

WEST BERKSHIRE DISTRICT COUNCIL

Policy on Criminal Record Bureau Checks

West Berkshire District Council supports the objectives of the Rehabilitation of Offenders Act 1974, the Police Act 1997, the Protection of Children Act 1999 and the Care Standards Act 2000 including the Protection of Vulnerable Adults Scheme ("POVA"). West Berkshire District Council recognises that access to criminal record information has to strike a balance between the rights of children and the vulnerable in society, an individual's right to privacy and the rights of ex-offenders to become rehabilitated into society. It is essential that confidential and sensitive information about an individual's criminal record is handled fairly and properly. To that end this policy covers 2 areas:

1. Secure storage, handling, use, retention and disposal of Disclosures and Disclosure Information [Disclosure and Disclosure Information is information provided by the Criminal Records Bureau in response to a search request] and our role as an umbrella body.
2. How West Berkshire Council deals with the recruitment of ex-offenders and guidance on the relevance of criminal records. These are very general and there will be important service specific variations. If in any doubt about whether a check is required or how the results should be treated please refer to Human Resources or Legal Services.

There is a comprehensive procedure note for schools which details CRB requirements for different roles in schools.

"Vulnerable Adults" throughout this policy means anyone in receipt of a social care package.

There will be an internal annual audit of the CRB process to ensure consistency and best practice across the organisation.

Detailed Management Guidance Notes on this have been prepared by Human Resources and are available on the West Berkshire Council intranet

Part One

SECURE STORAGE, HANDLING, USE, RETENTION AND DISPOSAL OF CRB DISCLOSURES AND DISCLOSURE INFORMATION

General Principles

As an organisation using the Criminal Records Bureau Disclosure service to help assess the suitability of applicants for positions of trust, West Berkshire District Council complies fully with the Criminal Records Bureau 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 on request, is set out below and is on the Council's website for public access.

Storage and Access

Disclosure Information is never kept on a personnel file or applicant's file. It is kept separately and securely in lockable, non-portable cabinets with access strictly controlled and limited to those who are entitled to see it as part of their duties.

Handling

West Berkshire District Council complies with s124 of the Police Act 1997, so that Disclosure Information is only passed to those who are authorised to receive it in the course of their duties. West Berkshire District Council maintains 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.

Usage

Disclosure Information is only used for the specific purpose for which it was requested and for which the applicant's consent has been given. Disclosure Information will be shared between different areas of the Council where this has been made clear from the outset and consent obtained.

Retention

Once a recruitment, or other relevant decision has been made West Berkshire District Council does not keep Disclosure Information for any longer than is absolutely necessary. This will generally be for six months to allow for consideration and resolution of disputes or complaints. Applicants may retain the top half of the applicant copy of the Enhanced Disclosure as proof that the check was undertaken.

If West Berkshire District Council wishes to retain Disclosure Information beyond 6 months, we will consult the Criminal Record Bureau about this and give due consideration to Data Protection and Human Rights.

Throughout retention, the conditions regarding safe storage and strictly controlled access will remain in place.

Disposal

After 6 months, or such extended period as may be agreed, West Berkshire District Council will ensure Disclosure Information is immediately suitably destroyed by secure means. While awaiting destruction Disclosure Information will not be kept in any insecure receptacle.

We will not copy or keep any representation of the contents of a Disclosure. However, West Berkshire District Council will keep a record of :

- the DATE of issue of a Disclosure,
- the NAME of the subject,
- the TYPE of Disclosure requested,
- the POSITION for which the Disclosure was requested,
- the UNIQUE REFERENCE Number (CRB No .) of the Disclosure and details of recruitment decision taken.
- whether POVA/POCA checks were requested
- the top half of the disclosure page

This information will be retained in a formal memo on the applicant's personal file .

Acting as an Umbrella Body

As an umbrella body which countersigns applications and receives Disclosure Information on behalf of others, West Berkshire District Council takes all reasonable steps to ensure that anyone for whom this service is provided complies fully with the Criminal Records Bureau Code of Practice, that information is handled, stored and destroyed in compliance with the Criminal Records Bureau Code and that they have a written policy to that effect.

Part Two

RECRUITMENT OF EX-OFFENDERS

West Berkshire District Council complies with and supports the objectives of the Rehabilitation of Offenders Act 1974. This Act allows people with criminal convictions to treat these as “spent” and therefore not reveal them after a prescribed period of time. The Exemptions Order to the Rehabilitation of Offenders Act sets out exceptions to this general principle. When assessing the suitability of a person for certain positions of trust an employer, or a licensing authority, is entitled to ask an applicant to reveal details of all convictions, whether spent or not. These are “enhanced” disclosures. Examples of exempted posts are those where the individual will be working in a “regulated position” (see below) or where the post involves coming into contact with vulnerable adults.

Working with children is defined in the Criminal Justice and Court Services Act 2000 as working in a “regulated” position. This includes employment in establishments catering mainly for children . There is a detailed guidance note for schools on which roles in schools should be CRB checked. The definition of “regulated” extends to a position where normal duties involve substantial contact with children. This covers taxi drivers and escorts who are routinely employed to transport children.

Where the applicant will be regularly caring for, training , supervising or being in charge of children or vulnerable adults, then Disclosure applications will be at the ENHANCED level meaning information on all convictions will be requested, together with any other relevant information which the police hold. Appropriate checks via Interpol will be made when recruiting overseas applicants.

Enhanced Disclosures will also show if someone is banned from working with children by virtue of their being included on List 99 the POCA (Protection of Children Act) List or the POVA (Protection of Vulnerable Adults) List. A formal request for a POCA or POVA check must be made as part of the application to the CRB. Only POCA or POVA will reveal whether someone is banned.

Individuals may also be banned from working with children if they have been convicted of certain specified offences under the Criminal Justice and Court Services Act 2000 which carry with them a disqualification order as part of the sentence. This disqualification will be revealed by the POCA/POVA checks. The type of offences covered by this disqualification include abduction and false imprisonment, homicide and threats to kill, assault occasioning actual bodily harm, grievous bodily harm, abuse of trust, supplying a class A drug to a child and offences relating to child pornography or to prostitution.

Under the Care Standards Act 2000 Standard and Enhanced Disclosures will also show whether a person applying for care work is banned from working with vulnerable adults because of misconduct “ which harmed or put at risk of harm a vulnerable adult”.

Where recruitment to such positions is undertaken the advertisements should make clear that the posts are covered by the requirement for enhanced and POCA/POVA checks and those disqualified will not be considered.

Portability for disclosures were available from 26th July 2004. This means Disclosure Information being transferred to a new employer. There are only very limited circumstances in which the CRB permit this and the CRB should be contacted before portability is accepted or offered.

What to do on receipt of the Disclosure

In all cases, the CRB check should confirm what the applicant has revealed. If there are discrepancies then further consideration by the recruiting manager is necessary. If the discrepancy excludes a person from the post they should be given an opportunity to dispute the information with the CRB if they wish to do so. If it does not exclude them from the post automatically then the reasons for the failure to disclose should be explored. They may make the person unsuitable because of the failure to disclose in itself but the discrepancy may have arisen because of a misunderstanding or a belief that the offence was no longer relevant. Advice on any matters arising from the Disclosure may be sought from HR, Legal or the appropriate Head of Service.

It is a criminal offence for someone to apply to work with children or vulnerable adults where they are disqualified. If this happens please refer the matter to Human Resources or Legal Services

Taking the results of the CRB Disclosure into account

The convictions of a person are irrelevant unless and until they are judged to have the skills, experience and ability to do the job. If they do have the necessary skills, experience and ability then the focus should be on those offences or police information disclosed which is relevant in terms of the duties the postholder will be expected to undertake.

The suitability for employment of a person with a criminal record varies depending on the job. What tasks will they be asked to perform and in what circumstances? When deciding on the relevance of offences to particular posts consider:

- Does the post involve substantial access to children or vulnerable adults as employees, customers or clients?
- What level of supervision will be available?
- Does the post involve direct responsibility for finance or items of value?
- Will the job provide an opportunity to reoffend?

When looking at the relevance of the offence consider:

- The seriousness of the offence and its relevance to safety of other employees, customers, clients or property
- The length of time since the offence occurred
- Was it a juvenile or adult offence?
- Any relevant information offered by the applicant about the circumstances which led to the offence being committed for example domestic or financial difficulties.
- Whether offence was one off or part of a history of offending
- Whether circumstances have changed to make reoffending less likely now
- Whether offence has been decriminalised by Parliament
- The country in which the offence was committed (may not be an offence in this country)
- The degree of remorse expressed by the applicant and their perceived motivation to change

Ensure there is a clear audit trail setting out the reasons for the decision taken. If in any doubt refer to Human Resources or Legal Services for guidance.

CRB checks should be carried out every three years unless more frequent searches are considered appropriate in the specific circumstances. Any convictions during that time should be reported immediately and a failure to report such convictions may lead to disciplinary action or non renewal of licence as appropriate.

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