

Educ8tions Ltd.



Disclosure of Unspent Convictions Policy  
(DoUCP)  
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### Document Control

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### Change History

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0.1	01 <sup>st</sup> August 2016	First draft	Vonley Joseph
0.2	02 <sup>nd</sup> April 2018	Updated	Vonley Joseph

### Change Mechanism

Any person seeking to alter this document must consult the author before making any change.

Educ8tions Ltd Change Authority must endorse any alterations to the approved version of this document before any wider dissemination of the altered document.

The person making the alteration must indicate every change between the previous (approved) document version and the altered document version.

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1. Educ8tions Ltd is committed to the fair treatment of its entire staff and welcomes applications from a wide range of individuals including those with criminal convictions. Educ8tions Ltd actively promotes equality of opportunity. Educ8tions Ltd selects individuals to take up employment based on their skills, qualifications, and experience and not on their background or personal circumstances. Having a criminal conviction will not necessarily prevent someone from working at Educ8tions Ltd. As an organisation using the Criminal Records Bureau (CRB) Disclosure service to assess applicants' suitability for positions of trust, Educ8tions Ltd complies fully with the CRB Code of Practice and undertakes to treat all applicants fairly. Educ8tions Ltd undertakes not to discriminate unfairly against any subject of a Disclosure based on conviction or other information revealed.

Educ8tions approach towards employing ex-offenders differs, however, depending on whether the job is or is not exempt from the provisions of the Rehabilitation of Offenders Act. The aim of this policy is to state Educ8tions approach towards employing people who have criminal records. It sets out the basis by which all recruiting managers at Educ8tions should comply with the CRB Code of Practice.

2 In managing its staff Educ8tions Ltd is mindful, however, of the duty of care it owes to its learners and staff and, in appropriate circumstances, to the wider community to act reasonably to protect their health, safety and welfare. Therefore, Educ8tions Ltd requires all applicants to disclose unspent criminal convictions (save for minor motoring offences), as described in this Disclosure of Unspent Convictions Policy. Disclosure is also a condition of enrolment and re-enrolment and staff will be required to disclose unspent convictions on an ongoing basis.

3 This Disclosure of Unspent Convictions Policy explains how Educ8tions Ltd deals with information regarding unspent criminal convictions and how the Educ8tions Ltd considers whether any such information is incompatible with an individual being offered employment, taking up an offer, or continuing in employment. It also describes the actions Educ8tions Ltd may take in respect of a failure by an individual to comply with its disclosure requirements.

#### 4 Who Does This Policy Apply To?

This Policy applies to all individuals who apply for and/or are offered employment.

A statement regarding an Enhanced CRB Disclosure should be contained in all Job Descriptions and documentation giving details about the position when recruiting. This policy on the recruitment of ex-offenders will be made available to all Disclosure applicants at the outset. We will ensure that all those who are involved in the recruitment process have been suitably coached or trained to identify and assess the relevance and circumstances of offences. We will also ensure that they have received appropriate guidance in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.



5. All individuals working directly within Care Homes are deemed to be excluded from jobs listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, and Educ8tions will require the applicant to disclose all convictions, whether spent or unspent. Even in these circumstances, however, Educ8tions will not refuse to employ a particular individual unless the nature of the conviction has some relevance to the job for which the individual has applied.

Under the provisions of the Protection of Children Act, the Criminal Justice, Court Services Act, and the Care Standards Act, a number of people are banned from working in care homes.

Furthermore, if the job is exempt, Educ8tions will, once it has selected the person to whom it wishes to offer employment, seek documentary evidence about that person's criminal convictions. Educ8tions Ltd will seek the applicant's agreement to make an application to the Criminal Records Bureau (CRB) for an Enhanced Disclosure. In the event that the person declines to disclose spent convictions or does not wish to participate in an application for a disclosure, they will not be further considered in the process.

Educ8tions Ltd is committed to ensuring that all information provided about an individual's criminal convictions, including any information released in disclosures, is used fairly and stored and handled appropriately and in accordance with the provisions of the Data Protection Act 1998. Data held on file about an individual's criminal convictions will be held only as long as it is required for employment purposes and will not be disclosed to any unauthorised person.

6. Individuals employed directly at Educ8tions Ltd  
Educ8tions Ltd will not automatically refuse to employ a particular individual just because he/she has a criminal record. Through the recruitment process, Educ8tions will ask individuals to disclose any unspent convictions, but will not ask job applicants questions about spent convictions, nor expect them to disclose any spent convictions unless their contact with Care Homes is regular by the nature of their job. If an applicant has a conviction that is not spent and if the nature of the offence is relevant to the job for which he/she has applied, Educ8tions Ltd will review the individual circumstances of the case and may, at its discretion, decline to select the individual for employment. Educ8tions Ltd will ensure that an open and measured discussion takes place on the subject of any offences or other matters that might be relevant to the position which are shown on an Enhanced CRB Disclosure. We undertake to discuss any matter revealed in an Enhanced Disclosure with the person seeking the position before withdrawing a conditional offer of employment. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

7. The following people are banned from working with children and/or vulnerable adults:

People on the DfES List 99, people on the DoH List, people on the National Assembly of Wales List, people aged 18 or over convicted of certain specified offences against those aged under 18 (or 16 in some instances) and given a hospital or guardianship order or a custodial sentence of 12 months or more. Suspended





sentences of 12 months or more are treated as qualifying sentences. Notice, *at its absolute discretion*. The specified (Schedule Four) offences are:

Murder or manslaughter, rape or burglary with intent to commit rape, grievous bodily harm, cruelty to children, kidnapping, false imprisonment and abduction, indecent assault on a man or a woman, sexual intercourse with a child under 13, intercourse with a girl aged between 13 and 16, buggery with a child under 16, indecency between men, abuse of trust, incest and related offences, assault with intent to commit buggery, indecency with children under the age of 14, offences relating to or encouraging child prostitution and offences relating to child pornography.

### 8. What is an 'unspent' conviction?

The Rehabilitation of Offenders Act 1974 distinguishes between spent and unspent convictions.

If you have ever been convicted of an offence for which a sentence of more than 2½ years was imposed (regardless of the amount of time you actually spent in prison) this conviction can never become 'spent' and therefore remains unspent.

If you were given a sentence of 2½ years or less, your conviction may be 'unspent' and this depends on the length of time that has elapsed since the date of your conviction. This length of time is called the 'rehabilitation period' - and it differs according to the type of sentence imposed by the court.

Current and future staff other than those listed in Appendix 1 do not have to disclose spent convictions. However, individuals are required to disclose unspent convictions in accordance with this Policy in order to assist Educ8tions Ltd to discharge its duty of care.

### Procedural Steps

All individuals are required to disclose unspent convictions on their:

- application form

If an unspent criminal conviction is disclosed or otherwise brought to the Educ8tions attention, the safeguarding officer will require the individual to complete a Disclosure Form providing Educ8tions with further information about the offence and contact details for any relevant third party e.g. a probation officer. Having considered the further information provided in any disclosure form the Safeguarding Officer, may ask the individual to provide additional information and/or provide consent for Educ8tions to contact relevant third parties e.g. a probation officer, medical practitioner etc.

This disclosure information will then be provided to the respective Safeguarding Officer who will determine whether it gives rise to any concern that the individual poses an unacceptable risk to the health, safety, and/or welfare of themselves and/or others (including learners and staff) and/or serious risk of damage to Educ8tions Ltd property. If the Safeguarding Officer determines that such a



concern arises, he/she will refer the matter to the CEO; who will undertake a risk assessment and determine whether the concern is made out, that is whether the individual poses an unacceptable risk to the health, safety and/or welfare of themselves and/or others (including learners and staff).

As part of the process for undertaking a risk assessment the nature of the concern will be put in writing to the individual and the individual invited to respond thereto. The individual can either respond in writing or by attending a meeting, which ever they prefer. If the individual decides to attend, they may be accompanied by a friend or relative, (*but not by a legal or other professional advisor*).

In carrying out any risk assessment, Educ8tions may seek to involve relevant third parties such as a probation officer or medical practitioner.

In carrying out any risk assessment Educ8tions may consider as appropriate in the circumstances of the case one or more of the following aspects (which is not an exhaustive list):

- the nature and circumstances of the offence
- the date of the commission of the offence
- the age and circumstances of the individual at the time of the commission of the offence
- the penalty imposed for the offence
- the country in which the offence was committed
- whether the offence was a one-off or a repeat offence

the particular environment(s) that the individual would be placed in if s/he were to take up employment e.g. where an applicant's criminal convictions have a direct bearing on the job that they have applied for, e.g. a conviction of a sexual nature might have a bearing on an applicant wishing to work, where they would have access to children and/or vulnerable adults. Or, where the admission of an applicant could place learners and/or staff at risk because the applicant has a history of violence or any other form of abuse towards others.

If an individual refuses to disclose further information when requested and/or refuses to consent to the Educ8tions Ltd contacting a third party for information, Educ8tions Ltd may come to a decision based on the information currently provided.

9. What is a 'spent' conviction?





A spent conviction is a conviction which, under the terms of Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time. The amount of time for rehabilitation depends on the sentence imposed, not on the offence. The more serious the conviction, the longer the period of rehabilitation. For example, if you have received a prison sentence of more than two and a half years, the conviction will never become spent, but cautions become spent immediately (apart from conditional cautions which will become spent after three months).

The Act aims to rehabilitate offenders by not making their past mistakes affect the rest of their lives if they have been on the right side of the law for some time. For details of the length of time before a conviction becomes spent, see the NACRO website in 'related information'.

Unless applying for particular types of work (see below), a person who has spent convictions and cautions does not have to disclose them to prospective employers, and employers cannot refuse to employ someone on the basis of spent convictions. However, when applying to work in certain types of employment, for example, working with children or vulnerable adults, certain professions such as law, health care, and pharmacy, senior management posts within certain sectors and employment where matters of national security are involved, the application form will state that it is exempt from the Rehabilitation of Offenders Act 1974. In these situation, you may need to disclose your cautions and convictions, and they may be disclosed on your DBS criminal records check.

The law protects people from having some old and/or minor convictions and cautions disclosed to employers, but sexual and violent offences will always be disclosed, as well as any convictions that resulted in a custodial sentence, and all convictions if a person has more than one conviction. Regarding any other convictions and cautions: convictions are not shown after eleven years (in relation to persons 18 or over) or five and a half years (in relation to persons under 18), and cautions are not shown after six years (in relation to persons 18 or over) or two years (in relation to persons under 18). In order to determine whether your caution/conviction needs to be disclosed and whether it will show on a DBS check, see the flow chart below:

<https://www.pnld.co.uk/docportal/content/Disclosure%20of%20Cautions%20and%20Convictions.pdf>

Please be aware that the information that police forces disclose may differ from the above and particularly in relation to enhanced disclosures, any information that the Chief Constable feels relevant with regards to the reason for the check, can be disclosed.

### 10. Decision

Upon consideration of the information received as a result of the procedure referred to in section 8 above, Educ8tions may make one of the following recommendations to the Safeguarding Officer:

The individual is:



- Offered employment with conditions
- Offered employment without conditions
- Not or should not be offered employment
- Permitted to remain in employment
- Permitted to remain in employment with conditions
- Excluded from employment.

The decision of the Safeguarding Officer together with reasons will be notified to the individual in writing normally within three working days of the decision being made.

### Appeal

For new applicants applying for employment with Educ8tions, the decision of the Safeguarding Officer is final and there will be no right of appeal against any decision made during this process

Existing staff, who wish to appeal against any decisions made during this process should set out their grounds for an appeal in writing to the Safeguarding Officer, The appeal must clearly explain the grounds for the appeal, e.g. that Educ8tions Ltd procedure in this Policy was not followed, or that the decision made was unreasonable or that new material evidence has become known.

The decision of the Safeguarding Officer together with reasons will be notified to the individual in writing normally within three working days of the decision being made.

### Failure to disclose a relevant criminal conviction

Educ8tions Ltd may amend or withdraw the offer of a place or terminate a learner's employment or withdraw services or facilities (such as library facilities) if it determines that an individual:

- Made any misleading, false or fraudulent application or statement to Educ8tions Ltd
- Failed to disclose relevant information to Educ8tions.
- Provided falsified documents whether in the course of his/her application or whilst in his/her employment.

### Data Protection

In accordance with the Data Protection Act 1998 (DPA), Educ8tions Ltd is the data controller of any personal and/or sensitive personal data (including any information on your previous criminal convictions, current allegations etc.) you and third parties provide. Personal information submitted as part of the application process/enrolment/re-enrolment will be dealt with in accordance with the data protection statement contained on the application form.

In some circumstances Educ8tions Ltd may request additional information from you on your criminal convictions to evaluate your application in more detail. To comply with the DPA, Educ8tions may require your written consent to collect and process this additional information on your criminal convictions, should Educ8tions require more information from you in this regard.





Where you provide your consent, any additional information provided which relates to your criminal convictions will be processed solely for the purposes of evaluating your application or enrolment or continued enrolment in accordance with this Policy and otherwise as required or permitted by law under the DPA. If you do not provide your consent, any information you provide to Educ8tions will be immediately returned to you and will not be considered under this Policy until such consent is provided. Failing to provide your consent may lead to Educ8tions being unable to process your application.

Any information provided to Educ8tions Ltd under this Policy shall be retained in accordance with its obligations under the DPA and Educ8tions Secure Storage Policy.

### **Monitoring and Evaluation**

Educ8tions Ltd will monitor and review performance of this Policy on an annual basis and can amend this Policy document at any time when it deems necessary/reasonably appropriate and after reasonable notice to learners.

### **Further Information**

If you require further information about Educ8tions Ltd DBS Check Policy and/or the Disclosure of Unspent Convictions Policy then please contact the Safeguarding Officer.

If you are in any doubt about whether a conviction/caution you have has become spent and/or should be disclosed, you should consider taking independent legal advice, or go to:

[http://www.DBS.homeoffice.gov.uk/glossary/glossary\\_of\\_terms\\_-\\_disclosure.aspx](http://www.DBS.homeoffice.gov.uk/glossary/glossary_of_terms_-_disclosure.aspx) or  
<http://www.nacro.org.uk/>]

