

Staff Handbook

Criminal Background Checks Policy

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Reviewed by: HR Manager

Amendments:

August 2018 - 9.2, 9.5, 9.9, 9.10, 9.11, 9.12, 9.14, 9.15, 9.16, 9.17, 9.18, 9.21

August 2019 - 9.8

August 2020 - None

August 2021 - None

Criminal Background Checks Policy

Purpose

- 9.1 This policy sets out the approach to criminal background checks within the organisation.

Scope and Key Principles

- 9.2 R.E.A.L Foundation Trust promotes equality of opportunity for all and recognises the importance of employment in the rehabilitation of ex-offenders. As an organisation using the Disclosure and Barring Service (DBS) formerly known as Criminal Records Bureau (CRB) service to assess applicants' suitability for positions of trust, R.E.A.L. Foundation Trust complies fully with the DBS Code of Practice.
- 9.3 After a certain length of time some sentences are considered spent and must be disregarded. Unless the nature of the work demands it, applicants are not asked to disclose convictions which are spent under the Rehabilitation of Offenders Act 1974
- 9.4 Having an unspent conviction will not necessarily bar applicants from employment. Criminal records should be taken into account for recruitment purposes only when conviction is relevant.
- 9.5 Applicants who are offered employment to certain posts which are exempted under the Rehabilitation of Offenders Act 1974 must have a criminal record check (disclosure) from the DBS before their appointment can be confirmed. These include posts which involve regulated activity. Regulated activity is defined by Safeguarding Vulnerable Groups Act 2006 and covers anyone working closely with children and vulnerable young adults, either paid or unpaid, not part of a family or personal arrangement, and certain situations where individuals have the opportunity to have contact with children or vulnerable adults on a frequent, intensive or overnight basis. Frequent means once a week or more (except in health or personal care services where frequent means once a month or more); intensive means on four days or more in a single month; overnight is defined as between 2am and 6am. Guidance and a fuller definition of regulated activity can be found at www.isa.gov.org. A list of posts eligible for DBS checks can be found on the DBS website at <https://www.gov.uk/government/organisations/disclosure-and-barring-service>.
- 9.6 The recruitment process for posts which are exempt under the Rehabilitation of Offenders Act 1974 makes clear to potential applicants that a disclosure will be required at the beginning and a copy of this policy is provided to them.

Roles and responsibilities

- 9.7 All employees involved in the disclosure process and in making employment related decisions should be provided with appropriate guidance.

Levels of disclosure

- 9.8 All disclosures requested by R.E.A.L. Foundation Trust will be at enhanced level. Enhanced disclosures contain details of spent and unspent convictions, cautions, reprimands or warnings from the Police National Computer, and also non-conviction information from local police records which a Chief Police Officer thinks may be relevant.

Cost of disclosure

- 9.9 The cost of checks relating to appointments to R.E.A.L. Foundation Trust posts should be met by R.E.A.L. Foundation Trust unless the employee leaves within 1 year of their start date in which case the Company will deduct the cost of the check from their final salary.
- 9.10 Checks for volunteers are free but incur an administration fee. A volunteer is currently defined by the DBS as a person who performs an activity which involves spending time unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit the Company other than or in addition to close relatives.

Use of disclosure information

- 9.11 A disclosure is only requested for the successful candidate following the selection process. Rechecks for existing employees who are subject to a DBS clearance should currently be done every three years.
- 9.12 If a disclosure reveals information about spent or unspent convictions, a decision must then be made by a Director or a member of the executive leadership team as to whether it is appropriate for the person to be appointed or continue in post or not.

Security and confidentiality

- 9.13 Disclosure information should be treated with the utmost confidentiality and kept in a secure place, such that access to disclosure information is restricted to only those individuals who have a requirement to see it in the course of their duties. Information should only be disclosed to third parties in exceptional circumstances and with the consent of the DBS.

Retention

- 9.14 Disclosures are to be retained by the employee R.E.A.L. Foundation Trust. will retain the necessary details from the DBS certificate for a maximum of 6 months after a recruitment decision has been made, with the exception of those for posts which ongoing evidence is required by a regulatory body. Disclosures must be destroyed by secure means e.g. shredding.

Portability of disclosures

- 9.15 Portability (accepting as valid a DBS clearance received previously for a different appointment within the organisation) is acceptable in certain circumstances. For further guidance please refer to the Safeguarding of Young People in Our Care Policy.

Pre-authorisation

- 9.16 In certain exceptional circumstances when the pressure to fill a vacancy is acute e.g. In order to maintain legal staffing levels in a regulated establishment, it may be appropriate to appoint an individual prior to DBS clearance being received (known as pre-authorisation).

Contractors

- 9.17 Sites or departments who employ contractors or commission a service to work with children or vulnerable young adults or in other jobs which DBS clearance is required, should make sure safeguards are in place for the relevant checking of contracted staff and see documentary evidence of DBS clearance when contractors are recruited.

Disputes

- 9.18 If an employee believes that the information provided in a DBS check is inaccurate or incorrect, then it is the responsibility of the individual to raise this with the DBS. R.E.A.L. Foundation Trust should base any decision on the information provided by the DBS and this decision will be final.

Legal position

- 9.19 Under the rehabilitation of Offenders Act 1974, it is unlawful to discriminate against an ex-offender on the grounds of a spent conviction with the exception of those posts exempt from the Act such as those working with children and vulnerable adults
- 9.20 The Safeguarding Vulnerable Groups Act 2006 creates a number of offences to prevent barred people from working in regulated activities. Employers, personnel agencies who supply staff, regulated activity providers and individual workers themselves can be perpetrators of a criminal offence if a person who is barred from engaging in a particular activity does actually engage in that activity. A regulated activity provider also commits an offence if it permits a person to engage in a regulated activity while knowing or having reason to believe the individual is barred.