

Section 5 - Confidential Declarations

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Requirements

5.1 A Church of England Confidential Declaration form must be completed by all applicants for positions engaging in regulated activity or otherwise working/having substantial contact with children, young people or vulnerable adults which requires an enhanced (with/without barred list) DBS check.

5.2 All recruitment documentation must detail the Confidential Declaration requirement for that particular role and the basis on which that requirement is made, so that the applicant is aware from the outset.

5.3 If an applicant does not want to complete a Confidential Declaration form then the application process must be terminated.

5.4 The Confidential Declaration form must only be viewed by those who need to see it as part of the recruitment & selection process.

Church bodies must have an appropriate policy in place to ensure information is reviewed and retained appropriately, in line with current data protection legislation.

Good practice advice

Why?

The [Rehabilitation of Offenders Act 1974](#) (ROA) allows certain convictions and cautions to be considered 'spent' (i.e. legally ignored) after a specified period of time¹. The specified period is determined by the sentence or penalty received for the offence. Once a caution or conviction is spent the person is considered rehabilitated and the ROA treats the person as if they had never committed an offence.

This means that applicants with criminal records have the right to legally withhold such information when applying for most jobs or voluntary roles. If someone's caution or conviction is spent, it's unlawful for employers/recruiters etc. to consider it when making a decision about their suitability for a job/role.

Some roles are made exempt from the ROA by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, commonly known as the 'ROA Exceptions Order'. Broadly speaking, the ROA Exceptions Order lists those roles and positions that are exempted from the provisions of the ROA, this includes those roles which will have substantial contact/work with children, young people or vulnerable adults. If the role you are appointing to is exempt (as previously defined in the role description see [Section 2: Role Descriptions and Person Specifications](#)) this means the individual will be eligible for an enhanced (with/without barred list) DBS check (see [Section 9: Disclosure & Barring Service \(DBS\)](#)).

Applicants for exempt roles must be asked to complete a confidential declaration which gives the individual the opportunity to disclose details of any convictions, cautions, final warnings and reprimands which are not protected i.e. not eligible for being filtered out in accordance with the [DBS filtering rules](#), and will be displayed on a DBS certificate. The information declared by the applicant, as well as that provided on the DBS certificate can be taken into account when deciding on an individual's suitability for the role for which he/she applied.

How?

Asking applicants for exempt roles to declare their criminal record and other information via a confidential declaration should be done in a way that encourages honesty and openness.

All recruitment and selection documentation must include an explanation that the post is exempt from the Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the fact that the post/role is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) Regulations and outline exactly what information will be requested from them and at which stage of the process.

The emphasis should be that the information will only be used to inform the overall assessment as to a candidate's suitability for the role, where it is relevant. Providing this information will help prospective applicants decide whether they would like to apply or not. All of this should be stated on the relevant privacy notice.

How should applicants make a confidential declaration?

A confidential declaration should be made in writing (handwritten or electronically). This is useful as it serves as evidence of exactly what the applicant disclosed when applying and may be held on the applicant's file if they are successful.

- [Download the Church of England's Confidential Declaration form](#)
- [Download the Church of England's Confidential Declaration form Privacy Notice](#)

When should applicants be asked to make a confidential declaration?

The timing of the completion of a confidential declaration form can vary in practice from organisation to organisation. Indeed, there may be some sense from an administrative point of view in not asking candidates to fill out the confidential declaration form until they are shortlisted for interview.

However, there is nothing in legislation preventing bodies from requesting such information at an early stage of the recruitment process provided there is sufficient justification or legitimate purpose for requesting it at that point. If someone is applying for a role in regulated activity or for a role which, although outside regulated activity, is still eligible for an enhanced DBS check, it is perfectly acceptable. For example, you could have a candidate that you don't shortlist as a result of their responses on the confidential declaration form because that candidate is completely inappropriate from a safeguarding perspective. Bodies need to be clear with applicants that this can happen and of course, give candidates an opportunity to explain.

Additionally, if you only request confidential declaration forms to be completed by shortlisted candidates, you may have a situation where a candidate is applying for a regulated activity role but they are barred from that activity by the DBS. If you don't ask the candidate to complete the confidential declaration form until after they are shortlisted for interview, you would not know that they were barred until the interview. If a person is barred, you must not interview the person for a regulated activity role and it is therefore questionable why such a person should be shortlisted prior to interview. It would be a criminal offence to employ such a person in regulated activity, as well as a criminal offence for them to apply. By asking candidates to complete forms earlier in the process you avoid such a situation arising.

If the candidate has declared anything on his/her confidential declaration, this should be assessed in accordance with the body's agreed process and, if it does not make them unsuitable to be shortlisted, the declared information should be discussed at interview. Appropriate notes relating to the discussions with the individual should be recorded within the interview notes. The information provided during the interview discussion must be discussed with the appropriate point of contact from within the safeguarding team relevant to the body (see [Section 10: Criminal Records](#) for further guidance on dealing with declared information).

Throughout all of this, transparency with applicants is key. Criminal record information is a particularly sensitive category of personal data and subject to additional protection under data protection legislation. Ensuring individuals are fully aware of a body's policies and procedures is essential. Applicants must be made aware of when and why such information is being requested, what will be done with it, who it may be shared with and for how long it will be retained. Bodies will need to have a retention policy about storing the information, whether a candidate is successful or not.

A privacy notice must be attached to the confidential declaration form to illustrate how a person's personal data will be processed in this context. A standard privacy notice for the confidential declaration can be found at the end of the Church of England Confidential Declaration form.

Bodies should consult those responsible for data protection if they have any queries in relation to the processing of this personal data or the appropriate use of the privacy notice.

Finally, if an applicant does not wish to complete a confidential declaration form, which is entirely his/her choice, the application should not proceed further and must be terminated.

[1] A sentence of over 4 years is never spent.

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