

Data Protection Criminal Records Information Policy

RESPONSIBLE COMMITTEE: PERSONNEL

This is a policy/procedure document of Saltash Town Council to be followed by both Councillors and Employees.

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Document Retention Period

Until superseded

Data Protection: Criminal Records Information Policy

1. Introduction

- 1.1. This policy supplements Saltash Town Council's Data Protection Policy for Employees.
- 1.2. This document sets out Saltash Town Council's policy on asking questions about a prospective (or existing) employee's criminal record, and carrying out Disclosure and Barring Service (DBS) checks.
- 1.3. This policy sets out our commitment to comply with the DBS Code of Practice and our data protection obligations, to treat prospective employees fairly and not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed. Its purpose is to set out how we comply with our data protection obligations in respect of criminal records information and seek to protect such information, and to ensure that staff understand and comply with the rules governing the collection, use and deletion of criminal records information to which they may have access in the course of their work.
- 1.4. We are committed to complying with our data protection obligations and the DBS Code of Practice in relation to criminal records information, in particular:
 - 1.4.1. in relation to the circumstances in which we seek criminal records information;
 - 1.4.2. by being concise, clear and transparent about how we obtain and use such information, and how (and when) we delete it once it is no longer required; and
 - 1.4.3. by ensuring the correct handling, use, storage, retention and disposal of DBS certificates and certificate information.

1.5. The Senior Policy and Data Compliance Monitoring Officer is responsible for data protection compliance within Saltash Town Council, including in relation to criminal records information. If you have any questions or comments about the content of this policy or if you need further information, you should contact the Senior Policy and Data Compliance Monitoring Officer by email: mandy.thomas@saltash.gov.uk

2. Policy statement

2.1. Having a criminal record will not necessarily bar you from working with us. We will take into account the circumstances and background of any offences and whether they are relevant to the position in question, balancing the rights and interests of the individual, our employees, customers/clients, suppliers and the public.

2.2. We will treat all applicants, employees and volunteers fairly but reserve the right to withdraw an offer of employment [or take disciplinary action] if you do not disclose relevant information, or if a DBS check reveals information which we reasonably believe would make you unsuitable for the role.

3. Scope and definitions

3.1. This policy applies to criminal records information relating to job applicants and current and former staff, including employees, temporary and agency workers, interns, volunteers and apprentices.

3.2. Staff should refer to Saltash Town Council's Data Protection Policy for Employees, Data Protection Privacy Notice (Employees) and, where appropriate, to its other relevant policies.

3.3. We will review and update this policy in accordance with our data protection obligations. It does not form part of any employee's contract of employment and we may amend, update or supplement it from time to time. We will circulate any new or modified policy to staff before it is adopted.

3.4. The definitions set out in Saltash Town Council's Data Protection Policy for Employees apply to terms used in this policy.

4. Asking for criminal records information

4.1. Before recruiting for any post the Council will, with advice from the Council's HR consultants, assess whether it is justified in seeking criminal records information for that particular post (see paragraph 4.2 below) and, if so:

4.1.1. whether it is appropriate to limit the information sought to offences that have a direct bearing on suitability for the job in question; and

4.1.2. whether the information should be verified with the DBS.

4.2. Saltash Town Council will be justified in obtaining criminal records information for a particular post if it is necessary:

4.2.1. for the performance of the employment contract for that post;

4.2.2. in order for Saltash Town Council to comply with a legal obligation to which it is subject;

4.2.3. in order to protect the vital interests of vulnerable service users; and/or

4.2.4. for the purposes of Saltash Town Council's legitimate interests.

4.3. The level of criminal records information and DBS check that Saltash Town Council is entitled to request (i.e. a disclosure and barring service (DBS) or enhanced disclosure barring service (EDBS)) will depend on the post for which the prospective employee's suitability is being assessed. Further details are set out in 0.

4.4. We will only ask an individual to provide criminal records information in relation to convictions and cautions that Saltash Town Council would be legally entitled to see in a DBS check for the relevant post (see paragraph 4.3 above), i.e.:

- 4.4.1. if Saltash Town Council is justified in seeking criminal records information for the post, and the post is not exempt from the Rehabilitation of Offenders Act 1974, we will ask applicants to complete the DBS form set out in the induction pack, which it states that applicants are not required to disclose convictions that are spent under the Rehabilitation of Offenders Act 1974; and
- 4.4.2. if Saltash Town Council is justified in seeking DBS information for the post, and the post is exempt from the Rehabilitation of Offenders Act 1974, we will ask applicants to complete the criminal records information form set out in the induction pack which asks applicants if they have any convictions, cautions, reprimands or final warnings which are not filtered (or 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)). For further information on filtering, see 0.
- 4.5. If the information sought can be limited to offences that have a direct bearing on suitability for the job in question, the Council will amend the DBS form accordingly.
- 4.6. Where a DBS 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.
- 4.7. Applicants will only be asked to complete a DBS form once they have accepted the formal offer; the formal offer will be subject to approval of the DBS check, they will not be asked to do so during the earlier short-listing, interview or decision-making stages.
- 4.8. Before an individual is asked to complete a DBS form, they will be provided with a copy of this policy.
- 4.9. If Saltash Town Council is not justified in seeking DBS for the post, it will not ask an applicant for criminal records information.

- 4.10. If it is assessed that Saltash Town Council should use the DBS to verify criminal records information, Saltash Town Council will:
- 4.10.1. provide the individual concerned with a copy of Saltash Town Council's data handling policy (set out in **Error! Reference source not found.**) before asking them to complete a DBS application form or asking for their consent to use their information to access the DBS update service;
 - 4.10.2. make every subject of a DBS check aware of the existence of the DBS Code of Practice and makes a copy available on request. A copy is available [here](#); and
 - 4.10.3. comply with the DBS Code of Practice.
 - 4.10.4. Once criminal records information has been verified through a DBS check, Saltash Town Council will:
 - 4.10.5. if inconsistencies emerge between the information provided by the individual and the information in the DBS certificate, give the applicant the opportunity to provide an explanation in accordance with paragraph 5;
 - 4.10.6. record that a DBS check was completed and whether it yielded a satisfactory or unsatisfactory result; and
 - 4.10.7. If, in accordance with paragraph **Error! Reference source not found.**, the Council's HR consultants assesses that the information in the DBS certificate is relevant to the ongoing employment relationship, it (and any record of the information contained in it) will be kept securely for no longer than is necessary, and no more than six months in line with the code of practice.
 - 4.10.8. Saltash Town Council will not seek criminal records information from any source other than the individual concerned or the DBS.
 - 4.10.9. DBS certificate information will be handled and kept in accordance with Saltash Town Council's policy on handling DBS certificate information set out in **Error! Reference source not found.**

5. Where an unprotected conviction or caution is disclosed

- 5.1. If Saltash Town Council has concerns about the information that has been disclosed by the DBS, or the information is not as expected, Saltash Town Council will discuss its concerns with the prospective employee and carry out a risk assessment.
- 5.2. Saltash Town Council has a legal duty, when recruiting staff to work in regulated activity with children or vulnerable adults, to check whether they are on the relevant children's or adults' barred list. If a prospective employee's name does appear on the relevant barred list, it would be against the law for Saltash Town Council to employ them to work or volunteer with the relevant group.
- 5.3. If a prospective employee is not barred from working with the relevant group, but nevertheless has a criminal record, it is up to Saltash Town Council to decide on their suitability for the role. Saltash Town Council will not refuse a prospective employee employment simply on the basis that they have a criminal record. Before making a decision, Saltash Town Council will:
 - 5.3.1. give the prospective employee the opportunity to address its concerns before making any decisions; and
 - 5.3.2. carry out a risk assessment.
- 5.4. In carrying out a risk assessment, Saltash Town Council will take account of:
 - 5.4.1. the relevance of the conviction or other matter revealed to the position in question.
 - 5.4.2. the seriousness of the offence or other matter revealed;
 - 5.4.3. the circumstances of the offence;
 - 5.4.4. the age of the offence;
 - 5.4.5. whether there is a pattern of offending; and
 - 5.4.6. whether circumstances have changed since the offending took place.

6. Training

6.1.1. Saltash Town Council will ensure that all those within the organisation who are involved in the recruitment process:

6.2. have been suitably trained to identify and assess the relevance and circumstances of offences; and

6.3. 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.

Appendix 1: Level of DBS check and filtering

1. Requesting a DBS certificate

- 1.1. The level of DBS check that Saltash Town Council is entitled to request will depend on the position for which the prospective employee's suitability is being assessed. Saltash Town Council may request:
- 1.2. a DBS certificate if the position is protected by the Rehabilitation of Offenders Act 1974;
- 1.3. an enhanced DBS certificate (EDBS) if the position is:
 - 1.3.1. excepted from the protections of the Rehabilitation of Offenders Act 1974 (i.e. included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended); and
 - 1.3.2. prescribed in the Police Act 1997 (Criminal Records) Regulations 2002 and
- 1.4. in addition, a search of the children's OR adults' barred list if the position is:
 - 1.4.1. eligible for an EDBS and
 - 1.4.2. prescribed in the Police Act 1997 (Criminal Records) Regulations 2009 as one for which the children's OR adults' barred list may be checked.

2. Filtering of protected convictions and cautions

- 2.1. Certain old and minor convictions and cautions are 'protected', which means:
 - 2.1.1. they are filtered out of a DBS check;
 - 2.1.2. they need not be disclosed by prospective employees to Saltash Town Council; and
 - 2.1.3. they will not be taken into account by Saltash Town Council in making decisions about employing a prospective employee.

2.2. Certain 'listed offences' will never be filtered out (see [here](#)). The list includes offences which are particularly serious, relate to sexual or violent offending or are relevant in the context of safeguarding.

2.3. A conviction will be a protected conviction (i.e. filtered) if:

2.3.1. the offence was not a listed offence;

2.3.2. it did not result in a custodial sentence (or sentence of service detention);

2.3.3. it is the individual's only conviction; and

2.3.4. where the individual was an adult at the time of conviction, 11 years or more have passed since the date of the conviction (or five years six months or more have passed since the date of conviction if the individual was under 18 at the time of conviction).

2.4. A caution will be a protected caution (i.e. filtered) if:

2.4.1. the offence was not a listed offence; and

2.4.2. where the individual was an adult at the time of the caution, six years or more have passed since the date of the caution (or two years or more have passed since the date of conviction if the individual was under 18 at the time of conviction).

2.5. As part of an ECRC, the police may also disclose information that they reasonably believe is relevant and ought to be included.

2.6. For further guidance on filtering, see [the DBS filtering guidance](#).

Appendix 2: Data Handling

1. Storage and access

1.1. Saltash Town Council will ensure that DBS certificate information is kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

2. Handling

2.1. In accordance with section 124 of the Police Act 1997, Saltash Town Council will ensure that certificate information is only passed to those who are authorised to receive it in the course of their duties. Saltash Town Council maintains a record of all those to whom certificates or certificate information has been revealed. It is a criminal offence to pass this information to anyone who is not entitled to receive it.

2.2. Once the DBS certificate has been inspected, it will be destroyed in accordance with the code of practice.

3. Usage

3.1. Certificate information must only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

4. Retention

4.1. Once a recruitment (or other relevant) decision has been made, Saltash Town Council does not keep certificate information for any longer than is necessary. This is generally for a period of up to six months in line with the code of practice, to allow for the consideration and resolution of any disputes or complaints.

4.2. If, in very exceptional circumstances, it is considered necessary to keep certificate information for longer than six months, we will consult the DBS about this and will give full consideration to the data protection and human rights of the individual before doing so.

4.3. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

5. Disposal

- 5.1. Once the retention period has elapsed, we will ensure that any DBS certificate information is immediately destroyed by secure means, e.g. by shredding, pulping or burning. While awaiting destruction, certificate information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack).
- 5.2. We will not keep any photocopy or other image of the certificate or any copy or representation of the contents of a certificate. However, notwithstanding the above, we may keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, the position for which the certificate was requested, the unique reference number of the certificates and the details of the recruitment decision taken.

6. DBS logo

- 6.1. Saltash Town Council will not copy or use the DBS logo without prior approval of the DBS.