

**CRIMINAL RECORDS AND  
EMPLOYMENT OF EX-OFFENDERS  
POLICY**

**JULY 2008**

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**PETERBOROUGH CITY COUNCIL**  
**CRIMINAL RECORDS POLICY**

## **1. Introduction \ Scope**

- 1.1. 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. All Managers must read and familiarise themselves with the contents of this document.
- 1.2. This policy covers information whether obtained from the CRB or other checks or when disclosed by an Individual.
- 1.3. The 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 working with children and/or vulnerable adults
  - school transport providers
  - others involved in council service provision where children and/or vulnerable adults are involved.
- 1.4. Where the term employee/applicant is used, the principles of this policy may also apply to others engaged in services provided by or for the council.
- 1.5. 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 procedure into their individual school policies.
- 1.6. 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, such as Educational Personnel Management [EPM].
- 1.7. 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 Department for Children, Schools and Families (DCFS) List 99 and the Department of Health (POCA) List (Protection of Children Act List Service), which lists people considered unsuitable to work with children. Following the Care Standards Act 2000, it also checks against the Protection of Vulnerable Adults list (POVA) all those considered unsuitable to work with vulnerable adults.
- 1.8. The authority 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).
- 1.9. Under the Human Rights Act anyone who believes their rights as set out in the European Convention on Human Rights have been violated by a public authority is able to raise their complaint before a UK court. Managers should therefore 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 should be aware that victims of physical/verbal/sexual 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.

- 1.10. Failure to disclose convictions on an application form may result in disciplinary action – para 2.1.5 of the Disciplinary Procedure applies.
- 1.11. 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.

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## 2. Types of Disclosure

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. 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.

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.

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. Further details regarding this are outlined at paragraph 18.

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
- the degree of contact with children and/or vulnerable adults.

### 2.1. The Basic Disclosure

- 2.1.1. 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.
- 2.1.2. 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.

## **2.2. The Standard Disclosure**

- 2.2.1. Standard Disclosures are primarily for positions that involve **WORKING WITH CHILDREN UNDER THE AGE OF 18 OR REGULAR CONTACT WITH VULNERABLE ADULTS**. This includes applicants and current post holders seeking paid or voluntary work, and trainees. There are certain other categories as outlined in the Rehabilitation of Offenders Act (ROA) 1974. Further details are available from HR on request, and it is important that clarification is sought if the manager is unsure about the requirement for and/or status of the check. The full list of posts exempt from the Rehabilitation Offenders Act is available on the CRB website. <http://www.crb.gov.uk/Default.aspx?page=1855>
- 2.2.2. Standard Disclosures contain details of all convictions on record. This includes spent convictions (i.e. those that happened some time ago and normally no longer need to be revealed as specified in the Rehabilitation of Offenders Act (ROA) 1974). It also includes details of any cautions, reprimands or warnings.
- 2.2.3. If the disclosure request states that the work includes working with children or vulnerable adults the standard disclosure also includes a check against standard government department lists as detailed in para 1.7.

## **2.3. The Enhanced Disclosure**

- 2.3.1. Enhanced Disclosures are principally available to people seeking paid work or voluntary work or training in a position whose normal duties involve a far greater degree of contact with children or vulnerable adults Duties would need to include **REGULARLY CARING FOR, TRAINING, SUPERVISING**, or being **IN SOLE CHARGE** of children under 18 years of age or vulnerable adults, to qualify for an enhanced level check. Examples where this will apply include provision of social services, medical services, for certain statutory licensing purposes such as taxi licences, and foster carers. If the manager believes that an enhanced check is justified and the person does not fit the criteria detailed above then advice should be sought from the HR Business Partner. This requirement applies to anyone newly appointed in a school setting under the School Staffing (England) (Amendment) (No 2) regulations 2006.
- 2.3.2. The Enhanced Disclosure shows spent and unspent convictions and cautions. The police may also provide details of acquittals or other non-conviction information held on local police records, which are relevant to the job or voluntary position being sought. 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.
- 2.3.3. Enhanced Disclosures involve an extra level of checking with local police force records in addition to checks with the Police National Computer (PNC) and the government department lists held by the DCSF and DoH where appropriate. Where local police records contain additional information that might be relevant to the post the applicant is being considered for, the Chief Police Officer may release information for inclusion in an Enhanced Disclosure. 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. Where this is the case, the applicant should not be alerted to the existence of the information under any circumstances. The Council should never reveal or discuss the information with the applicant. The recipient is not allowed to pass the information to anyone without the permission of the Chief Police Officer.
- 2.3.3. Where local police records contain additional information that might be relevant to the post the applicant is being considered for, the Chief Officer of police may release information for inclusion in an Enhanced Disclosure. 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. In this case, it should be noted the council is not at liberty to reveal or discuss the information to the applicant.

- 2.3.4. 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 at paragraph 18.

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### 3. Criminal Records and the Recruitment Procedure

- 3.1. 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.
- 3.2. 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.
- 3.3. 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.
- 3.4. The procedures in points 3.2 & 3.3 provide a basis for the applicant to decide whether or not to apply for the post. It should 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.
- 3.5. 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.
- 3.6. The recruitment interview provides an opportunity for managers to raise issues concerning declared offences with applicants in open discussion.
- 3.7. 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 Adviser should be informed of an employee'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 Appendix 3. These are required to comply with the CRB's code of practice.
- 3.8. 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 [e.g. see para 5]. 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.

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

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#### **4. Completion and checking of Disclosure requests**

- 4.1. The disclosure applicant will be required to submit the completed CRB Disclosure Application Form and relevant original documentation 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.
- 4.2. **It is the responsibility of the appointing manager to ensure that the appropriate check is obtained and the form is completed correctly.** 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. Managers should be vigilant in ensuring that there has been no oversight in the completion of the form.

#### **5. Consideration of Conviction information**

- 5.1. When considering any disclosure or declared conviction information received consideration should be given to: -
- 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 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.

- 5.2. 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.
- 5.3. 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 might need to 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.
- 5.4. **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.**
- 5.5. 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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## **6. Appointing subject to Disclosure results**

- 6.1. 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 as outlined in para 7.
- 6.2. 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.
- 6.3. 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.



- 6.4. A flowchart (*see Appendix 1*) is attached to this document, which outlines the exact procedure to be followed.
- 6.5. 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.

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## 7. Commencement of work pending Disclosure results

- 7.1. 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.**
- 7.2. 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.
- 7.3. Buddying / Supervision of Unchecked Employees
  - 7.3.1. 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.
  - 7.3.2. 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.
  - 7.3.3. 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.
  - 7.3.4. The normal requirement of 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.
  - 7.3.5. 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.***
  - 7.3.6. 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.

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## 8. Adverse Disclosure Results – following commencement

- 8.1. It is possible that commencement of work pending disclosure results will result in checks being sent back stating previously undisclosed information.
- 8.2. 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.
- 8.3. 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.

- 8.4. 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
- 8.5. The newly appointed employee will have a right of appeal to a Head of Service against the decision to terminate their employment.
- 8.6. A flowchart (see *Appendix 2*) is attached to this document, which outlines the procedure to be followed.

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## 9. CRB Checks for Employees in Children's Services

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 to be used is attached at Appendix 6.**

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.

### 9.1. 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.
- 9.2. 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. See paragraph 17 for further details regarding temporary staff.
- 9.3. 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.

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## **10. Existing Employees who have not previously required a disclosure check**

- 10.1. 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.
- 10.2. Line managers, in conjunction with HR Advisers will identify employees who require disclosure checks, and the relevant level of check, against the criteria.
- 10.3. 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 National Care Standards Commission.
- 10.4. 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, as per item 2.1.8 under Section 2.0 "Gross Misconduct" will lead to the employee being instructed to attend a disciplinary hearing.
- 10.5. 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.

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## **11. Existing Employees re-checks**

- 11.1. Existing employees 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.
- 11.2. 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 National Care Standards Commission.
- 11.3. 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, as per item 2.1.8 under Section 2.0 "Gross Misconduct" will lead to the employee being instructed to attend a disciplinary hearing.

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## 12. Existing Employees - Adverse Disclosure Results

- 12.1. It is acknowledged that disclosures may reveal unspent convictions for existing employees, which the council was unaware of.
- 12.2. The line manager and the employee should be advised immediately that the CRB check has revealed information about a criminal record.
- 12.3. The employee may confirm or refute the information provided by the CRB. A range of options may be pursued by the HR Adviser in conjunction with 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.
- 12.4. 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.
- 12.5. 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.
- 12.6. If the Disclosure results are considered to be of a serious nature and proved to be correct the manager may consider various options. Paragraph 5 provides further information. 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,
- 12.7. 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.
- 12.8. 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.
- 12.9. It should be noted that failure to give further consideration to anyone who has failed to disclose an offence might be considered unreasonable.
- 12.10. Failure to disclose convictions on an application form may also result in disciplinary action – para 2.1.5 of the Disciplinary Procedure applies.

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## 13. Countersignatories & 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 countersignatories will also receive verification training.

## 14. 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.

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## 15. Acting as an Umbrella Body

- 15.1. An umbrella body is one, which countersigns applications and receives disclosure information on behalf of other employers or recruiting organisations.
- 15.2. 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).
- 15.3. 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.

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## 16. 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. With effect from 1 April 2006 this practice is no longer endorsed by the CRB due to the risk factors involved. It is also council policy that CRB checks are non-transferable in any circumstances.

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## 17. Agency workers, Contractors

- 17.1. Heads of Service must ensure that where agency or contractor workers are supplied to carry out duties within the council the manager obtains written confirmation from the agency that the relevant CRB disclosure check has been carried out and is satisfactory before the individual commences work with the council.
- 17.2. Where there is disclosed information on the CRB check then the manager must obtain a copy of the CRB disclosure from the agency before the individual commences work with the council to allow a proper assessment to be undertaken.
- 17.3. Where there is 'soft information' provided by the Chief Police Officer then the agency 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.
- 17.4. Heads of Service must ensure that the contract with the agency imposes an obligation on the agency 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 (Para 9.5 and 10.5 refers).**

## 18. Applicants who have worked overseas or been resident overseas in the past five years

- 18.1 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.
- 18.2 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.
- 18.3 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.

- 18.4 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.
- 18.5 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.
- 18.6 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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## **19. Statement of main terms and conditions of employment**

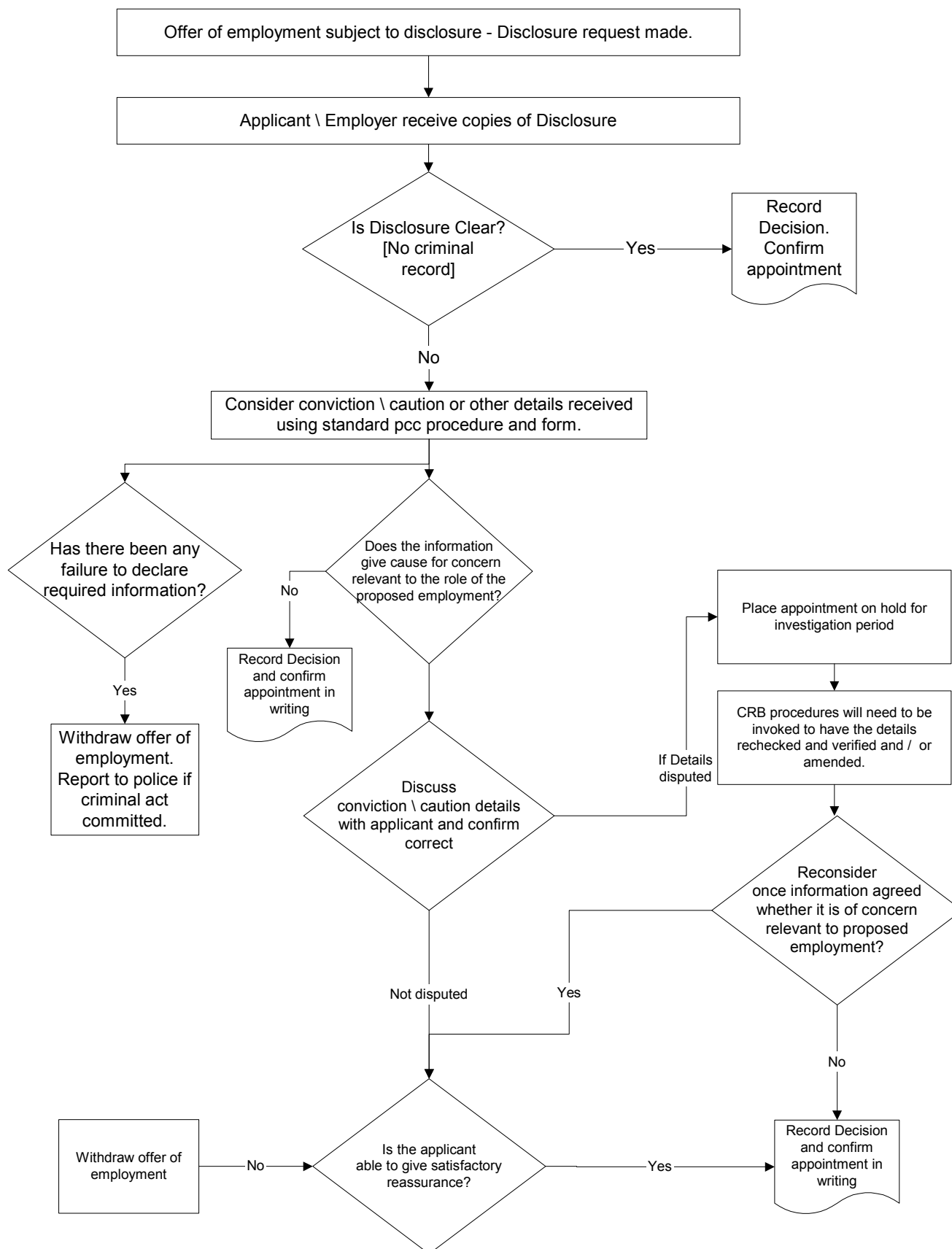
The following paragraph will be placed in the statement of main terms and conditions of employment for all employees: -

‘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’.

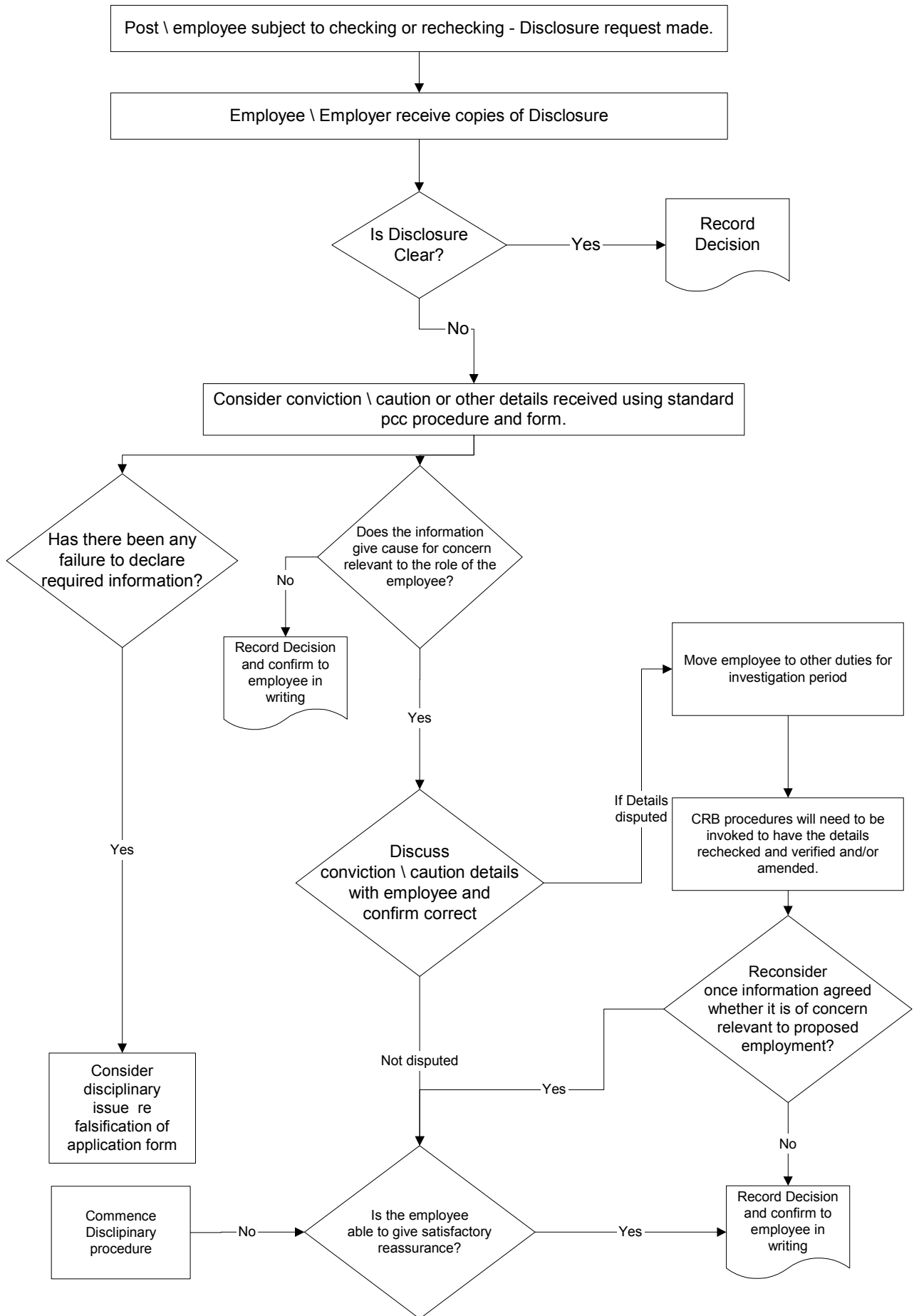
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## **20. Protection of Vulnerable Adults**

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.







**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-overs, 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.

**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 <a href="#">Guidance Notes</a> at the end of this form)	Yes	No
Please provide details:		

<b>When did the relevant offence(s) occur?</b>	Less than 2 years ago	More than 2 years ago
<b>Is there a pattern of related offences?</b>	Yes	No
<b>Is there a pattern of unrelated offences?</b>	Yes	No
<b>In what context/ circumstances did the relevant offence(s) occur?</b>		
<b>Is this still relevant today?</b>	Yes	No
<b>Please provide details:</b>		
<b>Was the relevant offence(s) committed at work (paid &amp; unpaid employment)</b>	Yes	No
<b>What level of independence will the post holder have?</b>	Close Supervision	Minimal Supervision
<b>Does the applicant demonstrate a determination not to re-offend?</b>	Yes	No
<b>Did the applicant declare the relevant offence(s) on his/her application form?</b>	Yes	No
<b>What response did the applicant give when questioned about the offence(s) revealed by the CRB?</b>		
<b>Have references been received? (written/verbal)</b>	Yes	No
<b>What do the references say about the applicant's suitability for the post?</b>		
<b>In light of the above does the applicant constitute an unacceptable 'risk'?</b>	Yes	No
<b>SECTION 3: <i>Managers assessment</i></b>		
<b>Name:</b>		



## 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.

APPENDIX 6

<p><b><u>RISK ASSESSMENT FOR COMPLETION IF HEAD OF SERVICE IS CONSIDERING ALLOWING A NEWLY APPOINTED EMPLOYEE TO COMMENCE WORK BEFORE THEIR CRB RESULTS ARE RECEIVED.</u></b></p> <p><b><u>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.</u></b></p> <p><b>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.</b></p>		
<p><b><i>SECTION 1: To be completed by the Line/Appointing Manager /Head of Service</i></b></p>		
<b>Post to be filled</b>		
<b>Date post became/becomes vacant</b>		
<b>Name of Applicant</b>		
<b>Date interviewed</b>		
<b>Type of Check</b>	Enhanced	Standard
<b>CRB Certificate No. (taken from the completed CRB form, which must have been sent to CRB prior to commencement)</b>		
<b>Date disclosure form sent to CRB</b>		
<b>Has the candidate declared any previous cautions/convictions?</b>	<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 <b><i>under no circumstances are they to commence employment.</i></b></p> <p><b>TAKE NO FURTHER ACTION UNTIL FORM RETURNED.</b></p>	
<b>Does the person have List 99 &amp; Medical Clearance?</b>	Yes	No
<b>Name of Current/Last employer. Details of post held:</b>		
<b>Length of service with current/last employer</b>		
<b>Has there been a break in employment since last employed?</b>		

<b>Has this been satisfactorily explained by the candidate?</b>		
<b>Has advice been sought on any matter from the HR Business Partner? If so provide details</b>		
<b>Is the post essential to the provision of a statutory service?</b>	Yes	No
<b>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.</b>		
<b>Is the line manager confident that it will be possible to supervise the person at all times?</b>	Yes	No
<b>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)</b>	Yes	No
<b>Will it be possible to offer work for a period of time which does not involve sole or close contact with children?</b>	Yes	No
<b>In light of the above does the applicant constitute an unacceptable 'risk'?</b>	Yes	No

**SECTION 2: To be completed by the department Director or equivalent**

**Name:**

**Declaration:**

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:

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

<b>Signed</b>	
<b>Date</b>	
<b>SECTION 3: To be completed by the Head of Human Resources or Lead Signatory for the Council</b>	
<b>Head of HR or Lead Signatory</b>	I agree / disagree* with the decision to appoint /not appoint* the applicant for the following reason(s):
<b>Signed</b>	
<b>Date</b>	
	<p><b>To be completed by the Appointing Manager</b></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>
<b>Signed</b>	
<b>Date</b>	
<b>Name of buddy assigned</b>	
<b>Date of first review</b>	No more than one month after commencement

Please ensure that this form is retained for future reference