



**NEWCASTLE
CATHEDRAL**

Policy Statement Regarding the Recruitment of Ex-Offenders

Introduction

The Church of England's practice guidance on Safer Recruitment¹ requires that all Cathedrals and parishes have a written policy statement on the recruitment of ex-offenders.

The practice guidance states:

Applicants for paid and volunteer positions must be clear about how they will be treated if they are ex-offenders.

The policy below is taken from a sample statement issued by the Disclosure and Barring Service (DBS)².

Policy Statement

1. As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974³ (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), we comply fully with the code of practice⁴ and undertakes to treat all applicants for positions fairly
2. We undertake not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed
3. We can only ask an individual to provide details of convictions and cautions that we are legally entitled to know about⁵. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended)
4. We can only ask an individual about convictions and cautions that are not protected
5. We are committed to the fair treatment of staff, potential staff or users of its services, regardless of race, gender, religion⁶, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background
6. 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
7. We select all candidates for interview based on their skills, qualifications and experience

¹ Church of England Safer Recruitment Practice Guidance: www.churchofengland.org/sites/default/files/2017-11/safeguarding%20safer_recruitment_practice_guidance_2016.pdf (Section 2.3, July 2016)

² DBS Sample Policy: www.gov.uk/government/publications/dbs-sample-policy-on-the-recruitment-of-ex-offenders/sample-policy-on-the-recruitment-of-ex-offenders

³ Full text available here: www.legislation.gov.uk/ukpga/1974/53

⁴ DBS Code of Practice: www.gov.uk/government/publications/dbs-code-of-practice

⁵ Where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and where appropriate Police Act Regulations as amended.

⁶ See Appendix 1 for information about Genuine Occupational Requirements (GOR).

8. 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. 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
9. We ensure that all those who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offence (see below regarding Responding to DBS Disclosures & Information)
10. 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
11. 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. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment
12. We make every subject of a criminal record check submitted to DBS aware of the existence of the code of practice⁷ and make a copy available on request
13. We undertake to discuss any matter revealed on a DBS certificate with the individual seeking the position before withdrawing a conditional offer of employment.

Responding to DBS Disclosures & Information

The Church of England's practice guidance on Safer Recruitment⁸ states clearly that the Diocesan Safeguarding Adviser must be informed when there are disclosures of cautions, convictions, reprimands or police intelligence in order to ensure that the relevance of the offences and associated risk are assessed.

4.4. The disclosure will be passed to the Diocesan Safeguarding Adviser for a risk assessment. The Diocesan Safeguarding Adviser is qualified to identify and assess the relevance and circumstances of offences and the risk. If the issues are complex he or she will ask for assistance from the Local Safeguarding Children or Adults Safeguarding Board. In very complex cases the advice of an independent specialist may be required. The Diocesan Safeguarding Adviser will make a recommendation concerning the suitability of the applicant to the person responsible for the appointment in line with the diocese's local arrangements. Should the applicant not wish the confidential declaration and /or the criminal record disclosure to be seen, which is entirely his / her choice, the application must not proceed further and must be terminated.

Policy Approval date: October 2020
Policy Review date: October 2021

⁷ DBS Code of Practice: www.gov.uk/government/publications/dbs-code-of-practice

⁸ Church of England Safer Recruitment Practice Guidance: www.churchofengland.org/sites/default/files/2017-11/safeguarding%20safer_recruitment_practice_guidance_2016.pdf (Section 2.3, July 2016)

Appendix 1:

Religion and Genuine Occupational Requirements⁹

Under the Equality Act 2010 there are some exemptions that apply to the work environment which allow employers to require employees to have (or not to have) certain protected characteristics. These are called Occupational Requirements (OR) and the burden is on the employer to show that there is an occupational requirement attached to a particular job role.

The protected characteristics under the Equality Act 2010 are: sex, race, disability, age, religion and belief, marriage and civil partnership, gender reassignment and sexual orientation.

This briefing note concentrates particularly on religious ORs. Applying an OR to a role will mean that the parish will be potentially discriminating against non-Christian prospective candidates. Consequently, such individuals could bring claims of discrimination against the employer and, if so, the burden would be on the employer to persuade a tribunal that the use of the OR was justified and proportionate.

Employers would be required to demonstrate that:

- It has an ethos based on the Christian religion. It should be able to demonstrate that the ethos is reflected in how it conducts its functions and in the nature and context of the work it does; and
- That given the nature and context of the work of the employer and particularly the work the role in question will undertake, that it is an occupational requirement that the post holder is of the Christian religion; and
- That applying that OR is a proportionate means of achieving a legitimate aim. A legitimate aim could be any of the aims of the parish. Achieving that aim proportionately will require the application of the OR to be “reasonably necessary” in order to achieve it. The application of the OR will not be considered reasonably necessary if the employer could have used less discriminatory means to achieve the same objective.

The ACAS Guide on Religion and Belief and the Workplace states that an OR should be reassessed on each occasion a post becomes vacant to ensure it is still validly claimed.

Seven Questions

Here are some questions which should be considered when looking at whether an OR is justified and proportionate.

1. What are the key duties, responsibilities and accountabilities (DRAs) of the role that requires the post holder to meet the OR?

⁹ Source: Adapted from, <https://www.london.anglican.org/kb/occupational-requirements/>

2. Of the DRAs identified in response to question 1, are they crucial to the role or could they be delegated to another person, perhaps a Trustee, so that it was not a requirement of the Role?
3. Of the DRAs, have they always formed part of the Role and has the role ever been performed by someone who did not meet the OR? If so, what issues/concerns presented themselves in the past that have now led the parish to consider applying the OR?
4. In respect of the DRAs, do they require an in-depth understanding of the doctrine of the Christian [/Anglican] religion or rather an appreciation of the values and culture of the Christian [/Anglican] religion. If the latter would it be possible to recruit someone who would be able to understand, appreciate and maintain the values, priorities and culture required of the parish's ethos when performing the DRAs, without the parish having to rely on the OR. The parish could apply a value based assessment as part of the recruitment process, as well as a competency based assessment to test this?
5. Will the Role require the post holder to carry out certain DRAs unsupervised and to exercise his/her own discretion and judgement over how certain DRAs are performed, and/or to directly manage and supervise other employees in the exercise of such discretion and judgement, that requires the post holder to meet the OR in order for such discretion and judgement to be applied consistently with, and in furtherance of, the ethos of the parish? If so to which DRAs would this apply?
6. In respect of the nature and context of the Role generally and particularly the DRAs, would it be possible for someone else who met the OR (for example the Vicar) to control and direct the post holder sufficiently in the performance of those DRAs that would ensure the post holder appreciated the values, priorities, culture of the parish ethos that needed to be applied when performing the DRAs?
7. Is there any other way of structuring the Role, in terms of its DRAs, how it is supervised/managed etc, that would avoid having to rely on the OR?