

Criminal Records Policy and Procedure

Policy Statement

Purpose

This policy sets out Orwell's approach to criminal background checks.

This policy ensures that safe recruiting and appropriate employment decisions are made, particularly in relation to Orwell's vulnerable customers and service users.

The principles in this policy apply to both paid and volunteer positions.

Legal Obligations

- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975
- Police Act 1997 (Criminal Records) Regulations 2002
- Safeguarding Vulnerable Groups Act 2006
- Health and Social Care Act 2008
- The Equality Act 2010
- The Protection of Freedoms Act 2012
- Data Protection Act 2018

Orwell's Commitment

- Orwell is committed to providing a safe environment for tenants, customers, colleagues, volunteers, contractors, and visitors.
- Orwell is committed to the fair treatment of its colleagues, potential colleagues, volunteers and customers, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background. Orwell undertakes not to discriminate unfairly against any subject of a criminal record check based on a conviction or other information revealed.
- Orwell promotes equality, diversity and inclusion and recognises the importance of employment in the rehabilitation of ex-offenders as detailed in Orwell's Recruitment and Selection policy. As an organisation using the Disclosure and Barring Service (DBS) to assess successful candidate suitability for positions of trust, Orwell complies fully with the DBS Code of Practice (Appendix 1) and Skills for Care Safe and Fair Recruitment Guide (Appendix 2) for checking criminal records.
- Orwell will only ask an individual to provide details of convictions and cautions to which we are legally entitled.
- Orwell understands that after a certain length of time some sentences are considered spent and must be disregarded. This is unless the nature of the work means that a role is

exempt. Applicants are not asked to disclose convictions which are spent under the Rehabilitation of Offenders Act 1974 (ROA).

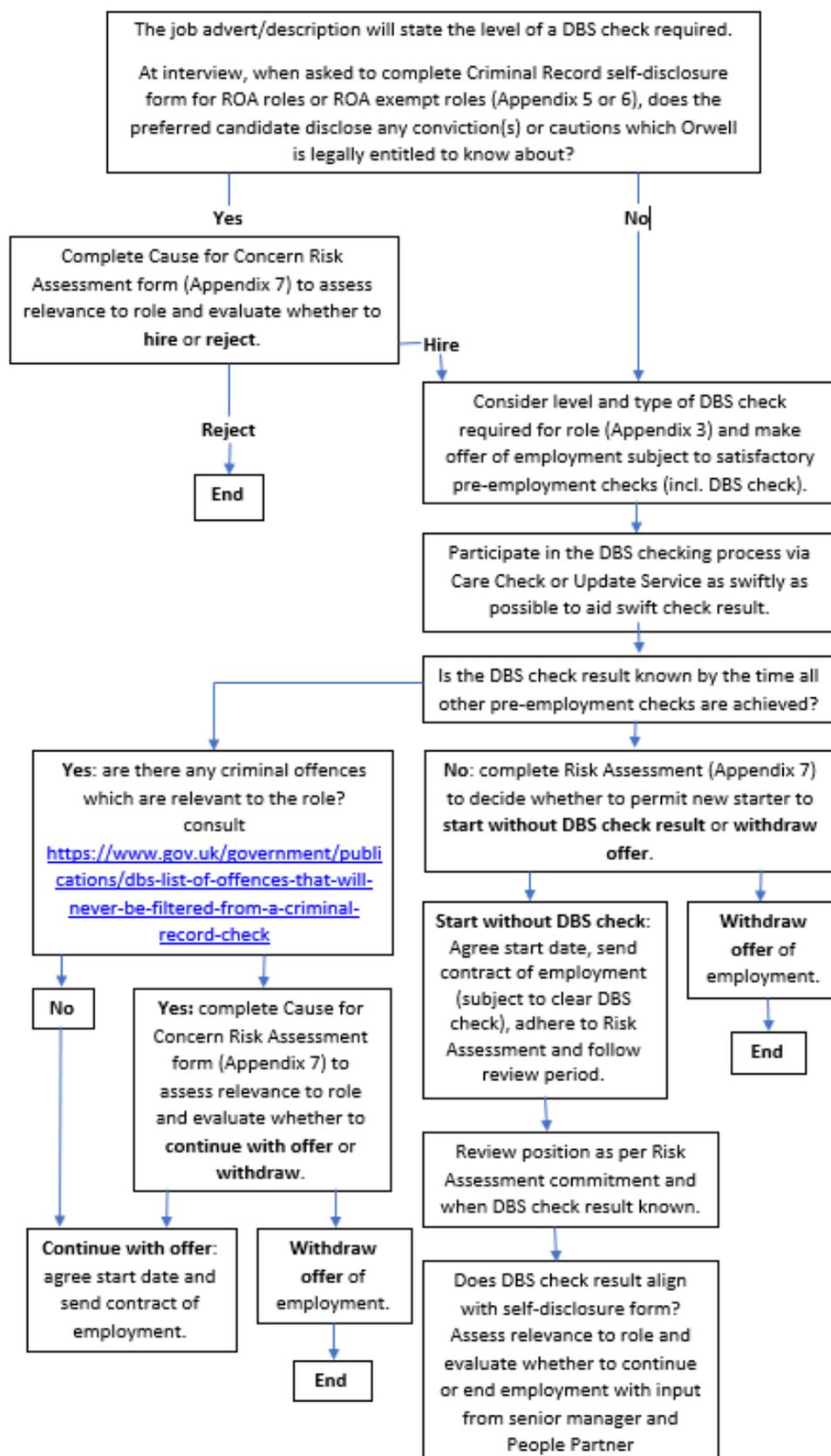
- At Orwell, having an unspent conviction will not necessarily bar applicants from employment. Criminal records will be considered for recruitment purposes only when a conviction is relevant (see Recruitment and Selection policy and procedures).
- For candidates offered employment in certain posts, including those where regulated activity is undertaken, a criminal record check will be relevant to the role being undertaken. Orwell consults the DBS eligibility guidance and DBS eligibility tool to determine which roles require particular levels of DBS check (Appendix 3).
- Any offer of new permanent, temporary, fixed term employment or of a volunteer agreement within Orwell's care and support services is conditional upon either a clear enhanced DBS with barred list(s) check or an enhanced DBS check result which has been risk assessed.
- Orwell ensures that colleagues involved in the recruitment and selection of people have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, eg the Rehabilitation of Offenders Act 1974.
- Orwell has a policy statement on the handling and safekeeping of DBS certificate information (Appendix 4).
- Orwell pays for and processes DBS checks online with a registered umbrella body. The exception to this is if colleagues leave our employ voluntarily within 12 months of their start date when the cost is deducted from final salary.
- Orwell requires individual annual subscription (cost reimbursed by Orwell) to the DBS Update Service.
- Orwell can accept a previously issued DBS certificate in particular circumstances (please refer to Procedures).
- Orwell may permit a new colleague to start work with an approved risk assessment in place whilst waiting for a DBS certificate to be received and assessed.
- Orwell will seek the renewal of a DBS certificate (or carry out a Status Check) every three years. In the event that a renewal is not achieved within this three-year best practice period, colleagues may be suspended from work without pay until the check is received and assessed.
- Colleagues who are charged with offences post DBS check should report this to their line manager (see Procedures and Recruitment & Selection policy and procedure) and may be subject to a disciplinary process if they fail to do so.

The procedure follows this Policy Statement.

Procedure

This Procedure provides guidance on the action to take at various stages of Criminal Record disclosure check process.

Quick Guide



Process

DBS Checks

Orwell's Recruitment and Selection policy includes information on the Recruitment of Ex-Offenders and is available to all DBS applicants during the recruitment process and to all current colleagues on Metacompliance. Adverts and job descriptions will confirm whether a DBS check is required for the role and the level of check needed.

When shortlisting and interviewing it is essential that the hiring Manager checks the information contained within job application forms. Interviewers must take reasonable steps to verify the information supplied, including the exploration of any gaps in employment and offer an opportunity for the candidate to disclose any known convictions or cautions during the selection interview (see Interview Question template). If a DBS check is required for the role, candidates will also be asked at interview to complete the criminal records self-disclosure form for posts covered by ROA (Appendix 5) or self-disclosure form for posts covered by ROA (Exempt) (Appendix 6).

If the preferred candidate discloses any conviction(s) or cautions about which Orwell is legally entitled to know, the hiring manager must complete a Cause for Concern Risk Assessment form (Appendix 7) to assess relevance to the role and evaluate whether to hire or reject.

New colleagues who require DBS checks may be permitted to start work whilst waiting for a DBS certificate to be received and assessed. To request this the line manager must complete a DBS Risk Assessment and to move forward with the appointment this must receive Director approval (see Appendix 7).

Levels of Check

There are four different levels of DBS check available, Basic, Standard, Enhanced and Enhanced with Barred List(s). Line managers and the People team consult the DBS eligibility guidance to determine which roles require levels of DBS check (Appendix 3) with reference to the DBS eligibility tool (<https://www.gov.uk/find-out-dbs-check>).

Access to Standard, Enhanced and Enhanced with Barred List(s) DBS checks is only available to employers who are entitled by law to ask an individual to reveal their full criminal history including spent convictions. This is known as asking an 'exempted question'. An exempted question applies when the individual will be working in specific occupations, for certain licenses or specified positions which are covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

Applying for a DBS Check

Within job offer documentation, a link to an online Disclosure application platform is included for a new colleague/volunteer who requires a DBS.

The People & Culture Manager is registered as the Primary Applicant Manager on the DBS application platform. Other members of the People team are registered as Applicant Managers. Orwell has post holders registered as ID Checkers who are invited to verify the details supplied by colleagues and complete the application:

- People Projects Advisor with responsibility for volunteering;
- Administrators, Team Leaders, Care Co-ordinators, Deputy Care Manager, and Service Managers with Extra Care services;
- Administrators, Team Leaders and Service Managers within Temporary Sheltered Housing services; and
- Deputy Service Managers and Service Managers within Learning Disabilities services.

Update Service

Orwell requires all successful applicants appointed to posts requiring a standard or enhanced DBS check to subscribe to the Update Service within 30 days of receiving their DBS Certificate. This will be overseen by the line manager and the colleague may claim for reimbursement of the annual fee from Orwell supported with evidence through petty cash or by claiming back through submission of an expenses claim form (and reimbursed through payroll). The Update Service is not available for a basic level check.

Orwell can then check the DBS Update Service for any new information since certificate issue (subject to individuals subscribing to the service). Orwell can also accept a previously issued certificate*, as long as the following conditions are met

- the applicant's identity matches the details on the certificate
- the certificate is of the right level and type for the role applied for

*with the exception of individuals providing personal care in Care Quality Commission (CQC) regulated services.

DBS Certificates with content

DBS certificates containing details of convictions which may render the applicant/colleague unsuitable for the post are a cause for concern and a discussion must take place between them and their (potential) line manager (with People Partner support) to establish further details and risk assess relevance to the post (see Appendix 7), complying with the Code of Practice.

A conviction will not necessarily exclude someone from employment as its relevance to the role will be considered along with applicant/employee rights and interests, customer/service user rights and interests and Orwell duties and responsibilities to ensure colleague and customer safety.

For existing colleagues, their track record should be carefully assessed and if this is satisfactory, this should be considered positively. If the disclosure results are of a serious nature and prove to be correct, the line manager should consider the following options:

- termination of employment (following disciplinary procedure)
- redeployment pending the availability of a suitable vacancy
- introduction of safeguards.

Each cause for concern will be assessed as its own case whilst being sensitive to making decisions which are consistent within Orwell. Liaising with People Partners will ensure consistently sound decisions are made and approval by a Director will ensure objectivity.

In circumstances where the conclusion is that colleagues cannot remain in post, if the conviction was disclosed, consideration will be given to whether they can be redeployed within Orwell. In the event there are no suitable alternative roles, colleagues will be

suspended on full pay pending a disciplinary process (see Disciplinary policy and procedure).

In the case where colleagues refute the information provided by the DBS, further checking with the DBS should be explored by the affected individual. Until there is a conclusion and to protect the safety of colleagues and customers, the colleague will be suspended from work, without pay.

Any offer of new permanent, temporary, fixed term employment or a volunteer agreement within Orwell's care and support directorate is conditional upon a clear DBS check or a DBS result which is risk assessed. Orwell pays for and processes DBS checks online with a registered umbrella body.

Orwell reserves the right to check/verify offence information provided by candidates after a full assessment of the candidate has been completed and a decision made about their ability to do the job.

Access to DBS check information

Orwell leaders (those with line management responsibilities), the People team and the subject of a DBS check (the applicant) can check on the progress and/or results of an application using the DBS tracking service. As the paper DBS certificate is only issued to the individual applying for a check, the line manager will request to see the certificate, as evidence and return confirmation of results to the Talent team as below:

Full name and date of birth of the subject

Position for which the check was requested

Date of the certificate

Certificate number

Have you seen the original certificate?

Does the data matches what it was expected

Was the DBS an Enhanced Disclosure

What was the workforce

Was it clear (no data recorded on it), a pass (something on it but we are happy with it), a decline

Any additional information that may require periodic checks to be made.

Vetting, Barring and Regulated Activity

The vetting and barring schemes apply to individuals working in regulated activities, in particular roles and with duties relating to children and vulnerable adults.

For these purposes, a 'child' is defined as someone under the age of 18.

An adult is 'vulnerable' if he or she is aged 18 or over and is the subject of a regulated activity. This definition requires consideration of the type of activity being carried out rather than the personal circumstances of the person involved in that activity.

Regulated activity is incorporated into the eligibility guides and tool mentioned above.

Conviction 'filtering' and information disclosed on DBS Standard or Enhanced certificates

Disclosure rules for criminal records are commonly referred to as "filtering". Filtering is the term used to describe the process that identifies which criminal records will be disclosed on a Standard or Enhanced DBS certificate (DBS check). Certain old or minor offences may not be disclosed on DBS certificates. These are known as 'protected' offences.

There is a list of offences that will always be disclosed on a Standard or Enhanced DBS certificate (unless they relate to a youth caution). These are 'specified offences' and are usually of a serious violent or sexual nature or are relevant for safeguarding children and vulnerable adults. The list can be found at <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>.

Standard and Enhanced DBS certificates will include details of spent and unspent convictions and cautions (excluding youth cautions, reprimands and warnings) recorded on the Police National Computer (PNC). PNC records relating to protected cautions and convictions will not automatically appear on the certificate. The rules regarding the automatic disclosure of convictions or cautions are set out in legislation.

Enhanced certificates may also include information taken from police records that a chief officer of a police force considers relevant to the application and ought to be disclosed, or details of whether an individual is included on one or both of our two lists barring people from working with children and/or other vulnerable groups.

Where an individual needs confidential advice, guidance or support on whether their criminal record is spent or requires further information on the Rehabilitation of Offenders Act, NACRO, a social justice charity, may be contacted at www.nacro.org.uk

Barred Lists

Where an individual is deemed unsuitable to undertake a regulated activity, they will be placed on the Children's Barred List and/or the Adults' Barred List and prevented from undertaking that activity. The DBS is responsible for administering these barred lists.

It is a criminal offence for a barred individual to engage or try to engage in a regulated activity from which they are barred.

Orwell will commit a criminal offence if it engages or permits a barred person to undertake a regulated activity. It is, therefore, crucial that hiring managers and the People team undertake appropriate checks during the recruitment process to help them make safer recruitment decisions. Enhanced disclosure checks can be requested where individuals undertake regulated activities, and this will include a check of the relevant barred list.

Dishonesty

If a job applicant/volunteer has made a false declaration on their application form or the DBS certificate contains information that was not disclosed during the recruitment and selection process or additional information from the Police is received, offers of employment will be withdrawn.

DBS Renewal

The People team will trigger DBS renewals at least 6 weeks before three-year best practice expiry. If a DBS is required for the job role, then a current DBS must be in force at all times. If a colleague is unable/unwilling to provide a DBS certificate at the point of renewal, then the future of their employment will need to be considered by Orwell which could lead to their dismissal.

The DBS application procedure will apply until all colleagues are registered with The Update Service.

In the case where a colleague has subscribed to The Update Service, People Administrators

will, with prior consent of colleague, check this facility instead of asking the employee to complete the DBS application procedure.

In the intervening period, a colleague who is required to maintain a clear DBS check and is charged with a criminal offence should advise their line manager immediately and a risk assessment will be completed (Appendix 7). In event that the case goes to court, the risk assessment will be reviewed considering any conviction(s), which may invoke Orwell's capability procedure and ultimately dismissal may result.

Agency Workers/Contractors

The agency is legally the employer of any agency workers and has the responsibility of obtaining all relevant background checks, including DBS checks at the appropriate level.

Line managers should ask to see written confirmation from the agency or a copy of the DBS check itself (no more than one year old) to ensure that the worker supplied has satisfactory checks.

Foreign Nationals or UK residents who have worked or been resident overseas in the past five years

The DBS can only access criminal records held on the PNC and this does not hold details of convictions, cautions, reprimands or warnings from outside the United Kingdom. A DBS check will not provide details of an overseas criminal record that may or may not exist. Anyone who is appointed to a post requiring a DBS check must undergo a DBS check regardless of their length of stay in the UK or, even if they have never been resident.

All new arrivals to the UK must provide a Statement of Good Conduct (SOGC) in addition to all documentation in relation to the Immigration requirements and DBS requirements.

The definition of new arrival is an applicant who has worked or been resident overseas in the previous five years and this includes citizens of the UK who have worked or lived overseas for a continuous period of six months or more. It is preferred that the SOGC is obtained via the relevant UK embassy of every country in which residency or employment is relevant. The applicant is responsible for acquiring this.

Hiring managers / Talent Acquisition team will ask candidates to obtain a Statement of Good Conduct in English. This document is considered by the hiring manager along with all other pre-employment checks before taking a decision regarding appointment. Prospective candidates are advised they should obtain their SOGC(s) prior to application or at least before interview.

Gender Recognition Certificates

If a person has undergone gender reassignment (gender recognition certificate issued), they must disclose any previous names and/or gender to the DBS – there is a special application procedure/dedicated contact officer to maintain confidentiality:

- DBS email: sensitive@dbs.gsi.gov.uk

Orwell will act in line with the DBS guidance on this matter and confidentiality will be maintained. Should a conviction come to light under a previous gender, only the primary applicant and those risk assessing the DBS would have access to this information.

Leaving Orwell

Orwell will seek reimbursement for the cost of the DBS check (in final salary payment) if the colleague chooses to leave Orwell's employment within the first 12 months of employment.

Complaints

Anyone unhappy with any aspect of the DBS process, including the application of this policy, should initially raise their concerns through the hiring manager/line manager. Where this fails to produce a satisfactory resolution, individuals have the right to escalate their concern to the next manager up.

Referring to the DBS

In the event that Orwell believes a person has caused harm or poses a future risk of harm to vulnerable groups, including children, or has engaged or tried to engage in a regulated activity from which they are barred, a referral will be made to the DBS.

DBS referral process can be found at Appendix 8. The DBS has a secure online referral form facility by clicking [here](#) via an online services account or telephone: 01325 953795.

If it is suspected that a crime has been committed, the police should also be notified.