We have a duty to ensure adequate protection of children and protected adults and safe working systems and practices. It is particularly important that decisions taken on the suitability of individuals to work in regulated activity relating to children and, or protected adults, are consistent and that risks are managed.

In recruitment situations, a candidate may advise that they have a criminal conviction, or that criminal proceedings (which may result in a conviction) are pending. This should be regarded as strictly confidential. Depending on the nature of the conviction, we reserve the right to withdraw consideration of their application. Alternatively we may proceed to consider the candidate, subject to a criminal records check being made with Disclosure Scotland.

It is a condition of employment for council employees that they disclose details of any of the following that occur prior to commencing, or during the course of employment:
How to carry out PVG & Disclosure Risk Assessment & Overseas Checks

- Involvement in police investigations
- Criminal charges
- Police cautions
- Disciplinary action taken by professional or regulatory bodies.

If a current employee advises that they have a criminal conviction, a risk assessment should be undertaken by their manager. The manager will assess the information disclosed and decide whether or not it materially affects the individual’s suitability for their particular post. Minor issues or offences will be disregarded if they have no direct relevance to an individual’s job.

A criminal convictions check through Disclosure Scotland will normally only identify the appropriate criminal convictions for candidates from the UK. If candidates have lived or worked outside the UK for 3 months or more in the past 5 years and the post requires a criminal records check, a further overseas check is also required. Successful candidates should be asked to obtain the most comprehensive level of criminal records check from the country that they have previously lived and/or worked in. More details can be found at the end of this document.

Criminal Convictions
On receipt of Disclosure/PVG certificates, HR will notify managers if there are any convictions on the certificate and they will be asked to carry out a risk assessment, to consider if any information disclosed makes the candidate unsuitable for employment. Managers should record their assessment on the Disclosure Scotland Risk Assessment Form and to return this to HR for filing. All risk assessment paperwork should be returned to HR for retention in a central file. This should not be held on the personal or recruitment file.

Risk Assessment
The risk assessment will take into account the type and nature of the conviction, the relevance of the conviction to the post and our duty to ensure adequate protection of children and protected adults. Advice can be obtained from Governance on what the nature of the information, charge or conviction may mean. Having a criminal record does not automatically make a person unsuitable for work with children or protected adults.

If any documentation suggests an individual is considered for listing, the manager MUST refer the matter to Governance and HR for further consideration. If any individual is barred from working with a particular group, they MUST NOT, in any circumstance, be offered any work within that particular regulated workforce.

In some circumstances we may be provided with information from the police that is considered relevant. This information is not provided to the candidate and is considered confidential, for example, where an individual has been or is presently under investigation by the Police.

Full consideration should be given to any such information disclosed and the relevance of this to the post applied for. Governance & HR advice should be
How to carry out PVG & Disclosure Risk Assessment & Overseas Checks

obtained in these circumstances. Any information of this type which is disclosed MUST NOT be shared with the candidate.

If a decision is taken to withdraw the recommendation for employment based on the information from the police, the candidate will be advised that they have been unsuccessful as a result of the information received from the disclosure/PVG check. The candidate will not be advised of the detail of the information received. If necessary as part of the process, the recruiting manager should confirm that we cannot disclose any further information.

Overseas Criminal Records Checks

It is the candidate’s responsibility to provide and pay for a separate overseas criminal records check. Certificates and other original documents obtained remain their property and may be used for future employment purposes.

Authenticity

Documents should come from the police or judicial authority, government department or embassy of the countries concerned. It must be an official statement confirming that the person does not have any history or pending criminal record proceedings. Original documents should be provided. Some countries offer a certificate in English or the option of a translated duplicate. Many countries do not. If a translation is required this must be carried out by a Falkirk Council approved source. Further information can be found on Inside Falkirk. If a translation has been required, ensure that the original document and the translation are inspected.

While managers are not expected to be an expert in recognising forged documents, they must check for evidence of tampering. Be suspicious of plausible explanations for missing or damaged originals; for example where the candidate claims a document has been damaged by liquid spillage or has accidentally been laundered.

Extra care should be used to check references, the dates of previous employment and any other biographical information supplied by the candidate. It is the recruiting manager’s responsibility to question any gaps in the application form and records received and to check where the candidate has been employed during gaps. The manager should cross reference documentation and check for consistency between information in the passport, work permits, references, and work history in the application form. Inspect closely the overseas documents produced for issue date and certificate numbers to ensure they are authentic.

Verification of authenticity of certificates provided may be available from the embassy or consulate of the country of origin. It is important to take care with documents confirming identity for foreign nationals. Documents to confirm suitability are likely to differ to those which confirm permission to work in the UK. The Centre for the Protection of National Infrastructure (CPNI) may be able to provide further information and intelligence on checking identity and related issues.

Alternative Checks/documents

We appreciate that obtaining an overseas criminal record check can be difficult and differs from country to country. In some cases it will prove impossible for a candidate to obtain the required statement, particularly where the country is experiencing
How to carry out PVG & Disclosure Risk Assessment & Overseas Checks

political difficulties. Political refugees may find it very difficult to obtain the required statement. The accuracy of the information received may also be questionable. There may also be concerns that such a request could put the individual’s personal safety in jeopardy.

In these situations, additional checking may be useful in assessing the suitability of candidates.

This can include:

- seeking a reference from an academic institution if the candidate has been studying abroad
- seeking references from all employers instead of just from the most recent employers
- checking professional registration
- verifying documents

Permission from the candidate should be sought before any contact is made. Although refusal may raise suspicions this should not be a reason to automatically reject the candidate without further investigation.

References

It should not be assumed that referees can read English. In some circumstances it may be necessary to send a translation of the reference request letter or form.

Convictions

Offences in different jurisdictions may not be directly comparable to offences committed in Scotland. This means that certain crimes may be described or categorised differently. In addition the record may include convictions for activities that would not be regarded as crimes in Scotland and vice versa. Governance or Police Scotland may be able to provide advice on what a foreign conviction equates to in Scottish law. The Apex Scotland Disclosure Helpline offers advice on what UK convictions mean and may also be able to advise on foreign convictions.

Limited information available

A reasonable period should be given to get the information. If after 6 weeks no response has been received managers should consider whether to:

- Allow more time
- Make a risk assessment on the partial information already available , or
- Reject the candidate

If no overseas criminal record check or only partial checks have been obtained, this should not be a reason to automatically reject the candidate.

When deciding how to proceed, the manager should consider what action has been taken to try and obtain the check and seek evidence of the dates and actions the candidate has taken. This evidence should be considered along with anecdotal information such as whether similar difficulties have been encountered by other candidates applying to the same source. It may also be useful to consult HR colleagues or other Local Authorities to provide further information.
How to carry out PVG & Disclosure Risk Assessment & Overseas Checks

Consider whether other information, such as information from references, means that the lack of a comprehensive authenticated criminal record check is less important. The assessment of suitability should consider the completeness, quality and authenticity of evidence provided.

There is information on the Government website which offers advice about obtaining criminal record information from a number of countries and how an individual can obtain their criminal record or certificate of good conduct from overseas. This can be accessed at https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants

Suitability of appointment
The decision on whether to confirm employment should be verified by the appropriate recruiting manager in consultation with the Head of Human Resources & Business Transformation.

If the check reveals a criminal record, this should be assessed using the same risk assessment criteria that would be applied to similar information from Disclosure Scotland.

If it is not possible to confirm the appointment, either because conviction history is incompatible with the duties of the post or because insufficient information has been obtained, the reasons should be discussed with the candidate. The candidate must have the opportunity to raise concerns about how the evidence provided has been interpreted, to allow for simple issues, such as an error in translation, to be brought to the attention of the Council.

Current Employees
If a current employee has a career break or an overseas exchange or secondment, managers should ensure that the employee is aware that the Council will require the employee to complete a Disclosure/PVG check prior to return to work if relevant for their post. Checks should also be carried out to include any other countries of residence for 3 months or over during the break, exchange or secondment. It will usually be the employee’s responsibility to source the necessary documents although in some situations, for example, exchanges or secondment, it may be sufficient to agree with the host organisation that the employee will remain bound by the Council’s disciplinary procedure and that arrest, charge, or conviction while abroad should be made known to the Council.

Other possible approaches include:

- Seeking a reference from the host organisation upon return
- Making it a condition of permission to take leave that the employee should obtain an overseas criminal conviction check upon return
- Seeking a report on the employee’s performance during secondment from the host organisation.

It is the manager’s responsibility to identify and complete any relevant checks. If an employee is about to return from work overseas and these arrangements have not been agreed in advance managers must contact Human Resources for advice.
## Useful Contacts
A list of useful sources is given below. The list was correct at the time of writing. Note that these external resources may change or move unexpectedly. Please let HR know about any links that need to be added, removed or updated. Phone numbers for the agencies below have not been given. Where contact by phone is possible the number can generally be found on the home page or contact us page of the website.

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