

<b>Staffordshire County Council</b>			<b>HR Policy Handbook</b>				
Reference Number	<b>HR 7</b>	Approved By		Issue	<b>1</b>	Issue/ Review	<b>March 07</b>
Policy Title	<b>Criminal Record Checking</b>						

### **Legislative Framework**

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

#### **1. Purpose**

To ensure that Staffordshire County Council's arrangements in respect of criminal record checking comply with relevant legislation, codes of practice and guidance, and constitute good practice. Further, by ensuring that the content of this policy is widely disseminated, to secure consistent application throughout the Authority.

For the purposes of this policy, Staffordshire County Council is hereafter referred to as 'the Council'.

#### **2. Scope**

This policy applies to applicants for appointment to all Council positions that are exempt from the Rehabilitation of Offenders Act (1974) who, if there were to be successful, would be employed under a contract of employment, engaged through a contract for services, or utilised as a volunteer.

This policy will also be applied to Elected Members of the Council, school governors, foster carer and adoptive parent applicants, and to people involved with the Council in any other capacity where their duties would involve regularly caring for, training, looking after, supervising or mentoring a child/vulnerable adult as part of a work experience placement.

The principles of the policy will also be applied to agency staff engaged in exempt positions, contract/partnership staff where the contract/partnership agreement with the Council specifies the requirement for a criminal record check, and to all organisations for which the Council is acting as an umbrella body. In such cases the Council will expect organisations either to adopt this policy or to produce their own policy complying with the general principles of this policy.

For the purposes of this policy all individuals being considered for or in positions for which a criminal record check is required are hereafter referred to as 'applicants' and all positions of employment, work or other activity are referred to as 'positions'.

### **3. Policy Statement**

The Council is committed to fulfilling its duty to protect children and vulnerable adults to whom it provides a service by ensuring the highest integrity of those appointed to positions of trust and in doing so, complying with the relevant legislation and codes of practice.

The Council is also committed to the elimination of discrimination and to equal treatment in employment. This applies to prospective employment and all stages of employment, including recruitment and selection, and the commitment extends to applicants with criminal records.

The Council will 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 will only request a Disclosure where it is relevant to do so, and will not require a Disclosure at a level higher than that which is appropriate for the position. However, an Enhanced Disclosure will be sought for all positions where it is likely that a child and/or vulnerable adult would place their trust in someone in that position.

The Council will act as an Umbrella Body to smaller organisations who are unable to register with the CRB and whose functions are aligned to those of the Council.

This Policy should be read 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.

### **4. Posts Subject to Criminal Record Checks**

The Council will only specify that a criminal record check is required in respect of positions that are included in the Exceptions Order to the Rehabilitation of Offenders

Act (1974), in respect of any regulated positions as defined by the Criminal Justice and Court Services Act (2000), and as otherwise stipulated by legislation.

The matrix included in the accompanying guidance notes will be used in assessing risk and to determine the appropriate level of Disclosure for positions.

Membership of certain professional bodies also falls within the Exceptions Order, namely, medical and nursing, accountancy and legal professions. As a rule, however, criminal record checks would be carried out by the relevant professional body and the Council will only request checks for such positions where the duties require individuals 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 the matrix included in the accompanying guidance notes.

Positions where individuals may have access to 'sensitive' information are currently not covered by the Exceptions Order or other relevant legislation, and as such are not eligible for a criminal record check. However, should future legislation/developments in respect of the 'Information Sharing Index' result in a requirement that employees who have access to the Index are checked, then the policy will be amended accordingly. At that point, the Council will give further consideration to the situation of employees who have access to data held in other systems which is similar to data held in the Index.

## **5. Undertaking Criminal Record Checks**

### **5.1 CRB Disclosure Service and POVAFirst**

The Council will utilise the CRB Disclosure Service to undertake criminal record checks.

POVAFirst will also be used, in line with CRB guidance, where the circumstances are such that service users would be at significant risk if individuals were not recruited to positions. In such instances, individuals appointed to positions will only be employed in accordance with the supervisory arrangements stipulated by legislation and as further noted in paragraph 7 below.

The processes to be followed to request a Disclosure and/or POVAFirst are detailed in the accompanying guidance notes.

## **5.2 Lead-Signatory and Counter-Signatories**

The lead-signatory and counter-signatories for the Council are based in the HR Shared Service Centre; they will process all Disclosure requests on behalf of the Council and also where the Council is acting as an Umbrella Body.

## **5.3 Recruitment**

Criminal record checking is a key element in safer recruitment processes which also incorporate checks in respect of educational qualifications, employment history/gaps, references and eligibility to work in the UK.

Where a post has been assessed as requiring a criminal record check, applicants will be made aware at the earliest opportunity that they will be required to disclose all criminal convictions, including those that are spent. This requirement will be specified in the job advertisement and reiterated in job particulars.

Details of convictions will be requested from all applicants for exempt positions through completion of the relevant application form. Details revealed in the application form will only be shared with those who need to be aware of the information as part of the recruitment process.

Short-listed applicants for exempt positions will be requested to complete the Disclosure Application Form, but only the completed form for the successful candidate will be submitted to the CRB.

## **5.4 Internal and external applicants**

The process of requesting completion of the Disclosure Application Form will be applied equally to internal and external applicants applying/being appointed to posts that have been assessed as requiring a criminal record check.

In respect of internal applicants, an existing Disclosure will only be accepted in the circumstances described in paragraph 6 below.

### **5.5 Existing employees**

Existing employees will be subject to a criminal record check where they apply for a position involving greater responsibility for children or vulnerable adults than their existing position, and if they do not have an existing Disclosure at the appropriate level for the position for which they are applying. Accepting an existing Disclosure should only be considered where the circumstances described in paragraph 6 below apply.

Existing employees may also become eligible for a criminal record 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.

### **5.6 Checking Backlog & Rechecking**

Where statute or guidance requires checks to be undertaken on staff who have not been checked appropriately as required in the past, the Council will deem this to apply to anyone appointed from the commencement of the CRB Disclosure Service (1 March 2002) for whom an appropriate check either has not been undertaken or cannot be evidenced.

As a general rule the Council will only require employees to be rechecked where (as above) guidance, statute or regulatory standards stipulate this, or where their suitability to continue to work with children or vulnerable adults has become a cause for concern.

Such rechecking requirements will also be specified in contract/partnership agreements where relevant.

NB: current legislation/regulatory guidance do not stipulate that existing employees, continuously employed, have to be rechecked at predetermined intervals. Indeed this unlikely ever to be the case because regulatory guidance (CSCI, Ofsted, etc) will have to be amended in line with the Safeguarding of Vulnerable Groups Act 2006, and specifically when the new Vetting and Barring Scheme is rolled out in 2008. From that point people who wish to work with children or vulnerable adults must be registered, and the register will confirm that there is no known reason why an

individual should not work with these client groups. A key feature of the V&BS is that, subject to a CRB check having been undertaken at some point, employers will be notified automatically if a person's status in the scheme changes. On the face of it this will obviate the need for rechecking and in this and other respects this policy will have to be revisited, and revised as appropriate.

### **5.7 Checking – applicants from abroad**

The Council will require applicants from abroad to complete the relevant section of the application form regarding criminal convictions.

They will also be required to complete a Disclosure Application Form and, if successful, this will be submitted to the CRB.

The Council will also, on a case by case basis, 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.

Further information is available in the accompanying guidance notes.

## **6. Accepting Existing Disclosures /Portability**

### **6.1 Applicants**

Applicants may already have a Disclosure and may offer this for the purpose of securing a position with the Council.

However, the Council will only accept existing Disclosures in the following circumstances, in line with current guidance:

- Where the Disclosure is at the level specified for the position, where it was requested by the Council, and where the applicant has been in continuous employment with the Council since the issue date;
- For Children's Services – where the Disclosure is not more than 3 months old, where there has been no break in service (the applicant can move between different childcare organisations but there must not be an interval where they have been doing other work or have not been employed) and where it is at the level specified for the position;

Existing Disclosures will not be accepted from applicants for any position within regulated services for vulnerable adults in respect of which a criminal record check is stipulated by the Care Standards Act, except where they are an existing employee and the Disclosure is at the appropriate level for the post and includes a POVA check.

NB: the new V&BS, to be rolled out in 2008, will completely change the position re: portability; once registered with the Scheme, membership will be fully portable.

## **6.2 TUPE transfers**

Under TUPE regulations, in respect of transfers in and out of the Council, the intention of the regulations is that employment transfers and is continuous. As such, portability of Disclosures will be deemed applicable in such circumstances. 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.

This principle will also apply in terms of contracts for the provision of works, goods, services and/or utilities, where a contract transfers to/from the Council to/from another provider.

## **7. Commencing employment without a Disclosure**

Applicants will only be able to commence employment without a Disclosure where guidance/statute supports this:

- Where applicants have been subject to a POVAFirst check they can commence employment before receipt of a full Disclosure subject to: (a) receipt of the POVAFirst check, and (b) the application 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.

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

#### **8. Acting as an umbrella body**

In acting as an Umbrella Body, the Council will ensure the following in respect of organisations for which Disclosure requests are countersigned:

- That the organisations concerned is entitled to request that Standard or Enhanced Disclosures are obtained;
- That the organisation complies with the Code of Practice issued by the CRB, including in respect of policies on recruitment or ex-offenders and securing of Disclosures and Disclosure information, either by developing relevant policies or by adopting the policies of the Council.

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.

The Council will charge organisations an appropriate fee for the Umbrella Body facility.

A written agreement will be in place between the Council and any organisation for which it is acting as an umbrella body.

#### **9. Disclosing criminal convictions during employment**

Employees in positions for which a criminal record check is stipulated will be required to declare any cautions, convictions or reprimands that they receive during the course of their employment.

For individuals appointed to such positions, whether internally or externally, after this policy comes into effect this requirement will be a contract term and included in the

statement of particulars of employment. From time to time individual employment contracts need to be varied in some particular and where this need arises, in addition to the terms which occasioned the variation, the above requirement will be incorporated. In the case of all other employees occupying positions where a criminal record check is required, it is expected that cautions, convictions, etc will be disclosed as they arise.

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

#### **10. Considering the relevance of convictions**

The Council is committed to ensuring that applicants for positions, and existing employees who have had occasion to be checked/rechecked, with a criminal record are treated fairly, in line with the Council's Policy on the Recruitment of Ex-Offenders.

Receipt of a positive Disclosure will not automatically render an applicant or existing employee unsuitable for a position 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.

The Council will only take into account convictions that are relevant to the position. The overriding consideration will be the duty to safeguard children and/or vulnerable adults.

The suitability of an applicant or existing employee will be reviewed in light of all the information available and having regard to accepted best practice (further information is provided in the guidance notes).

Should the receipt of a positive Disclosure result in an existing employee being deemed unsuitable for the position that they are in, attempts will be made to redeploy them to another role where appropriate. However, this redeployment will be based on a position being immediately available, and the individual will not receive prior consideration or, as appropriate, pay protection. Should alternative employment not be available employment will be terminated with due notice.

Further information regarding assessing the relevance of convictions is provided in the accompanying guidance notes.

#### **11. Use of Disclosure information and sharing information**

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.

Specifically, the Council will not reveal to applicants any additional information supplied by a police force in addition to the Enhanced Disclosure unless the permission of the relevant Chief Constable is given.

#### **12. Monitoring and Review**

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

Corporate HR, liaising with Directorate HR, will take the lead role in ensuring this policy, the associated policy and guidance notes are updated where changes in legislation, codes of practice and good practice deem this appropriate.

The HR Shared Service Centre will ensure that where the policies and/or guidance notes are altered, associated safe recruitment processes are reviewed and updated in line with any changes.

#### **13. Communication and Training**

The provisions of this policy will be communicated to all employees of the Council, agencies, contractors and partner organisations and to organisations for which the Council is acting as an umbrella body.

Applicants for posts subject to criminal record check will be made aware of this policy along with the criminal record check requirement at the advertisement or application stage.

Appropriate training or briefing will be made available to Head Teachers and those managers and staff involved in recruiting to posts requiring a criminal record check.

#### **14. Accountabilities**

**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.

**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

**Head Teachers/managers/appointing officers** – responsibility for ensuring, as an integral part of the recruitment process, that criminal record and other specified checks are initiated at the appropriate level for identified posts; for exercising discretion in line with this policy in respect of individuals commencing work before a CRB Disclosure has been received, and for ensuring (in respect of school based staff specifically) that appropriate records are created and maintained on site, and in general terms, for keeping abreast of developments associated with safe recruitment practices.

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

**Directorate HR** – responsibility for assisting in the updating of policies and guidance notes; for ensuring that Head teachers/managers/appointing officers are kept updated on policy, process and requirements; and for providing advice and guidance on case by case basis, including in respect of the response to the receipt of positive Disclosures.

**HR Shared Service Centre** – responsibility for the integrity of records maintained in SAP; for the security and appropriate dissemination of Disclosures and Disclosure information; and for the administration of the Disclosure Application, List 99 and POVAFirst process.

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

## **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.