

POLICY ON THE EMPLOYMENT OF EX-OFFENDERS

Policy Statement

Under this policy, the first priority of the Agency is to maintain the safety and welfare of vulnerable adults in our care, who use the services of the Agency or come into contact with our staff members. The Agency intends to achieve this by exercising rigour and vigilance in employment, decision making; criminal records disclosures are central to this.

The Fortress Homecare is committed to a comprehensive policy of equal opportunities for all in the workplace. We are committed to fair treatment of our staff, potential staff or users of our services, regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background. This policy confirms the Agency's specific commitment to ensuring that ex-offenders are not subjected to discrimination in recruitment and/or employment.

To this end the Agency will provide equal opportunities for ex-offenders, where their conviction has become 'spent'¹, in relation to recruitment, education, training, promotion, transfer and terms and conditions of employment.

This policy is made available for all potential applicants to see when applying for a job.

Code of Practice

Under the Rehabilitation of Offenders Act 1974, many ex-offenders are given certain employment rights if their convictions become 'spent'. An individual who has been convicted of a criminal offence and who is not convicted of a further offence during a specified period (the 'rehabilitation period') becomes a 'rehabilitated person'².

The rehabilitation period depends on the sentence and commences from the date of conviction. A conviction resulting in a prison sentence of more than 30 months can never become spent.

A 'rehabilitated person' is protected in the following ways:

They do not have to declare their previous conviction(s) for most purposes, such as applying for a job.

An employer cannot prejudice a person in any way because of a spent conviction.

Employees are protected against dismissal or exclusion from any office, profession, occupation or employment, on grounds of their spent conviction (with some exceptions).

Exceptions to this rule relate broadly to working with children, the sick, disabled people and the administration of justice. Where an exception applies, if asked, an individual must disclose all convictions including spent ones.

Disclosure & Barring Service

As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, Fortress Homecare complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.

The Agency reserves the right to request a DBS disclosure for certain roles. For example, roles that are required or have the potential to work with children (under the age of 18) and/or vulnerable adults.

A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, job adverts and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.

Where a Disclosure is to form part of the recruitment process, we encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process. We request that this information is sent under separate, confidential cover to the relevant Recruitment Department and we guarantee that this information is only seen by those who need to see it as part of the recruitment process. When a criminal record is revealed a measured and fair discussion will take place with the applicant (in a meeting separate from the recruitment or other interview) about the relevance of the convictions to the post in question. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment; however this will be discussed before action is taken.

Unless the nature of the position allows Fortress Homecare to ask questions about the applicants entire criminal record we only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act 1974.

We ensure that all our staff members who are involved in the recruitment process have been given appropriate guidance on how 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.

We make every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and make a copy available on request.

This policy applies to all staff groups and will be given to applicants at the outset of the recruitment process where a DBS request for disclosure of their criminal record will be required as part of the application process.

Having a criminal record will not necessarily bar the applicant from working with us. This will depend on the nature of the position and the circumstances and background of your offences.

Handling and Disclosure

The Agency complies with the DBS code regarding the secure storage, handling, use, retention and disposal of DBS disclosures and disclosure information and with its obligations under the Data Protection Act.

Recipients of disclosure information must ensure that disclosure information is not passed to persons not authorised to receive it under section 124 of the Police Act 1997. Unauthorised disclosure is an offence, so we will ensure that disclosures and the information they contain are available only to those who need to have access in the course of their duties and a record will be kept of those who received this information.

Storage and Access: DBS Disclosure information will not be stored on an employee's personnel file but will be stored separately in a lockable storage with access limited to those who are entitled to see it as part of their duties.

Retaining Information: Once a recruitment (or other relevant) decision has been made, DBS disclosure information will not be stored for longer than is necessary this is generally for a period of up to 6 months from the date of application to allow for consideration and resolution of any disputes or complaints. If, in exceptional circumstances, it is considered necessary to keep such information for longer consideration will be given to the data protection rights of the individual.

Disposal: Once the retention has elapsed, the Agency will ensure that any disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. 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 will however be securely stored for monitoring purposes.

Current Staff and Criminal Convictions

An employee who is charged or convicted of a criminal offence will not automatically be dismissed or disciplined for the offence. The details of the offence will be considered and a decision will be made as to whether the employee's conduct merits action because of its employment implications.

The following will apply in such situations:

The Agency will investigate the facts of the offence and consider whether the conduct is sufficiently serious to warrant disciplinary action;

The Agency will take fair and reasonable action where the conduct requires prompt attention (in such cases, the Agency does not need to await the outcome of the prosecution).

In some cases the nature of the alleged offence may not justify disciplinary action (e.g. off-duty conduct which has no bearing on employment) but the employee may not be available for work because he or she is in custody or on remand. The Agency retains the right to stop an employee's salary for the period spent in custody. However each incident will be reviewed on its own merits furthermore in these cases the Agency will decide whether, in the light of the needs of the organisation, the employee's job can be held open. Where a criminal conviction leads, for example, to the loss of a professional registration (e.g. NMC PIN Number) so that continued employment in a particular job (e.g. as qualified Nurse) may be illegal, the Agency will consider whether suitable alternative work is available (e.g. to work as a carer).

Where an employee, charged with or convicted of a criminal offence, refuses to cooperate with the Agency's disciplinary investigations and proceedings, this will not deter the Agency from taking action. The employee will be advised in writing that unless further information is provided, a disciplinary decision will be taken on the basis of the information available and could result in dismissal.