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difference

# RECRUITMENT OF EX-OFFENDERS POLICY

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## 1. POLICY STATEMENT

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- 1.1 Wyre Council is committed to equality of opportunity for all job applicants and aims to select people for employment on the basis of their individual skills, abilities, experience, knowledge and, where appropriate, qualifications and training.
- Wyre will therefore consider ex-offenders for employment on their individual merits. The Council's approach towards employing ex-offenders differs, however, depending on whether the job is or is not exempt from the provisions of the Rehabilitation of Offenders Act 1974.
- 1.2 Wyre Council is committed to ensuring that all information provided about an individual's criminal convictions, including any information released in disclosures, is used fairly and stored and handled appropriately and in accordance with the provisions of the Data Protection Act 2018. Data held on file about an individual's criminal convictions will be held only as long as it is required for employment purposes and will not be disclosed to any unauthorised person.

## 2. REHABILITATION OF OFFENDERS ACT 1974

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- 2.1 The Rehabilitation of Offenders Act 1974 ("1974 Act") primarily exists to support the rehabilitation into employment of reformed offenders. Under the 1974 Act, following a specified period of time which varies according to the disposal administered or sentence passed, cautions and convictions (except those resulting in prison sentences of over four years and all public protection sentences\*) may become spent. As a result the offender is regarded as rehabilitated.
- For most purposes the 1974 Act treats a rehabilitated person as if they had never committed, or been charged with charged or prosecuted for or convicted of or sentenced for the offence and, as such, they are not required to declare their spent caution(s) or conviction(s). For example, when applying for most jobs or insurance, some educational courses and housing applications.
- Further information on rehabilitation periods can be seen in Appendix 1.
- 2.2 Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'. Once a conviction has been spent, the convicted person does not have to reveal it or admit its existence. However there are some exceptions.

### 3. JOBS COVERED BY THE REHABILITATION OF OFFENDERS ACT 1974

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- 3.1 Wyre Council will not automatically refuse to employ a particular individual just because they have a previous criminal conviction.
- 3.2 During the selection process, Wyre Council will ask job applicants to disclose any unspent convictions, but will not ask job applicants questions about spent convictions, nor expect them to disclose any spent convictions.
- 3.3 If an applicant has a conviction that is not spent and if the nature of the offence is relevant to the job for which they have applied, the Council will review the individual circumstances of the case and may, at its discretion, decline to select the individual for employment.

### 4. JOBS THAT ARE EXEMPT FROM THE REHABILITATION OF OFFENDERS ACT 1974

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- 4.1 The Council has a duty of care to protect the well-being of the public and service users and in particular children and adults in its care who are considered to be especially vulnerable or at risk. The Exceptions Order overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Ex-offenders have to disclose information about spent, as well as unspent convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempted.
- 4.2 Exempted occupations fall into the following categories (see appendix 2 for examples):
- Work that brings the person into contact with groups such as the infirm, elderly, mentally ill and young people under the age of 18.
  - Professionals that have legal protection, for example, nurses, doctors, dentists, chemists, accountants.
  - Posts concerned with the administration of justice, for example, police officers, lawyers, probation officers, and traffic wardens.
  - Health service appointments

## 5. JOB APPLICANTS

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- 5.1 The Council is committed to the fair treatment of its staff, potential staff and users of its services regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience.
- 5.2 Pre-employment checks and other safe recruitment practices are a requirement to ensure that people who may pose a threat to children and adults are not given positions of trust where they could exploit those entrusted to their care.
- 5.3 As an organisation using the DBS disclosures to assess applicants' suitability for positions of trust, we comply fully with the DBS Code of Practice and undertake to treat all applicants for positions fairly.
- 5.4 A disclosure is only requested when it is legal to do so. The parameters are set out in the Council's Disclosure & Barring Service (DBS) Policy. For those positions where a disclosure is required all job adverts, application forms, and recruitment material will contain a statement that a disclosure will be requested before an appointment is made.
- 5.5 Unless the nature of the position allows the Council to ask questions about a person's entire criminal record we only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act (1974).
- 5.6 We ensure that all those in the Council who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act (1974).
- 5.7 Having a criminal record will not bar a person from working at the Council. It will depend on the nature of the position and the circumstances and background of the offences. We do not discriminate unfairly against any subject of a disclosure on the basis of conviction or other information revealed. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position before any offer of employment is considered.

## 6. PROTECTION OF A REHABILITATED PERSON

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- 6.1 The unauthorised disclosure of information about a spent conviction is illegal. Unauthorised disclosure is where an official with access to information about the person's criminal record discloses this information other than in the course of official duties. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.

## 7. COUNCIL EMPLOYEES

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- 7.1 Following appointment, employees have a responsibility to report any relevant changes of circumstance to their employer. These include any criminal investigations, convictions or warnings they may become the subject of, or any other relevant information which a reasonable employer might consider to impact on the employment of that individual. Employees should always discuss with their line manager any difficulties or problems that may impact on their suitability to work with children and adults so that appropriate support can be provided or action taken. Failure to disclose convictions with the line manager may result in disciplinary action.
- 7.2 Any existing employee may be asked to undertake a DBS re-check in line with Council policy. Refusing to comply with such a request may result in the employee being subject to formal disciplinary action for deliberate and/or unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager/supervisor, and/or to comply with a contractual agreement.
- 7.3 Confidentiality cannot be guaranteed where concerns arise about the welfare or safety of children or adults but any information sharing will be in accordance with relevant legislation and policy and only as is necessary in the circumstances.

## 8. EQUALITY IMPACT ASSESSMENT AND MONITORING

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- 8.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

## 9. DATA PROTECTION

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- 9.1 In implementing this policy, the council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.

## APPENDIX 1

The rehabilitation periods for sentences with additional “buffer periods” which run from the end date of the sentence are shown in the table below:

Sentence/disposal	Buffer period for adults (18 or over at the time of conviction or time the disposal is administered). This applies from the <u>end date</u> of the sentence (including the licence period).	Buffer period for young people (under 18 at time of conviction or the time the disposal is administered). This applies from the <u>end date</u> of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3 ½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order **	1 years	6 months

\*Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of your custody, a sentence of corrective training and a sentence of Borstal training.

\*\*In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

The following table sets out the rehabilitation period for sentences which do not have “buffer periods” and for which the rehabilitation period runs from the date of conviction:

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered)	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered)
Fine	1 year	6 months
Conditional discharge	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation Order	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance Centre Order	Period of the order	Period of the order
Hospital Order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

### Suspended sentences

A suspended prison sentence is treated as one that has taken effect and the rehabilitation period is the same as for the full sentence.

### Consecutive and concurrent sentences

An offender may be sentenced at one time for several offences. If the court decides that imprisonment is the right penalty for more than one offence, it can order that these run concurrently or consecutively. If a person is sentenced to two terms of imprisonment of six months each, to run concurrently, the person will be subject to a rehabilitation period of seven years. If they were ordered to run consecutively, they would be subject to a rehabilitation period of ten years.

### Extension of rehabilitation periods

Rehabilitation periods may be extended if a person receives further convictions while an original rehabilitation period is still running. If the second conviction is for a summary offence, i.e. an offence that can be tried only in a Magistrate's Court, then the first rehabilitation period is not affected and both rehabilitation periods will run their separate course. If, however, the second



conviction is more serious and could be tried in a Crown Court, then neither conviction will become spent until the longer rehabilitation period has expired.

Where the original sentence resulted in a disqualification, probation or other penalty, the rehabilitation period will not be affected if the person is convicted of a further offence.

## APPENDIX 2

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### Examples of the types of occupations, posts and activities in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

Please be aware that this is not a comprehensive list and merely gives an indication of the general types of employment that are included in the Exceptions Order.

1. Regulated activity with children and other activities which involve working closely with children such as caring for, training, supervising or being solely in charge of children under 18 (including adoption, fostering, day care and childminding)
2. Regulated activity and other activities which involve caring for, training, supervising or being solely in charge of other people in vulnerable circumstances (including social work and advocacy services)
3. Employment in healthcare professions (including medical practitioners, dentists, nurses, midwives, optometrists, registered pharmacists and osteopaths)
4. Employment concerned with national security (including the provision of air traffic services and employment by the UK Atomic Energy Authority)
5. Employment in the legal profession (including barristers, solicitors, legal executives, the Crown Prosecution Service and judicial appointments)
6. Offices and positions in HM Courts and Tribunals Service and the Judicial Office (including Justices' and sheriff's, court and tribunal security officers and contractors with unsupervised access to court-houses, tribunal buildings, offices and other accommodation used in relation to the court or tribunal)
7. Employment in law enforcement (including police constables and cadets, the naval, military and air force police, traffic wardens and employment in the Serious Fraud Office (SFO) and the Serious Organised Crime Agency (SOCA))

8. Offices responsible for the enforcement of warrants and writs (including Court officers who execute county court warrants, High Court enforcement officers, sheriffs and Civilian enforcement officers)
9. Employment in the Prison and Probation Services (including prison and probation officers, members of boards of visitors etc.)
10. Employment in the financial sector (including chartered and certified accountants, actuaries and all positions for which the Financial Conduct Authority or the competent authority for listings are entitled to ask exempted questions to fulfil their obligations under the Financial Services and Markets Act 2000)
11. For licensing purposes (including the National Lottery, gambling, firearms and drugs licensing purposes, Security Industry Authority licences, and licensing hackney carriages or private hire vehicle drivers)