

Staffordshire County Council							
Reference Number		Approved By		Issue	1	Issue/ Review	August 07
Policy Title	Contracts with the County Council, Requirements for Criminal Record's Checks for Providers Personnel						

Legislative Framework

Details of the key pieces of relevant legislation applicable to this policy are set out in Appendix 1.

Definitions

Authorising Officer(s)	Certain approvals, authorisations and risk assessments in respect of whether CRB checks are required may only be given by Senior Officers of the Council who have specific delegated authority to make such decision.
Contract(s)	This covers all contracts and arrangements between the County Council (Council) and Provider(s) including partnership arrangements, formal contract, purchase order, a Service Level Agreement or any other arrangement.
Criminal Records Bureau (CRB) Checks	The use of CRB in the Council's Contracts and this Policy includes, where relevant, Standard and Enhanced Criminal Records Bureau checks, List 99 and Protection of Vulnerable Adults (POVA) list checks, including relevant checks for those Providers Personnel who have lived or worked outside the UK.
Model contracts/purchase order terms and conditions	The Council's standard contracts are available on its website www.staffordshire.gov.uk/sellingtothecouncil/modelcontracts
Providers	Providers include all individuals / partnerships / companies and organisation that provide service(s) and work(s) under a Contract to or on behalf of the Council.
Providers Personnel	Includes all individuals and groups who may be engaged in the provision of a relevant service or work of any nature in respect of the Contract whether they are directly employed by the Provider, agents, sub-contractors or their employees, partners or their employees and all voluntary workers and those on works experience in relation to the contract.
Relevant Service(s) or Work(s)	Includes any task (including the delivery or installation of goods, if relevant) where the Providers Personnel may come into direct or significant indirect contact with child(ren) or vulnerable adults or sensitive personal information in relation to them

Significant Indirect Contact	Where, depending on the circumstances of each individual case, the Council considers that during the performance of a contract the amount or frequency of the contact is at a level where child(ren) or vulnerable adult(s) who come into contact with the Providers Personnel may place their trust in a member of the Providers Personnel.
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1. Purpose

1.1 To ensure that where a service (including the delivery or installation of goods, if relevant), or works are provided to or on behalf of the Council other than by the Council's directly employed staff, contractual arrangements are in place to require all Provider's to ensure that Providers Personnel involved in the provision of the relevant service(s) or work(s) are subject to the same requirements for Criminal Records Bureau (CRB) checks that the Council requires of its own directly employed staff.

1.2 To ensure that those officers who are responsible for tendering or otherwise arranging and approving Contracts are aware of relevant legislation, codes of practice, guidance and good practice for CRB checking and give appropriate consideration to the circumstances in which the Contract is to be performed, so as to require CRB checks for Providers Personnel where appropriate, including a reassessment of the requirement to seek CRB checks should the arrangements for the performance of the Contract vary.

1.3 To ensure that where a Contract requires a Provider to ensure its Providers Personnel have a CRB check that Providers have adopted and carry out appropriate procedures for safe recruiting, verification of checks and monitoring of checks, in line with the procedures the Council requires for its directly employed staff.

1.4 To ensure the fair and consistent application of the Policy to all Council Contracts.

1.5 For the purposes of this Policy, Staffordshire County Council is referred to as 'the Council'.

1.6 For the avoidance of doubt, where CRB checks are required the Council expects the cost of CRB checks for Providers Personnel to be included within the tender/contract price unless specifically excluded.

2. Scope

2.1 This Policy applies to all Contracts entered into by the Council including those arrangements where the Council is acting as Lead or Accountable Body.

2.2 Contracts where the appointment is to a Council position including the appointment of temporary or agency staff to cover a vacant position or an interim position within the Council are covered by the Councils HR Policy 7 (Criminal Record Checking). For such interim positions the Council may arrange CRB checks itself.

2.3 Where the Council appoints Provider(s) to provide Relevant Services or Works and the Provider is unable to access appropriate Criminal Records Checks in respect of its Provider's Personnel, the Council may act as an Umbrella Body, with the agreement of the Provider and carry out CRB checks on its behalf.

3. Policy Statement

3.1 The Council is committed to fulfilling its duty to protect children and vulnerable adults to whom it provides a service by ensuring that where relevant service(s) or work(s) are provided under a contract the Provider will ensure that any Providers Personnel engaged in respect of that Contract will be subject to the same level and frequency of CRB checks as the Council would require of its own directly employed staff.

3.2 Before entering into a Contract where CRB checks are required, the Council will require the Provider to certify that it holds clear CRB checks in respect of all members of the Providers Personnel who are to be engaged in the relevant service(s) or work(s) and that where any member of the Providers Personnel is subsequently engaged in the performance of the Contract they shall be subject to CRB checks before commencing the relevant service or work.

3.3 Where CRB checks are required the Council will require a Providers to adopt its own policies in relation to safer recruiting practices and to utilise the Criminal

Records Bureau (CRB) Disclosure Service as a key element in the making of safer recruitment decisions by checking the background of applicants to determine that they do not have a history that renders them unsuited for a position of trust. The Council may as part of its tender evaluation and Contract award process require Providers to make available information regarding their policies.

3.4 Where CRB checks are required the Council may require providers and Personnel to wear or produce valid identification, such as photo ID badges.

3.5 The Council will only require a Provider to request a CRB check where it is relevant to do so, and will not require a CRB check at a level higher than that which is appropriate for the performance of the contract. However, an Enhanced Disclosure including POVA and List 99 will be requested for all Providers Personnel where during the performance of the contract it is likely that a child and/or vulnerable adult would place their trust in the Providers Personnel.

3.6 The Council acknowledges that some Providers who are smaller organisations or whose main business does not relate to relevant services and works may be unable to register with the CRB to enable them to seek CRB Disclosure checks. In these circumstances where a CRB check is required the Council may act as an Umbrella Body to facilitate CRB checks.

3.7 The Council will respect the confidentiality of matters in relation to the Providers Personnel and will not require the Provider to disclose information in respect of the Providers Personnel. Similarly, the Council in its role as a Social Services Authority may occasionally be party to information in respect of the Providers Personnel which it is unable to disclose to the Provider. In such circumstances the Council in its Contracts will retain the right to request a Provider remove a member of the Providers Personnel from the performance of a Contract without disclosing details to the Provide. In such circumstances the Council will always act in good faith.

3.8 Where the Contract is subject to an option to renew/extend the Contract for a further period(s) the Council shall consider whether it will require the Provider to certify that the Providers Personnel hold clear CRB checks as a condition of such renewal/extension of contract.

NB: This Policy follows the Councils own policy for the appointment of its directly employed staff (including agency and interim staff), and officers responsible for tendering and approving contracts and contractual arrangements are recommended to refer to HR7 Policy (Criminal Record Checking) together with the associated guidance notes ('Guidance – Policy on Criminal Record Checking), the Policy on the Recruitment of Ex-Offenders and the Policy on the Security of Disclosures and Disclosure Information. These documents will be maintained on the Councils web site and may be accessed by Providers.

4. When are Providers Personnel Subject to Criminal Record Checks?

4.1 The Council will only specify that a CRB check is required in respect of contracts where the service or work to be provided under the Contract will involve services or work that is included in the Exceptions Order to the Rehabilitation of Offenders Act (1974), in respect of any regulated positions or would be if the service or work was carried out by a person who was directly employed by the council as defined by the Criminal Justice and Court Services Act (2000), and as otherwise stipulated by legislation.

4.2 Where membership of certain professional bodies falls within the Exceptions Order e.g. medical and nursing, accountancy and legal professions and CRB checks are carried out by the relevant professional body, the Council will only request Providers to carry out CRB checks for members of these professions where the tasks to be performed under the Contract require Providers Personnel to work with or have direct access to children and/or vulnerable adults. In such instances the requirement for a check, and the appropriate level of check, will be assessed by reference to a risk assessment.

4.3 Under the current legislation the Council may not currently require CRB checks where Providers Personnel have access to sensitive data only, i.e. where there is no direct or indirect contact with child(ren) or vulnerable adult(s). However, should legislation change in the future the Council may review its policy. For this purpose all Contracts will contain provisions to ensure that should relevant legislation be amended a Provider may be required to ensure the relevant Providers Personnel have the appropriate CRB Checks. In such circumstances the "Change of Law" provisions in the Contract will apply to determine responsibility for payment of costs.

4.5 Where there is any doubt as to whether a Contract shall include a requirement for CRB checks this shall be determined by an Authorised Officer. Such officer shall be a Senior Manager of the Council or hold specific Delegated authority to make such determinations. The Authorised Officer shall have or obtain knowledge of how the Contract is to be performed and the HR policy guidance. A risk assessment shall be recorded and placed on the Contract file.

5. Undertaking Criminal Record Checks

5.1 CRB Disclosures and use of POVA First in Urgent cases

A Provider is required to utilise the CRB Disclosure Service to undertake criminal record checks at the appropriate level required in the Contract (Standard or Enhanced).

Where due to the particular circumstances of the Contract to be performed, service users would be put at significant risk if the Contract was not performed, the Council may agree that members of the Providers Personnel may be used prior to completion of full CRB checking procedures where a Provider has obtained POVA First in relation to the individual member of the Providers Personnel. In such instances, such members of the Providers Personnel may only be engaged in the relevant service or work:-

a). In accordance with the supervisory arrangements stipulated by legislation and as further noted in paragraph 7 below, and

b). Where specifically agreed in writing by an authorised officer of the Council.

Only an Authorised Officer with information regarding the contract performance arrangements may give such approval.

N.B. the Councils HR guidance notes set out its internal processes to be followed to request a Disclosure and/or POVA First notes. Providers are recommended to adopt similar processes.

5.2 Lead-Signatory and Counter-Signatories

Providers are required to make their own arrangements with the CRB for authorising applications for CRB checks.

Where the Council agrees to act as an Umbrella Body its lead-signatory and counter-signatories for the Council are based in its HR Shared Service Centre. Arrangements for certification of identity and details will be agreed with Providers.

5.3 Tendering and awarding contracts

Contracts Officers (those authorising the tendering of or award of contracts) are required to consider whether during the performance of a Contract, Providers Personnel will be involved in relevant service(s) or work(s). Where this is likely to occur a contract shall include a requirement for CRB checks unless an Authorised Officer following the completion of a risk assessment approves the Contract being let without such checks.

Subject to Paragraph 5.1, No Contact where CRB checks are required may be commenced or extended/renewed where the Provider has not certified that it holds clear CRB checks for Providers Personnel.

Where a Contract has been identified as requiring CRB checks for Providers Personnel, Providers will be notified of the requirement at the earliest opportunity to allow sufficient time for them to follow appropriate recruitment and checking processes.

5.4 Changes to the role of Providers Personnel

Where during the course of a Contract a member of the Providers Personnel takes on a position involving greater responsibility/or contact with child(ren) or vulnerable adult(s) and the Contract requires that member of the Providers Personnel performing that role holds a CRB check or a CRB check at a higher level. In such case, subject to paragraph 5.1 the member of the Providers Personnel may not perform that new role unless a clear CRB check at the appropriate level is obtained.

Existing Providers Personnel may also become eligible for a CRBs check in response to changes in guidance, statute or the regulatory standards relating to the nature of the duties of their post (e.g. National Minimum Standards set out by the Commission for Social Care Inspection), or where their suitability to continue to work with children or vulnerable adults becomes a cause for concern.

5.5 Changes to the Contract

Where the contract is varied or to be performed in a different manner so as to include the performance of relevant service(s) or work(s) the Contracts Officer shall consider whether the revised contract requires CRB checks.

5.6 Requirements for Rechecking

Subject to section 6 (TUPE and Portability) and the provisions set out below, the Council requires all Providers, irrespective of how long the staff have been employed or otherwise engage or working with the Provider to hold clear CRB checks in respect of all Providers Personnel involved in the provision of relevant work or services from the commencement of the Contract.

N.B. the Councils existing model contracts contain provision to require CRB checks in appropriate circumstances.

The Council may require Providers Personnel to have a revised / renewed CRB check where:-

- a) In response to changes in guidance, statute or the regulatory standards relating to the nature of the duties of their post (e.g. National Minimum Standards set out by the Commission for Social Care Inspection), or
- b) Where their suitability to continue to work with children or vulnerable adults becomes a cause for concern, or
- c) There is a change in role as set out in paragraph 5.4.

NB: Where a Vetting and Barring (V&B) scheme in line with the Safeguarding of Vulnerable Groups Act 2006, anticipated to be rolled out from 2008, requires the Registration of people who wish to work with children or vulnerable adults, and the Provider's Personnel are subject to a CRB check as a condition of such Registration, the Council may accept current Registration as evidence of a satisfactory clear CRB check. In such circumstances the provider will be required to notify the Council if they receive notification that the member of the Providers Personnel status in the

V&B scheme has changed. In such circumstances the Council may require the member of the Providers Personnel to be removed from performing the contract in accordance with paragraph 3.7 above.

5.7 Providers personnel who have lived or worked abroad

Where a member of the Providers Personnel to be engaged to provide relevant service(s) or work(s) has lived or worked abroad the Council will require the Provider to include as part of its CRB check process, the completion of a Disclosure Application Form and, to utilise the CRB service that provides details of the availability of criminal record information in countries of origin, in order to determine what other criminal record check can and should be undertaken.

NB providers with Providers Personnel in these circumstances are recommended to view the Councils guidance notes for recommended processes.

6. Providers Personnel holding existing CRB clearance / Portability

6.1 Where a member of the Providers Personnel is not directly employed by the Provider e.g. an agent or sub contractor the Provider will be required to ensure that appropriate CRB checks are in place if required.

Arrangements are currently not in place to allow for portability of CRB checks and this is a matter which will be considered on an individual basis.

NB: this position will be reviewed when the Vetting and Barring Scheme is introduced, see 5.7.

6.2 TUPE transfers

6.2.1 The Council recognises that when contracts are subject to tendering process or are otherwise transferred between Providers, employees of the Provider may be the subject of a TUPE transfer and under the TUPE Regulations their employment is deemed to be continuous.

6.2.2 The Council will use its discretion whether to accept a CRB check as 'portable' depending on the circumstances of the Provider and the transferring employer. i.e. can the transferring certify that it carried out safe recruiting practices including

checking the identity of employees, is it able to pass on documentary evidence of clear CRB checks at the appropriate level, and that it can certify that it has not been notified of any subsequent convictions or concerns. E.g. it is anticipated that if the Council is outsourcing a service and its directly employed staff are proposed to transfer to a Provider the Council would be able to offer such certification, similarly where staff are transferring between associated organisations. In such circumstances, 'portability' of Disclosures will be deemed acceptable. The exception to this is where the transfer results in an individual working at a different level with children and/or vulnerable adults and the appropriate level of Disclosure is not already in place.

7. Use of Providers personnel without a Disclosure

7.1 Providers Personnel may only be engaged in the performance of relevant service(s) or work(s) without a Disclosure where guidance/statute supports this:

- Where Providers Personnel have been subject to a POVA First check and appropriate of induction and supervision arrangements as specified in the Care Standards Act (Establishments and Agencies)(Miscellaneous Amendments) Regulations 2004;
- In respect of schools, Head teachers have discretion to allow an individual to begin work within their school pending receipt of the CRB Disclosure, but must ensure that: (a) the individual is appropriately supervised (the nature of which must reflect what is known about the individual at the time), (b) all other checks, including List 99, have been completed, and (c) the Disclosure application is submitted before the individual begins work, and is received as soon as practicable thereafter.

7.2 Applicants for positions in regulated children's social care services will require a full CRB Disclosure **before** commencing employment.

8. Council may act as an Umbrella Body

8.1 In certain circumstances the Council may act as an Umbrella Organisation to obtain CRB checks in respect of Providers Personnel.

8.2 The Council will only act as an Umbrella Body where:

- The Provider / organisations concerned is entitled to request that Standard or Enhanced Disclosures are obtained in respect of the relevant service(s) or work(s).
- That a written agreement for the Council to act as a Umbrella Body is in place.
- That the Provider organisation complies with the Code of Practice issued by the CRB, including the policies on safer recruitment , recruiting ex-offenders and securing of Disclosures and Disclosure information, either by developing relevant policies or by adopting the polices of the Council (available on the Councils website or on request).
- The Provider organisation has a named signatory or counter signatory.
- The Council considers in all the circumstances it is appropriate for it to act as an Umbrella Body for the purposes of the particular Contract.
- The Provider agrees to meet the cost of the CRB checks and such administrative fee as may reasonably be required by the Council.

8.3 The Council will not countersign Disclosure applications on behalf of self employed individuals except in cases where the individual is providing a service to the Council and, in providing that service, is required to obtain a Disclosure. In such cases the requirement for a Disclosure will be made a condition of the agreement between the Council and the individual.

9. Disclosing criminal convictions during the continuation of the Contract

9.1 Providers are required to ensure that arrangements are in place to ensure that Providers Personnel for whom a CRB check is required must declare any cautions, convictions or reprimands that they receive during the course of the contract to the Provider, or in the event that the Provider is using an agent or subcontractor to the relevant person in that organisation for onward referral to the Provider.

9.2 Subject to paragraph 10 the Provider is required to notify the Council (ie the named appropriate officer in the contract) of any matters which may affect the Providers Personnel being in a position of trust in relation to child(ren) or vulnerable adult(s).

9.3 The relevance of any conviction, caution or reprimand will be considered as detailed in paragraph 10 below.

10. Considering the relevance of convictions

10.1 The Council is committed to ensuring that all persons whether they are directly employed with the Council or Providers Personnel engaged in the performance of Council Contracts are treated fairly.

10.2 Receipt of a positive Disclosure will not automatically render an individual unsuitable for to be engaged in performing a Council Contract unless stipulated by statute/guidance. For example, individuals will be prohibited from working with children if they are listed on POCA and/or List 99, and prohibited from working with vulnerable adults if they are listed on POVA.

10.3 The Council's overriding consideration will be the duty to safeguard children and/or vulnerable adults. However, it recognises that some convictions which may be disclosed do not affect the ability of the individual to perform relevant service(s) or work(s).

10.4 Should an individual member of the Providers Personnel be subject of a positive Disclosure result in their being deemed unsuitable for relevant services(s) or work(s) the Council requires that they are not engaged in the performance of the Contract in that role. The Provider is, however, at liberty to engage them in other non relevant service or work.

11. Use of Disclosure information and sharing information

11.1 The Council will comply with the CRB Code of Practice in respect of use of Disclosure information. In this connection the Council has developed a Policy on Security of Disclosures and Disclosure Information which must be adhered to.

11.2 Where the Council is party to information in relation to a member of the Providers Personnel it may determine not to disclose such information in accordance with paragraph 3.7 unless it has the relevant Chief Constables consent and deems it appropriate to disclose such information.

11.3 Where the Council is acting as an Umbrella Body the Council will only reveal additional information in addition to the Enhanced Disclosure to the Providers nominated Lead / Counter signatory unless the permission of the relevant Chief Constable is given in such circumstances the Council may require the Lead / Counter

signatory to agree not to disclose the information to the individual concerned without specific authorisation.

12. Monitoring and Review (Contracts and Policy)

12.1 The Council as part of its contract monitoring process may require confirmation from the Provider that it holds clear CRB checks in respect of its Providers Personnel (including those appointed, engaged or changing their roles following the commencement of the contract. Such confirmation or certification may be a requirement of contract extension or renewal.

12.2 The provisions of this policy will be subject to regular review and as required by changes in legislation and guidance.

12.3 The Policy in relation to Council Contracts follows the Councils HR Policy in relation to CRB checks for directly employed staff (including agency staff and interim roles) The Council's Law and Governance section will be responsible in association with the Council's Corporate HR, and Directorate HR, sections in ensuring this policy and guidance is reviewed and updated in line with the Councils own HR Policy where changes in legislation, codes of practice and good practice deem this appropriate.

13. Communication and Training

13.1 The provisions of this policy will be communicated to officers of the Council involved in procurement via training or briefing arrangements and a copy of the Policy and appropriate risk assessment and guidance documents will be available on the Council's Procurement section of the Intranet.

13.2 Reference to the Council's CRB policy is included in all the Council's standard and Model contracts and will be incorporated into relevant contracts.

13.3 All tender documents where providers are required to ensure Providers Personnel hold clear CRB checks will refer to the Policy and a requirement for CRB checks will be included as a condition of the Contract.

14. Accountabilities

Authorised Officer - responsible for carrying out our 'Risk Assessment' process to determine whether CRB checks are required in specific contracts.

Contracts Officer – responsible for day to day management of the tendering process / letting and monitoring the contract, arranging renewals and variations within their area of responsibility which includes ensuring that CRB requirements are included within relevant contract documentation and referring issues to Authorised Officers for the purposes of Risk Assessments.

Councils Lead Signatory – overall responsibility for ensuring compliance with CRB Code of Practice; for keeping abreast of developments in guidance and legislation and for issuing guidance to Corporate/Directorate HR as appropriate regarding the CRB and Disclosure Service.

Council's Counter Signatories – responsibility for ensuring that Disclosure Application Forms are completed to a satisfactory standard and processed appropriately; for the distribution of Disclosure information and positive Disclosures to appropriate persons, and for ensuring the appropriate storage and use of Disclosures/Disclosure information.

Corporate HR – responsibility for leading on the monitoring, reviewing and updating of policies and guidance notes, in liaison with Directorate HR.

Internal Audit – responsibility for assuring the integrity and effectiveness of this policy and its application, including through the annual audit programme including the monitoring of Contracts, where required.

Law and Governance, responsible for liaising with Corporate HR and reviewing the Policy in respect of Contracts, maintaining and reviewing appropriate standard contract clauses and training for contract processes to ensure compliance.

Provider – takes responsibility under the terms of the Contract for ensuring the Providers Personnel hold CRB checks at the level required under the Contract and for notifying of changes in the way the Contract is proposed to be performed.

Appendix 1 – legislative framework

Rehabilitation of Offenders Act (1974) – this legislation introduced the concept of ‘spent’ and ‘unspent’ convictions and created exceptions to the general rule that spent convictions should be ignored for purposes of employment. Specifically such exceptions include posts involving working with children and vulnerable adults.

Police Act (1997) – this legislation brought about the creation of the CRB and Disclosure Service.

Data Protection Act (1998) – this created specific principals around the storage and use of personal information (paper and computerised) regarding individuals. It also gives rights to individuals to access such information – known as ‘subject access’.

Protection of Children Act (1999) – this introduced a cross sector system to identify people unsuitable to work with children and introduced the requirement of the Secretary of State to keep a list (POCA List) of individuals considered unsuitable. It further made it an obligation for local authorities to check employees/applicants against this list.

Criminal Justice and Court Services Act (2000) – this created powers for courts to disqualify individuals who have committed specific offences from working with children. It also created the concept of ‘regulated’ positions for which criminal record checks are necessary.

Education Act (Section 142) (2002) - this gives the Secretary of State the power to make directions which prohibit or restrict a person's employment in the education sector. This legislation is supported by the Education (Prohibition from Teaching or Working with Children) Regulations 2003.

Care Standards Act (2000) (Establishments and Agencies)(Miscellaneous Amendments) 2004 – this introduced the possibility of people commencing in care positions prior to receipt of a full Disclosure subject to suitable supervision and induction arrangements.

School Staffing Regulations (2006) – still under consultation. These introduce the requirement for all new staff joining schools from May 2006 to be subject to an enhanced check. Furthermore, they introduce the requirement for schools to maintain a single central record of all staff employed in the school covering recruitment checking/vetting that has been undertaken.

CRB Code of Practice. – although not a piece of legislation, all organisations registered with the CRB to access the Disclosure Service are expected to comply with the Code of Practice. Failure to do so could ultimately lead to the registered body losing registration status.