

**Wellbeing and Community Health Services**

**CRIMINAL RECORDS POLICY**

**INTRODUCTION**

This document sets out the Council's policy towards the recruitment and retention of people with a criminal record. The Council recognises that, subject to certain exceptions, those convicted of criminal offences are entitled to have "the slate wiped clean" after a certain period of time and that employment is an important factor in an individual's rehabilitation.

Under its Equal Opportunities Policy the Council is fully committed to recruitment on the basis of an objective and systematic assessment of candidates against job related factors. Through the use of fair employment practices and the adoption of this policy, the Council is keen to ensure that information relating to criminal records is dealt with in context and with discretion.

To this end the Council gives assurances that it will take no account of spent criminal offences, except in relation to those occupations exempt from the provisions of the Rehabilitation of Offenders Act 1974 (ROA) and/or where the Council has a duty under other legislation to protect vulnerable groups in the community. Details of the practices, standards and safeguards that the Council will apply in dealing with the sensitive information relating to criminal records are set out below.

The Council complies fully with the Criminal Records Bureau Code of Practice and the Council's policy on the recruitment of ex-offenders is made available to all Disclosure applicants.

**SCOPE OF POLICY**

The policy will apply to those seeking paid or unpaid work with the Council that involves working with children or vulnerable adults. In addition, certain types of voluntary or sessional work, fostering arrangements, agency workers, student placements, permitted drivers, elected members, school governors, preferred contractors and other regulated positions will also come under the provisions of the policy, particularly where they involve unsupervised contact with children or vulnerable adults or the post is based within a school. The Council will also apply the policy to those situations where it acts as an Umbrella Body such as Aided Schools or local voluntary organisations.

For those moving jobs within the Council to a post with an increased level and nature of access to children or vulnerable adults, a higher level of Disclosure is required. In addition, where there might be reasonable grounds for concern, an up to date criminal record disclosure must be obtained. When someone is moving **within** the Council and has already been checked at the **enhanced** level, and the new post does not have an increased level or nature of access to children or vulnerable adults, discretion as to whether or not to perform a further CRB check can be used.

The relevance of criminal records to the workplace is a developing area of employment and the Council will need to review and amend its policies in the light of experience or new legislation. Where, due to changes in legislation, occupational groups become subject to regulation for the first time, the Council will require existing employees in those groups to obtain a criminal records disclosure under the terms of this policy. Employees in posts exempt from ROA and where the

duties involve working with children or vulnerable adults will have to seek an up to date disclosure from the CRB every three years.

Within Northumberland schools, the Governors and the Headteacher manage the school. Consequently the Governing Body has the responsibility on behalf of the Council where the vacancy or position is a school appointment. Throughout the policy specific provisions that apply to schools are clearly indicated.

## **WHAT IS A CRIMINAL RECORD?**

A criminal record arises from a conviction in a court of law. There are also police records. Cautions, reprimands, warnings and final warnings are issued by the Police as an alternative to prosecution, usually for less serious offences and only after an offence is admitted.

Disclosures do not normally include speeding and other minor driving or traffic offences.

## **LEGISLATIVE BACKGROUND**

Under the ROA any conviction will become spent after a specified period of time provided that the conviction did not involve a custodial sentence of more than two and a half years and provided there are no further convictions within the rehabilitation period. Once spent, the individual does not have to declare a conviction to a prospective employer, **unless** the vacancy is in one of the types of employment listed in the ROA, the ROA (Exceptions) Order 1975 and the ROA (Exceptions) (Amendment) Order 2001. These occupations include Solicitors, those administering the law, Chartered Accountants, registered teachers, jobs involving contact with children and jobs involving access to other vulnerable groups and those with a serious illness, disability or addiction. Organisations who employ people in these categories are legally entitled to ask exempted questions about criminal records and require candidates to disclose spent convictions.

Under the Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000 (CJCSA), it is an offence to offer employment involving regular contact with young people to anyone who has been convicted of certain specified offences or who is included in lists of unsuitable people maintained by several government departments. The CJCSA stipulates that a job is a “regulated position” and thereby subject to a criminal record disclosure, if it involves work in a particular type of establishment, such as a school or a care home or if the normal duties of the post involve contact with children or the post manages staff who occupy regulated positions.

## **CRIMINAL RECORDS BUREAU**

The Police Act 1997 established the Criminal Records Bureau (CRB) to give employers and organisations access to criminal record information from a centralised source. This executive arm of the Home Office will provide two types of police checks, known as disclosures.

**Standard Disclosure:** Applies to posts exempted under the ROA and relates particularly to posts involving contact with children and vulnerable adults. Any spent and unspent convictions and any cautions, reprimands and final warnings held on Police National Computer (PNC) are disclosed. A copy of the disclosure report is sent to both the individual and the organisation.

**Enhanced Disclosure:** With an enhanced disclosure the organisation receives the same type of information from PNC as for a standard disclosure, together with non-conviction information from local police records. The CRB send details to the individual and the employer. These disclosures will particularly apply to posts with greater contact with children or vulnerable adults, especially those caring, supervising, training or being in sole charge of children or vulnerable adults. An Enhanced Disclosure is required for all posts based in a school.

The Council is a Registered Body with the CRB. The Director of Personnel & Administration has overall responsibility for the Council's recruitment procedures and is the Council's Lead Countersignatory registered with the CRB. A number of other officers are also registered Countersignatories. They will countersign the candidate's application for a criminal records disclosure and will receive the details released by the CRB about individual prospective employees. Each of these Council officers will themselves have been subject to the disclosure procedure.

## **RECRUITMENT AND CONDITIONAL OFFERS OF EMPLOYMENT**

Every Council vacancy is referred to by a Vacancy Number to simplify indexing and monitoring procedures. The Vacancy Number is always quoted in the advertisement and at the top of the application form issued to applicants. Where the Vacancy Number contains a letter "X" the vacant post is exempt from the provisions of the ROA and the appointment of the successful candidate will be subject to the receipt of a satisfactory CRB Disclosure at the appropriate level for the post before a conditional offer of employment is confirmed. The applicant will also be notified what level of disclosure is required, together with a copy of recruitment of ex-offenders policy.

Upon making a conditional offer of employment the Appointing Officer will discuss the disclosure procedure with the successful candidate during which the individual will have the opportunity to declare and discuss any criminal or police records that are likely to emerge. The successful candidate will then have to complete a CRB form. The successful candidate must fully complete the CRB form and return it to the Appointing Officer who will arrange to have it countersigned by a Registered Person before its despatch to the CRB for processing.

As part of the disclosure procedure the successful candidate will have to produce documentary proof of identity. Documents containing a photograph, such as a passport or photo-style driving licence combined with evidence of address are preferred. Only original documents or official duplicates are acceptable for this purpose. Photocopies are not acceptable. The Appointing Officer will ask to see these documents and will record the details.

To minimise delays in the appointment process the Council may ask candidates invited to interview to bring with them the necessary documents to prove their identity.

The CRB charge a fee for the disclosure service, which the Council or school will pay.

## **DISCLOSURE INFORMATION**

A Standard or Enhanced Criminal Record Disclosure, giving details of any convictions or police records, is sent to the candidate and a copy is sent direct to the Council.

The information contained in Criminal Record Disclosures is considered highly confidential and the Council will restrict access to those who are entitled to see it as part of their duties for example, Countersignatories, Personnel Officers and the Appointing Officer actively responsible for the vacancy in question. The Council also undertake to ensure that disclosure information is;

- treated fairly,
- used solely for the purposes for which it was collected,
- handled and stored securely and

- kept for no longer than necessary. Once a recruitment (or other relevant) decision has been made, Disclosure information will be destroyed. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. Disclosure information relating to posts regulated by CSCI are held pending inspection by CSCI.

Under the Recruitment Code of Practice, at least one member of the Appointment Panel involved in any form of recruitment and selection must undergo training in the principles of equal opportunities, prevailing legislation and the Council's policy. Every Countersignatory registered with the CRB should also be issued with a copy of this policy together with the CRB's Code of Practice for recipients of disclosure information. For Council and School employees and elected members, failure to comply with the CRB Code of Practice or this policy may result in disciplinary action.

Full details relating to the storage of Disclosure information is detailed in the Council's policy on the use, storage and retention of Disclosure information.

## **ASSESSING THE RELEVANCE OF CRIMINAL RECORDS**

The successful candidate will be given the opportunity to discuss any convictions, cautions, reprimands, warnings and final warnings they have, spent or unspent, with the Appointing Officer and will be asked to make a written declaration about their record before a CRB Disclosure Application form is submitted to the CRB.

Having a conviction, caution, reprimand, warning or final warning will not necessarily bar someone from employment with the Council. This will depend upon the circumstances and background to the offence(s) and the nature of the work or position being sought. The Council will only take a criminal record into account when the conviction is relevant. Since questions about criminal records are only asked of the successful candidate, job applicants can feel assured that having a criminal record will play no part in the initial selection process.

Where the CRB discloses a criminal record, an assessment to decide the relevance of the criminal record and the suitability of the individual to carry out the duties of the post will be made. To reach a fair and balanced decision this assessment will involve an evaluation of the associated risks. Protection of the applicant's rights and interests must be weighed against the rights and interests of clients, employees and the public, including the Council's duties and responsibilities towards these or other groups. The Appointing Officer in discussion with a Personnel Officer, from the Personnel and Administration Directorate will consider each case on its individual merits but will take into account the following factors as a minimum:

- the relevance of the offence to the duties and responsibilities of the post,
- the nature and level of contact with children and other vulnerable groups,
- what responsibility the post has for finance and other resources,
- the freedom of action in the post and the level and nature of available supervision,
- what level of contact the post has with the public,
- the seriousness of the offence and its relevance to the safety of other people and resources,
- the length of time since the offence was committed,
- details of the circumstances that led to the offence (domestic or financial problems),
- changes to the individual's circumstances that make re-offending less likely,

- whether the individual has a history of re-offending,
- the country in which the offence was committed, for example what is an offence in Scotland is not necessarily an offence in England & Wales.

Before a final recruitment decision is made the applicant will have the opportunity to discuss the disclosure information with the Appointing Officer. This will provide the applicant with the opportunity to explain, question and promote her or his own views. Applicants also have the right to appeal to the CRB if they think a mistake has been made about their identity or if they feel the information disclosed to the Council is incorrect. The Council will normally allow a reasonable amount of time for the applicant to exhaust this right of appeal before finalising a decision.

Once a decision has been made, the Appointing Officer will contact the applicant to explain the decision reached and will confirm the decision in writing.

Occasionally the Chief Police Officer may, if thought necessary in the interests of the prevention or detection of crime, release 'additional' information to the Countersignatory only, in the form of a separate letter.

Where the police release additional information, the Countersignatory's copy of the Enhanced Disclosure will contain the following words 'Please refer to letter sent under separate cover', printed under the '*date of issue*' on the Disclosure. The information contained within the letter **must never be revealed to the applicant** or be shown to the applicant or to any other person not involved with the recruitment decision. In these situations the Council give assurances that those who are entitled to see this additional information as part of their duties will comply with the Police Act 1997 and not reveal the information contained within the letter to the applicant or another person who is not involved with the recruitment decision, without the written permission of the Chief Police Officer.

Occasionally the Council may have reasonable grounds to ask an existing employee to apply for a criminal record disclosure to disclose the most recent information available. Refusal to co-operate with the Council in this respect may result in disciplinary action.

## COMMENCEMENT OF WORK PENDING A CRB DISCLOSURE

It is Council policy that no one should be allowed to start work before the CRB Disclosure is received. This policy is to try to ensure maximum protection by minimising any known risks. It is acknowledged that the practice of awaiting CRB clearance is sometimes difficult to implement fully due to the practicalities on the ground of having to ensure minimum staffing levels at all times, therefore, **Headteachers** are permitted some discretion to allow school based staff to commence work under respite measures before receiving a disclosure from the CRB. Respite measures are to be used only in **exceptional** circumstances when the delivery of services will be affected and **all** other alternatives have been considered. Respite measures do not apply to high risk areas. The discretion to allow an individual to commence work prior to receiving CRB Disclosure under respite measures, and the corresponding responsibility and accountability lies **solely** with the Headteacher.

Respite measures require the Appointing Officer to undertake a formal, written risk assessment and arrange for any supervisory measures that result. Arrangements should be reviewed on a regular basis, at the very least at a frequency of every two weeks, until the CRB disclosure is received. All other pre employment checks must also have been complete including, identity

check, two satisfactory references including previous employer, List 99 check, health clearance and qualification requirements. In the case of Council staff contracted via a Service Level Agreement written permission needs to be sought from the Headteacher prior to placement within school.

Non compliance with the guidance on the use of respite will be monitored and reported to Management Board.

## **CONTRACTS OF EMPLOYMENT**

A contract of employment for a post that is exempt from the ROA and involves work with children or work with vulnerable adults will include a clause requiring the employee to;

- Notify their line manager or Headteacher if they are arrested at any time.
- Submit an application for a revised criminal records disclosure every three years or at any other time where the Council has reasonable grounds to request a disclosure.
- Co-operate with the Council in the above procedures.

## **COMPLAINTS**

Applicants unhappy with any aspect of the recruitment process, including the application of this policy, should initially raise their concerns through the Appointing Officer. Where this fails to produce a satisfactory resolution, applicants have the right to complain to a Chief Officer under the Council's Recruitment Complaints Procedure or to the Governing Body, through the School's Complaint's Procedure where it is a school appointment. To obtain a copy of the procedure applicants should write to the Director of Personnel & Administration, County Hall, Morpeth, NE61 2EF or to the relevant school.

Separate complaints procedures shall apply for those seeking to foster or adopt children, utilising the Council's Umbrella Body service, Permitted Drivers, and other volunteers. More information is available from the service provider

The above complaints procedures are intended to deal with the Council's own internal processes. Complaints relating to mistaken identity or the nature of the information given in a criminal record disclosure can only be dealt with by the CRB.