

Guidance Note - Self Declaration (Criminal History)

Self-declaration is part of the safer recruitment process. It involves requiring an individual to provide information regarding their criminal history to be used as part of the decision on their suitability to work with children. As an addition to DBS certificates, self-disclosure can play a vital role in the selection process as it gives candidates an opportunity to share relevant information at an early stage, which can then be discussed at interview and/or considered before the DBS certificate comes back.

'Protected Offences'

Since May 2013 individuals do not have to disclose certain old or minor offences (referred to as protected offences) and employers must not request applicants to do so. The filtering rules were amended again in November 2020 and **the Ministry of Justice and DBS policy guidance now requires employers to explain the effect of the 2013 / 2020 exceptions to the Rehabilitation of Offenders Act to applicants and to signpost applicants to impartial advice on the disclosure of criminal history before they complete any self-declaration.**

Requesting Self Declaration (disclosure)

In November 2020, the ICO made it clear that under GDPR and the Data Protection Act 2018, it is for employers to determine when best to ask for a criminal self-disclosure but that asking all applicants to disclose as part of the application process could be seen as too broad and therefore a breach of data processing principles.

Rather than a disclosure section on application forms (where they can be seen by short-listers or others), **only shortlisted applicants should be asked to provide any information about unspent and unprotected criminal records.**

It is important to be aware that it is discriminatory to use any self-disclosed information for short-listing.

It is therefore recommended that **Self Disclosure regarding Criminal history is not included on application Forms.** The Cornovii Trust Application forms reflect this. **It is recommended that a separate criminal history self-disclosure form is sent to those applicants who have been shortlisted for them to complete and return before the interview.**

Self-declaration remains an integral part of the safer recruitment process this step should be built into all recruitment processes within The Cornovii Trust.

Right to be Informed

The Ministry of Justice and DBS policy & guidance additionally requires employers to explain the effect of the 2013 / 2020 exceptions to the Rehabilitation of Offenders Act to applicants and to **signpost them to impartial advice on the disclosure of criminal history before they complete any self-declaration.** It is a requirement therefore that all schools within the trust:

- explain the effect of the exceptions to the Rehabilitation of Offenders Act and 'protected offences' to applicants.

- give applicants an opportunity to seek legal advice prior to completing their self-disclosure and signpost applicants to impartial advice from Nacro and / or Unlock.
- give them an opportunity to declare any relevant criminal record they have and to provide a signed statement that their declaration is accurate and complete.

Therefore, the following statement is now included in all trust application forms:

All posts involving direct contact with children are exempt from the Rehabilitation of Offenders Act 1974. However, amendments to the Exceptions Order 1975 (2013 & 2020) provide that certain spent convictions and cautions are 'protected'. These are not subject to disclosure to employers and cannot be taken into account. Guidance and criteria on the filtering of these cautions and convictions can be found on the Ministry of Justice website or visit <https://unlock.org.uk/advice/what-will-be-filteredby-dbs/>.

Shortlisted candidates will be asked to provide details of all unspent convictions and those that would not be filtered, prior to the date of the interview. You may be asked for further information about your criminal history during the recruitment process. If your application is successful, this self-disclosure information will be checked against information from the Disclosure & Barring Service before your appointment is confirmed.

The information to signpost them to the relevant guidance form is also include on the self-disclosure form.

Once short-listing has taken place, the disclosed information can then be considered against the ROA1974 (Rehabilitation of Offenders Act) and amendment order in 2020; information regarding unspent cautions and convictions plus any offences that would not be filtered can then be discussed with the candidate (at interview or in a separate suitability meeting) as part of assessing whether the information is relevant to suitability to work with children.