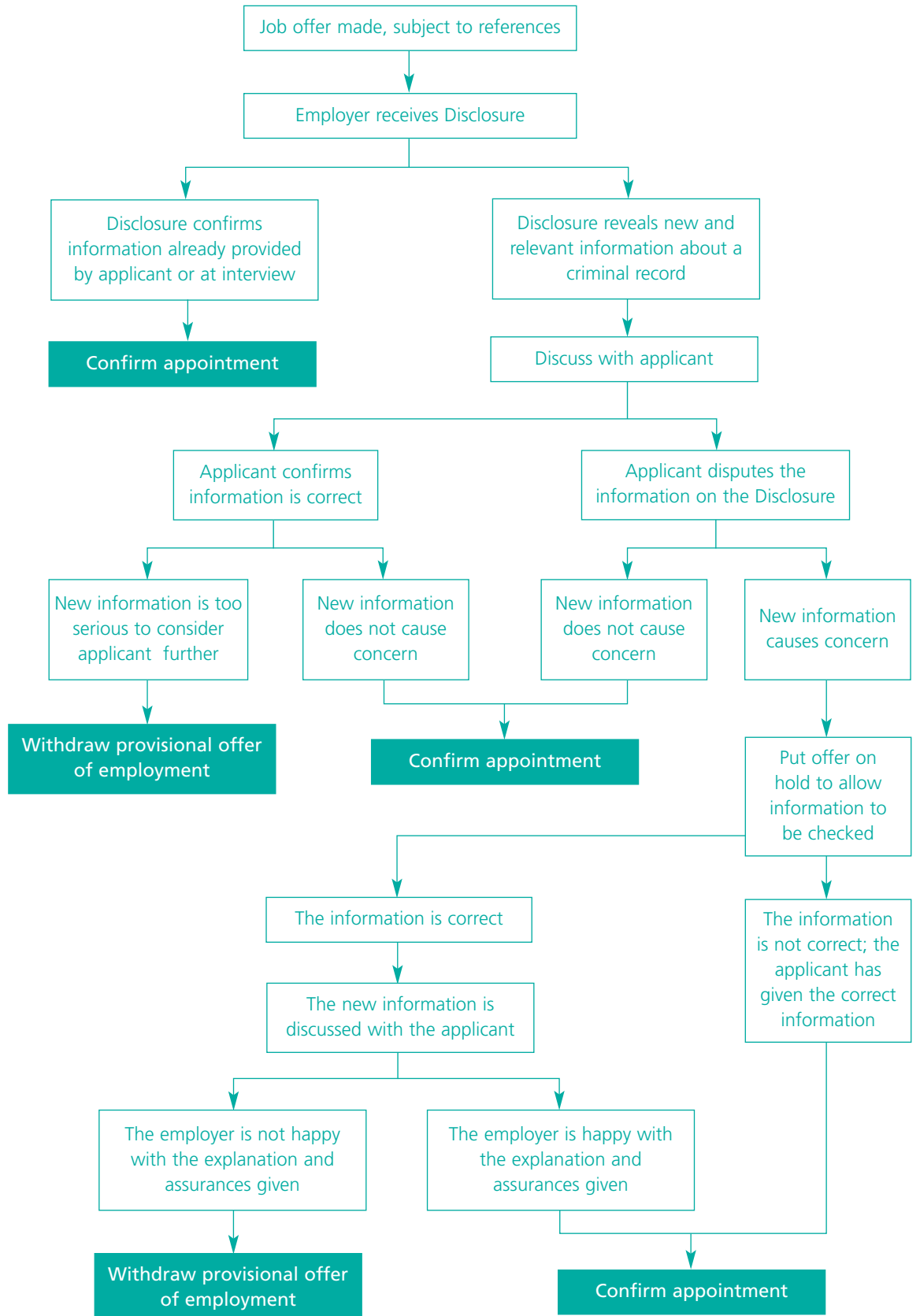


Figure 2: Dealing with Disclosures at the point of a job offer



Limitations of Disclosure

There is a limit to the usefulness of information provided by Standard or Enhanced Disclosures. Where information is revealed, the Disclosure will generally only provide the basic facts – the name and date of offences, for instance, and the sentence. It will not put them into context. Disclosures may also not provide information on people convicted abroad, although the CRB will draw on data on the Police National Computer, which contains details of some 70,000 offences committed overseas.

The suitability for employment of a person with a criminal record will vary, depending on the nature of the job and the details and circumstances of any convictions. Deciding on the relevance of convictions to specific posts is not an exact science. An assessment of an applicant's skills, experience and conviction circumstances should be weighed up against the risk assessment criteria for the job.

An applicant's criminal record should be assessed in relation to the tasks they will be required to perform and the circumstances in which the work is to be carried out. We recommend that you consider these points when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers or clients?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct contact with the public?
- Will the nature of the job present any opportunities for the post holder to reoffend in the course of work?

In some cases, the relationship between the offence and the post will be clear enough for the organisation to decide easily on the suitability of the applicant for the job. For shortlisted applicants who

Confidentiality of Enhanced Disclosure information (non-conviction information)

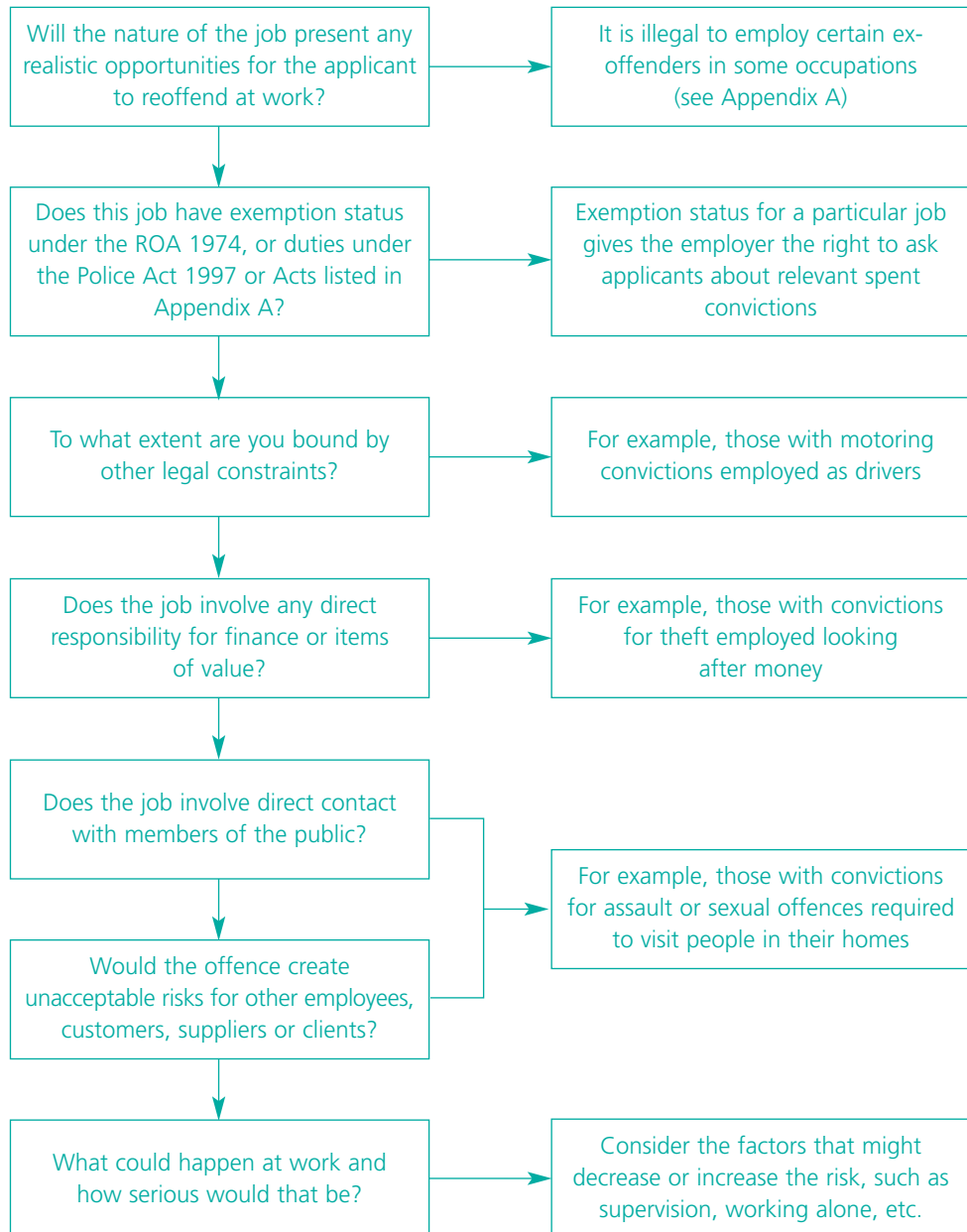
In a small number of cases an Enhanced Disclosure check may result in the local police force disclosing non-conviction information to the registered body, by way of a separate letter, and not to the applicant. This may include information about a current investigation. This is very important in determining whether someone is a suitable person for a particular post, but it should be remembered that this information must not be passed on to the applicant. To do so would be an offence under the Police Act 1997 (see the flow chart in Figure 4 for further information).

have met the requirements of the person specification and then disclose a criminal record that is not related directly to the post, you should discuss the relevance of each offence with the applicant.

You will need to take these issues into account:

- the seriousness of the offence and its relevance to the safety of other employees, customers, clients or property
- the length of time since the offence occurred
- any relevant information offered by the applicant about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties
- whether the offence was a one-off, or part of a history of offending
- whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely
- whether the offence has been decriminalised by Parliament
- the country in which the offence was committed. Some activities are offences in Scotland and not in England and Wales, and vice versa
- the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

Figure 3: Assessing the job for risk



Your organisation should ensure that:

- Information regarding offences is kept confidential. Applicants need to feel confident that information about their convictions will not be disclosed to anyone unless there is a specific reason for doing so.
- Only the people directly responsible for recruitment, whether or not in the personnel department, should be informed of an applicant's criminal record.
- The successful applicant should be informed who in the organisation is told about the conviction and the reasons why the information has been disclosed to those people. If the individual's line manager was not directly involved in the recruitment process, they should only be informed of the offence if it is directly connected with the job.
- Offence information must be kept securely in lockable filing cabinets. Access to keys should be restricted to individuals responsible for recruitment and those in personnel who need access to the files.

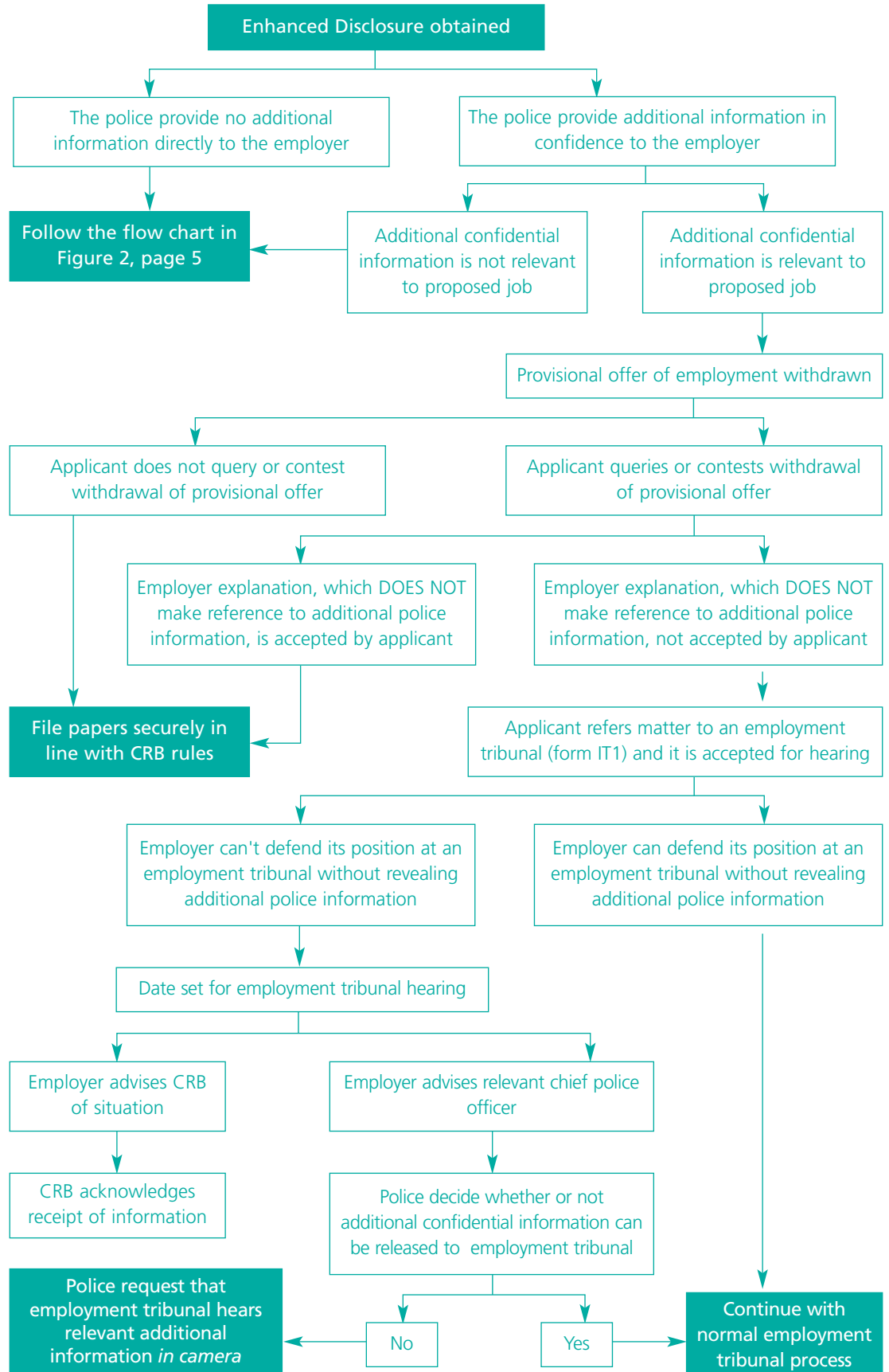
In a small number of cases, the chief police officer of the relevant police force may release additional police information in a letter, separate from the Enhanced Disclosure, to the countersignatory (employer) only and not to the applicant. The letter should be handled, stored and used in exactly the same way as any other Disclosure information and in accordance with the CRB's

code of practice (you can get this from the CRB weblink on page 16) and other guidance. The existence of the letter and the information it contains must not be revealed to the applicant or to any other person unconnected with the recruitment process.

The recruiter can then make the recruitment decision on the basis of all the information released by the CRB, including that contained in any separate letter, in accordance with good recruitment practice. If the decision is made to withdraw the provisional offer of appointment, the applicant will need to be informed of that decision. It may be that matters revealed in the Enhanced Disclosure will justify such a decision; or it may be that the information contained in the separate letter from the police provides evidence that in their view the applicant is unsuitable for the position.

In any event, the recruiter must not reveal the existence of any separate letter or its contents. It is a criminal offence to disclose information of this type without the written permission of the police. The conversation with the applicant may be difficult to conduct and recruiters may wish to take professional advice before proceeding. It might be enough for a recruiter to explain that, having taken up a number of references and made relevant enquiries, the decision has been made not to confirm the offer (see the flow chart in Figure 4).

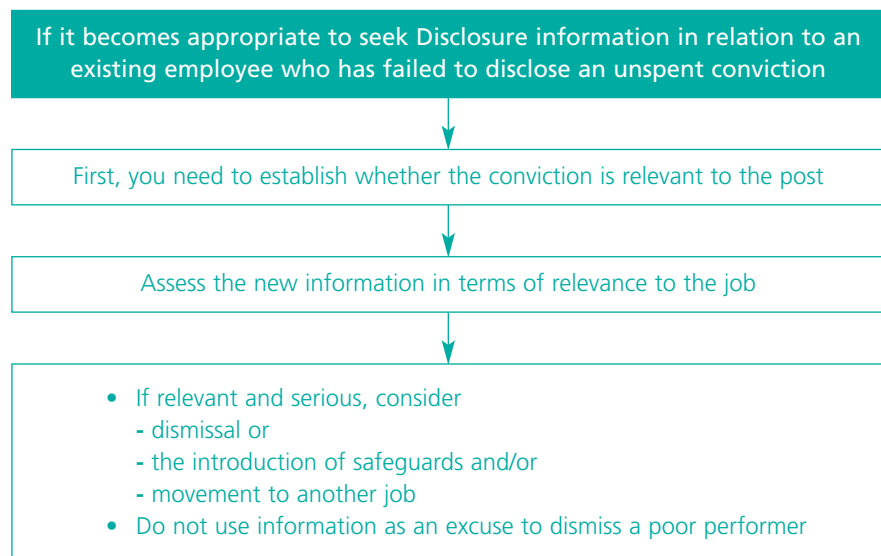
Figure 4: Dealing with additional information from the police



The introduction of the CRB has put the onus on organisations to adopt policies that ensure information on criminal records is used in a way that protects the vulnerable, is fair and improves overall recruitment and retention processes. In order for a policy on employing people with criminal records to gain widespread acceptance within an organisation, it's vital to involve managers, employees and their representatives in its development. In particular, organisations should:

- Review new posts to assess whether they involve any risk.
- Ensure staff involved in recruitment are provided with guidance on the employment of ex-offenders and the Rehabilitation of Offenders Act.
- Train staff involved in recruitment on training and employment programmes for the unemployed, including programmes intended specifically for ex-offenders.
- Consider fidelity bonding arrangements to cover 'at risk' posts.
- Provide all unsuccessful applicants with relevant feedback related to their convictions.

Figure 5: What to do if an existing employee is found to have a criminal record



Under the Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000, a number of people are banned from working with children. These are:

- people on list held under Section 142 of the Education Act 2002 (List 99)
- people on the Protection of Children Act (PoCA) list (see Useful weblinks section)
- people on the National Assembly of Wales list
- people aged 18 or over convicted of certain specified offences against those aged under 18 (or 16 in some instances) and given a hospital or guardianship order or a custodial sentence of 12 months or more. Suspended sentences of 12 months or more are treated as qualifying sentences.

Examples of offences specified in schedule Four of the Criminal Justice and Court Services Act 2000 include:

- intercourse with a girl under 16
- having indecent photographs of children
- gross indecency with a child.

See Useful weblinks for further details.

The term 'working with children' covers a number of areas. According to the Guide on the Protection of Children, broadly these are:

- **employment in certain establishments** that provide functions of various sorts exclusively or mainly for children such as schools, children's homes and children's hospitals. All staff, whether primary or secondary carers or ancillary staff are deemed to be primary carers
- **employment in daycare premises**, except where the work takes place in a different part of the premises to where daycare activities are situated, or if it occurs during times of the day when children are not being looked after
- **caring for, training, supervising or being in sole charge of children**
- **a position where normal duties involve unsupervised contact with children.**
This would cover, for example, a minicab firm whose drivers are employed to transport unaccompanied children on a regular basis, but not those who do this on an irregular or one-off basis

- **child employment.** Where the young person is under the age of 16, those responsible for caring for them in the course of their employment are covered by the definition
- **positions of influence and control over children** which could place them at risk.

Juveniles – under-18s – should only be banned if a court believes that there is a likelihood of the offender in question committing a further offence against a young person.

The 1999 Act requires childcare organisations to refer to the names of individuals considered unsuitable for work with children on the government-held lists. It also requires childcare organisations not knowingly to offer employment to anyone listed for any posts involving regular contact with children in a childcare capacity.

The Act applies to people disqualified in England and Wales only. However, such people are committing an offence if they seek similar work in Northern Ireland. Similar schemes are being considered in Scotland and Northern Ireland. Those who are subject to disqualification in Scotland and Northern Ireland will be recognised as being disqualified in England and Wales.

The Rehabilitation of Offenders Act 1974 enables criminal convictions to become 'spent', or ignored, after a 'rehabilitation period'. After this period, with certain exceptions, a person with a conviction is not normally obliged to mention it when applying for a job. The Act is more likely to help people with few and/or minor convictions because further convictions usually extend rehabilitation periods. People with many convictions, especially serious convictions, may not benefit from the Act unless the convictions are very old.

Rehabilitation periods

The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served (see table below). Custodial sentences of more than two-and-a-half years can never become spent.

Exceptions to the Act

Various kinds of employment, occupations and professions are exempted. The Exceptions Order overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Ex-offenders have to disclose information about spent, as well as unspent, convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempted. Exempted occupations fall into the following categories:

- work involving matters of national security
- work that brings the person into contact with vulnerable groups such as the infirm, elderly, mentally ill and young people under 18
- posts concerned with the administration of justice, for example, police officers, lawyers
- professions that have legal protection, for example, nurses, doctors, dentists, chemists etc
- Health Service appointments.

Sentence	Rehabilitation period for people aged under 18 when convicted	Rehabilitation period for people aged 18 or over when convicted
Prison sentences ¹ of 6 months or less	3.5 years	7 years
Prison sentences of more than 6 months to 2.5 years	5 years	10 years
Borstal (abolished in 1988)	7 years	7 years
Detention centres (abolished in 1988)	3 years	3 years
Fines, ² compensation, probation, ³ community service, ⁴ combination, ⁵ action plan, curfew, drug treatment and testing, and reparation orders	2.5 years	5 years
Absolute discharge	6 months	6 months

¹ Including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution (abolished for those under 18 in 2000 and for those aged 18–20 in 2001).

² Even if subsequently imprisoned for fine default.

³ For people convicted on or after 3 February 1995. These orders are now called community rehabilitation orders.

⁴ These orders are now called community punishment orders.

⁵ These orders are now called community punishment and rehabilitation orders.

Advisory, Conciliation and Arbitration Service

Head Office
Brandon House
180 Borough High Street
London SE1 1LW
Tel: 020 7210 3613
Website: www.acas.org.uk
(see telephone directory for address of your local ACAS office)

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CIPD House
Camp Road
London SW19 4UX
Tel: 020 8971 9000
Website: www.cipd.co.uk

Criminal Records Bureau

PO Box 110
Liverpool L69 3EF
Tel: 0870 90 90 811
Website: www.crb.gov.uk
Disclosure information website:
www.disclosure.gov.uk
Code of Practice for Registered Bodies, CRB

Department for Education and Skills – Adult Disadvantage Policy Division

8th Floor, Moorfoot
Sheffield S1 4PQ
Tel: 0114 259 4806
Website: www.dfes.gov.uk

Specialist voluntary organisations

Apex Trust

St Alphage House
Wingate Annexe
2 Fore Street
London EC2Y 5DA
Tel: 020 7683 5931
Website: www.apextrust.com
Fidelity Bond Insurance, Apex Trust

Clinks (umbrella body supporting organisations that work with ex-offenders and their families)

15 Priory Street
York YO1 6ET
Tel: 01904 673970
Website: www.clinks.org

Department of Health

Richmond House
79 Whitehall
London SW1A 2NL
Tel: 020 7210 4850
Website: www.doh.gov.uk
The Protection of Children Act 1999: A practical guide for all organisations working with children, Department of Health

Employment Service

236 Grays Inn Road
London WC1X
Tel: 020 7211 3000
Website: www.employmentservice.gov.uk
Just for the Record, Employment Service

Home Office

50 Queen Anne's Gate
London SW1 9AT
Tel: 020 7273 4000
Website: www.homeoffice.gov.uk
Wiping the Slate Clean, Home Office
Safe from Harm: Safeguarding the welfare of children in voluntary organisations in England and Wales, Home Office
Criminal Justice and Court Services Act 2000: Protection of children guidance, Home Office

Trade Union Congress

Congress House
Great Russell Street
London WC1B 3LS
Tel: 020 7636 4030
Website: www.tuc.org.uk

Nacro

169 Clapham Road
London SW9 0PU
Tel: 020 7582 6500
Website: www.nacro.org.uk
Employing Offenders: Advice to employers, Nacro
Recruiting Safely, Nacro/CJNTO

Society of Voluntary Associates (Sova)

350 Kennington Road
London SE11 4LH
Tel: 020 7793 0404
Website: www.sova.org.uk

Cautions

Given when there is sufficient evidence for a conviction but it is not considered to be in the public interest to institute criminal proceedings. Cautions have traditionally been used most for juvenile and first-time offenders.

Code of practice

Code published by the CRB that sets out the requirements with which organisations using Disclosure information must comply.

Conviction(s)

Arise from offences tried at court.

Criminal records

Contain details of convictions, as well as cautions, reprimands, final warnings, etc.

Fidelity bonding

A form of insurance that organisations can buy to protect themselves against loss of money or property caused through the dishonest acts of employees. Also known as fidelity guarantee insurance.

Police National Computer

The central police database against which all checks will be made.

Registered body

An employer or other agency registered with the CRB to administer Standard and Enhanced Disclosures.

Schedule Four offence

Under the Criminal Justice and Court Services Act 2000, adults convicted of a Schedule Four offence and given a hospital or guardianship order or a custodial sentence of 12 months or more are banned from working with children.

APEX TRUST. (1991) *The hidden workforce: employing ex-offenders – recruitment policy and practice, a national survey*. London: Apex Trust.

ASSOCIATION OF CHIEF OFFICERS OF PROBATION (ACOP). (1998) *Offender employment statistics summary*. London: ACOP.

BETTER REGULATION TASK FORCE. (1999) *A view of the criteria used to judge people's suitability for certain occupations*. London: Central Office of Information.

FLETCHER, D., TAYLOR, A., HUGHES, S., (2001) *Recruiting and employing offenders*. York: York Publishing Services Ltd. Joseph Rowntree Foundation.

GARDINER COMMITTEE. (1972) *Living it down: the problem of old convictions*. London: Justice.

HOME OFFICE. (1987) *Criminal careers of those born in 1953: persistent offenders*. Statistical Bulletin. London: Home Office.

HOME OFFICE. (1999) *Prison statistics England and Wales*. London: HMSO.

HOME OFFICE, Criminal Records Bureau. (2001) *Code of practice for registered bodies*. London: Home Office.

NACRO. (2001) *Recruiting safely*. London: Nacro.

Rehabilitation of Offenders Act 1974

www.homeoffice.gov.uk/justice/sentencing/rehabilitation/obtain.html

CRB

Code of practice

www.disclosure.gov.uk/index.asp?fuseaction=codeprac

CRB

How to handle approved and additional information guidance

www.disclosure.gov.uk/index_reg.asp?fuseaction=alreadyreg_using_9

Police Act 1997

www.hms0.gov.uk/acts/acts1997/1997050.htm

CIPD

A selection of material on ex-offenders (survey, guide and tool)

www.cipd.co.uk/subjects/dvsequ/

Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000

It is an offence for any organisation to offer employment involving regular contact with young people under the age of 18 to anyone who has been convicted of certain specified offences, or included on lists of people considered unsuitable for such work held by the Department for Education and Skills and the Department of Health. It is also an offence for people convicted of such offences to apply for work with young people. Schedule four of the Criminal Justice and Court Services Act lists the offences that would automatically ban the offender from working with children. These include various kinds of violence and sexual offences.

www.hms0.gov.uk/acts/acts1999/90014--a.htm#1

www.hms0.gov.uk/acts/acts2000/00043--r.htm#sch4

Care Standards Act 2000

This has two main aims: improving the quality of care services and protecting vulnerable people who use these services. The main provisions of the Act are the proper regulation of the full range of social care and private and voluntary health care through the National Care Standards Commission and the regulation of the social care workforce through the General Social Care Council. In Wales, the Care Council for Wales and the Care Standards Inspectorate for Wales and the Children's Commission for Wales play the same role respectively. The Act also seeks to improve the protection of service users by creating a list of people unsuitable to work with vulnerable adults, similar to the existing provision for children.

www.legislation.hms0.gov.uk/acts/acts2000/20000014.htm

Data Protection Act 1998

In the UK, the Data Protection Act 1998 covers personal information, in manual or computerised form, that is readily accessible. The law, which sets out eight principles that those in control of data must follow, has been brought into force in stages and will not come fully into effect until 24 October 2007. So far, the Information Commissioner has issued a number of codes on recruitment, managing absence, employee monitoring and medical testing.

www.hms0.gov.uk/acts/acts1998/19980029.htm

Human Rights Act 1998

Under the Human Rights Act 1998 anyone who believes their rights as set out in the European Convention on Human Rights have been violated by a public authority is able to raise their complaint before a UK court. Organisations that are public authorities should therefore be aware of the possibility of legal challenge from ex-offenders who believe their rights have been violated under Article 14 of the Act, which guarantees freedom from discrimination. Equally, public organisations should be aware that victims of physical abuse caused by employees known to have a criminal record might also seek legal challenge on the grounds that the organisation failed to protect them sufficiently.

www.hms0.gov.uk/acts/acts1998/19980042.htm

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