

## Safer recruitment

### Gathering and assessing criminal record information for UK and non-UK nationals, including displaced people

Social care employers must do all they can to ensure that staff they appoint are suitable to work with adults who draw on care services and the Care Quality Commission (CQC) expects registered providers to apply the same recruitment processes for staff recruited from abroad as for UK-based staff.

Criminal record checks form just one part of a robust safe recruitment exercise supporting employers make safer recruitment decisions but overseas criminal record checks can prove challenging to obtain, particularly when a person has been displaced from their home country and is seeking asylum, refugee status or humanitarian protection.

The following recommendations explain actions you can take as an employer to gather and assess criminal record information for all applicants, including displaced people. By using the suggested templates and checklists, you can demonstrate you are applying a consistent approach before deciding whether to make an offer of employment.

Where providers have not been able to gain appropriate evidence of conduct, they must demonstrate that every attempt was made. Failure to demonstrate this is likely to result in a breach of regulation which could affect the rating under Safe, Effective and/or Well-led. [Find out more on the CQC website.](#)

#### **Recommendation 1: Ensure applicants complete a criminal record self-declaration at the appropriate stage in the recruitment process**

1. Applicants are required by law to disclose all unspent conditional cautions or convictions when applying for roles in the social care sector in England and Wales, regardless of whether they're convicted in the UK or abroad.
2. Ask all applicants shortlisted for interview to complete a criminal record self-declaration appropriate for the role applied for. This information should be obtained separately and confidentially in the form of a self-declaration or disclosure statement, not as part of the initial application form.

- a. For roles covered by the Rehabilitation of Offenders Act 1974 (ROA),** (e.g. roles which typically don't involve delivering care and may have only incidental contact with people who draw on services, such as catering, facilities, administration and other ancillary roles), use the sample [criminal record self-declaration form for roles covered by the ROA](#)
  - b. For roles exempt from the ROA,** (e.g. paid or voluntary work which involves close and unsupervised activity with people who draw on services), use the sample [criminal record self-declaration form for roles exempt from the ROA](#)
- 3. Support applicants on what and how to disclose by signposting them to the following specialist organisations:**
  - a.** Nacro <https://www.nacro.org.uk/> and/or share [Nacro's practical guidance on disclosing criminal records](#)
  - b.** Unlock <https://unlock.org.uk/>

The Safe and fair recruitment guide contains more details about the Rehabilitation of Offenders Act 1974 (ROA) (Pages 4 - 5). Or contact DBS, Nacro or Recruit for advice if you are uncertain whether the role is covered by the ROA or exempt.

## **Recommendation 2: Carry out a Disclosure & Barring Service (DBS) criminal record check at the correct level for the job role**

- 1. Comply with Regulation 19 requirements by carrying out the appropriate level of DBS criminal record check after a conditional job offer has been made, including for non-UK nationals.**
  - a.** Whilst the DBS cannot access criminal records held overseas, it is still recommended that employers undertake DBS checks in case a person is barred, has a criminal record in the UK or comes from a country where the DBS does have information sharing arrangements.
  - b.** A criminal record check will help you verify any information the applicant has revealed under self-disclosure.

The [Safe and fair recruitment guide](#) contains further information regarding the [main types of criminal record checks available and the differences between each level of DBS check](#) (Pages 12 – 13).

**Recommendation 3: Where possible, go beyond compliance. Carry out overseas criminal records checks for overseas applicants and UK national applicants who have spent six months or more overseas within the last five years.**

1. Don't assume it won't be possible to obtain details of overseas criminal records information. Visit the [Home Office website](#) to find out whether the country has a functioning criminal record checks process or reciprocal arrangements to share information about a person's criminal record history.
2. If the country **has a functioning process** for providing criminal record information:
  - a. Ask the applicant if they consent to an overseas criminal record check being obtained. Even if a functioning process is in place, applying to the government could put some displaced individuals or their families at risk of harm and it would therefore be unreasonable to expect these groups to obtain checks.
  - b. Be aware that the application process varies from country to country. For example, not all countries allow prospective UK employers to apply for criminal records information. You may need to ask applicants to apply for criminal record checks in the countries where they've been living or visiting.
  - c. Where applicants successfully obtain criminal records information, make it clear they will need to present any original documentation received, such as Overseas Police Certificates and Certificates of Good Character, for employment checking purposes.
  - d. Check all documentation of criminal records information in the same way as all other documentary evidence to verify that it's genuine and relates to the individual who has applied for the role.
3. **In the absence of a functioning process** for providing criminal record information:
  - a. Ask individuals to contact the Embassy or High Commission in the relevant country for advice on what to do. Contact details can be found on [Gov.uk](#).
  - b. Ask applicants to show any attempt made to seek overseas criminal records information and reasons given as to why one could not be obtained – accurately record details of efforts made.

## **Recommendation 4: Carry out all other pre-employment checks and complete a fair pre-employment risk assessment as appropriate.**

1. If a shortlisted applicant has disclosed a criminal record that has given you concerns regarding their suitability for the role, before making a final decision, conduct a risk assessment and meet with the applicant to allow them to respond to any concerns.
  - a. It's your duty as the employer to ensure you've assessed and managed any risks identified during a recruitment process and put in place any adequate safeguards deemed necessary to protect people who draw on services, regardless of whether or not the person has a criminal record.
  - b. The [Pre-employment checks & criminal record risk assessment](#) template is a criminal record risk assessment form which can be adapted to your needs.
  - c. Having a criminal record in itself doesn't mean the person will present a risk to people who draw on services and the absence of a criminal record doesn't mean a person doesn't present a risk.

## **Recommendation 5: Make a final decision based on all information gathered within the recruitment process**

1. The recruitment decision should be based on relevant evidence gathered throughout the recruitment process together with your own judgement as to the suitability of the applicant and their fitness to carry out the role.
2. Accurately record reasons for the recruitment decision. You should be able to show you've applied a reasonable and fair consideration of the applicant's criminal record rather than judging them as unsuitable just because they have a criminal record.
3. Where it is genuinely not possible to obtain overseas criminal record information, accurately record details of efforts made to:
  - i. obtain criminal records information, and
  - ii. gather all available information to confirm that the person is of good character.

For further information and templates to support you recruit safely and fairly, including checklists covering the whole recruitment process, data protection and record-keeping, please see our [Safe and fair recruitment guide](#).

Other useful links:

[CQC guide: DBS checks](#)

[Regulation 19: Fit and proper persons employed](#)