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East Herts Council

Managing the Criminal Record Bureau Process Policy

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East Herts Council

Criminal Record Bureau (CRB) Disclosure Management Policy

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Introduction

The Council is committed to safeguarding employees whose normal duties involve close contact and involvement with children, young persons, the elderly and vulnerable persons.

The Council uses the services of the Criminal Records Bureau (CRB) to carry out disclosures on its behalf.

Where a post has been identified as requiring a CRB disclosure as defined under the disclosure access category codes of the Criminal Records Bureau, that employee must comply and may not refuse to co-operate with the disclosure process provided the request is reasonable.

Aims and Scope of the Policy

East Herts Council aims to ensure that it has arrangements in place in respect to the proper process of conducting a Criminal Record Bureau (CRB) Disclosure, in doing so it shall have:

- Procedures for managing the process (this Policy)
- A written statement on the recruitment of ex offenders
- A procedure for the Secure Storage, Handling, Use, Retention & Disposal of Disclosures and Disclosure information

The Policy and guidelines have been drawn up in accordance with the Criminal Record Bureau's code of practice.

Legal Duties

Management of Health and Safety at Work Regulations 1999 (MHSWR)

In accordance with these regulations, the recruiting manager must carry out a thorough risk assessment to determine if a disclosure is indicated and that one is both proportionate and relevant to the position concerned. For those positions where a disclosure is required, all application forms, job adverts and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.

Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act (ROA) 1974 applies to England, Scotland and Wales, and is aimed at helping people who have been convicted of a criminal offence and who have not re-offended since.

Once a conviction is 'spent', the convicted person does not have to reveal it or admit its existence in most circumstances. However, there are some exceptions relating to employment and these are listed in the Exceptions order to the ROA. The two main exceptions relate to:

- Working with children
- Working with the elderly or sick people.

If a person wants to apply for a position that involves working with children or working with the elderly or sick people they are required to reveal all convictions, both spent and unspent.

As the CRB checks are only available for those applying for positions involving working with children, or working with the elderly or sick people, the checks will reveal both spent and unspent convictions.

Application

Criminal Record Bureau – Disclosure Process

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 East Herts and we guarantee that this information will only be seen by those who need to see it as part of the recruitment process.

Unless the nature of the of the position allows East Herts Council to ask questions about your entire criminal record, we only ask about ‘unspent’ convictions as defined in the Rehabilitation of Offenders Act 1974.

We ensure that all those in East Herts 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 in the relevant legislation relating to the employment of ex-offenders, e.g. Rehabilitation of Offenders Act 1974.

At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offence or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to a position sought could lead to withdrawal of an offer of employment.

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 and we will 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 a person from working with us. This will depend on the nature of the position and the circumstances and background of the offences.

Secure Storage, Handling , Use, Retention & Disposal of Disclosures and Disclosure information

It is a requirement of the **CRB**'s Code of Practice that all Registered Bodies must have a written policy on the correct handling and safekeeping of 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, East Herts 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 and access

Disclosure information should be kept 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 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 was requested and for which the applicant's full consent has been given.

5. Retention

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is 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 very 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 before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail. Under normal circumstances where there is no dispute only the top portion of the disclosure may be retained, guidance on retention is available from the Health and Safety Officer, Human Resources.

6. Disposal

Once the retention period has elapsed, the retained portion of the disclosure shall be shredded.

However, notwithstanding the above, an electronic register will be kept 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 of the Disclosure and the details of the recruitment decision taken.

Once a recruitment decision (or other relevant decision – e.g. for regulatory or licensing purposes) has been made, a recipient of a Disclosure must not retain it, or any associated correspondence, for longer than is necessary for the particular purpose. In general, this should be for a maximum of 6 months.

Levels of Disclosure

The CRB offers two levels of Disclosure Standard and Enhanced, each representing a different level of check.

These Disclosures cannot be obtained by members of the public and are only available to organisations for those professions, offices, employments, work and occupations listed in the Exceptions Order to the Rehabilitation of Offenders Act 1974.

Standard Disclosure

Are primarily for posts that involve working with children or vulnerable adults they may also be issued for people entering certain professions. Standard Disclosures contain the following;

- details of all convictions, cautions, reprimands and warnings held on the Police National Computer (PNC);

and if the position involves working with children or vulnerable adults and the relevant boxes have been marked on the application form to indicate this:

- information from the Protection of Children Act List (PoCA);
- Information from the Protection of Vulnerable Adults List (POVA); and
- Information held by the DfES under Section 142 of the Education Act 2002 of those considered unsuitable for banned from working with children.

Enhanced Disclosure

Enhanced Disclosures are for posts involving a far greater degree of contact with children or vulnerable adults. The type of work will involve regularly caring for, supervising, training or being in sole charge of such people. Examples include a Teacher, Scout or Guide leader. Enhanced Disclosures are also issued for certain statutory purposes such as gaming and lottery licences.

Enhanced Disclosures contain the same information as Standard Disclosures but with the addition of local police force information considered relevant by Chief Police Officer(s).

Disclosure Guidelines

Renewal

The CRB does not recommend a specific renewal interval for CRB checks. The Council requires all employees that are subject to disclosure to renew after three years. The Health and Safety Officer shall advise service heads when these are due.

Persons employed by East Herts Council to operate Playschemes shall be required to have a new disclosure annually.

Portability

This refers to the re-use of a disclosure, obtained for a position in one organisation and later used for another position in another organisation. The CRB no longer endorses portability, organisations that choose to accept a previously issued disclosure do so at their own risk (see limitations)

Limitations

- The disclosure may not have included a check of List 99, Protection of Children Act List (POCA) and/or the Protection of Vulnerable Adults List Act (POVA).
- A disclosure carries no formal period of validity and the older a check the less reliable the information is, as the information it contains may not be up to date.
- Information revealed through a CRB check always reflects the information that was available at the time of its issue.
- You may be required by law to carry out a fresh check with List 99, POCA and/or POVA. In certain circumstances, portability cannot be used e.g. care workers need a new POVA check each time they change employment.
- An original CRB check, not a photocopy, contains a number of security features to prevent tampering or forgery.
- You need to understand the meaning of the wording that appears in the information boxes on Disclosure. 'None recorded' means no information was found, 'Not requested' means that that check was not done.

Risks

- Using a previously issued CRB check does not constitute a fresh CRB check – the person's criminal record or other relevant information may have changed since its issue.
- Registered Bodies are responsible for the accuracy of the information provided to the CRB and on which it carries out its checks. By accepting a previously issued CRB check you are accepting the risk that the previous Registered Body provided the CRB with a fully validated applicant's identity on which to carry out its checks.
- Enhanced checks may contain 'approved' non-conviction information provided by the police from their local records. In the majority of cases, the CRB will print this information on both the applicant's and Registered Body's copy in the box entitled 'Other relevant information disclosed at the Chief Police Officer(s) discretion'. However, occasionally the Chief Police Officer may, if thought necessary in the interests of the prevention or detection of crime, withhold this information from the applicant's copy. The Registered Body's copy will contain the following words 'Please refer to letter sent under separate cover', printed under the date of issue on the Disclosure. If you choose to accept the applicant's copy you will need to find out from the previous Countersignatory if such information was revealed in a separate letter.

Other Posts

The Criminal Records Bureau uses a system of category codes to identify specific posts with specialist or professional capabilities that may be submitted for a disclosure and these include Professional, licensing and regulatory bodies whose volunteers, employees and licensees are not necessarily in direct contact with the vulnerable, but still need to uphold the highest standards of professional performance. A Disclosure can help when considering appointments as part of the recruitment process.

Standard Disclosures are primarily for posts that involve working with children or vulnerable adults. Standard Disclosures may also be issued for people entering certain professions, such as members of the legal and accountancy professions.

For a full list of Disclosure Category Codes please refer to the table - Appendix A.

Volunteers

As a registered body East Herts Council is not permitted to carry out a disclosure for any external agencies or organisations.

The following exceptions apply:

- **Volunteers**

East Herts may process a disclosure request on behalf of **unpaid** volunteers who may be engaged in partnership with the Council and are not in receipt of payment for their services. For the purpose of this policy **unpaid** means, not receiving a wage/salary from the Council or external agency or submitting invoices for payment in relation to time working with or for the Council. The Council may not carry out a disclosure for any volunteer in receipt of payment.

- **Licensed Private Hire, Hackney Carriage Vehicles**

The Community Protection Service is responsible for administering the disclosure process for the purposes of licensing private hire and hackney carriage vehicle drivers.

Responsibility of Managers

Risk Assessment Framework

Before requesting a disclosure Managers are required to carry out a risk assessment to determine if one is appropriate, it is important to remember that it is the duties and activities of the post that are being assessed not the individual, the risk assessment should take into account the following:

- Does the posts normal duties involve unsupervised contact with children under arrangements made by a responsible person.
- For the purpose of the ROA 1974 (Exceptions) Order 1975, a person who regularly cares for, trains, supervises or is in sole charge of vulnerable adults. A vulnerable adult for the purposes of a Disclosure is a person aged 18 or over. The post is concerned with the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment; and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services
- Does the post fall in the category as a professional post as specified by the CRB e.g.

- CIPFA qualified Chartered accountant, certified accountant
-Barrister (in England and Wales), advocate (in Scotland), solicitor.
-Legal executive.

Please note that any disclosure carried out where it is not required or appropriate is deemed as an **illegal search** and may result in the Council being subject to financial penalties or loss of registered body status. The Health and Safety Officer shall scrutinise applications and shall contact the requesting line manager to discuss the application prior to sending to the disclosure service.

Role of Human Resources

The Human Resources Officer for (People Development and Training) is the lead signatory for East Herts and has overall responsibility for the execution of the disclosure process and for signing new counter signatory applications.

The Health and Safety Officer is a registered counter signatory and is responsible for the scrutiny of applications and managing the electronic register of applications.

The (insert post titles) are responsible for managing the CRVB disclosure process for the purposes of licensing hackney carriage or private hire vehicle drivers

All disclosure applications with regard to recruitment of posts must be signed by the Health and Safety Officer or Human Resources Officer for (People Development and Training).

Sources of Information and Advice

Further advice may be obtained from the Criminal Records Bureau website at: www.crb.gov.uk

Or contact the Health and Safety Officer, Human Resources

Policy Review and Amendment

This Policy shall be reviewed Bi-annually and amended where changes in guidelines, contact details or new information useful to the execution of the policy are made in order to reflect the best possible level of support and management.

Appendix A - Disclosure Category Codes

| Category type | Category Code |
|---|----------------------|
| A position whose normal duties include work in one of the following establishments: i. an institution which is exclusively or mainly for the detention of children ii. a hospital which is exclusively or mainly for the reception and treatment of children iii. a care home, residential care home, nursing home or private hospital which is exclusively or mainly for children iv. an educational institution exclusively or mainly for children (under 18's) v. a children's home or voluntary home a home provided under 82(5) of the Children Act 1989 | 01 |
| A position whose normal duties include work on a day care premises | 02 |
| A position whose normal duties include caring for, training, supervising or being in sole charge of children. | 03 |
| A position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person. | 04 |
| A position whose normal duties include caring for children under the age of 16 in the course of the child's employment. | 05 |
| A position whose substantial part of normal duties includes supervising or training children under the age of 16 in the course of the child's employment. | 06 |
| One of the following positions: <ul style="list-style-type: none">• 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: <ul style="list-style-type: none">• 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:<ul style="list-style-type: none">- 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 | 07 |

| Category type | Category Code |
|--|---------------|
| A position whose normal duties include supervising or managing an individual in his work in a regulated position. | 08 |
| Work in a further education institution where the normal duties of that work involve regular contact with persons aged under 18. | 09 |

'Working with vulnerable adults':

| Category type | Category Code |
|--|---------------|
| <p>For the purpose of the ROA 1974 (Exceptions) Order 1975, a person who regularly cares for, trains, supervises or is in sole charge of vulnerable adults of the following description is entitled to an ENHANCED DISCLOSURE. A vulnerable adult for the purposes of an Enhanced Disclosure is a person aged 18 or over who receives services of a type listed in paragraph 1) below and in consequence of a condition of a type listed in paragraph 2) below, has a disability of a type listed at 3) below:</p> <p>1. The services are: a) accommodation and nursing or personal care in a care home, b) personal care or support to live independently in his or her own home, c) any services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body, d) social care services, or e) any services provided in an establishment catering for a person with learning difficulties.</p> <p>2. The conditions are: a) a learning or physical disability, b) a physical or mental illness, chronic or otherwise including an addiction to alcohol or drugs, or c) a reduction in physical or mental capacity.</p> <p>3. The disabilities are: a) a dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions, b) severe impairment in the ability to communicate with others, or c) impairment in a person's ability to protect him or herself from assault, abuse or neglect.</p> <p>Or</p> <p>Any office or employment which is concerned with the</p> | 10 |

Category type

Category Code

representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment; and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services

The following type of position attracts a **STANDARD DISCLOSURE**:

Work which is concerned with the provision of care services (1) to vulnerable adults (2) and which is of such a kind to enable the holder of that employment or the person engaged in that work to have access to vulnerable adults in receipt of such services in the course of his normal duties.

(1) "Care services" means i) accommodation and nursing or personal care in a care home (where "care home" has the same meaning as in the Care Standards Act 2000); ii) personal care or nursing or support for a person to live independently in his own home; iii) social care services; or iv) any services provided in an establishment catering for a person with learning difficulties.

(2) "Vulnerable adult", means a person aged 18 or over who has a condition of the following type: i) a learning or physical disability; ii) a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or iii) a reduction in physical or mental capacity.

Category codes 11 to 28 refer to all professions that are exempt from the provisions of the ROA.

| Category type | Category Code |
|---|----------------------|
| Medical Practitioner. | 11 |
| Barrister (in England and Wales), advocate (in Scotland), solicitor. | 12 |
| Chartered accountant, certified accountant. | 13 |
| Dentist, dental hygienist, dental auxiliary. | 14 |
| Veterinary surgeon. | 15 |
| Nurse, midwife. | 16 |
| Ophthalmic optician, dispensing optician. | 17 |
| Pharmaceutical chemist. | 18 |
| Registered teacher (in Scotland). | 19 |
| Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act. | 20 |
| Registered osteopath. | 21 |
| Registered chiropractor. | 22 |
| Chartered psychologist. | 23 |
| Actuary. | 24 |
| Registered foreign lawyer. | 25 |
| Legal executive. | 26 |
| Receiver appointed by the Court of Protection. | 27 |
| Home Inspector | 28 |

Category codes 29 to 50 refer to all offices, employments and occupations that are exempt from the provisions of the ROA 1974.

| Category type | Category Code |
|---|----------------------|
| Judicial appointment. | 29 |
| The Director of Public Prosecutions and any employment in the Crown Prosecution Service. | 30 |
| Justices' chief executives, justices' clerks and their assistants. | 31 |
| Clerks (including deputy and assistant clerks) and officers of the High Court of Justiciary, the Court of Session and the district court, sheriff clerks (including sheriff clerks deputy) and their clerks and assistants. | 32 |
| Police constables or police cadets. | 33 |
| Employment within the precincts of a prison, remand centre, detention centre, Borstal institution or young offenders institution, and members of boards of visitors (England & Wales) or of visiting committees (Scotland). | 34 |
| Traffic wardens. | 35 |
| Probation officers. | 36 |
| Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of his normal duties. | 37 |
| Any occupation in respect of which an application to the Gaming Board for Great Britain for a licence, certificate or registration is required by or under any enactment. | 38 |
| Financial Services position – This means all positions for which the Financial Services Authority or the competent authority for listings are entitled to ask exempted questions to fulfil their obligations under the Financial Services and Markets Act 2000. | 39 |
| Any occupation which is concerned with the management of a place in respect of which the approval of the Secretary of State is required by section 1 of the Abortion Act 1967. | 40 |
| Any occupation which is concerned with: <ul style="list-style-type: none"> • in England and Wales, carrying on a nursing home in respect of which registration is required by Section 187 of the Public Health Act 1936 or Section 14 of the Mental Health Act 1959, or • in Scotland, carrying on a nursing home in respect of which registration is required under Section 1 of the Nursing Homes Registration (Scotland) Act 1938 or a private hospital in respect of which registration is required under | 41 |

| Category type | Category Code |
|---|---------------|
| Section 15 of the Mental Health (Scotland) Act 1960. | |
| Any occupation which is concerned with carrying on an establishment in respect of which registration is required by Section 37 of the National Assistance Act 1948 or Section 61 of the Social Work (Scotland) Act 1968. | 42 |
| Any occupation in respect of which the holder, as occupier of premises on which explosives are kept, is required by any Order in Council made under section 43 of the Explosives Act 1875 to obtain from the police or a court of summary jurisdiction a certificate as to his fitness to keep the explosives. | 43 |
| Inspectors and other staff working for the Royal Society for the Prevention of Cruelty to Animals (the RSPCA) who, as part of their duties, may carry out humane killing of animals. | 44 |
| Any office or employment or other work in the Serious Fraud Office. | 45 |
| Any office or employment in the National Crime Squad or the National Criminal Intelligence Service | 46 |
| The Commissioners for Her Majesty's Revenue and Customs and any office or employment in their services. The Director and any office or employment in the Revenue and Customs Prosecutions Office. | 47 |
| Any employment or other work concerned with the supervision of electronic communications with or between children for the purpose of child protection. | 48 |
| An individual designated under section 2 of the Traffic Management Act 2004 | 49 |
| Court Positions | |
| <ul style="list-style-type: none"> • Judges' clerks, secretaries and legal secretaries within the meaning of section 98 of the Supreme Court Act 1981(c) • Court officers and court contractors, who in the course of their work, have face to face contact with judges of the Supreme Court, or access to such judges' lodgings • Persons who in the course of their work have regular access to personal information relating to an identified or identifiable member of the judiciary • Court officers and court contractors, who, in the course of their work. Attend either the Royal Courts of Justice or the Central Criminal Court • Court security officers, and tribunal security officers • Court contractors, who, in the course of their work, have unsupervised access to court-houses, offices and other | 50 |

Category type

Category Code

- accommodation used in relation to the courts
- Contractors, sub-contractors, and any person acting under the authority of such a contractor or sub-contractor, who, in the course of their work, have unsupervised access to tribunal buildings, offices and other accommodation used in relation to tribunals

The following persons –

- a) Court officers who execute county court warrants
 - b) High Court enforcement officers
 - c) sheriffs and under-sheriffs
 - d) tipstaffs
 - e) any other persons who execute High Court writs or warrants who act under the authority of a person listed at (a) to (d)
 - f) persons who execute clamping orders, as defined in paragraph 38(2) of Schedule 5 of the Courts Act 2003(d)
- The Official Solicitor and his deputy
 - Persons appointed to the office of Public Trustee or deputy Public Trustee, and officers of the Public Trustee
 - Court officers and court contractors who exercise functions in connection with the administration and management of funds in court including the deposit, payment, delivery and transfer in, into and out of any court of funds in court and regulating the evidence of such deposit, payment, delivery or transfer and court officers and court contractors, who receive payment in pursuance of a conviction or order of a magistrates' court.

Category codes 51 to 60 refer to other activities for which you

are entitled to ask a question that is exempted from the provisions of the ROA 1974

| Category type | Category Code |
|---|----------------------|
| A person living at the premises where a childminding or day care service is provided or who regularly works on the premises at a time when the childminding takes place. | 51 |
| A person living in the same household as a person whose suitability is being assessed for a position working with children and who lives on the same premises where their work with children would normally take place. | 52 |
| For National Lottery licensing purposes. | 53 |
| For the purpose of licensing hackney carriage or private hire vehicle drivers. | 54 |
| For the purpose of safeguarding national security. | 55 |
| For adoption purposes. | 56 |
| For foster caring purposes. | 57 |
| For the purpose of licensing under Section 8 of the Private Security Industry Act 2001. | 58 |
| For the award of public works contracts, public supply contracts and public service contracts in accordance with Directive 2004/17/EC and 2004/17/EC of the European Parliament and of the Council of March 2004(a) | 59 |
| Football Stewards, supervisors or managers of football stewards | 60 |