



BRATHAY TRUST

RECRUITMENT OF EX-OFFENDERS

POLICY & MANAGEMENT GUIDELINES

DOCUMENT MANAGEMENT RECORD

Policy Name: Recruitment of Ex-Offenders

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Policy Owner: Business Support Manager

Distribution: i.e. Internal and External – Non- Confidential , Website

SUMMARY POLICY STATEMENT

Introduction

This policy outlines Brathay's use of criminal record checks and the recruitment of staff and volunteers with criminal convictions.

Brathay has developed this policy:

- To ensure that Brathay complies with the spirit and requirements of the Rehabilitation of Offenders legislation.
- To ensure consistent and fair practice regarding the recruitment of staff and volunteers who have a criminal record to paid positions or voluntary, unpaid positions.

Policy Statement

Brathay is committed to creating equal access to opportunities for paid work and voluntary involvement, while continuing to base selection and promotion solely on ability to meet the requirements of the post. This is irrespective of age, disability, gender, marriage, civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation, irrelevant offending background, responsibility for dependents, economic status or political values.

Brathay will not discriminate unlawfully against any applicant based on a conviction or other information revealed.

Describe the purpose of the policy here, including appropriate headings, general principles, etc.

The design of this section is to be tailored by the person creating the policy to suit the needs of the communication

POLICY DETAILS

Scope

This policy applies to all staff and volunteers, including potential staff/volunteers applying for roles at Brathay, and is made available to applicants at the outset of the recruitment process.

General Principles

Brathay actively promotes equality of opportunity for all and welcomes applications from a wide range of candidates, including those with criminal records. As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, Brathay complies fully with their Codes of Practice and undertakes to treat all applicants fairly.

Unless the nature of the position allows Brathay to ask questions about an applicant's 'spent' and 'unspent' criminal convictions (including cautions, reprimands or final warnings) that are not 'protected' as part of the application process (e.g. posts exempt from the Rehabilitation of Offenders legislation, such as those involving working with children or vulnerable adults), we only ask about 'unspent' convictions.

Certain convictions (and cautions) become 'spent' after a rehabilitation period during which time there have been no further convictions. The way in which a conviction can become 'spent' under the legislation will depend upon the sentence received for the offence, and the applicable rehabilitation period. There are however certain convictions which can never become spent.

Where a position is 'exempt' from the Rehabilitation of Offenders legislation an enhanced criminal records disclosure will form part of the recruitment process. For relevant positions 'covered' by the Rehabilitation of Offenders legislation, a standard criminal records disclosure will apply with the individual's consent. Failure to consent or subsequent withdrawal may affect the continuance of an application if this is a requirement of the position.

A criminal records Disclosure is only requested for those positions where it is deemed both proportionate and relevant to the position concerned, following consideration of the role requirements.

For those positions 'exempt' from the Rehabilitation of Offenders legislation recruitment materials will contain a statement that an enhanced criminal records Disclosure will be required in the event of an individual being offered the position.

For relevant roles 'covered' by the Rehabilitation of Offenders legislation, job applicants will be made aware that as part of the recruitment process, successful candidates will be asked to agree to a basic criminal records check.

With some exceptions e.g. conviction of a Schedule Four offence, having a criminal record will not necessarily bar a person from working with us in either a paid or unpaid capacity. This will depend on the nature of the disclosed conviction(s) and the position sought; the circumstances and background of the offence and their relevance to the post in question.

Suitable applicants will not be refused posts because of offences which are not relevant to, and do not place them at or make them a risk in, the role for which they are applying. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place about any offences or other matter that might be relevant to the position.

We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before deciding whether the conditional offer of employment or volunteering placement will be confirmed or withdrawn.

A failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment or volunteering placement or disciplinary action if such information comes to light once an individual is in post.

Once in post the line manager will complete a risk assessment considering the needs of the role and how any specific risks relating to the conviction will be managed. This will be shared with the employee and relevant members of staff, if necessary, to ensure effective risk management.

In accordance with our Safeguarding Policy, staff must inform their line manager, of any changes to their circumstances which affects their criminal record status, in order that the impact upon their suitability to undertake their role may be reviewed. This requirement also applies to voluntary involvement and volunteers informing their supervisor.

A change of role within Brathay may lead to the requirement to carry out additional / different criminal records checks dependent upon the requirement of the role.

Process

Candidate completes application form including question on disclosure of criminal record

- Where the role being recruited is classed as 'exempt' all candidates will be made aware as part of the recruitment process that they are required to answer this question
- In the event that a candidate makes a disclosure at application stage (but otherwise is successful at the paper-sift), meeting arranged with the candidate and an appropriate senior manager to review and establish whether the process can continue
- Appropriate level DBS check applied for at offer stage and offer made subject to satisfactory certificate
- In the event that certificate reveals a record that hasn't been disclosed this will result in a meeting with the candidate to review the situation, the outcome of which may be that the offer is withdrawn

Previous Convictions and/or Cautions

Rehabilitation of Offenders Act 1974 - When obtaining a response to a request for this information, consideration should be given to the relevance of the Rehabilitation of Offenders Act 1974 which enables some criminal convictions to become 'spent', or ignored, after a 'rehabilitation period', this being a set length of time from the date of conviction.

Applicants with a criminal record who are asked whether they have any previous convictions can answer 'no' if the convictions are spent.

Under the terms of the Act, a spent conviction shall not be proper grounds for not engaging an applicant. If, however, an applicant does not disclose unspent convictions, if asked to do so, and is subsequently found out, this would normally provide grounds for termination of the contract and in extreme cases possibly prosecution.

Rehabilitation Periods - The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the length of time served is irrelevant; the rehabilitation period is decided by the original sentence. The following sentences can never become spent:

- A sentence of imprisonment, youth custody detention in a young offender institution or corrective training, for a term of more than two and a half years.
- A sentence of imprisonment for life.
- A sentence of preventative detention.
- Detention during Her Majesty’s pleasure.
- Sentence of custody for life.
- Public protection sentences (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders).
- A public protection sentence (the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006 means a sentence of imprisonment or detention, as detailed above, imposed for specified sexual and violent offences).

The following sentences become spent after fixed periods from the date of conviction

Sentence	Rehabilitation Period	
	People aged 18 or over when convicted	People aged under 18 when convicted
A custodial sentence of over 2 years 6 months but not exceeding 4 years	7 years from the date on which the sentence (including any licence period) is completed	3 years 6 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of over 6 months but not exceeding 2 years 6 months*	4 years from the date on which the sentence (including any licence period) is completed	2 years from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months*	2 years from the date on which the sentence (including any licence period) is completed	1 year 6 months from the date on which the sentence (including any licence period) is completed
A sentence of service detention	1 year from the date on which the sentence was completed	6 months from the date on which the sentence was completed
Dismissal from Her Majesty’s Service	1 year from the date of conviction	6 months from the date of conviction
Fine	1 year from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order or youth rehabilitation order	1 year from the last day on which the order has effect	6 months from the last day on which the order has effect
Driving endorsements	5 years from the date of conviction	2 years 6 months from the date of conviction

Driving disqualifications	When the period of the disqualification has passed	When the period of disqualification has passed
Simple cause, youth caution	Spent immediately	Spent immediately
Conditional caution, youth conditional caution	3 months or when caution ceases to have effect if earlier	3 months or when caution ceases to have effect if earlier
Compensation order	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required
Absolute discharge	Spent immediately	Spent immediately
Relevant orders** (orders that impose a disqualification, disability, prohibition or other penalty)	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent
Relevant orders** (orders that impose a disqualification, disability, prohibition or other penalty)	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent

*Suspended custodial sentences are treated the same as custodial sentences for this purpose. It will be the length of the sentence imposed by the court, not the period it is suspended for that dictates when it will become spent.

**Relevant orders include conditional discharge orders, restraining orders, hospital orders, bind overs, referral orders, care orders and any order imposing a disqualification, disability, prohibition or other penalty not mentioned in the table.

Cautions - Cautions, reprimands and final warnings are not criminal convictions and so are not dealt with by the Act. This means that if an applicant with cautions, reprimands or final warnings is only asked whether they have any 'criminal convictions' they can answer 'no'.

However, people who are specifically asked if they have cautions, reprimands or final warnings should disclose them until they are deleted from policy records. Records of cautions should be deleted after 5 years if there are no convictions on the record. (In practice, some police forces may retain records or cautions for much longer than this or indefinitely).

DATA PROTECTION

Those involved with recruiting at Brathay will have access to personal and sensitive personal data as part of this process. This is justified because of the business requirement to recruit appropriately and effectively. However, information relating to criminal convictions, spent or otherwise must be treated as highly confidential and shared only with those who need to know. It should be stored and kept in accordance with the Brathay Privacy Policy.

TRAINING

Responsibility for the implementation of this policy rests with HR who provide guidance and support on implementation to recruiting managers.

RESPONSIBILITIES

Trustees

Responsible for:

- Overall responsibility for a policy which ensures compliance with the relevant statute

Chief Executive & Leadership Team

Responsible for:

- Ensuring compliance with legal and regulatory requirements
- Development and maintenance of such procedures as are necessary to ensure implementation of the policy
- Maintenance of the policy
- Reporting to Trustees

Line Managers/Recruiting Managers

Responsible for:

- Complying with this policy and if criminal record information is revealed, ensuring that a measured discussion about any offences or other matter that might be relevant to the position takes place with the applicant.
- Seeking advice from HR resource when appropriate

DEFINITIONS / ABBREVIATIONS

Criminal Record for the purposes of this policy may include 'spent' and 'unspent' criminal convictions, cautions, reprimands, final warnings which are not 'protected' (i.e. eligible for filtering). For further information on filtering, please refer to the Nacro Website and/or the Disclosure and Barring Service website.

DBS - The Disclosure and Barring Service. Responsible for criminal record disclosure checks in England and Wales

ASSOCIATED GUIDANCE AND DOCUMENTS

Associated policies

- Disclosure and Barring Service Policies (England & Wales)
- Equality and Diversity Policy
- Recruitment and Selection Policy
- Safeguarding Policy

Relevant legislation

- Police Act 1997
- Rehabilitation of Offenders Act (ROA) 1974 – Exceptions and amendments

DOCUMENT HISTORY

Issue	Date	Notes	Author	Status
1.	August 2019	Revised document prepared and circulated	Finance Director	Approved
2.	September 2019	Document approved by senior management team and published	Finance Director	
3.	October 2020	Document reviewed	HR Consultant	