

Arawak Walton Housing Association

Recruitment of Ex-offenders Policy (DBS Policy)

Approved by	Senior Management Team
Date of Approval	January 2019
Date issued to staff	February 2019
E&D impact Assessed	February 2019
Date of Next Review	January 2022
Policy Ownership	Corporate Services Manager
Strategic Bridges	Value People and our Roots We are Open and Accountable
Legal Review	No
Version	1.0
Revision details	
Statement of Values	We Aim High We Value People We Move With The Times

1 Policy statement

- 1.1 Arawak Walton is committed to equality and diversity in employment. This policy sets out the association's approach to the recruitment of ex-offenders.
- 1.2 Candidates are assessed on their skills, experience and qualifications for the job role and criminal convictions will not be immediate grounds for refusal of employment. Candidates will be required to disclose "unspent" convictions during the application and/or interview process. If the nature of the offence is relevant to the role they are applying for, the suitability of the candidate will be considered. In these circumstances, the association reserves the right to refuse to offer employment to the candidate in particular circumstances. Having an unspent conviction will not necessarily bar applicants from employment. In determining whether disclosure of a criminal record will lead to withdrawal of offer of employment, or may lead to termination of employment, consideration will be given to the nature, circumstances and background to the offences committed.
- 1.3 Information relating to "spent" convictions will not be required to be disclosed by the candidate, unless the job role is exempt from the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 as amended. The association recognises that some spent convictions are pre-equality legislation and will make sure that these do not prejudice employment opportunities.
- 1.4 Arawak Walton ensures that all those who are involved in the recruitment process receive guidance from the Corporate Services Manager to identify and assess the relevance and circumstances of offences and in the relevant legislation relating to the employment of ex-offenders.
- 1.5 At interview, or in a separate discussion, Arawak Walton ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

2. Disclosure and Barring Service (DBS) checks

- 2.1 DBS checks (formerly CRB checks) enable organisations to make safer recruitment decisions by identifying candidates who may be unsuitable for work that involves children under the age of 18, or that involves working with vulnerable adults. This policy sets out Arawak Walton's approach to DBS checks within the statutory framework.
- 2.2 An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned (see appendix I). For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.

2.2 Arawak Walton makes every subject of a criminal record check submitted to DBS aware of the existence of the [code of practice](#) and makes a copy available on request.

2.3 Arawak Walton undertakes to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

3. Types of DBS checks:

- **Basic checks** - These are non-job specific therefore can be applied for regardless of role. Arawak Walton will ensure that all employees obtain at least a basic level check upon appointment (excluding those eligible for a higher level check). This is due to the nature of the work the association does and in recognition of the fact that due to our size, all staff will on occasion work with our customers or prospective customers.
- **Standard checks** - To be eligible for a standard level DBS check the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.
- **Enhanced checks** - To be eligible for an enhanced level DBS check, the position must be included in both the ROA Exceptions Order **and** in Police Act Regulations. This can include a search of the adults' barred list, if the position meets the new definition of regulated activity.

3.1 It is at the employer's discretion as to whether a DBS check should be undertaken. **The job roles that will be processed for DBS Checks under this policy are detailed in Appendix I.**

3.2 Basic checks

3.2.1 This is sometimes referred to as a Basic DBS check or basic criminal record check. A basic check is carried out by the DBS and will search for any unspent convictions and conditional cautions on an individual's criminal history in order to make an informed hire and prevents the hiring of unsuitable candidates around vulnerable groups.

3.2.2 All applications for a basic check are processed through the Police National Computer (PNC) and the Scottish Criminal History System (CHS) in search for any details of convictions considered "unspent" under the Rehabilitation of Offenders Act 1974.

3.3 Standard checks

3.3.1 A standard DBS check discloses information including any convictions considered to be **spent** or unspent under the Rehabilitation of Offenders Act 1974, convictions, cautions, warnings and reprimands held on the Police National Computer (PNC) which stores convictions which stores details of all convictions in England and Wales, and most of Scotland.

3.3.2 Currently none of Arawak Walton's roles have been identified as falling under this category of check (see appendix I).

3.4 Enhanced checks

3.4.1 An enhanced check discloses information including any convictions considered to be spent or unspent under the Rehabilitation of Offenders Act 1974, convictions, cautions, warnings and reprimands held on the PNC. In addition it discloses any information the Police 'reasonably believe to be relevant' to the role and/or whether applicants are included on the adults' barred list which means they are excluded for working in certain positions.

4. Aims

4.1 The aims of this policy are:

- To safeguard the people we work with from abuse and neglect and to protect our customer's property;
- To ensure our employees are treated fairly, appropriately and in accordance with the relevant legislation relating to the recruitment of ex-offenders;
- To ensure correct handling, use, storage, retention and disposal of Disclosures and Disclosure information;
- To ensure that all relevant roles are subject to the correct level of disclosure checks.
- To ensure that we have a process of renewing DBS checks regularly where relevant. As a minimum all disclosures will be undertaken every three years. If the association has reasonable grounds, they may reserve the right to request existing employees re-apply for a DBS check if actions or activities give cause for concern. This could include allegations of inappropriate behaviour made by a colleague or member of the public

5. Legal context

3.1 The law makes provision for the protection of ex-offenders to help with their rehabilitation however the law also recognises the necessity for employers to consider the background of individuals in order to assess their suitability for certain work and to protect vulnerable groups from risk.

3.2 Key points to note:

- An employer will commit a criminal offence if it engages or supplies a barred person to undertake a regulated activity
- It is also a criminal offence for a barred individual to engage, or try to engage, in a regulated activity from which they are barred
- The safeguarding schemes impose a duty on employers to refer relevant information about individuals carrying out regulated activities where this may affect their suitability to perform such roles in the future.
- Where an employer's operation involves regulated activities, and it is recruiting individuals to roles which fall within those regulated activities,

checks must be made with the Disclosure and Barring Service to ensure the individual is not barred from such employment and any offers of employment must make clear the employment is subject to this check.

3.3 This policy takes account of the following legislation:

- a. The Protection of Freedoms Act 2012
- b. The Safeguarding Vulnerable Groups Act 2006
- c. The Police Act 1997
- d. The Protection of Children Act 1999,
- e. The Criminal Justice and Court Services Act (Part II) 2000
- f. The Mental Health Act 1983
- g. The Human Rights Act 1998
- h. Rehabilitation of Offenders Act (1974) and Exemptions Order (1975)
- i. Data Protection Act (2001)
- j. Disclosure and Barring Service Code of Practice

6. Data Protection

6.1 As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, Arawak Walton complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information.

6.2 It also complies fully with its obligations under the General Data Protection Regulation and other relevant information relating to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters, which is available to those who wish to see it on request.

6.3 Disclosure information is never kept on an applicant's file and is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

6.4 In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties.

7. Related Policies

- 7.1 Recruitment and Selection Procedure
- 7.2 Safeguarding Adults and Children Policy
- 7.3 Equality and Diversity Policy
- 7.4 Code of Conduct

8. Equality and Diversity

8.1 This policy has been subject to an Equality Impact Analysis with solutions to any barriers identified built into the policy.

Recruitment of Ex-offenders Policy (DBS Procedure)

1. Pre-employment disclosures

- 1.2 Where a criminal records check is part of the recruitment process, all candidates who are successfully invited to an interview will be encouraged to present information regarding any convictions they have at an early stage. This information will be kept confidential and only disclosed to those who require the information as part of the recruitment process.
- 1.3 Any disclosure of an offence will lead to a full discussion with the candidate regarding the convictions relevance to the job role before a decision is made about withdrawal of an offer of employment. A failure by the candidate to produce information about convictions relevant to the role could lead to the association withdrawing an offer of employment. Where the criminal record information reveals details of an offence, the relevance to the job in question should be fully discussed with the applicant before withdrawing an offer of employment. Before withdrawing an offer, the Corporate Services Manager should be consulted.
- 1.4 In order to assess whether a criminal record is relevant to the role, the convictions disclosed should be assessed in line with the duties of the role and how the work is carried out. Factors to take in to account include, but are not limited to:
 - whether the offence is relevant to the position in question
 - the seriousness of any offence
 - the type of offence or offences the applicant committed
 - the circumstances and the explanation offered by the applicant
 - the length of time that has passed since the offence took place
 - whether the applicant's circumstances have changed since the offending took place.

2. DBS checks

- 2.1 Job applicants will be made aware of any positions where a criminal records check is required. A statement that a criminal record check is required if the candidate is offered the position will be included in any application forms, job advertisements and recruitment documents.
- 2.2 Arawak Walton will only request an employee, or prospective employee, to make an application for a DBS where we are legally entitled to ask that person to reveal their conviction history. This is a requirement of the Rehabilitation of Offenders Act 1974 (ROA).

3. DBS check process

- 3.1 The Corporate Services Team will manage the process of application and storage of DBS checks.

3.2 New starters

- 3.2.1 New starters to a role that requires a DBS Check must not commence employment in that role until all of the statutory pre-employment checks have been carried out.
- 3.2.2 Following the recruitment exercise, the relevant manager will notify the Corporate Services Team of the details of the successful candidate and the Corporate Services Team will apply for the relevant level of check (if appropriate, based on appendix I) via a DBS umbrella body i.e. 'Personnel Checks Ltd.'
- 3.2.3 In the event that it has not been possible to obtain a satisfactory Disclosure before the individual is scheduled to commence employment, the relevant Director has discretion to allow an individual to begin work pending receipt. This must be subject to a risk assessment being completed. This would have to be considered an exceptional circumstance such as severe staff shortages which may pose a threat to service quality or health & safety. However, in making such a decision, the Director can only allow the new colleague to commence work in the event that the individual is appropriately supervised and that all the other statutory pre-employment checks have been completed.

3.3 Existing employees

- 3.3.1 If current employees are in a role that requires a DBS check (outlined in appendix I) and they do not currently have a check in place, or that check is over 3 years old, then a DBS check must be applied for immediately by the Corporate Services Team in conjunction with that member of staff. All staff who are employed by the association are advised whether or not their role requires a DBS check and all other staff are asked to give consent to the association to obtain a check at the point that they are offered the role.
- 3.3.2 Transfers, promotions or appointment to new roles attracting DBS checks will be subject to the relevant level of check for the role offered. This will be applied for at the earliest opportunity and receipt of a satisfactory check will form part of a condition of employment.
- 3.3.3 In the event that it has not been possible to obtain a satisfactory Disclosure before the individual is scheduled to commence or continue employment in regulated activity, the relevant Director has discretion to allow an individual to begin (or continue) with their duties pending receipt. This must be subject to a risk assessment being completed as set out in this Disclosure and Barring Procedure.

3.4 DBS check outcome

- 3.4.1 The Corporate Services Team will be notified by the DBS umbrella body that the check has been completed however it is standard practise for the check certificate to be issued to the applicant's home address. However, with the applicant's consent, certificates can be issued to the association.

3.4.2 Regardless, if the employee/new starter's role is outlined in appendix I as requiring a DBS check, it is a condition of employment that the employee provides the association with a copy of the disclosure. Failure to provide the association with a copy of the disclosure could result in a job offer being withdrawn for new employees or in disciplinary action being taken against existing employees, up to and including dismissal.

3.5 Adverse Disclosures

3.5.1 Where the result of a disclosure check for a new or existing colleague (or admission - see section 3.6) gives cause for concern, a risk assessment must be performed by the relevant Director in conjunction with the Corporate Services Manager in accordance with this Disclosure and Barring Procedure. If the disclosure is found to be of a serious nature which has direct implications on the job role or shows evidence that the individual is potentially a risk to children or vulnerable adults, the association reserves the right to withdraw a job offer for new employees, or it may warrant disciplinary action, up to and including dismissal for existing employees. Decisions will be made following a full risk review taking into account the seriousness and date of any offence.

3.5.2 Minor offences of a non-safeguarding nature committed a long time ago will normally be considered to have little or no bearing on whether the individual is a risk and/or 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 or in disciplinary action being taken. 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.

3.5.3 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 Chief Executive for a final decision.

3.6 Review of DBS check

3.6.1 It is important that employees undertaking roles subject to DBS checks notify their line manager / the Corporate Services Manager of any new convictions immediately in order to determine their suitability to continue working in their current role. This requirement is outlined in the employee Code of Conduct which is issued to employees upon commencement of employment.

3.6.2 It is not appropriate to wait for up to 3 years for a DBS recheck as an individual could present an immediate risk to employees and/or customers. Failure to disclose may result in disciplinary action being taken, up to and including dismissal.

3.6.3 All DBS checks will be renewed no later than 3 years after the original date of the DBS check, assuming the employee is still in a role outlined in Appendix I.

4. Agency workers and contractors

- 4.1 The agency provider 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. Any manager that engages an agency worker will ensure that the agency has the relevant checks in place before the agency worker starts employment with the association.
- 4.2 The organisation providing the contractor service is legally the employer of any contractors and the responsibility to obtain a relevant DBS check or Enhanced check for Regulated Activity is theirs. This check can then be used within any organisation that contractors are provided to. If contractors are procured, we must ensure that all Safeguarding requirements are included within the procurement documentation.

5. Storage, retention and disposal

- 5.1 The association maintain a record of all those to whom Disclosures or Disclosure information has been revealed and recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.
- 5.2 Upon receipt of a disclosure certificate, the Corporate Services Team will update the HR system with the date of the disclosure and the review date of the DBS check. The copy certificate will not be placed on Cascade and will not be placed on an employee's HR file.
- 5.3 Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.
- 5.4 Once a recruitment decision has been made, we do not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints.
- 5.5 If in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six-months, we will consult the DBS about this and will give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will apply.
- 5.6 Once the retention period has elapsed, we ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding.
- 5.7 While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack).

- 5.8 We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However we may keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

6 Complaints

- 6.1 Any complaints arising through the application of this policy at the recruitment stage will be dealt with under the association's Complaints Policy and Procedure. Any complaints arising through the application of this policy following recruitment will be dealt with under the Grievance Policy and Procedure which is outlined in the Employee Handbook.

Type of check	Role
Basic check	<ul style="list-style-type: none">• All roles excluding 'Scheme Manager'
Standard check	N/A
Enhanced check	<ul style="list-style-type: none">• Scheme Manager