

STANDARDS COMMITTEE

MINUTES OF MEETING HELD AT THE TOWN HALL, PETERBOROUGH 5 NOVEMBER 2008

Members Present:

Mr S Boast (Chair), Ms. B Fearon, Mr O Menendez, Ms. A Smith, Mr D Whiles
Councillors Lane, Murphy and Trueman
Parish Councillors Batty and Evans

Officers Present:

Helen Edwards, Solicitor to the Council and Monitoring Officer
Carol Tilley, Senior Cabinet Officer

1. Apologies for Absence

1.1 Apologies for absence were received from Councillor Miners and Todd.

2. Declarations of Interest

2.2 There were no declarations of interest.

3. Minutes of Meeting held 3 September 2008

3.1 The minutes of the meeting held 3 September 2008 were approved as an accurate record.

4. Monitoring Officer's Report

The Committee received a report from the Solicitor to the Council and Monitoring Officer for consideration. Members noted the report and discussion was held as follows:

4.1 Actions since last meeting:

The training event held on 20 October, which had focused on the way in which complaints against elected Members were dealt with (in particular, dealing with hearings) had proved useful and had been well received by those present. Members were asked to give consideration to any further training topics that might be appropriate.

It was noted that an alternative date had now been identified to hold the training event open to all Members, which aimed to enhance awareness of the new arrangements in respect of the complaints process against elected Members.

4.2 Referrals / Complaints

Members noted that the second quarterly return for the period ending 30 September 2008 had been submitted to the Standards Board, showing that two complaints had been received during this period. Members were advised that one of these had been referred for investigation.

A further complaint had been received since submission of the above return and this had been dealt with at a meeting of the Standards Committee's Assessment Sub Committee held on 27 October. The outcome of this would be reported at the next meeting.

4.3 CRB Checks for Elected Members

Members were asked to consider the new Criminal Records and Employment of Ex-Offenders draft policy, which had been agreed by Employment Committee. The document highlighted suggestions in respect of how it might be amended to relate to Members and input from the Committee was sought in this regard. Following this, a revised version would be circulated to Scrutiny Committee for comment, before being submitted to Cabinet.

During discussion it became apparent that further debate was required with regard to this matter in order to clarify the Committee's position. The Chair therefore suggested that the issue be debated in detail at a separate meeting. However, it was emphasised that this would be the final opportunity for members to discuss this matter.

It was **AGREED** to debate this matter in detail at the next scheduled meeting (3 December 2008).

4.4 Consultation on new Code of Conduct for Local Authority Members and Employees

Members were advised that the consultation document which had been despatched with the agenda was not the correct version. Hard copies of the correct version were circulated during the meeting.

Following brief discussion, Members **AGREED** to defer this item to the meeting of 3 December 2008 in order to allow all Members (a) an opportunity to thoroughly peruse the document and (b) an opportunity to consult with their party colleagues.

4.5 Consultation on Code of Recommended Practice on Local Authority Publicity

Members were advised that the new Code had not yet been published.

In light of the above, it was **AGREED** to defer this item to a future meeting.

4.6 Planning Committee Voting Analysis

The Committee noted the Voting Analysis in respect of meetings of the Planning and Environmental Protection Committee held 29 July 2008 and 9 September 2008 respectively.

5. Agenda Planning

The Chair requested that the following item be included on the agenda for the meeting of 21 January:

- Update on Work Programme.

Meeting closed at 7.43 p.m.

STANDARDS COMMITTEE	AGENDA ITEM 4
3 December 2008	PUBLIC REPORT

Contact Officer(s):	Helen Edwards, Solicitor to the Council	Tel: 01733 452539
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R E C O M M E N D A T I O N S
FROM : SOLICITOR TO THE COUNCIL & MONITORING OFFICER
<p>That the Standards Committee:</p> <ol style="list-style-type: none"> 1. Determines the policy that it recommends to the Cabinet in respect of carrying out Criminal Records Bureau (CRB) checks on elected members. 2. If appropriate, depending on the policy agreed as above, to determine the procedure that it recommends for determining which members should be subject to CRB checks.

1) Background.

The Standards Committee has previously considered the issue of CRB checks for elected members on a number of occasions.

At its meeting on 7th November 2007 a decision was taken to ask the monitoring officer to seek the views of group leaders on whether they would support a policy of universal checks for members, which was the Standards Committee's preference at that stage. The general consensus of opinion from group leaders was that they would like to see further detail of the proposals, although the Liberal Democrat leader was very clear that his group would not support a policy of universal checks.

Following further research, and consideration of a revised policy for employees, the matter went back before the Standards Committee on 3rd September 2008. At this meeting members agreed with the Monitoring Officer's recommendation to proceed with a policy of requiring CRB checks for members appointed to certain posts, such posts to be identified following a risk assessment. It was further agreed that the monitoring officer would bring a draft policy before the standards committee, based on the policy for employees.

2) Decision of previous meeting

At its meeting on 5th November, the Standards Committee decided that it would like to revisit the decision that it had previously made, and debate it further. The item included in paragraph 3 of the monitoring officer's report to that committee was therefore deferred until the meeting on 3rd December 2008. The draft policy that was part of that report is now attached to this report as Appendix A. If members decide they wish to proceed with a selective policy based on risk assessment against certain

posts to which members might be appointed, then it will be necessary for the standards committee to consider the draft policy at its meeting. Should members decide to adopt a policy of universal checks, then the draft policy as currently drafted will not be relevant.

3) Applying for a CRB check

Organisations registered with the CRB may only apply for a disclosure if the position in question is on the list of those professions, offices, employment work and occupation exempted from the Rehabilitation of Offenders (ROA) Act 1974.

4) Working with children.

For the purpose of the ROA 1974 (Exceptions) Order 1975, the definition of 'working with children' includes any work that is:

- work in a regulated position
- work in a further education institution where the normal duties of that work involve regular contact with persons aged under 18

The regulated positions are specified by category codes 01 to 09. The most relevant code for elected members is code 07, set out in full below. Some of the other codes may relate to specific roles carried out by members in certain positions:

Category Code 07

One of the following positions:

- *member of the governing body of an educational institution*
- ***member of a relevant local government body***
- *director of social services of a local authority*
- *chief education officer of a local education authority*
- *charity trustee of a children's charity*
- *member of the Youth Justice Board for England and Wales*
- *Children's Commissioner for Wales or deputy Children's Commissioner for Wales*
- *member or chief executive of the Children and Family Court Advisory and Support Service (CAFCASS)*

For these purposes, a person is a member of a relevant local government body if:

- ***he/she is a member of a local authority, or a member of an executive of a local authority, and is involved in discharging any education functions or social service functions of a local authority***
- ***he/she is a member of an executive of a local authority which discharges any such functions***

he/she is a member of:

- ***a committee of an executive of a local authority, or***
- ***an area committee or any other committee of a local authority which discharges any such function***

5) Working with vulnerable adults

There is no corresponding category of exemption in respect of those who work with vulnerable adults, and the available exemptions that would allow CRB checks in such circumstances tend to relate to those who have actual access to vulnerable adults in receipt of services in the course of their normal duties.

6) The implications of exemption category code 07

In the opinion of the Monitoring Officer, this exemption category would cover at least those elected members in the following positions, suggesting that CRB checks should be carried out:

- Cabinet
- Corporate Parenting Group
- Education Transport Appeals
- Schools Organisation Committee
- Children's & Lifelong Learning Scrutiny Panel
- Health & Adult Social Care Scrutiny Panel

7) Universal checks

The possibility of a policy that requires all elected members to undergo a CRB check has been explored with the Criminal Records Bureau. The advice given by the CRB is that such a policy would potentially be illegal. There is a range of offences which might potentially be committed:

If an organisation submits Disclosures for positions for which they are not entitled they will be committing an offence under section 123(2) of the Police Act 1997, ' A person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this Part.'

Requesting information to which there is no entitlement also breaches the following pieces of legislation:

Data Protection Act 1998 s55 & s56 deal with unlawfully obtaining data about an individual. Schedule 1, principles 1,2,3, 4 & 6 apply.

Human Rights Act 1998 (Article 8 - the right to privacy) - Everyone has the right to respect for his private and family life, his home and his correspondence.

8) Recommendations / Legal Implications

The Monitoring Officer strongly advises that the Standards Committee should recommend a policy based on a risk assessment of the position held in the Council by an elected member.

This is likely to result in checks being carried out on all members in the committees and groups referred to in paragraph 6 above. All posts and committees should be risk assessed to identify the level of involvement in discharging any education functions or social service functions. Some other roles may result in a recommendation for a CRB check because of the likely level of unsupervised access to children or vulnerable adults.

9) Financial Implications

There are no specific financial implications to this report.

10) Ward Councillors

The contents of this report are not ward specific.

Background Papers

In accordance with the Local Government (Access to Information) Act 1985, background papers used in the preparation of this report were:-

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Criminal Records & Employment of Ex-Offenders policy

Purpose of the Policy

The purpose of this policy is to facilitate the protection of the public and service users, especially children and vulnerable adults, as well as council property / assets / staff etc. by defining the use of criminal record information in the selection of persons involved in service delivery. The policy also relates to elected members, and their selection to fulfil roles within the Council, such as committee membership.

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All Managers must read, and familiarise themselves with the contents of this document. It is also recommended that all Members familiarise themselves with it.

The council has a statutory duty of care towards vulnerable members of society. The council will carry out this duty of care with due regard to all other relevant legislation.

Scope

This policy includes recruitment and other decisions taken using crime related information in respect of: -

- existing employees who work with children and/or vulnerable adults
- prospective employees who would be employed to work with children and/or vulnerable adults
- the re-checking of previously checked relevant employees
- volunteers working with children and/or vulnerable adults
- licensed taxi-drivers
- foster-carers
- contractors working with children and/or vulnerable adults
- agency workers/interims working with children and/or vulnerable adults
- school transport providers
- elected Members
- others involved in council service provision where children and/or vulnerable adults are involved.

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Where the term employee/applicant/ member is used, the principles of this policy may also apply to others engaged in services provided by or for the council.

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This policy applies to all Peterborough City Council services as far as possible. However, a different procedure may be necessary for certain areas, e.g. those roles based in schools and who are subject to procedures involving governing bodies. In these circumstances, governing bodies are recommended to adopt the principles of this policy and procedure into their individual school policies.

This policy covers information whether (a) obtained from the Criminal Records Bureau, (b) from other checks, or (c) when disclosed by an Individual.

Peterborough City Council is a registered body for carrying out Criminal Records Bureau (CRB) disclosures and operates some limited services to external bodies. Some checks related to council services are undertaken by other registered bodies, (e.g. 'Educational Personnel Management').

Principles

As a result of Part V of the Police Act 1997, the CRB acts as a central access point not only to criminal records information, but also to the statutory lists which list people considered unsuitable to work with children and vulnerable adults.

The council must be particularly careful to enquire into the character and background of applicants for appointment to posts involving contact with children aged less than 18 years. It is therefore essential that in making an application, applicants disclose whether they have ever been convicted of a criminal offence or cautioned and if so for what offence(s). The manager should make clear via the job description and job pack if the post is exempt from the provisions of section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders (1074) (exceptions) order 1975 and the Rehabilitation of Offenders Act 1974 (exceptions) (Amendment) Order 1986 the Police Act 1997 as amended by part V of the Protection of Children Act 1999.

Posts working with Children or Vulnerable Adults or meeting other exemptions are defined within the Rehabilitation of Offenders Act, and are described as 'exempted', which means disclosure applications can be made.

When seeking to recruit people for posts that are **exempted** under the Rehabilitation of Offenders Act, the advertisement and / or job information available for all candidates must make it clear that the post requires the disclosure of all criminal record information, including details and dates of 'spent' convictions, cautions, reprimands and final warnings. Where the post is subject to Enhanced Disclosure, other relevant non-conviction information such as police enquiries and pending prosecutions should also be asked for.

When seeking to recruit people for posts that are **not exempted** under the Rehabilitation of Offenders act the advertisement and / or job information must make it clear that criminal convictions will be taken into account only when they are relevant to the post. It should be explained that applicants are not required to disclose convictions that are 'spent' under the Rehabilitation of Offenders Act. Cautions, reprimands and final warnings are considered 'spent' immediately they are given.

Failure to disclose convictions on an application form may be considered a disciplinary offence and action taken against the employee.

[In respect of elected members, the Monitoring Officer will arrange for a risk assessment to be carried out as to which roles within the Council require the Member nominated to that position to have a CRB check.](#)

Types of disclosures

There are three types of disclosures. Only line managers will have sufficient in-depth knowledge of their own posts to allow them to decide which the appropriate level of check to apply is. [For elected members, the Monitoring Officer will determine the appropriate level of check to be carried out.](#) HR are able to provide advice on the criteria and will proactively advise managers if they are checking posts that do not appear to meet the criteria, and/or are being checked at the wrong level. Some roles may also be ruled inadmissible by the CRB or there may be a suggested level, which will generally need to be followed.

This must be carefully managed. If an inappropriately high level of check for the role is requested, there could be a breach of the Data Protection Act and the terms of the Rehabilitation of Offenders Act. However if an inappropriately low level of check is requested the council could be failing in its duty of care for the protection of children and/or vulnerable adults. If a manager is unsure of which check to request they should always consult HR for further advice.

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Applications for Standard and/or Enhanced Disclosures can only be made by the employer (PCC). Applications to the CRB must be made with the express agreement of the individual concerned, and signed by both the applicant and the registered body. Applicants receive their own copy of the disclosure, though this does not include any additional police information.

In general, the assessment of which type of disclosure is relevant should have regard to:

- job descriptions and person specifications
- the level of supervision the post receives
- [for elected Members, the terms of reference of the committee in question](#)
- the degree of contact with children and/or vulnerable adults.

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Completion & Checking of Disclosure requests

The disclosure applicant will be required to submit the completed CRB Disclosure Application Form and relevant original documentation in person to the verifier. The verifier will check the CRB Disclosure Application Form and check the original documentation and then forward the CRB Disclosure Application Form to a currently approved Peterborough City Council CRB signatory for counter signing before submission to the CRB.

It is the responsibility of the appointing manager / [Monitoring Officer](#) to:

- ensure that the appropriate level of check is obtained and
- that the disclosure application form is completed correctly
- ensure that there has been no oversight in the completion of the form or in verification of the form

The government lists will be checked as part of a standard or enhanced disclosure check provided the correct options have been ticked on the form.

Commencement of duties

Applicants should not commence work or service provision for any role in the council until all the relevant checks have been undertaken, assessed and signed off as acceptable by the responsible manager.

[Ordinarily, elected members appointed to committees will have CRB checks in place before taking up that appointment, although this will not prevent appointments being made, and appropriate systems will be put in place to protect the safety of service users in the meantime.](#)

However, it is recognised that where delays occur in the processing of CRB checks, this may place additional pressures on services in terms of meeting client needs and overall service objectives. **The paramount consideration must always be the safety of the service users.** No person who requires a CRB check should be allowed to commence work until the risk assessment has been undertaken using the standard council template and signed off by a Director/Head of HR/Lead CRB Counter signatory as detailed.

If a new employee commences work, subject to checks, they must be allocated other work-related duties, which do not involve close or sole contact with children and/or vulnerable adults until the results of the disclosure and/or other checks have been received.

Any applicant who completes the application form or CRB form and declares that they **do have unspent criminal convictions must not commence employment under any circumstances.**

Persons who have worked or lived overseas during the previous five years

Managers should be cautious about relying on checks on those with little if any residence in the UK and should also exercise caution in respect of those with any gaps in their career record. The CRB

may be able to offer advice about criminal record checking systems based outside the United Kingdom if required.

The CRB can only access criminal records held on the Police National Computer. The Police National Computer does not hold details of convictions, cautions, reprimands or warnings made outside of the United Kingdom. A CRB check will not provide details of an overseas criminal record that may or may not exist.

All persons who are appointed to a post requiring a CRB check must still undergo a CRB check regardless of their length of stay in the UK.

However, for those new arrivals to the UK they must provide in addition to all documentation in relation to the Immigration requirements, and the CRB requirements, a STATEMENT OF GOOD CONDUCT to cover the time period in their own country.

Re-Checks

Existing employees [and members](#) who have been checked and who continue in a role where checks are required will generally have a full CRB disclosure check every three years. However, this will vary according to circumstances and re-checks will be carried out more frequently than three years in some service areas.

Whilst there are no published timescales within which CRB disclosures should be renewed best practice suggests that renewal should take place at least every three years to strike a balance between the appropriate level of safeguarding and the efficient management of risk.

Re-checks may also be carried out if there are concerns about a person's suitability to work with children, or if a person's work changes to involve greater contact with children. Re-checks will also be carried out if a person moves to a different post within the council which requires a check.

Employees will have no right to refuse to comply with this request, as Peterborough City Council is under a duty to adhere to the statutory requirements of e.g. the CSCI.

Any existing employee refusing to comply with the request for a full CRB disclosure check will be advised that their deliberate and/or unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager/supervisor, and/or to comply with a contractual agreement will lead to the employee being instructed to attend a disciplinary hearing.

[An elected Member who refuses to comply with the request for a full CRB disclosure check will be given the opportunity of not taking up the committee or other role in respect of which the check is sought. If the Member insists on taking up the position without a CRB check, the matter may be referred to the Standards Committee for consideration of whether, in the circumstances of the case, this may represent a potential breach of the Code of Conduct.](#)

Disclosure results

A process to follow to ensure that every positive trace is dealt with in a consistent manner has been devised and must be followed to ensure key decisions are taken correctly and in accordance with the council policy and the Rehabilitation of Offenders Act. A record needs to be kept of the decision relating to all applicants for whom a disclosure application is made and not just those where any conviction information is disclosed.

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Counter signatories and Verifiers

Before any verification of documents or CRB disclosures is undertaken, verification of document training must be carried out. This training is mandatory. A central record of trained employees is held in the HR Support team. All counter signatories will also receive verification training.

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Volunteers

Applicants for voluntary posts that involve contact with children and/or vulnerable adults will need to have a CRB Disclosure check at the appropriate level. The definition of volunteer taken from the 1997 Police Act (Criminal Records) Regulations 2002 is 'a person who performs any activity which involves spending time, unpaid (except for travelling and other out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

Acting as an umbrella body

An umbrella body is one, which countersigns applications and receives disclosure information on behalf of other employers or recruiting organisations.

The Council is registered with the CRB as a 'limited umbrella body.' The Council does not openly provide a commercial service to external bodies but can conduct checks on behalf of other organisations to whom the council provides HR and/or Payroll services, or other partner organisations it may from time to time chose to support (e.g. sports clubs, children's services provided by voluntary organisations etc).

Before acting as an Umbrella Body the council will take all reasonable steps to ensure that the client organisation can comply fully with the CRB Code of Practice and has adopted appropriate policies and procedures. The council will enter into a written agreement with the organisation outlining its duties and responsibilities.

Portability

Portability refers to the re-use of a CRB Disclosure, obtained for a position in one organisation and later used for another position in another organisation. The council policy is that CRB checks are non transferable in any circumstances.

Statutory framework Including Standard Government Checks

The council has a statutory duty of care towards vulnerable members of society. However, this duty must be carried out with due regard to all other relevant legislation including the Rehabilitation of Offenders Act (1974), the Data Protection Act (1998) and the Human Rights Act (1998). Anyone who believes their rights have been violated by a public authority is able to raise their complaint before a UK court. Managers must be aware of the possibility of legal challenge from ex offenders who believe their rights have been violated under article 14 of the act which guarantees freedom from discrimination. Equally they must be aware that victims of physical/sexual/verbal abuse caused by employees known to have a criminal record might also seek legal challenge on the grounds that the organisation failed to protect them sufficiently. In order to avoid prosecution by the courts the council needs to apply policies that ensure vulnerable people are protected but at the same time treat ex-offenders fairly.

Protection of Vulnerable Adults

The Care Standards Act sets out obligations in relation to individuals in care positions involving regular contact with vulnerable adults. There is a statutory requirement on providers of care to check if an individual is included on the POVA list prior to appointment to a care position.

Protection of Children

The Protection of Children Act sets out obligations of "child care organisations." There is a statutory requirement to check if an individual is included on the POCA list or the list known as List 99 prior to appointment. It is a criminal offence to employ a person in a child care position if that person is included on the POCA List or List 99.

Agency workers, Contractors, Interims

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Heads of Service must ensure that where agency, interims or contractor workers are supplied to carry out duties within the council the manager obtains written confirmation from the agency/employment business that the relevant CRB disclosure check has been carried out and is satisfactory before the individual commences work with the council.

Where there is disclosed information on the CRB check then the manager must obtain a copy of the CRB disclosure from the agency/employment business before the individual commences work with the council to allow a proper assessment to be undertaken.

Where there is 'soft information' provided by the Chief Police Officer then the agency/employment business cannot provide the council with a copy of that information. The Head of Service would need to carry out a repeat disclosure if they still wanted to use that person.

Heads of Service must ensure that the contract with the agency/employment business imposes an obligation on them to carry out the same checks as the council would for its own staff in advance of the work starting. **It is essential that these checks are up to date and renewed in accordance with this policy.**

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Statement of main terms and conditions of employment

There will be a clause placed in the statement of main terms and conditions of employment for all employees outlining the position on checks through the CRB or other official agencies.

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Policy Statement on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures & Disclosure information

1. General principles

As an organisation using the Criminal Records Bureau (CRB) Disclosure service to help assess the suitability of applicants for positions of trust, Peterborough City Council complies fully with the CRB Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act (1998) and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters, which is available to those who wish to see it on request.

2. Storage & Access

Disclosure information is never kept on an applicant's personal file and is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

3. Handling

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure Information has been revealed and we recognise that it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.

4. Usage

Disclosure information is only used for the specific purpose for which it has been requested and for which the applicant's full consent has been given.

5. Retention

Once a recruitment (or other relevant) decision has been made, the council does not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six-months, we will consult the CRB about this and will give full consideration to the Data Protection and Human Rights of the individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

Where a unit is subject to an inspection by the Care Standards Inspectorate disclosures will be retained until the next annual inspection, and no longer.

6. Disposal

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

Policy statement on the recruitment of ex-offenders

1. As an organisation using the Criminal Records Bureau (CRB) Disclosure service to assess applicants' suitability for positions of trust, Peterborough City Council complies fully with the CRB Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
2. Peterborough City Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
3. We have a written policy on the recruitment of ex-offenders, which is made available to all Disclosure applicants at the outset of the recruitment process.
4. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, (which may include those with criminal records). We select all candidates for interview and appointment based on their skills, qualifications and experience and their ability to meet the requirements listed in the person specification attached to the job description.
5. A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, all job adverts and person specifications will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
6. Where a Disclosure is to form part of the recruitment process, we encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process. We request that this information is sent under separate, confidential cover, to a designated person within Peterborough City Council and we guarantee that this information is only seen by those who need to see it as part of the recruitment process.
7. Unless the nature of the position allows Peterborough City Council to ask questions about the entire criminal record we only ask about "unspent" convictions as defined in the Rehabilitation of Offenders Act (ROA) 1974. All posts where work is with children or vulnerable adults is classed as an exemption and therefore the applicant for the check must declare any reprimands, cautions, warnings, bind-over's, or convictions on the application (including those regarded as 'spent') if they are applying for a post working with children or vulnerable adults.
8. We ensure that all those in Peterborough City Council who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act (ROA) 1974.
9. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
10. We make every subject of a CRB Disclosure aware of the existence of the CRB Code of Practice and make a copy available on request.
11. We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

Having a criminal record will not necessarily bar you from working with us. This will depend on the nature of the position and the circumstances and background of your offences.

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1. Further Advice

Further details are provided in the CRB Managers Guidance document. Advice and support is available from your line manager, HR Business Partner, HR support, or trade union representative. Any employee with concerns about the application/breach of this policy should discuss this in the first instance with their line manager.

[Any elected member with concerns about the application / breach of this policy should discuss this in the first instance with the monitoring officer, or their group leader.](#)

2. Implementation procedures

To implement the principles in this policy please use:
CRB Manager's Guidance
Recruitment & Selection policy

3. Authorisation and review

This policy has been authorised by: Jacquie McGeachie, Head of Human Resources

Glossary of terms

Full description	Any abbreviation commonly used	Meaning
Criminal Records Bureau	CRB	An executive agency of the Home Office which vets applications for people who want to work with children and vulnerable people.
Education Personnel Management	EPM	A personnel and payroll service provider used by many Peterborough schools
Commission for social care inspection	CSCI	Set up by the government to independently inspect and report on care services and councils
Department of Health 'Protection of Vulnerable Adults' list	POVA list	A list detailing care workers who have harmed vulnerable adults in their care. There is a statutory requirement on registered care providers to check if a care worker is included on the POVA list.
Information held under Section 142 of the Education Act 2002	Previously called List 99	This list is maintained by the Department for Children, Schools and Families (DCSF) and contains the details of teachers who are considered unsuitable or banned from working with children in education.
Protection of Children Act List.	POCA list	This is a list, managed by the Department for Children, Schools and Families (DCSF) on behalf of the Department of Health (DH), of people banned from working with children.
Exempted Question		This is a valid request for a person to reveal their full criminal history (including spent convictions) and is made possible by virtue of the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974.
Exceptions Order		The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 sets out those occupations and positions exempt from the provisions of the ROA. These are generally positions of trust, where there is a valid need to see a person's full criminal history in order to assess their suitability for a position. The information is intended as general guidance only and is not a definitive interpretation of the ROA.
Caution		A formal warning about future conduct given by a senior police officer, usually in a police station, after a person has committed an offence. It is used as an alternative to a charge and possible prosecution.
Conviction		Guilty of the crime as charged
Fixed Penalty Notices	FPN	These are designed to reduce paperwork on police and council officers by allowing low-level anti-social behaviour to be dealt with on the spot. Receiving a notice is not a criminal conviction.
CRB disclosure results		A CRB check can provide access to a range of different types of information, such as: (a) held on the Police National Computer (PNC), including Convictions, Cautions, Reprimands and Warnings in England and Wales, and most of the relevant convictions in Scotland and Northern Ireland may also be included. (b) held by local police forces and other agencies, relating to relevant non-conviction information; (c) from the Government's Protection of Children Act List (PoCA), where applicable; (d) from the Government's Protection of Vulnerable Adults List (PoVA), where applicable; and (e) held by the Department for Children, Schools and Families (DCSF) under Section 142 of the Education Act 2002 (formerly known as List 99), where applicable.
Independent Safeguarding Authority Vetting & Barring Scheme	ISA VBS	From October 2009, the new Vetting and Barring Scheme (VBS) will replace current schemes: List 99, PoCA, PoVA and Disqualification Orders. Under the VBS, the Independent Safeguarding Authority (ISA) will take the decisions on barring unsuitable people from working or volunteering with vulnerable groups.

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Criminal records checks & employment of ex offenders – managers' guidance

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Types of disclosures

There are three types of disclosures. Only line managers will have sufficient in-depth knowledge of their own posts to allow them to decide which the appropriate level of check to apply is. ~~For elected members, the Monitoring Officer will determine the appropriate level of check to be carried out, HR are able to provide advice on the criteria and will proactively advise managers if they are checking posts that do not appear to meet the criteria, and/or are being checked at the wrong level. Some roles may also be ruled inadmissible by the CRB or there may be a suggested level, which will generally need to be followed.~~

Deleted: For elected Members, the Monitoring Officer will determine the appropriate level of check to be carried out. HR

This must be carefully managed. If an inappropriately high level of check for the role is requested, there could be a breach of the Data Protection Act and the terms of the Rehabilitation of Offenders Act. However if an inappropriately low level of check is requested the council could be failing in its duty of care for the protection of children and/or vulnerable adults. If a manager is unsure of which check to request they should always consult HR for further advice.

Applications for Standard and/or Enhanced Disclosures can only be made by the employer (PCC). Applications to the CRB must be made with the express agreement of the individual concerned, and signed by both the applicant and the registered body. Applicants receive their own copy of the disclosure, though this does not include any additional police information.

In general, the assessment of which type of disclosure is relevant should have regard to:

- job descriptions and person specifications

- the level of supervision the post receives
- for elected members, the terms of reference of the committee or role in question
- the degree of contact with children and/or vulnerable adults.

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The Basic Disclosure

Basic Disclosures **are not currently available**, but are intended to be introduced at some future point. The Basic Disclosure will show all convictions held at national level which are not "spent" as defined under the terms of the Rehabilitation of Offenders Act (ROA) 1974. All employers, including Peterborough City Council, will be entitled to ask prospective employees/volunteers to obtain a Basic Disclosure. The Disclosure will be available to all members of the public, and be obtainable directly from the CRB without the need to go through an employer or a voluntary organisation.

Potentially Basic Disclosures could be used to confirm the unspent convictions declared on applications for any job. This is most likely to be applicable for posts involving significant trust or responsibility e.g. for equipment or financial resources.

The Standard Disclosure

Which category of person falls within the definition of a standard disclosure?

These are primarily for posts that involve **working with children or vulnerable adults**. Standard checks may also be issued for people entering certain professions, such as members of the legal and accountancy professions. This is also the level of check most likely to be used for elected members working in roles such as committee membership, where the monitoring officer has assessed that a disclosure is necessary.

What information is returned on the results?

The Standard check contains details of all convictions held on the Police National Computer including current and 'spent' convictions as well as details of any cautions, reprimands or final warnings. If a position involves working with children, the CRB check will indicate whether information is held on three government lists of those who are banned from working with children or the vulnerable.

The Enhanced Disclosure

Which category of person falls within the definition of an essential disclosure?

These are for posts that involve a far greater degree of contact with children or vulnerable adults. In general, the type of work will **involve regularly caring for, supervising, training or being in sole charge of such people**. Enhanced disclosures may also be requested for those that hold posts of responsibility within schools and childcare organisations, even when the person may not care for, supervise, train or be in charge of children (for example School Governors, Members of Local Authorities with responsibilities for childcare, managers of those who work with children etc etc). Enhanced checks are also issued for certain statutory purposes such as gaming and lottery licenses. It may be helpful to refer to the [Exceptions Order](#) when assessing if a post should be checked and at what level.

The requirement for an enhanced disclosure applies to anyone newly appointed in a school setting under the School Staffing (England) (Amendment) (No 2) regulations 2006.

What information is returned on the results?

(a) The Enhanced check contains details of all convictions held on the Police National Computer including current and 'spent' convictions as well as details of any cautions, reprimands or final warnings. If a position involves working with children, the CRB check will indicate whether information is held on three government lists of those who are banned from working with children or the vulnerable.

(b) An enhanced check also involves a check on local police records. Where local police records contain additional information that may be relevant to the post the applicant is being considered for, the Chief Officer of police may release information for inclusion in an Enhanced check.

(c) Exceptionally, and in a very small number of circumstances (typically to protect the integrity of current

police investigations), additional information may be sent under separate cover to the Counter Signatory and should not be revealed or discussed with the applicant under any circumstances. The council is not allowed to pass the information to anyone without the permission of the Chief Police Officer.

For this reason it is important when applying for the disclosure to specify the nature of the post in the job title given. For example this should be 'School Secretary' and not just 'Secretary', or 'Actor running workshops for young people' and not just 'Actor', or 'Sports Centre Receptionist with first aid responsibility' and not just Receptionist.

The Disclosure will not generally show offences committed by people whilst living overseas, although the CRB will draw on data held on the Police National Computer. Further checks are required for all those who have been resident overseas during the past five years and these are outlined in a separate section.

When a disclosure is returned with 'a trace' (i.e. conviction information is revealed)

A risk assessment process to ensure that every positive trace is dealt with in a consistent manner has been devised and must be followed to ensure key decisions are taken correctly and in accordance with the council policy and the Rehabilitation of Offenders Act. A record needs to be kept of the decision relating to all applicants for whom a disclosure application is made and not just those where any conviction information is disclosed.

The types of questions to consider are:

- identified job requirements and safeguards against offending at work
- what level of supervision the post holder will receive
- possible safeguards and precautions.
- the employer's duties in law
- whether the post involves any direct responsibility for finance or items of value
- whether the post involves direct contact with the public
- whether the nature of the job presents any opportunities for the post holder to re-offend in the place of work
- the nature of the crime, when it happened, the circumstances involved, the sentence,
- patterns of offending, efforts to avoid re-offending,
- the availability of assessments and reports from those Agencies involved in the applicant's process of rehabilitation. For example, Probation Service, Specialists working in prison, other Agencies.
- the seriousness of the offence/s and relevance to the safety of other employees, customers, service users and property. Generally speaking, the longer the sentence the more seriously the Courts viewed the offence at the time. Custodial sentences are usually more serious than non-custodial sentences.
- the length of time since the offence occurred. (e.g. how effective has rehabilitation been?)
- any relevant information offered by the applicant about the circumstances that led to the offence being committed, for example the influence of domestic or financial difficulties.
- was the offence a one-off, or part of a history of offending. (e.g. is the offence likely to re-occur?)
- whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely (e.g. improved personal circumstances, drug addiction therapy, etc.).
- the country in which the offence was committed; for example, some activities are offences in Scotland and not in England and/or Wales, and visa versa.
- whether the offence has since been decriminalised by Parliament.
- the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

This process will help managers to decide whether the risk of employing a person can be taken and what precautions and safeguards would be needed to manage and minimise that risk. Managers must be aware of the dangers of personal prejudices that might cloud judgement and good practice.

In considering the relevance of offences, most offences involving violence, drink, or drugs would be relevant to positions involving unsupervised contact with the public. Sexual or child pornography offences would disqualify any person required to work with children. It should be remembered that no two offences are exactly alike. For example, a premeditated burglary that involves extensive damage to property and the physical intimidation of the occupants is different from someone convicted of an opportunistic crime such as reaching in through an open window and stealing a purse.

It could be illegal to employ people with certain convictions in specific jobs. Managers need to be aware of their legal duties. There may be other legal constraints, for example, those with motoring convictions employed as drivers may result in implications for the Council's insurance policy etc. Managers should check that insurance policies do not exclude employment of some ex-offenders in specific occupations. Most do not, but fidelity bond insurance might be necessary if there is a problem.

Under the Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000, it is an offence for any organisation to offer employment that involves regular contact with young people under the age of 18 and/or vulnerable adults to anyone who has been convicted of certain specified offences, or included on lists of people considered unsuitable for such work held by the Department for Children, Schools and Families and the Department of Health. It is also an offence for an individual who is disqualified from working with children or vulnerable adults to knowingly apply for, offer to do, accept or undertake work with children or vulnerable adults.

In respect of elected members, it is important to note that a positive trace will not prevent a member carrying out their role as an elected member. If the member remains eligible to be a member despite a positive trace, careful consideration will need to be given with both the member, and where appropriate the political group leader, about roles within the Council that would be suitable for the member to undertake.

Additional sources of information: Guidance notes for the recruitment of ex offenders. Positive Trace Assessment process.

Persons who have worked or lived overseas during the previous five years

Managers should be cautious about relying on checks on those with little if any residence in the UK and should also exercise caution in respect of those with any gaps in their career record. The CRB may be able to offer advice about criminal record checking systems based outside the United Kingdom if required. The CRB can only access criminal records held on the Police National Computer. The Police National Computer does not hold details of convictions, cautions, reprimands or warnings made outside of the United Kingdom. A CRB check will not provide details of an overseas criminal record that may or may not exist.

All persons who are appointed to a post requiring a CRB check must still undergo a CRB check regardless of their length of stay in the UK.

However, for those new arrivals to the UK they must provide in addition to all documentation in relation to the Immigration requirements, and the CRB requirements, a STATEMENT OF GOOD CONDUCT to cover the time period in their own country. This Statement of Good Conduct is usually provided by the relevant embassy or police force and is arranged by the applicant. This document should be considered along with the internal risk assessment process and all other employment checks before taking a decision regarding appointment. Particular care must be taken with the other required checks – especially those of identity and qualifications – and references must be obtained from previous employers.

The definition of new arrival is applicants who have worked or been resident overseas in the previous five years. This includes citizens of the UK who have worked or lived overseas.

There are a limited number of countries where it is possible for the council to make its own enquiries to overseas authorities. Details of these countries are held by the CRB or from your HR support team. However, the CRB is not responsible for the information provided or the length of time it takes for it to be returned.

Where the applicant is:-

- unable to provide all the documentation listed within this paragraph,
- or the information contained within the documentation gives cause for concern
- or the risk assessment identifies any risk

Then the decision must be taken not to appoint.

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Recruitment information

Posts working with Children or Vulnerable Adults or meeting other exemptions are defined within the Rehabilitation of Offenders Act, and are described as 'exempted', which means disclosure applications can be made.

What information should be requested on the advertisement?

Issue	Exempted under ROOA	Not exempted under ROOA
Advertisement and/or Job Information	Must clearly state that disclosure of all criminal record information (including details and dates of 'spent' convictions, cautions, reprimands, and final warnings) must be made	Must clearly state that criminal convictions will be taken into account only when they are relevant to the post. The applicant is not required to disclose convictions that are 'spent'. Cautions, reprimands, and final warnings are 'spent' immediately they are given.
	For Enhanced Disclosures other relevant non-conviction information should also be asked for (e.g. police enquiries and pending prosecutions)	

Providing the advertisement etc is clear then the applicant can decide whether or not to apply for the post in full knowledge of what they will need to disclose. It should also be emphasised during the recruitment process that this information will be used only to assess the applicant's suitability for employment, in so far as it is relevant, and that they will be considered on merit and ability and not discriminated against unfairly.

For elected members, information will be given to all group leaders by no later than 1st March each year as to which committees, and other member roles are deemed to need a CRB check. This will ensure that any member considering appointments to such roles is aware of the requirement before an appointment or nomination is made.

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Short listing and interviewing of candidates must focus on the assessment of the applicant's relevant skills, experience, qualifications and ability to do the job. All applicants should be judged on merit. Only after a full assessment of the applicant has been completed and a decision made about the person's ability to do the job should criminal conviction and, if relevant, other criminal record information be checked and verified using the Disclosure service.

The recruitment interview provides an opportunity for managers to raise issues concerning declared offences with applicants in open discussion.

Information regarding offences must be kept confidential. Applicants need to feel confident that information about his or her convictions will not be disclosed to anyone unless there is a specific reason for doing so. Generally, only the counter-signatory, recruitment panel and/or the HR Business Partner those who are undertaking the risk assessment to consider the information should be informed of an employee's or member's criminal record. The individual's line manager should only be informed if the offence is directly connected with the job. Offence information should be kept securely in lockable filing cabinets. Access to keys should be restricted to individuals responsible for recruitment and personnel. Further details of data handling arrangements are specified in the policy document. These are required to comply with the CRB's code of practice.

It may be possible for some recruitment exercises to devise a list before recruitment begins of the types of offences that may need to be taken into account. This can be good practice, because it can help ensure

consistency and equal treatment of individuals. There could be some ex-offenders who CANNOT be employed by statute or regulation in a particular role, especially where the post involves working with children or vulnerable adults. Additionally, this will take into account any specific regulations and guidance available, common practice among authorities etc. However, except with clear legal restrictions, such criteria must not be used to disregard applications without discussion of the disclosed information with the applicant. This is to ensure the details are correct, and so that consideration of personal circumstances is made as outlined in this policy. Managers should beware of mechanically applying pre-determined criteria. For example an offence may have occurred which is relevant but was not on the list [it is unlikely that lists will be fully comprehensive]. Or it may be that there is a combination of convictions, which while individually not of concern, reveal a pattern, which needs to be questioned. Also, not all offences of theft, for example, will have the same degree of relevance or seriousness.

All applicants must be made aware that copies of the CRB Code of Practice and the Council Policy on CRB are available on request.

Making an offer of employment pending the disclosure results

A job offer can be made subject to checks such as references, medical information, and disclosure details. It is at this point when the job offer is made that the CRB disclosure should be requested. Disclosure information must not be requested for all short-listed applicants. Disclosure results must be received by the council prior to the employee commencing employment, except in extenuating circumstances (see section on commencement pending disclosure results).

If a disclosure subsequently reveals details of convictions, the manager should undergo the Positive Trace Assessment Process and if the record renders the applicant unsuitable for the applied post, the appointing manager will discuss the situation with the applicant in line with the CRB Code of Practice. The council may decide, following confirmation of the convictions, that there is no alternative but to withdraw the offer of employment.

Where a Chief Officer of Police releases information from local police records relevant to the post following an enhanced disclosure this will not be revealed or discussed with the applicant but will be taken into account when the decision regarding employment is taken.

A flowchart (*dealing with disclosures – post employment*) is attached to this document, which outlines the exact procedure to be followed.

It should be noted that failure to give further consideration to anyone who has failed to disclose an offence may be considered unreasonable. Applicants should not be rejected outright but full consideration given to the circumstances before a decision is reached.

Starting work pending the disclosure results

It is recognised that where delays occur in the processing of CRB checks, this may place additional pressures on services in terms of meeting client needs and overall service objectives. However, the paramount consideration must always be the safety of the service users. No person who requires a check should be allowed to commence work until the risk assessment has been undertaken using the standard council template and signed off by a Director/Head of HR/Lead CRB Counter signatory as detailed.

If a new employee commences work, subject to checks, they must be allocated other work-related duties, which do not involve close or sole contact with children and/or vulnerable adults until the results of the disclosure and/or other checks have been received.

Buddying / Supervision of Unchecked Employees

Checked (cleared) employees should be the only ones in sole charge of children and vulnerable adults. Special attention should be given in circumstances where employees are supervising games/sports and out of hour's activities, such as after school clubs, or working within a residential setting, and only checked employees should supervise these activities.

In this instance, the Director of Service may authorise the use of a 'buddy system', to enable new employees, under strictly supervised conditions, to commence working in posts that bring them into contact with children and/or vulnerable adults pending the results of a disclosure.

Managers are required to keep records of frequency and reasons for the buddying system being used. This should be monitored by the departmental management team who must satisfy themselves that the arrangements are satisfactory.

The normal requirement of right to work in the UK, checking references and undergoing medical checks must still be undertaken prior to any commencement of employment and the process of requesting a CRB Disclosure check must have been completed and be in the process of awaiting a reply.

If the applicant has put an "X" on Section H – "Do you have any unspent criminal convictions?" on the CRB Disclosure Application Form – (the 'X' signifies that they do have a conviction) – then ***under no circumstances are they to commence employment.***

Managers must ensure that the prospective employee is fully aware and totally understands the conditions of commencing their duties whilst awaiting the clearance of the CRB Disclosure.

Dealing with adverse disclosure results following commencement – newly appointed employees

It is possible that commencement of work pending disclosure results will result in checks being sent back stating previously undisclosed information.

If the disclosure results render the newly appointed employee unsuitable for the applied post, the appointing manager will discuss the situation with the applicant in line with the CRB Code of Practice. They will be removed immediately from their duties.

Where a Chief Officer of Police releases information from local police records relevant to the post following an enhanced disclosure this will not be revealed or discussed with the employee but will be taken into account when the decision regarding future employment options is taken.

After investigation, and depending on the disclosure results, the line manager may decide on one of the following options:

- To terminate employment, OR
- To look for alternative employment within the council, subject to an appropriate vacancy being available

The newly appointed employee will have a right of appeal to a Head of Service against the decision to terminate their employment.

A flowchart (*dealing with disclosures on employees*) is attached to this document, which outlines the procedure to be followed.

Re-checks on existing employees

Existing employees **and members** who have been checked and who continue in a role where checks are required will generally have a full CRB disclosure check every three years. However, this will vary according to circumstances and re-checks will be carried out more frequently than three years in some service areas. Whilst there are no published timescales within which CRB disclosures should be renewed best practice suggests that renewal should take place at least every three years to strike a balance between the appropriate level of safeguarding and the efficient management of risk.

Employees will have no right to refuse to comply with this request, as Peterborough City Council is under a duty to adhere to the statutory requirements of e.g. the CSCI.

Any existing employee refusing to comply with the request for a full CRB disclosure check will be advised that their deliberate and/or unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager/supervisor, and/or to comply with a contractual agreement, will lead to the employee being instructed to attend a disciplinary hearing.

Existing employees who have not previously required a disclosure check

Existing employees may as a result of changes to regulations or working practices be required to undertake CRB disclosure checks during the course of their employment with the council. All employees will be expected to comply.

Line managers must identify employees who require disclosure checks, and the relevant level of check, against the criteria.

Employees will have no right to refuse to comply with this request, as Peterborough City Council is under a duty to adhere to the statutory requirements of e.g. CSC1.

Any existing employee refusing to comply with the request for a full CRB disclosure check will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager/supervisor, and/or to comply with a contractual agreement, will lead to the employee being instructed to attend a disciplinary hearing.

Any existing employee – not already checked - who is working in a role where checks are required will generally have a full CRB disclosure check every three years. However, this will vary according to circumstances and re-checks will be carried out more frequently than three years in some service areas.

Dealing with adverse disclosure results - existing employees

It is acknowledged that disclosures may reveal unspent convictions for existing employees, which the council was unaware of.

The line manager and the employee should be advised immediately that the CRB check has revealed information about a criminal record.

The employee may confirm or refute the information provided by the CRB. A range of options may be pursued by the employee's line manager. This may include further checking with the CRB. It may be appropriate to move the employee to an alternative post with no access to children and/or vulnerable adults, property / information / resources etc pending the outcome of a full investigation.

Only after a full appraisal of the situation, including the risks involved, and other alternatives should dismissal be considered. It should be considered whether the conviction is relevant to the post. Evidence of previous convictions should not be used to dismiss a person for poor job performance. The track record of the individual should be carefully assessed. If it is satisfactory, this should be considered positively.

If the Disclosure results are considered to be not serious, and do not impinge upon an employee's ability to work in their existing role, the line manager should inform the employee accordingly in writing. Failure to give full consideration to the circumstances of the conviction may be considered unreasonable.

If the Disclosure results are considered to be of a serious nature and proved to be correct the manager may consider various options. Options include: -

- Termination of employment
- redeployment pending the availability of a suitable vacancy,
- the introduction of safeguards, or
- moving the employee to a more suitable job,

If the manager decides to consider termination of employment then the employee must be informed in writing and a hearing held in line with the disciplinary procedure. It may be that there are no suitable duties the employee could undertake during this period, which do not bring them into contact with children/vulnerable adults. If this is the case, the manager must give serious consideration to placing the employee on paid leave pending the outcome of the disciplinary hearing.

Where a Chief Officer of Police releases information from local police records relevant to the post following an enhanced disclosure this will not be revealed or discussed with the employee but will be taken into account when the decision regarding the future of the employment is taken.

It should be noted that failure to give further consideration to anyone who has failed to disclose an offence might be considered unreasonable.

Failure to disclose convictions on an application form may also result in disciplinary action.

Dealing with adverse disclosure results – elected members

The member concerned should be advised immediately by the monitoring officer that the CRB check has revealed information about a criminal record.

The member may confirm or refute the information provided by the CRB. A range of options may be pursued by the monitoring officer. This may include further checking with the CRB. It may be appropriate to move the member from any role which allows access to children and/or vulnerable adults, property / information / resources etc pending the outcome of a full investigation.

A full appraisal of the situation, including the risks involved, should be undertaken by the monitoring officer. It should be considered whether the conviction is relevant to the post.

If the Disclosure results are considered to be not serious, and do not impinge upon an member's ability to carry out their role, the monitoring officer should inform the member accordingly in writing.

If the Disclosure results are considered to be of a serious nature and proved to be correct the monitoring officer may consider various options. Options include: -

- asking the member to resign the committee membership or other role for which the CRB check has been undertaken (and not to volunteer for any other role which requires a CRB check)
- the introduction of safeguards, or
- discussion with the appropriate group leader

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If the monitoring officer decides that it would be inappropriate for the member to continue in the role for which the check was carried out, then the member must be informed in writing.

If the matter can be resolved voluntarily, further action is unlikely to be taken.

If the member disagrees with the monitoring officer's assessment, the member may appeal to a sub-committee of the Standards Committee, who may either confirm or amend the monitoring officer's decision. The sub-committee's decision shall be final.

If a member either refuses to undergo a CRB check when one is deemed necessary by the monitoring officer, or refuses to comply with a decision by the monitoring officer or a standards committee sub-committee about continuing in a role after a positive check, the monitoring officer will consider whether to refer the matter to the Standards Committee for consideration of whether the member's behaviour is in breach of the code of conduct. Any such referral will be dealt with in accordance with the guidelines for Standards Committee referrals, which can be found on the Council's website.

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Specific advice regarding CRB checks for employees in Children's Services (education settings)

The following additional information applies to those employed within positions in Children's Services (education settings) where CRB disclosure checks are required.

Further information and guidance on the issues regarding employment of those in children's services can be found in the DCSF document [Safeguarding Children and Safer Recruitment in Education](#).

Under the requirements of the School Staffing (England) (Amendment) (No.2) Regulations 2006 it is a statutory requirement for all new appointments to schools to have an enhanced CRB check. This includes those who work in a school but do not work directly with children.

In a school setting List 99 checks must be carried out as a statutory requirement and no person should be employed in a school setting without a List 99 check being completed.

The CRB disclosure should be obtained before an individual begins work. The request for a CRB disclosure must be submitted in advance of the individual starting work. However, in extenuating circumstances, Head Teachers or senior managers have discretion to allow work to commence pending receipt of the disclosure providing the individual is properly supervised, a risk assessment has been carried out, the list 99 checks, and all other checks have been completed. These staff should then be subject to additional supervision until the disclosure is returned. The template which must be used is found within these guidelines.

Employees who are **starting a new school with the same employer, who have not had a break in service** may continue to work in advance of receiving a disclosure, with a further check of List 99.

Schools, FE colleges or LA's are not required to ask **existing staff, in post, who were not previously eligible** for criminal background checks to apply for Disclosure, unless they have concerns about the person's suitability to work with children, or they move to a different post which satisfies the criteria for a disclosure, or they have lived overseas in the previous five years. Council policy states that all employees should have a disclosure if they satisfy the criteria for the standard or enhanced disclosure.

Frequency of disclosure

A further disclosure should be undertaken in the following cases: -

- When appointing a new employee from another employer,
- On re-appointment or re-election as a school governor,
- If there is a break in service of three months or more,
- If there is a move to a post with significantly greater responsibility for children,
- No later than three years from any previous check providing the person remains in a post which is subject to disclosure checks
- or if the employer, school, further education institution or LEA has grounds for concern about an employee's/applicants suitability to work with children.

Before taking on an individual from an employment agency or employment business the school or FE college must obtain written confirmation from the agency that the checks that the school or FE college are required to carry out on their employees have been carried out by the agency. Refer further to section on agency workers, interims and contractors.

Teachers seeking positions in further education, where they will be dealing only with students over 18 years of age, (unless they fall within the definition of a vulnerable adult) will not be entitled to a Standard or Enhanced Disclosure check, as such positions are not covered by the exceptions to the Rehabilitation of Offenders Act 1974. However, List 99 checks must still be obtained.

Statement of main terms and conditions of employment

The following paragraph will be placed in the main terms and conditions of employment for all employees:-

'Certain posts are, or may become subject to checks through the Criminal Records Bureau or other official agencies. This will involve both initial checks and re-checks at an interval appropriate to the position. These checks may either be to meet a statutory requirement, or at the Council's discretion in order to protect service users, staff or council assets. Employees are required to comply with the checking process where it is or becomes applicable. The Council will operate these checks to the CRB Code of Practice or other relevant standards and policies, copies of which are available on request'.

POSITIVE TRACE ASSESSMENT (CRB DISCLOSURES)

Where a CRB certificate indicates a caution, conviction, charge or other record, the manager should undertake an assessment of whether or not the prospective employee can be offered appointment, or, if an offer has already been made, whether the employee can be confirmed in post. Managers are strongly advised to seek the advice of their HR Business Partner/Business Relations Manager if they receive a positive trace on a CRB disclosure.

A Positive Trace Assessment must be completed in every case, in order to ensure that the decision-making process is clear and consistent. Once completed, if the appointment is confirmed, the form should be kept in a sealed envelope in the employee's personal file. If the decision is taken to withdraw the offer of employment, or not to proceed with the appointment, the Positive Trace Assessment should be retained in a sealed envelope with the recruitment papers.

SECTION 1: To be completed by the HR Recruitment Team

Job Title	
Post Reference (if applicable)	
Name of Applicant	
Date interviewed	
CRB Certificate No.	
Date CRB returned	
Name of Appointing Manager	

SECTION 2: To be completed by the Appointing Manager

Does the applicant meet all the essential criteria for the post i.e. skills, knowledge and ability?	Yes	No
Is the type/nature of offence(s) directly relevant to the post? (see Guidance Notes at the end of this form)	Yes	No
Please provide details:		

When did the relevant offence(s) occur?	Less than 2 years ago	More than 2 years ago
Is there a pattern of related offences?	Yes	No
Is there a pattern of unrelated offences?	Yes	No
In what context/ circumstances did the relevant offence(s) occur?		
Is this still relevant today?	Yes	No
Please provide details:		
Was the relevant offence(s) committed at work (paid & unpaid employment)	Yes	No
What level of independence will the post holder have?	Close Supervision	Minimal Supervision
Does the applicant demonstrate a determination not to re-offend?	Yes	No
Did the applicant declare the relevant offence(s) on his/her application form?	Yes	No
What response did the applicant give when questioned about the offence(s) revealed by the CRB?		
Have references been received? (written/verbal)	Yes	No
What do the references say about the applicant's suitability for the post?		
In light of the above does the applicant constitute an unacceptable 'risk'?	Yes	No

SECTION 3: Managers assessment

Name:

Declaration:

I understand the City Council's policy on the Recruitment of Ex-Offenders. I have discussed this with the Head of Service and HR Business Partner and having considered the above assessment, I believe the applicant does / does not* constitute a risk for the following reasons:

Therefore, the applicant should / should not* be offered this post.

Please note: If you are proposing to appoint a person with a conviction for a HIGH RISK offence you MUST ensure that you have discussed this with your Head of Service and HR Business Partner/Business Relations Manager. If in doubt, always err on the side of caution.

Signed

Date

SECTION 4

To be completed by the Head of Human Resources or Lead Signatory for the Council and relevant Departmental Director

Head of HR or Lead Signatory

I agree / disagree* with the decision to appoint /not appoint* the applicant for the following reason(s):

Signed

Date

Departmental Director

To be completed by the Head of Human Resources or Lead Signatory for the Council and relevant Departmental Director

I agree / disagree* with the decision to appoint /not appoint* the applicant for the following reason(s):

Signed

Date

Please ensure that this form is retained for future reference.

Guidance Notes for Positive Trace Assessments process

Recruitment of Ex-Offenders

These guidance notes are taken from Peterborough City Council Criminal Records and Employment of Ex-Offenders Policy and are provided as a reminder of the types of offences that the Council considers high risk when employing an individual to work with children or vulnerable adults.

Work with Children

Under the Protection of Children Act 1999 and the Criminal Justice and Courts Services Act 2000, **it is unlawful** for the Council to employ persons, regardless of any mitigating circumstances, who may have regular contact with children who are either:

- included on the list maintained by the Secretary of State for Health of people judged to be unsuitable to work with children. Unsuitability includes but is not limited to previous convictions. Referral to the list must be made by a "childcare organisation" if the person concerned was employed in a post involving the care of children and commits misconduct (whether or not within the course of his/her employment) which has harmed a child or put a child at risk of harm;
- OR
- **subject to a disqualification order**

Under part 2 of the Criminal Justice and Court Services Act 2000 individuals convicted of one of a list of specified sexual and violent offences against a child or of supplying Class A drugs to a child are liable to disqualification from working with children. There is a qualifying threshold for a disqualification order – the offender must have received a sentence of 12 months or more imprisonment or detention or the court believes the offender is likely to commit a further offence against a child.

Offenders given a disqualification order are prevented from applying for, offering to do, accepting, or doing any work in a regulated position. This includes working with children in paid or unpaid positions whose normal duties involve caring for, training, supervising, or being in sole charge of children, and positions whose normal duties involve unsupervised contact with children under arrangements made by a responsible person, for example a parent.

Examples of 'working with children' extend from babysitting to working as a school teacher and from working in a local authority education or social services department to voluntary work at a boys football club. They also include positions whose normal duties include the supervision or management of another individual who works directly with children, for example a member of a school governing body.

A person who is given a disqualification order commits an offence if he or she knowingly applies for, offers to do, accepts, or does any work with children. It is also an offence for an individual knowingly to offer work with children to, or procure work with children for, an individual who is disqualified from working with children or to allow such an individual to continue in such work. Both offences have a maximum penalty of five years imprisonment and/or a fine.

The Council will not employ persons to work with children who are banned from working with children for the reasons detailed above. Similarly, the Council will not employ persons who appear on the Department for Children, Schools & Families List 99.

High Risk Offences

It is the Council's normal policy to consider it a high risk to employ persons, who may have regular contact with children if they have been convicted at any time, with the following offences:

- Murder;
- Manslaughter;
- Rape;
- Other serious sexual offences;
- Grievous bodily harm;
- Other serious acts of violence
- Serious Class A drug related offences
- Robbery/Burglary/Theft; and/or
- Deception/Fraud

(please note this section applies to those persons not subject to a disqualification order)

Work with Vulnerable Adults

It is the Council's normal policy to consider it a high risk to employ persons, who may have regular contact with vulnerable adults if they are subject to a disqualification order or have been convicted at any time, with the following offences:

- Murder;
- Manslaughter;
- Rape;
- Other serious sexual offences;
- Grievous bodily harm;
- Other serious acts of violence;
- Serious class A drug related offences;
- Robbery/burglary/theft; and/or
- Deception/Fraud.

RISK ASSESSMENT FOR COMPLETION IF HEAD OF SERVICE IS CONSIDERING ALLOWING A NEWLY APPOINTED EMPLOYEE TO COMMENCE WORK BEFORE THEIR CRB RESULTS ARE RECEIVED.

New employees should not commence work pending CRB results. This should only be considered in exceptional circumstances. UNDER NO CIRCUMSTANCE MUST ANY INDIVIDUAL COMMENCE WORK BEFORE (A) LIST 99 HAS BEEN CHECKED AND/OR (B) IF THEY HAVE DECLARED THAT THERE ARE CAUTIONS/CONVICTIONS ON THE RECORD.

A Risk Assessment must be completed in every case, in order to ensure that the decision-making process is clear and consistent. Once completed, if the appointment is confirmed, the form should be kept in a sealed envelope in the employee's personal file. If the decision is taken to withdraw the offer of employment, the risk assessment should be retained in a sealed envelope with the recruitment papers/leaver file.

SECTION 1: To be completed by the Line/Appointing Manager /Head of Service

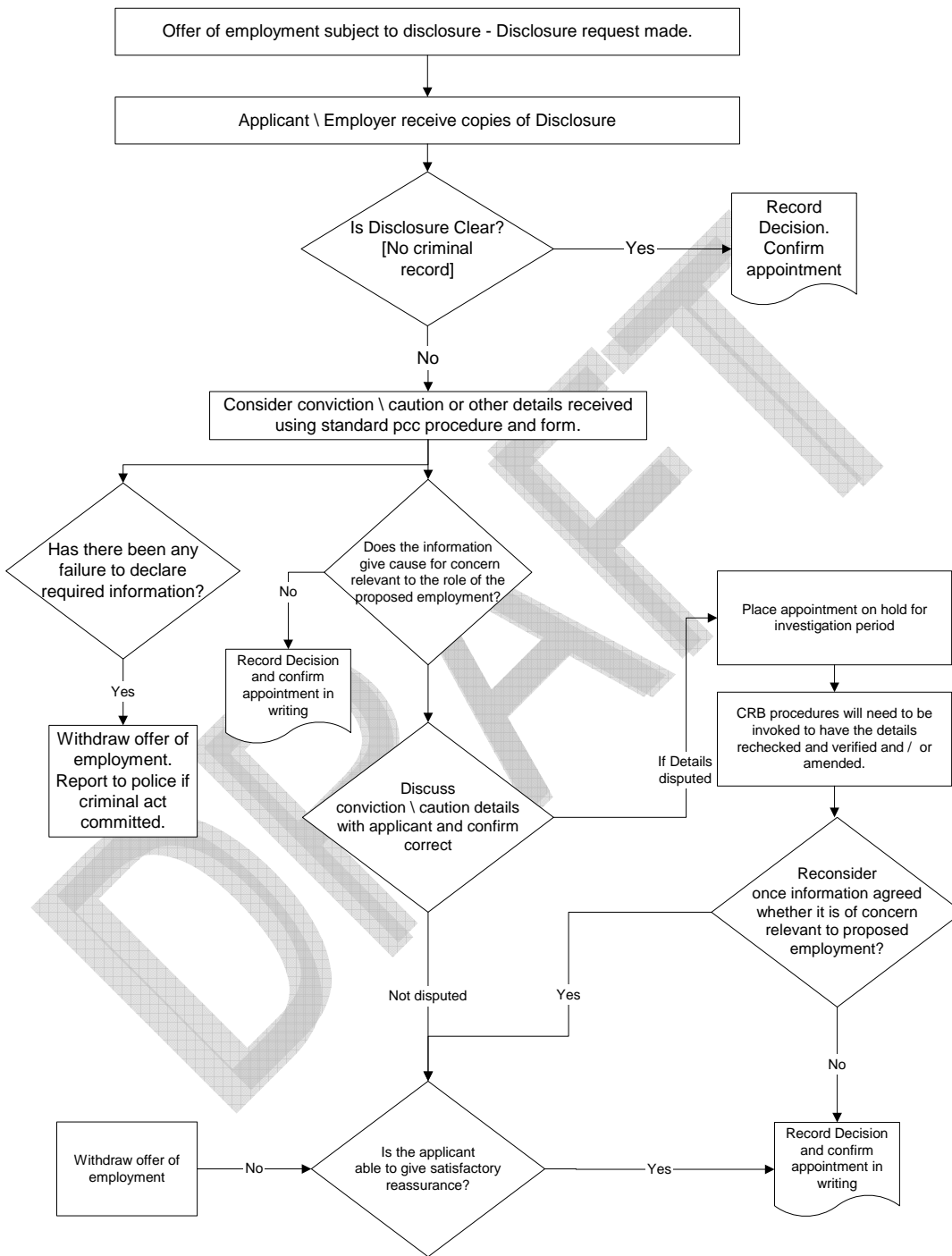
Post to be filled			
Date post became/becomes vacant			
Name of Applicant			
Date interviewed			
Type of Check	Enhanced	Standard	
CRB Certificate No. (taken from the completed CRB form, which must have been sent to CRB prior to commencement)			
Date disclosure form sent to CRB			
Has the candidate declared any previous cautions/convictions?	<p>If the applicant has put an "X" on Section H – "Do you have any unspent criminal convictions?" on the CRB Disclosure Application Form – (the 'X' signifies that they do have a conviction) – then <i>under no circumstances are they to commence employment.</i></p> <p>TAKE NO FURTHER ACTION UNTIL FORM RETURNED.</p>		
Does the person have List 99 & Medical Clearance?	Yes	No	
Name of Current/Last employer. Details of post held:			
Length of service with current/last employer			
Has there been a break in employment since last employed?			

Has this been satisfactorily explained by the candidate?		
Has advice been sought on any matter from the HR Business Partner? If so provide details		
Is the post essential to the provision of a statutory service?	Yes	No
Does the Appointing Manager have references from a recent work related referee which contain no reservations regarding suitability to work with children/young people/vulnerable adults? Provide information.		
Is the line manager confident that it will be possible to supervise the person at all times?	Yes	No
Is the line manager confident that the person will not be given any responsibility for high risk activities (i.e. overnight stays, sports activities etc)	Yes	No
Will it be possible to offer work for a period of time which does not involve sole or close contact with children?	Yes	No
In light of the above does the applicant constitute an unacceptable 'risk'?	Yes	No
SECTION 2: To be completed by the department Director or equivalent		
Name:		
Declaration:	<p>I understand the City Council's policy on appointment pending CRB disclosure results. I have discussed this with the Head of Service and HR Business Partner and having considered the above assessment, I believe the applicant does / does not* constitute a risk for the following reasons:</p> <p>Therefore, the applicant should / should not* be offered this post.</p>	
Signed		
Date		

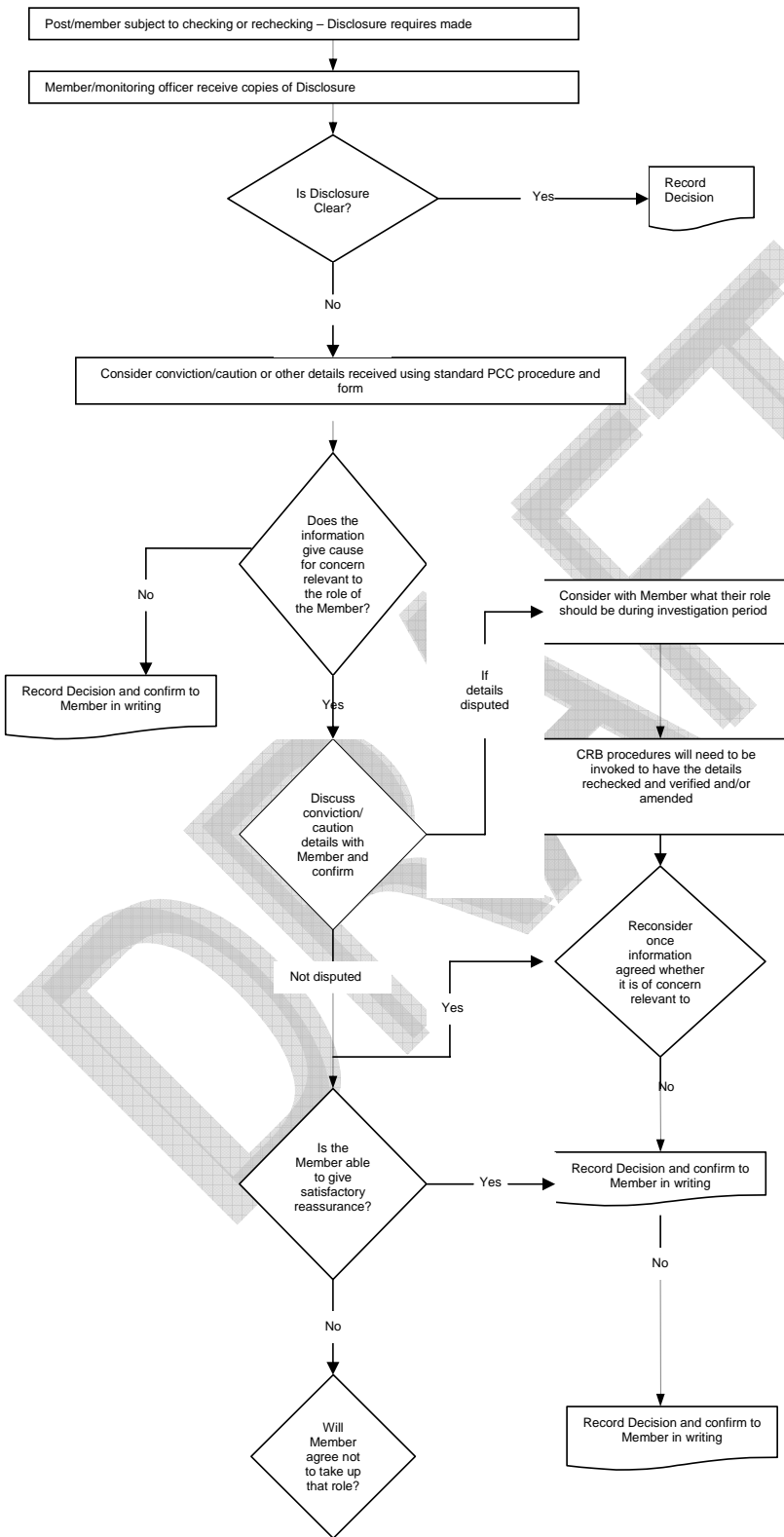
SECTION 3: to be completed by the Head of Human Resources or Lead Signatory for the Council

Head of HR or Lead Signatory	I agree / disagree* with the decision to appoint /not appoint* the applicant for the following reason(s):
Signed	
Date	
	<p>To be completed by the Appointing Manager</p> <p>I confirm that this appointment is essential to the safe operation of my service. I confirm that I have obtained references from at least one referee with recent and relevant knowledge of the employee and am satisfied that the referee has no reservations re. the applicant's suitability to work with children/young people/vulnerable adults.</p> <p>I confirm that a list 99 check has been carried out and I have written confirmation of a satisfactory outcome.</p> <p>I confirm that I will follow the councils CRB policy in respect of supervision, activities undertaken etc.</p>
Signed	
Date	
Name of buddy assigned	
Date of first review	No more than one month after commencement

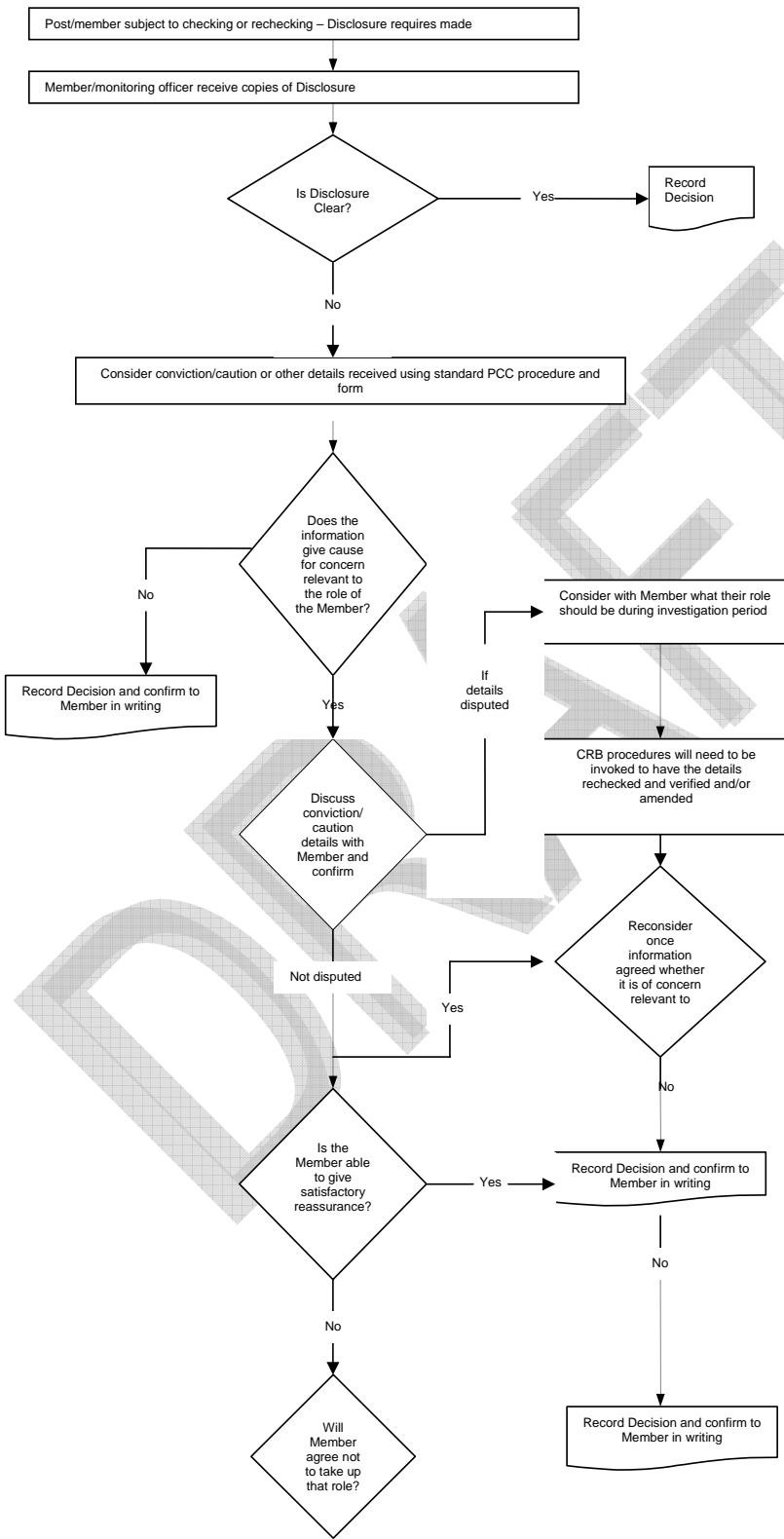
Please ensure that this form is retained for future reference

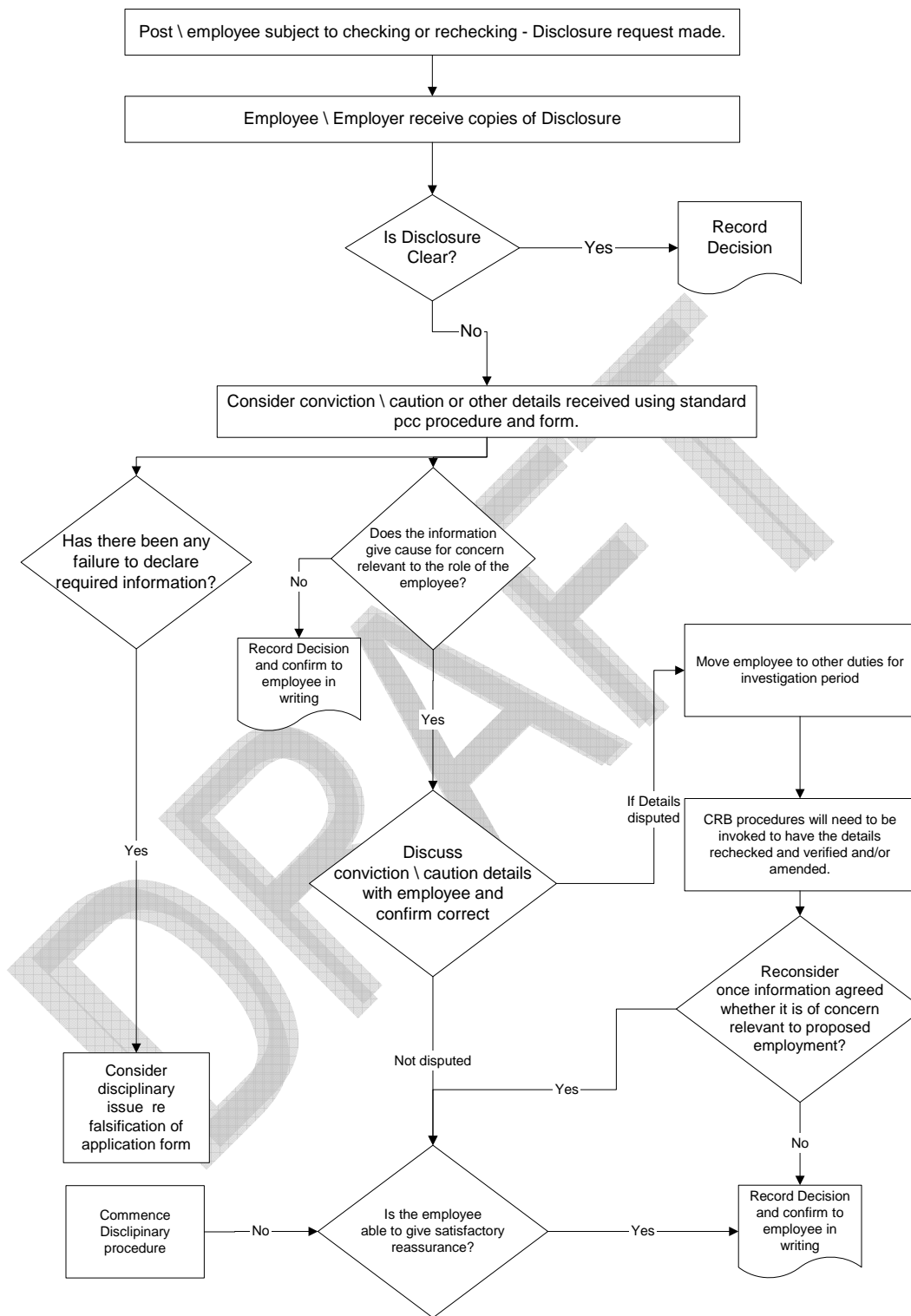


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STANDARDS COMMITTEE	AGENDA ITEM 5
3 December 2008	PUBLIC REPORT

Contact Officer(s):	Helen Edwards, Solicitor to the Council	Tel: 01733 452539
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R E C O M M E N D A T I O N S
FROM : SOLICITOR TO THE COUNCIL & MONITORING OFFICER
<p>That the Standards Committee:</p> <ol style="list-style-type: none"> 1. considers the consultation paper attached, and in particular the questions at Annex A; 2. instructs the Monitoring Officer to respond to the consultation on its behalf by the response date of 24 December 2008; 3. notes that the further consultation referred to, on the code of recommended practice on local authority publicity, has been delayed and is not now expected to be published before the end of November 2008. This consultation will be brought to the next Standards Committee meeting.

- 1) The attached consultation has been issued by DCLG. It is part of a series of Communities in Control consultation documents following the publication of the Local Government Empowerment White Paper, *Communities in Control: Real people, real power*, on 9 July, and building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 2) Views on proposals for revising the Local Authorities (Model Code of Conduct) Order 2007 and the Relevant Authorities (General Principles) Order 2001. It also seeks views on the proposed introduction of a model code of conduct for local government employees.
- 3) The consultation deals with two major issues in addition to some relatively minor proposals:
 - a. Clarify the application of the code of conduct to members' conduct in their non-official capacity, and
 - b. A requirement for authorities to incorporate a code of conduct for employees, based on the statutory model code for members, into the terms and conditions of their employees ("the employee's code").

4) Members should note that Peterborough City Council already has a code of conduct for employees, which was approved by Council in February 2008 and which is contained in Part 5, section 2 of the Constitution (copies can be provided on request).

5) **FINANCIAL & LEGAL IMPLICATIONS**

There are no specific financial or legal implications to this report.

6) **WARD COUNCILLORS**

The contents of this report are not ward specific.

Background Papers

In accordance with the Local Government (Access to Information) Act 1985, background papers used in the preparation of this report were:-

None.

To Chief Executives of:
County Councils and District Councils in England
London Borough Councils
The Greater London Authority
National Park Authorities
The Broads Authority

1 October 2008

The Clerk of:
City of London
Council of the Isle of Scilly
Combined Fire and Rescue Authorities
Fire and Civil Defence Authorities
Police Authorities in England and Wales

The Clerk of:
Parish and Town Councils in England

Dear Colleague,

Communities in control: Real people, real power: Codes of conduct for local authority members and employees – A consultation

I am writing to draw your attention to the above consultation paper which was published on the Communities and Local Government website on 1 October. I also enclose a paper copy of the consultation for your consideration.

You will see that this is the next in a series of Communities in Control consultation documents following the publication of the Local Government Empowerment White Paper, *Communities in Control: Real people, real power*, on 9 July, and building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.

This paper invites views on proposals for revising the Local Authorities (Model Code of Conduct) Order 2007 and the Relevant Authorities (General Principles) Order 2001. It also seeks views on the proposed introduction of a model code of conduct for local government employees. Particular questions on which we would welcome comments are summarised at Annex A to the paper.

Copies of the consultation paper are being sent to all principal local authorities, parish councils and other organisations and individuals who have a particular interest in these issues. If you wish to comment, please send responses either by post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

Or by e-mail to: conductcode@communities.gsi.gov.uk

By **Wednesday 24 December 2008**.

Any queries you may have about this letter or the enclosed paper should be directed to Karl Holden (tel: 0207 944 5962; conductcode@communities.gsi.gov.uk).

You will also be interested to know that, as announced in the *Communities in control: Real people, real power: Improving local accountability* consultation paper, we will be consulting at the end of October on proposals to revise the code of recommended practice on local authority publicity. A paper copy of the consultation paper will be sent to you on publication.

Yours sincerely

Paul Rowsell



Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation



Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation

October 2008

Department for Communities and Local Government: London

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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October 2008

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Chapter 1: The consultation and how to respond

Communities in control consultation papers

- 1.1 The White Paper, *Communities in control: Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 This paper is the next in a series consulting on a number of policy commitments. Future consultation papers include a consultation on proposals to revise the code of recommended practice on local authority publicity, which is due to be published at the end of October. This paper invites views on proposals for revising the model code of conduct for local authority members (“the members’ code”), principally to clarify its application to members’ conduct in their non-official capacity. This paper also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which sets out the general principles which govern the conduct of local authority members. Finally, it seeks comments on proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model code of conduct, in to the terms and conditions of employment of their employees’ (“the employees’ code”).

About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England and police authorities in Wales.
- 1.4 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authority members centred on local authority standards committees. Under the new devolved regime, the Standards Board for England has become a light-touch strategic regulator, responsible for monitoring the operation of the conduct regime and giving support and guidance to standards committees and monitoring officers in discharging their new functions.
- 1.5 As part of the changes to the conduct regime, a new model code of conduct for local authority members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced with effect from May 2007, on the basis that the provisions of the members’ code would be reviewed in light of early experience of its practical operation.
- 1.6 Chapter 2 of this paper seeks views on proposals to clarify the members’ code in its application to members’ conduct when acting in a non-official capacity. It also seeks views on the operation of, and proposed revisions to, the members’ code, including reconfiguring the members’ code into two distinct sections, the first dealing with members’ conduct in their official capacity, the second dealing with members’ conduct in their non-official capacity. Finally, it seeks views on associated amendments to the Relevant Authorities (General Principles) Order 2001 to clarify its application to members’ conduct in their non-official capacity.

- 1.7 Chapter 3 of this paper seeks views on the proposed introduction of a model code of conduct for local government employees, which will become part of such employees' terms and conditions of employment.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in **Annex A**. In order to aid your consideration of the proposed amendments to the current members' code, the substance of the 2007 code is reproduced at **Annex B**.
- 1.9 We are minded, subject to responses to this consultation, to implement the proposals in this consultation paper, so that they come into effect in line with the local government elections 2009.

Who are we consulting?

- 1.10 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from local authority members, local authority monitoring officers, local government employees, national representative bodies, local government partners and trade unions. **The consultation period runs for 12 weeks to 24 December 2008.**

How to respond

- 1.11 Your response must be received by 24 December 2008 and may be sent by e-mail or post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

e-mail: conductcode@communities.gsi.gov.uk

If you are replying by e-mail please title your response 'Response to Model Code consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.12 The Department will take account of the responses received to this consultation before taking decisions on the legislation that will form the revised members' code, the general principles order and the new employees' code.
- 1.13 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's website at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.14 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 1.15 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.16 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.17 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.18 The UK Government has adopted a code of practice on consultations. Please see **Annex C** of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.19 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk.

In context – previous consultations and relevant legislation

- 1.20 The local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct for members which would include changes to the rules on personal and prejudicial interests. This announcement followed a consultation by the Standards Board for England, *A Code for the future*, in February 2005 and the Discussion Paper *Conduct in English Local Government*, issued by the then Office for the Deputy Prime Minister in December 2005.
- 1.21 The policy proposals took form in the January 2007 consultation document, *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, which proposed the combination of the four different model codes of conduct that existed at the time (for local authorities, parish councils, national parks and police authorities) into a single consolidated model code.

- 1.22 The Local Authorities (Model Code of Conduct) Order 2007 came into force on 3 May 2007. With the members' code now in place for over a year, we believe this is an appropriate time to examine how well it has functioned in practice and consider any revisions that may be required. The proposed amendments to the members' code set out in this paper reflect discussions with the Standards Board and, in particular, their experience of the practical operation of the 2007 members' code over the last year.
- 1.23 Following the 2006 local government White Paper and the introduction of the 2007 members' code, the Local Government and Public Involvement in Health Act 2007 made provision clarifying the law in relation to the application of the conduct regime to the conduct of members in their non- official capacity. This paper therefore also invites comments on proposals to revise the members' code and the general principles order to address the issue of the application of the conduct regime to the conduct of members in their non-official capacity.

Code of conduct for local government employees

- 1.24 In August 2004, the then Office of the Deputy Prime Minister issued the consultation paper, *A Model Code of Conduct for Local Government Employees*. The paper consulted on a draft code defining the minimum standards of conduct that employees of relevant authorities would be expected to observe on carrying out their duties. The 2004 consultation was followed by further inquiries and consultations on matters relating to the conduct regime for local government.
- 1.25 The Department restated its commitment to introduce a model employees' code, under Section 82 of the Local Government Act 2000, in the local government White Paper 2006. However, in light of the above inquiries and consultations, and the introduction of the 2007 members' code, it was decided that the implementation of an employees' code should be delayed until the Department had an opportunity to consider the employees' code in the context of the wider review of the conduct regime for local government and the lessons learned from the implementation of the new members' code.
- 1.26 With the implementation of the new devolved conduct regime and our proposals to amend the members' code, drawing on the experience of its first year of operation, we consider that the time is right to also consult on proposals to introduce a model employees' code.

Chapter 2: Code of conduct for local authority members

What is the code of conduct for?

- 2.1 The public has a right to expect high standards of conduct from their elected and co-opted members. The standards of conduct expected of local authority members are set out in the members' code, which is underpinned by the ten general principles. By signing up to the members' code, a member is actively taking on a formal obligation to abide by its requirements.
- 2.2 The members' code forms the bedrock of the conduct regime and aims to promote the public's trust and confidence in their members and faith in local democracy. It does this by providing a robust set of standards of behaviour for members to abide by and work within. In doing this, the code also protects members from unreasonable expectations of behaviour being put upon them. Since May 2008, allegations that a member has failed to comply with the provisions of the members' code are considered by local authority standards committees.
- 2.3 The current members' code is set out in the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of relevant authorities in England and of police authorities in Wales. On its introduction, the Government gave an undertaking that the effectiveness of the code would be reviewed after it had been in operation for some time. We believe, drawing on the Standards Board's practical experience that the members' code is, broadly, operating very well. However, as it has been in force for over a year, we consider that it is now appropriate to review the code.
- 2.4 Most importantly, we propose that the members' code be restructured by revoking the existing Order and making a new one. We propose that the new members' code will be differently formatted to the existing code, making it easier to interpret and clearer in its application, for instance by dividing it into two sections: the first dealing with members' conduct when acting in an official capacity and reflecting what is in the current code, the second dealing with members' conduct in their non-official capacity.

Application of the code to members' conduct in their non-official capacity

- 2.5 Trust in our local authority members is one of the cornerstones of local democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.
- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the conduct of members in a non-official capacity. We wish now to clarify which provisions of the

members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.

- 2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole.
- 2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

Consultation Question 1:

Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

Definition of 'criminal offence' and 'official capacity'

- 2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members' code, what constitutes a 'criminal offence'. We propose for the purpose of the members' code, that 'criminal offence' be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
- 2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members' code. However, serious criminal offences which we consider should come under the remit of the members' code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.
- 2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

Consultation Question 2:

Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members' code, what constitutes 'official capacity'.

2.14 We propose that for the purposes of the members' code, 'official capacity' be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.

Consultation Question 3:

Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.

Offending abroad

2.15 We also propose that the members' code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.

Consultation Question 4:

Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

What does this mean?

2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.

2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

Criminal conviction of a member

2.18 It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local Government Act 1972, with the member automatically disqualified from office for five years. We are not proposing any changes to this legislation.

The conduct regime

2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.

2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

2.21 For the purpose of the conduct regime, the criminal process will be considered to have been completed at the conclusion of any appeals process.

Consultation Question 5:

Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Proposed revisions to the members' code

2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.

2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at www.standardsboard.gov.uk

Parish councils

2.24 It has been suggested that article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a parish council wishes this provision to apply, it must make a conscious decision to adopt paragraph 12(2) into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

Membership of other bodies

2.25 It has been suggested that paragraphs 8(1)(a)(i) and (ii) of the current members' code be amended to clarify that the sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.

Personal interests

2.26 It has been suggested that current wording of paragraph 8(1)(a) of the members' code could be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of members' interests.

Prejudicial interests

2.27 It has been suggested that paragraph 10(2) of the code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of your authority affects your financial position or the financial position of a person listed in paragraph 8 of the code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the code.

2.28 It has been suggested that the meaning of 'determining' in paragraph 10(2)(b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.

2.29 It has also been suggested that paragraph 10(2)(c) could be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the code.

Registration of members' interests

2.30 We propose that any new members' code would take into account any existing registration of members' interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised members' code is introduced.

Consultation Question 6:

Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

Consultation Question 7:

Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

Consultation Question 8:

Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

Legislative context

- 2.31 The current members' code is set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 made under powers conferred on the Secretary of State by section 50 of the Local Government Act 2000.
- 2.32 Section 183 of the Local Government and Public Involvement in Health Act 2007 inserted, into section 50 of the Local Government Act 2000, a requirement for the Secretary of State to specify which provisions of the members' code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. The power in section 50 of the Local Government Act 2000 permits the Secretary of State to define for the purposes of the members' code what is meant by "criminal offence" and what is meant by "official capacity".
- 2.33 We propose that the existing Local Authorities (Model Code of Conduct) Order 2007 be revoked and a new, revised Order would be made to reflect our proposed amendments and that part of the code applies to a member's conduct in their official capacity and part of it would apply to a member's conduct in their non-official capacity.
- 2.34 Provision is also made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new code within a period prescribed by the Secretary of State. We propose that members will have two months from the date their authority adopts the new code to give a written undertaking that they will observe their authority's code. Failure to do so will mean that they cease to be members of the authority.

Consultation Question 9:

Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Proposed amendments to the General Principles

What are the General Principles?

2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.

2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

The General Principles

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in a situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees. **65**

Duty to uphold the law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Proposed revisions

2.37 We propose that the Relevant Authorities (General Principles) Order 2001 be amended to make clear which principles govern the conduct of members when acting in an official capacity and which principles will apply to the conduct of members when acting in a non-official capacity, where the member's conduct would constitute a criminal offence.

2.38 We propose that the General Principles Order be amended by providing that the 10 existing principles apply to a member when acting in an official capacity and by adding a new principle which would be specified as applying to a member acting in a non-official capacity, where the member's conduct would constitute a criminal offence. We propose that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:

Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.

Consultation Question 10:

Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Definition of 'criminal offence' and 'official capacity'

2.39 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

Consultation Question 11:

Do you agree with this broad definition of ‘criminal offence’ for the purpose of the General Principles Order? Or do you consider that ‘criminal offence’ should be defined differently?

2.40 We propose that for the purposes of the revised General Principles Order, ‘official capacity’ be defined as “being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority”.

Consultation Question 12:

Do you agree with this definition of ‘official capacity’ for the purpose of the General Principles Order?

Legislative Context

2.41 The Relevant Authorities (General Principles) Order 2001 was made under powers conferred on the Secretary of State in section 49 and 105 of the Local Government Act 2000. Section 183 of the Local Government and Public Involvement in Health Act 2007 modified section 49 of the 2000 Act and it is this modification that requires the Secretary of State to specify which general principles apply to a person when acting in an official capacity and when acting in a non-official capacity.

Chapter 3: Model code of conduct for local government employees

Is an employees' code needed?

- 3.1 A code of conduct for local government employees (“employees’ code”) should provide the staff of an authority with an effective ethical framework within which to work and it should give that authority’s citizens confidence that an authority’s staff are working on their behalf in an appropriate manner.

Consultation Question 13:

Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees’ terms and conditions of employment, is needed?

The employees' code in context

- 3.2 In August 2004, the (then) Office of the Deputy Prime Minister consulted on a model code of conduct for local government employees. Responses indicated that the model code of conduct consulted on was not adequate, but also that the universal application of a code to all staff would be needlessly bureaucratic as all employees would be subject to the same code regardless of their position. There was support for following the model of the Welsh code of conduct, which only applies to a certain category of defined senior officer. Alternatively, the code could be restricted to those who exercise executive, regulatory or overview and scrutiny powers under the authority’s scheme of delegation to officers.
- 3.3 Another view in response to the consultation paper was that certain aspects of the code (eg registration of interests), could be limited to senior officers while other more universal aspects should be applicable to all - for instance, it is beyond question that all employees should behave with honesty and integrity.
- 3.4 Many local authorities already have a code of conduct for employees in addition to, or part of, their standard terms and conditions of employment. These codes range from simple statements agreeing to act with propriety to comprehensive documents covering everything from political neutrality to intellectual property matters. These codes of conduct are also integrated into the authority’s discipline procedures.
- 3.5 It is not intended that the employees’ code be a burden on authorities or employees. The code should not constrain an authority’s ability to develop its own code reflecting local needs and conditions. We consider that authorities should be free to adopt supplementary provisions beyond the employees’ code in order to provide their staff with an effective ethical framework within which to work.

Application of the employees' code

- 3.6 We propose that the employees' code would apply to all relevant authorities and police authorities in Wales, as defined in Section 49 of the Local Government Act 2000. We are proposing that a model employees' code - a model code that authorities may augment if they wish - be introduced, which will be incorporated into local government employees' terms and conditions of employment.
- 3.7 However, we do not propose to apply the employees' code where it is not needed, for instance to employees in professions that are covered by their own code of conduct; firefighters, teachers, community support officers, solicitors etc.

Consultation Question 14:

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

Consultation Question 15:

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

- 3.8 We propose a two-tier model. The first tier, drawing on the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, will apply equally to all authority employees and will enshrine the core values that it is reasonably expected every authority employee would abide by. The second tier, drawing on the members' code, will apply to 'qualifying employees', that is; either senior officials or those officials carrying out delegated functions.
- 3.9 With the members' code in place, and members having to abide by that code, there is a reasonable expectation that officials undertaking functions delegated to them by members would have to abide by the same conduct regime as members when performing those functions.

Proposed core values

The model employees' code: core values for all employees

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the

authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.

Consultation Question 16:

Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

Beyond the core values

Who are the 'qualifying employees'?

- 3.10 There are two alternatives for selecting those 'qualifying employees' to which, in addition to the core values of the employees' code, some of the restrictions and expectations of the members' code should apply.
- 3.11 The first is based on the approach taken to determining which posts in an authority are 'politically restricted' under section 3 of the Local Government and Housing Act 1989, and assumes that certain posts are senior or influential enough to warrant controls placed on the activities of postholders. Certain posts would be designated as qualifying employees.
- 3.12 The second is the delegation model, which would see qualifying employees selected on the basis that they perform functions delegated to them by elected members under section 101 of the Local Government Act 1972.

Consultation Question 17:

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

The model employees' code: values for qualifying employees

Compromising the impartiality of officers of the authority

A qualifying employee must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the authority, either directly or as a response to pressure from others. A qualifying employee should not attempt to force employees to take action or change advice if doing so would prejudice their professional integrity.

Using your position improperly

A qualifying employee must not use, or attempt to use, their position improperly either for their or anybody else's advantage or disadvantage.

Considering advice provided to you and giving reasons

If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the employees' code applies, the qualifying employee must have regard to this advice.

Personal interest

Qualifying employees must register, within 28 days of taking up their appointment, any interests set out in the categories below. This record of interest must be in writing, to the authority's monitoring officer or, in the case of a parish council, through the parish clerk.

The registration of interests protects the qualifying employee by giving early warning of any possible areas of conflict of interest and provides assurance to the public that the qualifying employee is acting transparently. Only registration of personal interests in areas where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision making and working practice of the authority are required.

These are:

- Your membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
- Any business you might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company.
- Any contracts between the authority and any company you have an interest in, as above.
- Any land or property in the authority's area in which you have a beneficial interest.

A qualifying employee may seek to exempt their personal interests from the register of interests if they consider, for instance that having this information on record might put themselves or others at risk. In such cases, the qualifying employee should discuss the matter with their monitoring officer.

Consultation Question 18:

Should the code contain a requirement for qualifying employees to publicly register any interests?

Consultation Question 19:

Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally.

Qualifying employees with a prejudicial interest should declare such an interest. Where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear.

Consultation Question 20:

Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?

Consultation Question 21:

Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Contractors, partners and part time staff

3.13 Local authorities have an increasingly complex relationship with the private sector in its work with contractors, partners and part time staff. We consider that rather than attempt to determine centrally when and when not to apply the employees' code not just to local government employees, but those working on behalf of local government, it will be for local authorities themselves to decide, in agreeing contracts, partnership agreements or terms and conditions of employment, if and how the employees' code, in whole or in part, should apply.

Parish councils

3.14 The members' code applies to parish councillors as well as members of larger authorities, and it seems reasonable therefore for the ethical framework of the employees' code to apply to parish council employees. We recognise that the environment that parish councillors operate within is different to that of larger authorities and are conscious that what is considered to be a reasonable expectation in the employees' code for larger councils, may prove to be difficult for parish councils.

3.15 That being the case, we would welcome responses from parish councils on any particular aspect of the employees' code that might present difficulties and how those difficulties could be overcome.

Consultation Question 22:

Should the employees' code extend to employees of parish councils?

Legislative context

- 3.16 Section 82(7) of the Local Government Act 2000, provides that the provisions of a code made under section 82(1) of that Act will be deemed to be incorporated in employees' terms and conditions of employment.

Annex A: List of consultation questions

Chapter 2: Code of conduct for local authority members

- Question 1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
- Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.
- Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.
- Question 4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?
- Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?
- Question 6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

- Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?
- Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.
- Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?
- Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?
- Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?
- Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Chapter 3 Model Code of Conduct for local authority employees

- Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of

employment, is needed?

- Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
- Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?
- Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?
- Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
- Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?

Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Question 22 Should the employees' code extend to employees of parish councils?

Annex B

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a)
the authority;

(b)
the executive of the authority;

(c)
any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,
and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of

the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;
 unless you have obtained a dispensation from your authority’s standards committee;
- (b) you must not exercise executive functions in relation to that business; and
- (c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members’ Interests

Registration of members’ interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority’s register of members’ interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority’s monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to

any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Annex C: Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of
 - 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at:
www.bre.berr.gov.uk/regulation/consultation/code/index.asp.
- A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk

