

Employment of Offenders Policy

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1 Policy Information

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2 Policy Statement

This policy outlines South Liverpool Homes (SLH) approach towards criminal background checks and employing people who have criminal convictions. We are committed to treating all job applicants who have a criminal record fairly and not discriminating unfairly against candidates with either a spent or an unspent conviction, whilst also safeguarding the organisation, customers, colleagues, and service users.

We are committed to complying with the Rehabilitation of Offenders Act 1974 and undertake to comply fully with the DBS Code of Practice in treating all applicants for positions fairly and not discriminating against them unfairly based on a conviction or other information revealed. Criminal records will be taken into account for recruitment purposes only when a conviction is relevant to the applicant's suitability for the role they have applied for.

This policy covers all colleagues employed by SLH at all levels. It does not form part of any colleagues' contract of employment, and may be amended at any time.

3 Policy Aims

The aims of this policy are to:

- ensure that colleagues and job applicants with criminal convictions are treated fairly and not unfairly disadvantaged
- establish robust guidelines to ensure the safety of colleagues, customers and partners whilst also supporting those with convictions to secure employment
- ensure that all roles within SLH are subject to the relevant and appropriate level of disclosure check in compliance with the DBS Code of Practice.

4 Rehabilitation Of Offenders Policy

The Rehabilitation of Offenders Act 1974 (ROA) was designed to support individuals in gaining employment where they have committed a criminal offence in their past, provided that they have not subsequently re-offended. Under the Act, a conviction becomes "spent" after the elapse of a defined period of time with the result that the individual becomes "rehabilitated". Job applicants are therefore entitled to withhold details relating to spent convictions from a prospective employer. A refusal to employ a rehabilitated person on the grounds of a spent conviction is unlawful. All cautions and convictions may eventually become spent, with the exception of prison sentences over 30 months or detention sentences for young offenders of over four years, and all public protection sentences regardless of length.

There is also a list of exempt jobs and professions, where the fact that a conviction is spent does not entitle the individual to withhold it from a prospective employer. Where a job is exempt, we may lawfully decide to reject the individual for employment on the grounds of a conviction, whether spent or unspent. We will make clear on job adverts and subsequent recruitment information if a job is exempt from the Act.

4.1 Data Protection

Under the General Data Protection Regulations (GDPR), information about an individual's actual or alleged criminal offences is regarded as "sensitive data". This means that any recorded data about the individual's criminal offences must be held on file only if the individual has expressly consented, or if one of a restricted number of conditions is fulfilled such as where it is necessary for the purpose of legal proceedings. Another condition is where the data is necessary in order that we can comply with a legal obligation in connection with employment. It is an offence under this law for anyone who has access to criminal records to disclose information about spent convictions unless officially authorised. It is also a serious offence to obtain information about spent convictions by means of fraud, dishonesty or bribery.

Disclosures should not be retained for longer than is necessary for the purpose they were obtained. Disclosures will be destroyed effectively, no later than the period specified in the DBS 'Code of Practice.' In general, this will be no longer than six months after the date the recruitment decision was made. No photocopies of disclosures will be retained. The name of the individual, the date, type and reference number of the Disclosure and the position applied for will be kept as a HR record of the recruitment decision taken and will be kept as confidential, secure information accessible only by the HR team.

4.2 What is a Criminal Record?

A criminal record only arises from a conviction. However, the Rehabilitation of Offenders Act 1974 also covers simple and conditional cautions, which become spent immediately and after three months respectively.

Cautions (for adults) are based on the seriousness of offences. A caution is a warning about future conduct given by a senior police officer, usually in a police station, after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution.

Conditional cautions are a statutory disposal introduced for adults by the Criminal Justice Act 2003 and for youths by the Crime and Disorder Act 1998 operated under Statutory Codes of Practice. A conditional caution differs from a simple caution as there are certain conditions that must be complied with in order to avoid prosecution for the offence committed.

4.3 Jobs covered by the Rehabilitation of Offenders Act 1974

A refusal to employ a rehabilitated person on the grounds of a spent conviction is unlawful. We will not automatically refuse to employ an individual just because they have a previous criminal conviction.

Should an individual secure employment having failed to disclose information relating to unspent convictions when requested, they may be subject to disciplinary action under the Disciplinary Policy.

4.4 Jobs that are Exempt from the Rehabilitation of Offenders Act 1974

In certain circumstances, you are obliged to disclose spent convictions as well as unspent convictions. These circumstances are contained in the Rehabilitation Offenders Act 1974 (Exceptions Order) 1975.

We currently do not have any roles exempt from the Rehabilitation of Offenders

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Act. However, if a job we are recruiting to was one of the excluded jobs listed in the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975 we would request applicants to disclose all convictions, whether spent (and unprotected) or unspent. Even in these circumstances, however, we would still consider whether the nature of the conviction had some relevance to their suitability for the job for which the individual had applied.

If the job is exempt, at the time of offering the post, we will seek documentary evidence about that person's criminal convictions and the applicant's agreement to make an application to DBS for a standard or enhanced disclosure (as appropriate).

Should an individual secure employment having failed to disclose spent or unspent convictions for a role covered by the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, disciplinary action may be taken under the Disciplinary Policy.

4.5 Types of Checks and Eligibility

There are three levels of Disclosure appropriate to different types of work. Standard and Enhanced Disclosures can only be obtained for posts considered to be exempted from the Rehabilitation of Offenders Act as set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order. These provide information on 'spent' as well as 'unspent' convictions, as well as details of cautions, reprimands or final warnings.

Information Searched	Types of DBS Checks			
	Basic	Standard	Enhanced	Enhanced + Barring
Unspent convictions	Yes	Yes	Yes	Yes
Spent convictions	No	Yes	Yes	Yes
Cautions, Warnings, Reprimands	No	Yes	Yes	Yes
Other relevant police info.	No	No	Yes	Yes
Children's or Adult's barred list	No	No	No	Yes

- **Basic check**

Is the lowest level of disclosure and provides information from the Police National Computer for details of all current criminal convictions (convictions considered unspent under the Rehabilitation of Offenders Act 1974). It discloses all such convictions, or states that there are none. There are no eligibility requirements for a Basic Check, meaning anyone can obtain one regardless of their role (as long as they work in England or Wales).

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- **Standard checks**

To be eligible for a standard level DBS check the position must be included in the ROA Exceptions Order.

A standard DBS check discloses information including any convictions considered to be spent or unspent under the ROA.

- **Enhanced checks**

To be eligible for an enhanced level DBS check, the position must be included in both the ROA Exceptions Order and in the Police Act 1997 (Criminal Records) Regulations (Criminal Records Regulations).

An enhanced DBS check is the highest level of criminal record check available and will detail both spent and unspent convictions, as well as any cautions, warnings or reprimands the applicant may have received plus any additional information the police 'reasonably believe to be relevant' to the role. If the applicant is engaging in regulated activity, they will also be eligible for barred list checks as required.

- **Enhanced checks with children's and/or adults' barred list check(s)**

There are two barred lists which contain information of people barred from working with children and vulnerable adults respectively. To be eligible to request a check of the barred lists, the position must be eligible for an enhanced level DBS certificate and be specifically listed in the Criminal Records Regulations as being eligible to check the appropriate barred list(s) Adult/Child.

We will only request that a colleague, or prospective colleague, makes an application for a standard/enhanced DBS check where we are legally entitled to do so. This is a requirement of the Rehabilitation of Offenders Act. All existing and new posts will be objectively assessed [using the disclosure & barring online eligibility tool](#) and if it is considered that a post requires a Disclosure, conviction information should be verified via the Disclosure Service, offered by the Disclosure and Barring Service (DBS). This should be undertaken through an appropriate 'umbrella' body, which will be directly registered with the DBS.

Regulated activity covers various types of activities which, by their nature, would entitle an individual to an enhanced DBS check with applicable barred lists.

The full definition of regulated activity with regards to children is detailed at Appendix B and the full definition of regulated activity with regards to adults is detailed at Appendix C.

4.6 Considering the Relevance of a Criminal Record

If an applicant has a conviction that is not spent and if the nature of the offence is relevant to their suitability for the job for which they have applied, we will review the individual circumstances of the case following a discussion with the applicant and may at our discretion, decline to select them for employment. The suitability of a person with a criminal record will vary depending on the nature of the role and the circumstances of the conviction. An assessment of the applicant's skills, experience and the nature of the convictions should be weighed against the potential risks associated with the job.

Minor offences of a non-safeguarding nature committed a long time ago will be considered to have little or no bearing on whether the individual is suitable to work with children or vulnerable adults. However, it is not possible to give firm rules on which offences will result in offers of employment being withdrawn.

This is a matter for professional judgement and each case will be considered on its own merits. More serious offences committed recently may give rise to a reasonable belief that the individual is a potential risk to children or vulnerable adults. Where there is any doubt, or where it appears as though the offences committed are such that the individual is a potential risk, the matter will be referred to the Executive Management Team for a final decision.

If the disclosure shows evidence that the individual is potentially a risk to children or vulnerable adults, we reserve the right to withdraw any offer of employment. Decisions will be made in the light of the seriousness and date of any offence. When a decision is made not to appoint an individual after criminal offences have been considered, then we will, on request, inform the individual why they were considered to be pertinent.

4.7 Managing Risk and Providing Safeguards

If an applicant is appointed with a conviction, the risks identified will have control measures placed against them so that we can effectively manage the applicant's transition into SLH.

4.8 Existing Colleagues

Should a colleague be convicted of an offence whilst in employment with SLH, they have an obligation to inform their line manager/director and Human Resources (HR) immediately and provide any relevant documentation.

Depending on their role and the nature and seriousness of the adversity, consideration may be given to moving the colleague to a more appropriate role. If this is not possible or practical, consideration must be given to suspending the colleague on full pay pending the outcome of a disciplinary investigation.

4.9 New Colleagues

All applicants are asked to declare if they have been convicted of a criminal offence, which under the provision of the Rehabilitation of Offenders Act 1974 is **not** spent. This information is held securely by HR and not shared with the recruiting panel. Candidates shortlisted for interview who have declared

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unspent convictions will be asked to complete a 'Unspent criminal record declaration form' detailing all **unspent** convictions. Applicants are not required to disclose convictions that are 'spent' under the Act. (Cautions, reprimands, and final warnings are regarded as spent as soon as they are issued). Information on an applicant's criminal record will be considered by the hiring manager/director.

Any advertisement for a role that will require any level of DBS check will contain a statement confirming the level of check that will be required. The successful candidate will be informed that their offer of employment is conditional upon satisfactory completion of pre-employment checks which will include a DBS check. Every effort will be made to ensure that new starters undertaking regulated activity commence employment after all pre-employment checks have been carried out, including, where appropriate, the disclosure check. If it has not been possible to obtain a disclosure before the individual is scheduled to commence employment, the relevant director has discretion (although it will not be appropriate in all cases) to allow an individual to begin work pending receipt of the check subject to a risk assessment being completed as set out in the Employment Of Offenders Procedure.

However, in making a decision, the director can only allow the new colleague to commence work in the event that the individual is appropriately supervised, any other appropriate safeguards are put in place **and** that all the other pre-employment checks have been completed.

4.10 Existing Colleagues

Existing colleagues whose role is subject to a disclosure check will be re-checked every three years.

If it has not been possible to obtain a satisfactory disclosure before the individual is scheduled to commence or continue employment the relevant director has discretion to allow an individual to begin (or continue) with their duties pending receipt, subject to a risk assessment being completed as set out in the Employment of Offenders Procedure.

Colleagues are required to bring to the attention of their director any indiscretion or conviction that would subsequently lead to an unsatisfactory result at their next disclosure. A failure to do so will be considered a disciplinary matter and dealt with in accordance with the Disciplinary Policy

4.11 What is Appropriate Supervision?

Appropriate supervision for individuals who commence employment prior to receiving the results of a DBS disclosure should reflect what is known about the person concerned, their experience, the nature of their duties and the level of responsibility they will hold. For those with limited experience and where references have provided limited information, the level of supervision required may be high.

For those with more experience and where the references are detailed and provide strong evidence of good conduct in previous relevant positions, a lower level of supervision may be appropriate. The nature of the supervision will be specified and the roles of colleagues in undertaking the supervision clearly

identified. The arrangements must be reviewed regularly by the appropriate line manager.

4.12 Agency Workers

The agency is legally the employer of any agency workers and the responsibility to obtain a relevant DBS check or an enhanced check for regulated activity is theirs. This check can then be used within any organisation that the agency provides workers to work within.

When using an agency worker, HR should ask to see written confirmation from the agency or a copy of the DBS check (this should be no more than three years old), to ensure that each worker supplied has had a satisfactory DBS check and checks against the children's and/or adult's barred list (as appropriate).

4.13 Contractors

The responsibility to obtain a relevant DBS check lies with the organisation providing the contractor. This check can then be used within any organisation that a contractor is provided to. If contractors are procured, we will ensure that all safeguarding requirements are included within the procurement documentation. An audit of the contractor's organisation will be undertaken on an annual basis to ensure compliance with these requirements.

4.14 Volunteers

A volunteer is described as a person who performs an activity which involves spending time unpaid (except for travelling and approved out of pocket expenses) doing something which aims to benefit someone (individuals or groups), other than or in addition to close relatives.

Volunteers who assist us on a regular basis in a role which meets the parameters for requiring a DBS check are required to undertake a DBS check.

5 Equality Analysis

We understand how valuing diversity can improve our ability to deliver better services. This policy has been subject to an equality analysis with solutions to any barriers identified built into the policy.

6 Policy Assessment

This is based on statutory requirement and stakeholder expectations rather than customer involvement. A full policy assessment was completed in reviewing this policy.

7 Colleague Influence

This policy reflects the requirements of the statutory and legislative framework summarised in section 10 below.

8 Complaints

Any complaints arising through the application of this policy at the recruitment stage should be raised with Human Resources. Any complaints arising through the application of this policy following recruitment will be dealt with under the Grievance Policy and Procedure.

9 Data Protection

We will comply fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of disclosures and disclosure information and with our obligations under relevant data protection legislation pertaining to the safe handling, use, storage, retention, and disposal of disclosure information.

Personal data and information must be held securely and only seen by those entitled to see it in the course of their duties. Any information including the results of a risk assessment (if applicable) will only be stored for as long as necessary and then confidentially destroyed. All such information will be

processed and held in accordance with the General Data Protection Regulations 2018, Data Protection Policy, and the DBS Code of Practice.

10 Associated Policies

- Safeguarding Children Policy
- Customer Feedback Policy
- Safeguarding Adults Policy
- Speak Up Policy
- Disciplinary Policy
- Grievance Policy
- Information Security Policy
- Data Protection Policy
- Equality, Diversity and Inclusion Policy

11 Statutory and Legislative Framework

This policy takes account of the following legislation:

- The Protection of Freedoms Act 2012
- The Safeguarding Vulnerable Groups Act 2006
- The Police Act 1997
- The Police Act 1997 (Criminal Records) Regulations
- The Protection of Children Act 1999
- The Criminal Justice and Court Services Act (Part II) 2000
- The Mental Health Act 1983
- The Human Rights Act 1998
- Rehabilitation of Offenders Act 1974
- Rehabilitation of Offenders Act (1974) (Exemptions Order) 1975
- General Data Protection Regulations 2018
- Disclosure and Barring Service Code of Practice

Appendix A – Current Job Roles and DBS Status

The following job roles have been identified by South Liverpool Homes as requiring a **basic DBS check**:

Basic
• Scheme Manager

Colleagues being recruited to the above role will be required to apply for the relevant certificate every three years.

There are presently no roles requiring an standard/enhanced check.

Appendix B – Regulated Activity relating to Children (as set out in Part 1 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006)

General exceptions:

Regulated activity relating to children does not include:

- Family arrangements and personal, non-commercial arrangements.
- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children.

Frequency

An activity is a regulated activity relating to children if it is carried out frequently by the same person or the 'period' condition is satisfied.

An activity is carried out frequently if it is carried out once a week or more, on an ongoing basis. The period condition is satisfied if the person carrying out the activity does so at any time on more than three days in any period of 30 days.

In relation to the provision of teaching, training or instruction, care or supervision, or advice or guidance, the period condition is satisfied if the person carrying out the activity does so at any time between 2 am and 6 am; and the activity gives the person the opportunity to have face-to-face contact with children.

Regulated activity relating to children does include:

1. Teaching, training or instruction of children:

Any form of teaching, training or instruction of children is regulated activity relating to children, unless it is

- a. Supervised – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity;
- b. Activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- c. Activity merely incidental to activity with adults

Day-to-day supervision is that which is reasonable in all the circumstances for the purpose of protecting any children concerned;

2. Care or supervision of children

(except that covered by points 6 or 7): Any form of care provided for, or supervision of, children except where it is:

- a. Supervised – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity. Day-to-day supervision is that which is reasonable in all the circumstances for the purpose of protecting any children

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concerned. This exception does not apply to providing relevant personal care or health care by or under a professional

- b. Health care provided otherwise than by or under the direction or supervision of a health care professional;
- c. Activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- d. Activity merely incidental to activity with adults.

3. Advice or guidance:

Any form of advice or guidance provided wholly or mainly for children which relates to their physical, emotional or educational well-being is regulated activity relating to children, with the exception of:

- a. Legal advice; and
- b. Activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose.

4. Moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children

A person moderates a public electronic interactive communication service if, for the purpose of protecting children, they have any function relating to either monitoring the content of matter which forms any part of the service, or removing matter from, preventing the addition of matter to, or controlling access to, or use of, the service in circumstances where the person has access to the content of the matter and contact with users of the service.

5. Driving a vehicle being used only for conveying children and their carers/supervisors

- a. Carried out by the same person frequently (once a week or more) **or** on 4 or more days in a 30-day period; and
- b. Done under an agreement, either with the driver or with a person with whom the driver works, for gain or not.

6. Relevant personal care

Either:

- i. Physical help with eating or drinking necessary due to illness or disability;
- ii. . Physical help with toileting, washing, bathing or dressing necessary due to age, illness or disability;
- iii. Prompting, with supervision, in relation to i or ii where the child is otherwise unable to decide; or
- iv. . Any form of training, instruction, advice or guidance given to the child in relation to i or ii.

This does not include:

- a. Activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- b. Activity merely incidental to activity with adults.

7. Health care

Provided for children by, or under the direction or supervision of, a health care professional except

- a. Activity relating to a child, aged 16 or over, in the course of his employment, not by a person for whom arrangements exist principally for that purpose; and
- b. Activity merely incidental to activity with adults.

8. Childminding

- a. On domestic premises, for reward; and
- b. With a requirement to register, or voluntary registration, under the Childcare Act 2006.

9. Fostering a child except care arranged by family members, not for reward; and Local Authority fostering a child with a barred person who is, or lives with, a relative of the child.

10. Day-to-day management or supervision on a regular basis of a person providing regulated activity as described by points 1-7 and 11 (or in relation to points 1, 2 and 11, activity which would be regulated activity if it was unsupervised).

11. Activity carried out at certain establishments:

- a. Carried out by a person while engaging in any work;
- b. Carried out by the same person frequently or if the period condition is satisfied;
 - 1. Carried out for in connection with the purposes of the establishment;
 - 2. Gives the person the opportunity, in carrying out their work, to have contact with children;

Except:

- a. Activity by a person contracted or volunteering to provide temporary or occasional services (and not mentioned in points 1-7 above);
- b Supervised volunteering – i.e. under reasonable day-to-day supervision by another person engaging in regulated activity; and

The activity must be carried out at one of the following establishments:

- i. A school.
- ii. A pupil referral unit;
- iii. Nursery school;

- i. An institution for the detention of children.
- ii. A children's home.
- iii. A children's centre.
- iv. An alternative provision academy; or
- v. Any childcare premises, including nurseries (but not including the home of a parent of at least one child to whom the childcare is provided).

Appendix C – Regulated Activity relating to Adults (as set out in Part 2 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006)

General exception:

Regulated activity relating to adults does not include:

Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity relating to adults.

Regulated activity relating to adults includes:

1 Health care

For the purpose of the provision of Health Care - health care includes all forms of health care provided whether relating to physical or mental health and also includes palliative care and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

Health Care is provided for adults by, or under the direction or supervision of, a health care professional.

Health care includes all forms of health care provided for individuals, whether relating to physical or mental health and also includes palliative care and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition. It also includes first aid provided by a person acting on behalf of an organisation established for the purpose of providing first aid.

2 Relevant personal care:

Either:

- i. Physical help with eating, drinking, toileting, washing, bathing, dressing, oral care or care of skin, hair or nails, necessary due to age, illness or disability;
- ii. . Prompting, with supervision, in relation to i where the person is otherwise unable to decide; or
- iii. Any form of training, instruction, advice or guidance given to the person in relation to i.

3 Relevant social work:

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Relevant social work is social work required in connection with any health, education or social services provided by any social care worker. to an adult who is a client or potential client.

4 Day to day assistance in relation to general household matters:

Either:

- i. Managing the person's cash.
- ii. . Paying the person's bills; or
- iii. Shopping, which is necessary by reason of age, illness or disability.

5 Relevant assistances in the conduct of an adult's own affairs:

Anything done on behalf of a person by virtue of:

- i. A lasting power of attorney.
- ii. . An enduring power of attorney.
- iii. court order appointing a deputy or making decisions on the person's behalf.
- iv. The appointment of an independent mental health/capacity advocate.
- v. The provision of independent advocacy services; or
- vi. The appointment of an appointee to receive the person's benefits payments.

6 Conveying:

Necessary by reason of age, illness or disability in order to transport to, from or between places where the person receives health care, personal care or social work.

Except transportation by family, friends or taxi drivers.

7 Certain inspection functions

The following inspection functions relating to vulnerable adults:

- i. Inspection of social services, care, treatment, or therapy provided for vulnerable adults by certain agencies.
- ii. The inspection functions of the Welsh Ministers which, in consequence of anything the person is permitted or required to do, gives them the opportunity to have contact with vulnerable adults.
- iii. The exercise of the functions of the Commissioner for older people in Wales and those of the Deputy Commissioner for older people in Wales

8 Day-to-day management or supervision on a regular basis of a person carrying out regulated activity as described by points 1-6.

Note: There is *no* requirement for the above activities to be done a certain number of times before they become regulated activity.