

## Briefing Note: Criminal Record Information

### An Introduction to the Guide

This Briefing Note sets out the issues a business should consider when dealing with information about a criminal record. Businesses are entitled to ask a job applicant, employee, worker or volunteer about their criminal record.

This Briefing Note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

### Rehabilitation of offenders

Subject to certain exceptions, individuals who have been convicted of a criminal offence, but who have not re-offended during a specified period from the date of conviction, are considered to be rehabilitated and their convictions become 'spent'.

### Exceptions: when spent convictions must be disclosed

In certain cases, there is an exception to the rehabilitation principle. For example, there are at least 70 excepted occupations, offices and professions, for which applicants must disclose spent convictions, including:

- Professions (such as accountants, chemists and opticians).
- Those whose work means they could pose a risk to national security (for example, air traffic controllers).
- Regulated occupations (for example, taxi drivers and firearms dealers).

### How much weight should be attached to a criminal record?

The weight that a business should attach to an individual's criminal record history will depend on the circumstances. For example:

- Legislation may exist which makes it compulsory for a business to check a person's criminal record history. In these cases, a business will have no discretion about whether to obtain and take the information into account.
- Businesses should check whether any industry guidance or practice exists for the sector they operate in.
- Nacro, the crime prevention charity, recommends that businesses take the following factors into account:
  - Whether the conviction is relevant to the position in question.
  - The seriousness of the offence.
  - The length of time since the offence was committed.
  - Whether there is a pattern of offending.
  - Whether the applicant's circumstances have changed since the offending behaviour.

#### Briefing Note

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#### Summary:

An overview of the issues businesses should consider when dealing with information about a criminal record.

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- The circumstances surrounding the offence and the explanation offered by the individual involved.
- Nacro also recommends that businesses do not have a blanket ban on employing ex-offenders but instead carry out a risk assessment that is relevant to the sector, position and situation involved.

### Refusing to employ someone if they have a criminal record

- Other than in cases where legislation or industry guidance determine how employers should deal with the disclosure of a criminal record, a business must exercise its own judgment when deciding whether to employ someone whom they know has a criminal record.
- If the conviction is spent, a business cannot refuse to employ the individual, unless the position they have applied for falls with an exception (for example, a regulated profession, such as taxi driving).
- If the conviction is spent but the position falls within the exceptions, a business may refuse to employ the individual (and must refuse to employ an individual if there is sector-specific legislation preventing an offer of employment being made).
- If the conviction is not spent, a business can decide not to employ the individual.
- Businesses are prohibited from using knowledge of a spent conviction as the basis for excluding or dismissing an individual from employment. However, there is no specific penalty for breaching this prohibition.
- Although an employee who is dismissed because of a spent conviction may have a remedy, a job applicant who believes that the discovery of a spent conviction resulted in a business failing to offer them a job appears to have limited redress.

### Dismissing someone for their criminal record

- Dismissing an employee on the basis of a spent conviction will almost certainly be unfair.
- If the employee lied about their criminal record, a business may be able to terminate their contract for a breach of trust and confidence. If it is shortly after they have started their employment, a business is likely to be able to terminate the employee's contract by giving the correct notice (or payment in lieu).
- If someone is employed and later acquires a criminal record, this may call into question their suitability for the role. However, before automatically dismissing the employee, a business should consider what bearing, if any, the offence has on the role the individual holds.

If you would like to know more about this topic or our other legal services, please contact:

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