

Cautions, convictions and your safer recruitment process

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The changes mean that youth cautions, warnings and reprimands will no longer be disclosed automatically on a DBS certificate. You shouldn't be seeking this information as part of your recruitment process either. To be clear, all other specified offences (as listed here) will always be disclosed in addition to all convictions resulting in a custodial sentence.

Our advice was (and remains) that you should not ask for criminal record disclosures in your application form. Instead, you should question candidates about previous criminal history during interview.

The Disclosure and Barring Service (DBS) suggests that the below questions should be asked:

1. Do you have any unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974?
2. Do you have any adult cautions (simple or conditional) or spent convictions that are not protected as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020?

DBS also suggests this statement be included in application forms:

The amendments to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020) provide that when applying for certain jobs and activities, certain convictions and cautions are considered 'protected'. This means that they do not need to be disclosed to employers, and if they are disclosed, employers cannot take them into account.

Guidance about whether a conviction or caution should be disclosed can be found on the Ministry of Justice website.

When asking about convictions at interview, be sure to ask the right questions (see above) and if the candidate is unclear about what to disclose, ask them to provide the conviction information after the interview and provide a form for them to use. That form (we call it a Relevant Conviction Form) should include a reminder about the Ministry of Justice guidance and a link to it.

So, you've probably got some changes to make. Along with checking your application form is correct, you will need to tweak your safer recruitment policy, you may need to update your employment contracts, you'll need to create a Relevant Conviction Form and, if you have one, you'll need to update any recruitment/DBS checklists.

None of this is particularly complicated, but getting it right is important. We've got a mix of safeguarding law, employment law and GDPR all caught up in these changes, so there's quite a lot that can go wrong. Spend a bit of time updating and creating these documents and you'll be fine. If you need some support, you know where I am.

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