



National governing bodies of sport

**Making safe and fair decisions about membership
for people with criminal records**



Child Protection in Sport Unit

NSPCC

This publication has been produced by Nacro's Employer Advice Service and is primarily set within the context of the legal arrangements in England and Wales. It is a practical guide aimed at national governing bodies (NGBs) of sport to help them understand their legal rights and responsibilities and best practice when a criminal record of an existing member of a governing body comes to light. The guidance outlines how to make safe, fair and responsible decisions based on a full understanding and assessment of risks involved.

Foreword

Nacro has been delighted to work closely with the Child Protection in Sport Unit (CPSU) on this important guidance. Our collective aim is to support sports organisations to arrive at fairer and safer decisions relating to individuals with criminal records, while ensuring the safety and welfare of vulnerable groups. By combining the complementary expertise of our two organisations, we are confident that national governing bodies of sport will now be better placed to manage risk and any matters relating to criminal records or allegations against existing members or applicants.

Joanne Drew
Director and Safeguarding lead
for Nacro



The CPSU welcome this guidance for sports organisations to support them in making safe and fair decisions about membership for people with criminal records. Together the CPSU and Nacro have discussed the importance of ensuring that children are protected within the context of making safe and appropriate decisions about sports membership based on a full assessment of risk. It is important that a full assessment of members with criminal records includes an informed consideration of the conviction alongside a realistic appraisal of the risk posed to children. The interests of children is always of paramount concern but sports bodies should be wary of over simplistic considerations of members' convictions and seek external advice as appropriate. The CPSU can always be contacted for advice and information where relevant.

Anne Tiivas
Director, CPSU



Main contributor to this guidance: Jackie Sinclair, Legal Officer, Nacro.
Acknowledgements: Anne Tiivas and Jude Toasland, CPSU.

© Nacro 2018

Every reasonable effort has been made to check that the information in this guidance is as accurate as possible. However, we cannot guarantee its accuracy or completeness, and any liability for it is expressly excluded and disclaimed by Nacro.

Nacro, First Floor, 46 Loman St, London SE1 0EH
nacro.org.uk

Registered charity no. 226171

Contents

Section 1	5-6
What the law says	
1.1 The Children's Act 1989 and 2004	5
1.2 Safeguarding Vulnerable Groups Act 2006	5
1.3 The Rehabilitation of Offenders Act 1974 (ROA)	5
1.4 How long does it take for offences to become spent?	6
Section 2	6-7
What to do if a criminal record comes to light	
2.1 Determine whether the criminal record is spent	6
2.2 Consider the original source of information	7
Section 3	9-10
Gathering relevant information	
3.1 Information from the member concerned	9
3.2 Criminal record certificates	10
3.3 Data Protection Act 1998	10
3.4 What to do if there are discrepancies	10
3.5 References and independent sources of information	11
Section 4	11-13
Assessing the risk and relevance of criminal records	
4.1 Identifying risks associated with the responsibilities and role of a member	11
4.2 The risk assessment interview	13
4.3 Assessing the criminal record	13
Section 5	16-17
Reviewing policies and procedures	
5.1 How to manage sensitive information	16
Appendix A	18-19
The Rehabilitation of Offenders Act 1974 (ROA)	
Appendix B	20-21
Criminal record declaration form for membership of NGB	
Appendix C	22-28
Criminal record check risk assessment form	

Section 1: What the law says

1.1 The Children's Act 1989 and 2004

The Children's Act 2004 reinforces the message that all organisations working with children have a duty in helping to safeguard and promote the welfare of children. Specifically, the law places a duty on organisations, including sport and leisure services, to ensure that they have in place arrangements, policies and procedures that reflect the importance of safeguarding and promote the welfare of children.

These include, but are not limited to:

- A designated professional lead for safeguarding
- A clear line of accountability within the organisation
- Clear whistleblowing procedures
- Clear policies for dealing with allegations against people who work with children
- Arrangements which clearly set out the process for sharing relevant information
- Safe recruitment practices for employees (including volunteers) that regularly work with children
- Appropriate training, supervision and support for staff

If you need advice or support about your responsibilities under The Children's Act, contact the Child Protection in Sport Unit (CPSU) in the first instance.

1.2 Safeguarding Vulnerable Groups Act 2006

The Safeguarding Vulnerable Groups Act 2006 provides the legislative framework for preventing people who are deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work. The Act established a single body – now the Disclosure and Barring Service (DBS) – to make decisions about individuals who should be barred from working with children and to maintain a list of these individuals.

The Act, amended by the Protection of Freedoms Act 2012, provides the legal definition of regulated activity with children and adults (i.e. work that a person who has been barred must not do).

Membership of a national governing body (NGB) does not fall within the definition of 'regulated activity with children', but if you have members who are, for example, coaching children, you will have a legal duty to check whether they are barred from regulated activity with children.

1.3 The Rehabilitation of Offenders Act 1974 (ROA)

The ROA allows people to have the legal right to be treated as though they had never committed an offence after a certain period of time has passed. Convictions, cautions, reprimands and final warnings become spent after a specified period of time known as the rehabilitation period which is determined by the sentence or out-of-court disposal received. Once spent, the person is considered rehabilitated and has the right to be treated as if he or she had never committed an offence. As a result, the caution or conviction in question does not need to be disclosed by the person in most circumstances, unless the application is for a role that is exempt from the ROA.

Membership of an NGB is not exempt from the ROA. This means it is unlawful for an NGB to refuse or withdraw membership, or to prejudice a member in any way when the member's

caution or conviction has been spent. If you find out that a member has been previously cautioned or convicted, you must first establish whether the caution or conviction is spent under the ROA before taking any action. However, safeguarding should be at the heart of your organisation and is everybody's responsibility. If you have any concerns about an applicant or existing member, you can contact the Child Protection in Sports Unit (CPSU) for advice.

Some of your members might perform other duties or roles which would be exempt from the ROA. Examples include members that coach or train children under the age of 18. Safeguarding children and vulnerable groups is of paramount concern when making decisions about the suitability of applicants to posts which are exempt from the ROA. If you are in any doubt at all about a particular applicant, your decision-making processes or any other related matter, the CPSU can help you and should be contacted in the first instance.

1.4 How long does it take for offences to become spent?

The length of time it takes for an offence to become spent depends entirely on the disposal (or sentence) a person receives. The nature of the offence doesn't impact on the rehabilitation period. In order to determine whether an offence is spent, you will need to know the date of the caution or conviction and the sentence or disposal received.

On 10 March 2014, changes to the ROA, as amended by Section 139 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, were implemented in England and Wales. The changes reduced the length of time that certain sentences, including fines, community sentences and short custodial sentences, took to become spent. See Appendix A for more details on rehabilitation periods. Comprehensive guidance on the ROA and rehabilitation periods can be found on the Nacro website.

Section 2: What to do if a criminal record comes to light

2.1 Determine whether the criminal record is spent

If a criminal record comes to light, you must first establish whether or not the offence is spent under the terms of the ROA. If you are not sure how to do this, please call Nacro's confidential advice service on 0845 600 3194. If the conviction is spent and the member is not in an exempted role (e.g. coaching children), you are not entitled to take the conviction into account when determining the suitability of the individual to continue as a member. You must treat the member as though he or she had never been convicted.

If the conviction is not yet spent, but gives you no real cause for concern because it is not relevant to safeguarding (see section 4.3) or other risks associated with being a member of the NGB, the membership should proceed as usual.

If the conviction is not yet spent and does give you cause for concern, or if you have concerns about the member's behaviour, you should consider the information you have, gather other relevant information (see Section 3) and conduct an informed risk assessment (see Section 4) before making a final decision about whether the membership should continue. If your decision to grant membership depends upon approval from a senior staff member, or perhaps a panel, you should ensure that the decision-maker has all the relevant information to hand in order to make a fair and balanced decision. This may include the applicant's initial disclosure (if they made one), a disclosure statement and any other relevant information they may have provided in the interim that may inform a risk assessment.

2.2 Consider the original source of information

There are many different ways in which a criminal record may come to light and some sources of information are more reliable than others. For this reason, it is important not to jump to any conclusions if you find out that a member may have an offending history of which you were previously unaware.

- **Word of mouth**

It might be that the criminal record has come to light because another person – perhaps another member – has informed the club or the NGB directly. Alternatively, perhaps a concerned member of the public, completely unconnected to the sport, has made you aware. While it is important to take these concerns seriously, you should remember that information about a criminal record from another person remains an allegation until other sources of information, and particularly the member, have verified the accuracy of the information.

- **Newspaper article/online source**

Articles that can be classified as journalism, art or literature are exempt from the Data Protection Act. This means that newspaper and other media articles, which may contain inaccurate information about a member and/or their offending history, can stay online indefinitely. This includes information about spent cautions or convictions. Be very wary of the accuracy of newspaper and online articles until you have gathered other sources of information.

- **Police or other criminal justice agent**

Some people who have been convicted of certain violent and/or sexual offences are managed under multi-agency arrangements (e.g. by the police, probation, mental health teams etc). Those responsible for managing an individual's risk may disclose information that they feel is relevant for you to know in order to assess, for example, their suitability to be in a club environment. The police also have common law powers to disclose conviction information in the interests of safeguarding and the prevention or detection of crime. If criminal record information is disclosed to you in this way, it is still important to give the member the opportunity to address your concerns and to gather other relevant sources of information before making any decisions. If you have any concerns that the member poses an immediate risk of harm, you might wish to consider suspending the membership until the final decision is reached.

- **Self-disclosure**

It may be that the member makes you aware of his or her own criminal record. If members or prospective members self-disclose, you should explain how the information will be used and the process that will follow (i.e. gathering other relevant information and conducting a risk assessment, where required).

Example 1 Tom has been a member of the club for 18 months. Another member Googled Tom to find out more about his sporting history and found an old newspaper article with Tom's name and photo. The article, dated from 2006, said that Tom had sexually assaulted a woman in a nightclub and had punched the woman's friend who had confronted him.

When asked about this, Tom explains that he did not sexually assault a woman. He was involved in a fight at the nightclub and was convicted of actual bodily harm, for which he received a two-year community order. A two-year community order is spent one year after the end of the order (i.e. three years after the date of conviction). The conviction was spent in 2009, which means that the club are not entitled to take the conviction into account and must treat Tom as though he had never been convicted.

Example 2 Ian is 17 years old and has been a member of the club for two years. You've heard that he was convicted of robbery last month. When you speak to Ian, he tells you that he received an eight-month referral order to be supervised by the Youth Offending Team, which will be spent once the order is completed.

Ian's conviction is unspent and relates to a robbery charge, which might be relevant to safeguarding vulnerable people. You need to gather more information, both from Ian and other sources, in order to carry out a risk assessment and to make a decision as to Ian's suitability to continue as a member.

Example 3 Robert (36) has applied to the club to coach under-18s. He informs you that he was convicted of a sexual offence 13 years ago, explaining that he was in a relationship with a 15-year-old girl.

As Robert has applied for a role that is regulated activity with children, the role is not covered by the Rehabilitation of Offenders Act and is eligible for an enhanced DBS check. You will be required to use this information, informed by the DBS disclosure, to assess Robert's risk and suitability to coach children.

Example 4 You are aware that one of your members, Paul, was convicted of several offences relating to drug use and violence when he was younger. You have determined that these convictions are now spent. You are informed by more than one of the other club members that Paul is encouraging younger players to break club rules by encouraging 15- and 16-year-olds to drink alcohol in the club bar and is teasing those who don't comply.

Although Paul's convictions are spent, it has been alleged that he is breaching the club's code of conduct and exhibiting concerning behaviour that is relevant to safeguarding within the club environment. It would be appropriate to conduct an investigation in accordance with your disciplinary procedures. This process should not involve any consideration of his spent convictions, but rather the current safeguarding concerns.

Example 5 You are informed by a parent that one of the club members, Dave, is a 'convicted sex offender' and may pose a risk to children at the club. She provides details of a Google search that provides links to several newspaper reports dating back five years which appear to substantiate her concerns.

When you discuss this with Dave, he explains that he has received a criminal conviction for possession of indecent images, but received a non-custodial sentence. He says this conviction is now spent. You are not aware of any concerns about this individual's behaviour in the club context.

If the club wanted to confirm that Dave's information was accurate, they could request that he applies for a basic criminal record certificate from the DBS (see section 3.2). If this confirms that his conviction is spent (i.e. by virtue of the fact that it does not appear on the basic DBS certificate), legally you must treat Dave as if he had never committed the offence.

If the club identifies any risks associated with this information being available online (e.g. risk to Dave if other club-users read the article, or risk to the NGB or club's reputation etc.), the club should consider whether safeguards can be implemented to manage these risks.

It would also be worth revisiting and reinforcing your policies and procedures that are relevant to mitigating risk of abuse and that help to keep members safe. This will include your safeguarding procedures, code of conduct and reporting procedures for all members and staff.

Section 3: Gathering relevant information

Before you carry out a criminal record risk assessment, it is important that you have gathered as much information as possible to help inform the assessment. Sources may include (but are not limited to) the original source of the information (e.g. word of mouth, newspaper article etc.), a self-declaration and information provided by the member concerned, a criminal record certificate, answers given in any interviews, references and independent statements from relevant sources. The original source of information may indicate that the individual is unsuitable to continue as a member. However, in the vast majority of cases, this will not be clear until you have questioned the member further.

3.1 Information from the member concerned

If information of concern has come to light, it is extremely important that you allow the member to discuss relevant information relating to the unspent conviction to address your particular concerns.

When approaching a member for this information, you should do so in a way that encourages honesty. You might decide, in the first instance, to give the member the opportunity to disclose in writing by completing a declaration form (see Appendix B). Note that this form has been designed to give the individual the opportunity to provide the level of detail required to help you make an informed assessment. It also gives the member the opportunity to put the disclosure in writing, if he or she prefers.

If you plan to request the disclosure in a face-to-face meeting, you should let the member know in advance what information will be requested and why. You should also make it clear that this information will be used only in order to assess suitability for membership where it is relevant.

For further information, see Nacro's practical guide, *Disclosing Criminal Records*, to which you can signpost existing or prospective members.

3.2 Criminal record certificates

Membership of NGBs is covered by the ROA. Therefore, you are not entitled to request that members apply for a standard or enhanced DBS certificate, unless they apply for an eligible role (e.g. coaching under-18s). Note that it is an offence to request standard or enhanced DBS certificates for membership purposes. Not only is it a breach of the ROA and Part V of the Police Act 1997, but also of the Data Protection Act 1998 (DPA), which requires that data be processed fairly and lawfully.

However, you are entitled to request details of unspent convictions and, on this basis, you are entitled to request that the member applies for a basic criminal record certificate which gives details of any unspent cautions or convictions. Note that it is not a legal requirement to request a basic certificate from members with unspent convictions, but it is an option should you wish to confirm the conviction information provided by the member.

Basic disclosure certificates are now available from the DBS. An individual, or the NGB with the individual's consent, can apply for a basic disclosure from the DBS directly. A basic disclosure should not be confused with a standard disclosure (standard DBS check), which can only be requested for roles which are exempt from the ROA.

In the interests of being fair and transparent, you should make it clear in your policies and procedures that you are going to request basic disclosure certificates from members in the event of criminal record information coming to light.

3.3 Data Protection Act 1998

On 10 March 2015, Section 56 of the DPA was fully implemented. This makes it a criminal offence for an organisation to require an applicant or existing member to apply for copies of their own police, probation, prison or court records from the relevant statutory authority and then share this information with the organisation. This is called an enforced subject access request. Any NGA that requires an enforced subject access request may now face prosecution by the Information Commissioner's Office (ICO).

For further information, advice, or support with criminal record checks or the legislation, contact Nacro's Employer Advice Service on 0845 600 3194 or employeradvice@nacro.org.uk or visit the Nacro website.

3.4 What to do if there are discrepancies

If you have carried out a basic disclosure check and there are significant discrepancies between the information on the certificate and that provided by the member, further consideration is necessary. It is good practice to ask the member to attend a meeting (the risk assessment interview) where any concerns can be discussed, and to give the applicant the opportunity to address these concerns before a final decision is made.

It is not unusual for discrepancies to occur. Quite often this is not because the individual is trying to deceive, but simply because he or she has a limited understanding of how the criminal justice system works, or for how long disclosure of convictions is needed. The changes to disclosure legislation, including the ROA, are also extremely complex and individuals are often not given accurate advice about their rights and responsibilities to disclose.

In addition, while the DBS makes every effort to ensure that disclosure certificates are accurate, mistakes can occur. If the discrepancy arising from an apparent mistake on a disclosure is serious enough to terminate membership, the decision should be deferred until the applicant has had an opportunity to dispute the information through the DBS disputes channel.

3.5 References and independent sources of information

Organisations conducting criminal record risk assessments often express concern at having to take the individual's word about the context of an offence. While it is true that the individual will be the main source of information relating to the context of a past offence, you can seek verification from character references and other independent sources. For example, if the individual explains that the offence was linked to a drinking problem which has since been addressed through counselling or treatment, you can ask whether the counsellor or treatment provider can supply a reference or statement to that effect. Similarly, if the individual explains that, as part of his or her sentence, an anger management programme was successfully completed, you could ask whether you can see a certificate.

If a member is currently under the supervision of probation or a youth offending team, he or she may be able to request a statement from the offender manager as to his or her risk and suitability of being a member or being in a club environment. You might be able to speak with the offender manager directly if you have the member's permission to do so. Note, however, that probation and youth offending services are under no obligation to provide references or statements and almost certainly will not do so if the individual concerned is no longer under their supervision.

Section 4: Assessing the risk and relevance of criminal records

4.1 Identifying risks associated with the responsibilities and role of a member

Unspent convictions should be assessed in relation to the responsibilities the individual has as a member (if applicable) and the nature of the environment(s) they have access to in relation to the membership (e.g. local clubs). You will need to identify the actual risks or hazards associated with the membership and/or environment in order to assess whether the convictions are relevant and to assess whether the risks can be managed.

Example Johnny is a member of the club and plays for his regional team. He has an unspent conviction for downloading indecent images of children. Although he does not coach children at the club or have any responsibility for young people, there are lots of children within the club environment and the club has some concerns about the risk that Johnny may pose. They report their concerns to the club.

The club completes the first part of the following hazard matrix overleaf:

Risk or hazard	Who might be harmed	What is already being done
Risk of harm to young or vulnerable people (physical/sexual/emotional)	Young or vulnerable people using the club facilities.	<p>Parents/guardians reminded of responsibilities to supervise.</p> <p>Coaches or others with supervision responsibility fully vetted and trained in safeguarding.</p> <p>Member code of conduct in place.</p> <p>Whistleblowing policies and procedures in place and displayed throughout club environment.</p> <p>Safeguarding policies and procedures in place and made known to those using the club facilities.</p> <p>Mobile phone/camera/recording policy in place and publicised within the club environment.</p> <p>Disciplinary codes in place.</p>
Risk of harm to individual	Johnny	<p>Information about the conviction shared on a need-to-know basis only.</p> <p>Member code of conduct in place.</p> <p>Data protection training for relevant staff/volunteers.</p> <p>Disciplinary codes in place.</p>
Risk to reputation	Club, NGB and associates	<p>Transparent policies and procedures about accepting membership of people with past convictions.</p> <p>Strong culture of safety and safeguarding engrained across the sport.</p> <p>Code of conduct (including appropriate behaviour on social media) signed up to by all members and coaches.</p> <p>Information shared in accordance with the Information Sharing guidance.</p> <p>Media policy and procedures in place (including draft responses to media interest).</p>
Financial loss/withdrawal of sponsorship	Club, NGB, members	Sponsors aware of all policies relating to safeguarding and risk assessment of members with past convictions.

Once the risks have been identified, along with the safeguards that are already in place that help to minimise the risks, the club will need to gather information that can help them to determine the likelihood of risk occurring and, if it does occur, the impact it would have. At this stage, the club will need to decide whether an interim suspension should be put in place if there is a concern that the individual may pose a safeguarding risk. Following this, the club can identify whether any additional safeguards can be put in place, who is responsible for doing so, and when. Please see the full hazard matrix on page 27.

4.2 The risk assessment interview

Once you have gathered your relevant sources of information and assessed the risks associated with the membership, you will need to conduct your criminal record risk assessment interview with the member concerned. It is only once your full risk assessment has been completed that a final decision should be taken. The assessment and final decision should be made by a minimum of two people. Where there are child protection considerations, it is recommended that a Care Management group reviews the risk assessment(s) in order to make recommendations or decisions. Please contact the CPSU if you have any questions about this.

You should conduct any interview with the member with sensitivity and empathy, as discussing past cautions or convictions might be a great source of anxiety and embarrassment for them. Think carefully about the questions to ask, and keep the discussion focused on the individual and his or her feelings and attitudes. If possible, it is best not to conduct the meeting alone. Instead, invite a colleague to provide support and take notes.

It is also important to remember that it is not your responsibility to decide whether the court's decision or police course of action was the right or fair one. The purpose of the interview is to help you to gather the necessary information to assess whether the individual may pose a risk.

While you may have already gathered some relevant information prior to the risk assessment interview, the information provided by the member during the interview may prompt further information-gathering to aid your decision-making.

4.3 Assessing the criminal record

Once you have spoken to the member concerned and gathered relevant sources of information to inform your assessment, you will then need to consider the following criteria:

- **Nature of offence(s)**

What type of offence or offences did the individual commit i.e. theft, fraud, violence or other offences against the person, possession of drugs, supply of drugs, sexual offences, public order or other offences? Did the offender commit one type of offence or a range of different offences?

- **Relevance**

NGBs should consider whether the offence(s) are relevant to the requirements of membership. Serious violent, sexual and supply of drugs offences are generally thought to be relevant when considering suitability of applicants to have unsupervised access to children. However, other offences may well be relevant to safeguarding upon full consideration of the circumstances. You can refer to the CPSU guidance and training for support with assessments of risk to children.

For vulnerable adults, the relevant categories are generally considered to be violent and sexual offences. Offences of dishonesty, including fraud, may be more relevant in relation to them because older people may have money and valuables. However, even here one should distinguish between offences. An offence of shoplifting, for instance, might not be a particular cause for concern, though an offence of theft from an individual very likely would be. Beyond these offences, there are a wide variety of offences that may have little relevance, such as public order offences.

Drink-driving offences will not be particularly relevant to suitability of membership, unless the members are routinely expected to drive other members (e.g. to and from matches).

- **Seriousness**

You should consider the seriousness of any unspent convictions or other relevant information disclosed. This is important because all offence codes cover a very wide range of offences that vary in terms of seriousness. A sexual offence, for instance, covers everything from young men sleeping with their underage girlfriends to indecent assault and rape.

Violence covers everything from taps and smacks, normally recorded as battery or common assault, to grievous bodily harm and murder. Drug offences cover everything from possession of small amounts of cannabis for personal use to possession of large quantities of Class A drugs with intent to supply. Burglary covers everything from taking goods from shop storerooms to entering the homes of elderly people, leaving them in fear. Arson ranges from a person setting fire to litter bins to a person destroying property and endangering lives.

Offence codes can often make the incident sound more serious. This is why it is important to get further details from the applicant of what actually took place. Crown Courts would normally deal with more serious offences than a magistrates' court, but some individuals elect for their cases to be heard in a Crown Court if it is a triable-either-way offence.

- **Offence circumstances**

Who was involved? What happened? Where did it happen? When did it happen? How did it happen? Why did it happen? Official police data will only provide limited information; the applicant's self-disclosure can help to provide some context.

You should consider the member's circumstances at the time of offending. This might include previous issues with accommodation, education, employment, management of finances and income, lifestyle and associates, relationships, drugs and alcohol, emotional wellbeing or health.

Pay attention to whether there were any aggravating or mitigating circumstances. What was the member's attitude to offending? Has the member shown any remorse or taken responsibility for his or her actions? Did the member try to make reparation to any victim?

You should look for openness and honesty, rather than denial and minimisation. Consider the member's insight into his or her own behaviour, any indication of changed thinking and changed circumstances and, where relevant, victim empathy, not victim blame or shared responsibility.

- **Age of offences**

You should consider the length of time that has passed since the offence. The government recognises that people can and do put their offending behind them. This recognition is embodied in the ROA and other disclosure legislation relating to roles which are not covered by the ROA.

- **Pattern of offending**

Consider whether the member has a single unspent conviction, or whether there has been a pattern of offending behaviour or allegations. Is there a big gap between offences, or is there a cluster? People who have a pattern of offending right up to the present date have probably not put their offending behind them. Those people with gambling or drink- or drugs-related convictions, in particular, may remain a risk unless there is evidence of a clear break in the pattern of their offending. Nevertheless, many offenders, including repeat offenders, do eventually give up crime and settle down, and often there will be clear evidence shown throughout the other sources of information you have gathered to inform your assessment.

- **Changed circumstances**

You should consider whether the applicant's circumstances have changed since the offending took place. For instance, those convicted when young, perhaps as juveniles, often do not reoffend once they have family or mortgage responsibilities, because they have too much to lose by getting into trouble. As previously mentioned many offenders, even those with long and serious records, can eventually change, as they simply grow out of a period of offending or seek help to address related problems.

As part of the risk assessment process, try to establish the applicant's attitude at the time of the offence. What is their attitude now? How do they now feel about what happened? How do they feel about their part in what happened? Do they show remorse? Do they blame others? Do they feel a victim of injustice? How genuine is their expression? What efforts have they made not to reoffend? If they have one, can a reference be sought from their probation officer or support worker?

Having reviewed the circumstances at the time of the offence, you should then compare these with their current circumstances. It may be that the member can provide the necessary reassurance that past issues have been resolved. Even people with more recent cautions or convictions may also have reached the point where they want to put their offending behind them and put their talents to constructive use.

Section 5: Reviewing policies and procedures

Many organisations face increasing pressures with implementing vetting procedures and applying complex changes in the law to their policies and practices. The onus is on organisations to adopt policies that ensure information about criminal records is used in a way that protects the organisation and vulnerable people, but is also fair to prospective and existing applicants. In order for a policy that deals with granting membership to people with criminal records to gain widespread acceptance within an NGB, it is vital to involve staff, clubs and their representatives in its development. In particular, NGBs and clubs should:

- Review the requirements of members to assess what types of risks membership may involve and complete a criminal record risk hazard form (example included in Appendix C), if required.
- Have a written policy and guidance on granting or continuing membership for people with an unspent criminal record, and provide a copy to any current or prospective member to whom it applies. The policy should clearly state that the NGB is committed to the principle of equality of opportunity and, as such, will make all efforts to prevent unfair discrimination against those with criminal records, to ensure that suitable people are not refused membership because of offences which are not relevant and do not make them a risk. This should be cross-referenced with your safeguarding policy and procedures.
- Ensure that staff and others involved in membership decisions are provided with all relevant guidance on making decisions about applicants with criminal records.
- Provide relevant training, including risk assessment training, to staff involved in making membership decisions.
- Where membership is refused or terminated because of a criminal record, provide relevant feedback to the individual affected.
- Ensure that all applicants' personal and sensitive information is treated confidentially. Applicants' criminal record information should be either stored securely, if membership is granted, or destroyed, if membership is refused or terminated.
- Review the membership code of conduct (or regulations, or equivalent) to ensure that any requirements to disclose are clearly included. You should also make prospective applicants aware of any such requirements to help them decide whether they would like to go ahead with the application.

5.1 How to manage sensitive information

Information about a prospective member's criminal record should not be disclosed to anyone in the organisation, apart from those who have a genuine need to know. This may include people directly responsible for membership decisions or those responsible for implementing safeguards (e.g. the local club manager), but only if the offence is relevant. For further information about information sharing, please refer to HM Government Information Sharing guidance.

The member should also be told who in the organisation knows about their record, as they need to feel confident that their personal and sensitive information will not be disclosed to anyone unless there is a specific reason for doing so.

The reasons for the final decision should be based on an objective, common sense, and rational approach. It is best to have a formal record of the decision and provide clear reasons to continue with, or terminate the membership, which is kept in a securely lockable cabinet. The decision will then need to be communicated to the member.

Figure 1

What to do if a conviction concerning an existing member comes to light.



Appendix A

The Rehabilitation of Offenders Act 1974 (ROA)

The ROA enables certain convictions to become 'spent' (or legally ignored) after a 'rehabilitation period'. After this period, a person with a 'spent' conviction is not required to declare it when applying for most jobs, unless the role is 'exempt' from the Act.

The tables below detail the rehabilitation periods of the more common sentences. For custodial and community sentences the rehabilitation period includes an additional 'buffer period' that runs from the end of the sentence. This 'buffer period' is determined by the length of total sentence imposed.

Rehabilitation periods for custodial sentences and community sentences (with buffer period)

Sentence/disposal	Buffer period for adults (aged 18 and over when convicted) from end of sentence including licence period	Buffer period for young people (aged under 18 when convicted) from end of sentence including licence period
Community order or youth rehabilitation order	1 year	6 months
Imprisonment or detention in a young offender institution for 6 months or less	2 years	18 months
Imprisonment or detention in a young offender institution for over 6 months and up to and including 30 months (2½ years)	4 years	2 years
Imprisonment or detention in a young offender institution for over 30 months (2½ years) and up to 48 months (4 years)	7 years	3½ years
Imprisonment or detention in a young offender institution for over 48 months (4 years) or a public protection sentence	Never 'spent'	Never 'spent'

Example 'Spent' periods for custodial sentences:

John receives a three-month custodial sentence as an adult (he is aged 18 or over when convicted). His sentence may become 'spent' after two years and three months: the rehabilitation period is the total sentence of three months (including the licence period) and the additional buffer period of two years as he received a total sentence of six months or less.

Example 'Spent' periods for community sentences:

Michelle receives a one-year youth rehabilitation order (she is under 18 when convicted). Her sentence may become 'spent' after 18 months: the rehabilitation period is the total length of the order (one year or 12 months) plus the additional buffer period of six months.

Rehabilitation periods for sentences which start from the date of conviction (with no buffer period)

Sentence/disposal	Rehabilitation period for adults (aged 18 or over at the time of conviction or at the time the disposal is administered)	Rehabilitation period for young people (aged under 18 at the time of conviction or at the time the disposal is administered)
Simple caution/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
Absolute discharge	'Spent' immediately	'Spent' immediately
Reparation order	'Spent' immediately	'Spent' immediately
Bind over	At the end of the order	At the end of the order
Conditional discharge order	At the end of the order	At the end of the order
Fine	1 year	6 months
Compensation order	When paid in full	When paid in full
Hospital order (with or without restriction)	At the end of the order	At the end of the order
Referral order	At the end of the order	At the end of the order
Relevant order	When the order ceases to have effect	When the order ceases to have effect
Endorsements	5 years	2½ years

Comprehensive guidance on the Rehabilitation of Offenders Act 1974 and other rehabilitation periods can be found on the Nacro website.

For further advice, support and training contact Nacro's Employer Advice on 0845 600 3194 employeradvice@nacro.org.uk.

Appendix C

Criminal record check risk assessment form

This form is to be completed and used for the following purposes:

1. When a new member declares an unspent conviction
 2. When information of concern relating to an existing member comes to light
- Where required, the risk assessment needs to be completed before a decision is made about the continuation or termination of the membership.
 - If further action is necessary, this will be agreed between the NGB lead for safeguarding, or safeguarding panel.

Once completed this form should be signed by both the NGB lead for safeguarding, or members of the safeguarding panel and stored confidentially on file.

Risk assessments are live documents and should be subject to periodic review.

Section A To be completed by safeguarding lead/panel

Please complete in full:

Name of member:	
Club:	
Commencement date of assessment:	
Name of assessor one:	[Safeguarding lead]
Name of assessor two:	[Position]

Question	Yes/No	Please provide details
Has the member declared any unspent criminal convictions, cautions, reprimands, final warnings or bind overs in the UK or any other country, or are they under police investigation?		
Is this a single offence or has there been more than one offence?		
Nature of conviction(s) or police intelligence disclosed (Continue on separate sheet if necessary)		
Offence(s)		
Date of conviction		
Sentence received		
Age at time of offence(s)		
Length of time since conviction(s)		

Section B To be completed by [safeguarding lead/panel] and individual during risk assessment meeting

Question	Please provide details	
What were the circumstances surrounding the offence(s)?		
Attitude to the offence(s)		
Efforts made to not reoffend		
Question	Yes/No	Please provide details
Have the individual's circumstances changed since the offence(s)? If so, how?		
Are the offence(s) relevant to membership?		
Is the individual taking part in a specific remedial/action programme?		
Does the nature of the membership present any opportunities for the post-holder to reoffend?		
Does the membership involve regular one-to-one/unsupervised contact with vulnerable people?		
Does membership involve direct contact with the public?		
Does membership involve direct responsibility for finance or items of value?		
Does membership involve a significant level of trust, e.g. unsupervised transportation of children to and from games?		
Were suitable references obtained and ID checked? (If references gave cause for concern please state details)		
Question	Please provide details	
What level of supervision does the member receive?		

Question	Please provide details

Signed:		Print name:		Date:	
---------	--	-------------	--	-------	--

Enter below any further questions you feel may be relevant to the post in relation to criminal convictions.

Section C To be completed by [safeguarding lead/panel] after risk assessment meeting has taken place

Please enter below any precautionary measures recommended for the individual in light of the above information to minimise the risk of any reoccurrence of any potential criminal activity or associated behaviour. This can be expanded on as necessary.

1.	
2.	
3.	
4.	
5.	

Please record below any organisational risk of harm. This should relate specifically to the impact on the NGB/club and not the individual.

Hazard matrix:

3 = Very serious impact	4 = Very likely
2 = Fairly serious impact	3 = Fairly likely
1 = Minor impact	2 = Fairly unlikely
	1 = Very unlikely

<p>Nature of hazard? e.g. reputational risk, risk of sexual harm, risk of theft</p>
<p>Who might be harmed?</p>
<p>What is already being done to minimise risk?</p>
<p>Likelihood of hazard/risk occurring? Please select from matrix above:</p>
<p>Impact of hazard/risk? Please select from matrix above:</p>
<p>What is the remaining risk based on likelihood and impact?</p>
<p>What further action is required?</p>
<p>Who is responsible for taking this action and by when?</p>

Section D To be completed by all parties involved in the risk assessment process

Declaration by safeguarding lead*

The information above has been considered and we are/are not satisfied that it is safe to allow the individual/member to commence/continue as a member of [NGB/club].

Detail action to be taken below:

<p>Signed: Relevant decision-maker</p>		
<p>Print name</p>		<p>Date:</p>
<p>Signed: Relevant decision-maker</p>		
<p>Print name</p>		<p>Date:</p>