

Guide to Safeguarding & CRB Checks

Warwickshire County Council has a legal obligation to protect vulnerable customers and client groups (such as children in schools and in care, and older people) from people who have committed serious criminal offences.

The legislation affecting the recruitment of ex-offenders is the Rehabilitation of Offenders Act 1974 (ROA), that enables criminal convictions to become “spent” or ignored after a specified “rehabilitation period”. A person with a spent conviction is not normally required to divulge it when applying for a job, although there are important exceptions under the ROA when applicants will always be required to disclose previous convictions, whether they are spent or not. These include posts that involve regular contact with children and vulnerable adults.

Working with Children

The Protection of Children Act 1999 requires us to check in every instance where we propose to offer an individual a position working with children. This includes a situation where the individual may already be employed by WCC other

than in a position working with children, but is applying for a child care post.

Whilst the majority of employees will be employed under a contract, there are likely to be arrangements not covered by contractual arrangement. The definition of “employment” used in the Act is designed to ensure that even the most casual connections and voluntary work are covered by the provisions of the Act.

The definition of “working with children” is contained within the Criminal Justice and Court Services Act 2000. The definition of work is itself very broad and covers the public, private, voluntary and volunteering sectors. If there is any doubt as to whether a particular position involving the provision of any skill or labour, no matter what the terms and conditions, falls within the definition of “work”, it should be assumed that it does, unless specific legal advice is obtained to the contrary.

Apart from where children are in employment (e.g. a part time/Saturday job), a child is defined as anyone under 18. Where children in employment are concerned, a child is someone under 16.

Any work in a “regulated position” is classified as “working with children”. The first established regulated position depends not on the nature of the work, but on the nature of the establishment in which the work is carried out. These are areas of work providing functions of various sorts exclusively or mainly for children. In each of these establishments it is considered right that all members of staff, whether primary or secondary carers, or ancillary staff, should fall within the definition of working with children. This is to meet the legitimate expectation of parents and society at large in respect of all staff in certain environments, such as schools, nurseries and colleges, whether or not they have direct access to children.

There are eight basic sets of regulated positions (details are held by your Directorate HR staff) and, with one exception, all the definitions of regulated position are limited to “normal duties”. The intention is to exclude one-off work.

Although these child protection measures are intended to provide a further tool to assist in preventing unsuitable people from

working with children, it is critical that all those involved in such work understand that none of this will replace, or lessen the need for, a continuing culture of vigilance. Careful recruitment processes, including taking up references and other good practice, will still be essential. References must sought on all short listed candidates, including internal ones, and should be obtained before interview, however, if this is not possible, they must be received, scrutinised, and any concerns resolved satisfactorily, before the person's appointment is confirmed.

You will be fully within your rights not to offer jobs involving work with children to those who refuse to agree to the relevant criminal record checks, or about whom you do not have all the relevant information.

You must make use of the various safeguards described here to help ensure the suitability of people who work with children. The welfare of children must be paramount.

Working with Vulnerable Adults

The Care Standards Act 2000 sets out the definition of "vulnerable adult" for the purpose of obtaining an Enhanced Disclosure from the Criminal Records Bureau, to ensure the suitability of people to work with vulnerable people and to

protect those individuals from neglect or abuse.

A vulnerable adult is a person aged 18 or over who receives services of a type listed below (a) and, in consequence of a condition of a type listed below (b), has a disability of a type listed at (c) below.

(a) The services are:

- Accommodation and nursing or personal care in a care home
- Personal care or nursing or support to live independently in his or her own home
- Any services provided by an independent hospital, independent clinic, independent medical agency or NHS body
- Social care services or
- Any services provided in an establishment catering for a person with learning difficulties

(b) The conditions are:

- A learning or physical disability
- A physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- A reduction in physical or mental capacity

(c) The disabilities are:

- A dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions,
- Severe impairment in the ability to communicate with others, or
- Impairment in a person's ability to protect him or herself from assault, abuse or neglect.

There is a new definition of employment concerned with providing care services to vulnerable adults, which states that "any employment or other work which is concerned with the provision of care services to vulnerable adults 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".

Criminal Records Bureau

Under amendments made to Part V of the Police Act 1997, the Criminal Records Bureau (CRB) was set up by the Home Office, largely as a response to public concern about the safety of children and vulnerable adults. The CRB achieves its purpose of assisting organisations in screening out candidates who may be

unsuitable for certain kinds of work by providing a service called “disclosure”. The CRB acts as a one-stop-shop where employers can gain access to criminal and other information to support their recruitment activities. In order to safeguard the privacy rights of individuals, no disclosures can be issued without the consent of the job applicant, and the information is provided directly to both that individual and the prospective employer.

The 1997 Act makes provision for three different level of criminal record checks; Basic, Standard and Enhanced Disclosures. For our recruitment purposes, we request Standard and Enhanced disclosures only. In order to obtain information under a Standard or Enhanced disclosure, an organisation must be registered with the CRB. For a list of WCC posts and their relevant Disclosure levels, please refer to Managing People.

Within WCC there are three Registered Bodies – Children, Young People & Families RB, Adult, Health & Community Services RB and a WCC Corporate RB, which serves all the remaining WCC Directorates. You should contact your Directorate HR staff for further information on the levels of Disclosure required for any post and to obtain the necessary paperwork to apply for a Disclosure.

Recruiting Ex-offenders

Assessing the relevance of convictions to specific posts is not an exact science. An assessment of an applicant’s skills, experience and conviction circumstances should be weighed against the risk assessment criteria for the job. Managers responsible for recruitment need to identify what risks might be involved and what precautions put in place in order to provide satisfactory safeguards. Your Directorate HR staff will have a set procedure to follow when Disclosures are returned that show a record of convictions and they will work with you to ensure that the individual is always treated fairly.

Some of the key questions to consider when it is revealed on a Disclosure form that a prospective employee has a criminal record are:

- Does (or could) the post involve one-to-one contact with children or other vulnerable groups as employers, customers and clients
- What level of supervision will the post holder receive
- Does the post involve any direct responsibility for finance or items of value
- Does the post involve direct contact with the public

- Will the nature of the job present any opportunities for the post holder to reoffend in the place of work?

The answers to these questions should help you to determine the relevance of convictions to specific posts. In some cases, the relationship between the offence and the post will be clear enough for you to decide easily on the suitability of the applicant for the job. In other cases, the decision may not be so clear-cut. When your preferred applicant discloses a criminal record that is not related directly to the post, you should discuss the relevance of each offence with the applicant. Whilst it may not be possible to carry out a thorough risk assessment on each individual, it is recommended that the following issues are taken into account as a minimum requirement:

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property
- The length of time since the offence occurred
- Any relevant information offered by the applicant about the circumstances which led to the offence being committed
- Whether the offence was a one-off, or part of a history of offending

- Whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change

Frequently Asked Questions

I want to offer an existing WCC employee a position as a volunteer, working with young people. Do they need a Disclosure?

Yes, unless they already have an Enhanced Disclosure as part of their WCC role. If they have a Standard Disclosure then you must request a higher level, Enhanced Disclosure. For an existing member of staff, we can accept the Disclosure for up to 12 months after the date of issue, provided that it is at the correct level and the employee has continuous service throughout.

Volunteers within a school setting are required to obtain a new Disclosure at the start of every school year.

Can I rely on a Disclosure for an applicant, which was requested by their previous employer?

No. A new Disclosure must be obtained for every new employee to a post that requires a CRB Disclosure except those staff moving internally within WCC – see above.

WCC has no legal right to see the actual Disclosure information held by another organisation, nor can we demand sight of the applicant's copy of the Disclosure. Furthermore, the CRB does not endorse the use of portability.

What about recruiting supply teachers in schools?

Supply teachers should be recruited to WCC via the partnership with Direct Solutions. They will not need to obtain a new Disclosure if their existing one was processed less than three months before their start date with WCC. However a new Disclosure must be obtained if they have had a break in service for three months or longer since March 2002; if they are taking up a post with significantly greater responsibility for children or if you have concerns about their suitability to work with children.

I have an overseas applicant for a post. Can I request a Disclosure for them?

Currently the CRB is only able to access information within the UK as part of the Disclosure Service. However, the CRB does offer guidance on their web site – www.crb.gov.uk/overseas. This service provides details and guidance on how to obtain a certificate of good conduct or a copy of a criminal record from overseas. If the country that you are looking for is not listed on the CRB web site you should obtain contact details for that country from the Foreign and Commonwealth web site – www.fco.gov.uk or telephone 020 7008 1500.

Remember that the Disclosure certificate does not indicate if someone has lived abroad and therefore 5 years residency may not be covered.

Please contact your Directorate HR staff who can access this service for you.

Can I request a Disclosure for an existing member of staff?

Yes but this will be given on a voluntary basis as it is a change to the terms and conditions of employment for that individual. However, where new legislation introduces retrospective Disclosures as mandatory, then we must comply with the Law.

What if I have offered the post to an applicant and subsequently wish to withdraw the offer?

This will depend upon the individual circumstances and must be determined by your Directorate HR staff. In certain circumstances it creates a criminal offence if you fail to remove the individual from the employment.

Can an applicant start work with WCC before the Disclosure form has been returned from the CRB?

No, if they are to be working directly with children or vulnerable adults. However there have been occasions when an applicant who is not working with children or vulnerable adults has been allowed to start work in exceptional circumstances. A judgement may be made that the risk of not appointing someone to fill a post immediately, has to be balanced against the risk of their starting work before the CRB Disclosure is returned. In these exceptional circumstances the risk needs to be evidenced and recorded, and action taken to ensure that the employee has no unsupervised access to children or vulnerable adults until the CRB Disclosure has been cleared. Sometimes new employees are asked to sign a Self Declaration form in these circumstances

and start work on the strict understanding that they are supervised at all times, for example, during a period of induction. The Self Declaration form states that a failure to disclose convictions, which are subsequently revealed, may be grounds for dismissal.

How long is a Disclosure valid for?

Each Disclosure will show the date, on which it was printed, therefore, the older the Disclosure the less reliable it is. WCC can accept a Disclosure for up to 12 months after the processing date for a WCC employee with continuous service throughout. However, there is no expiry date for a Disclosure.

Should I make it clear at interview or before, that a satisfactory Disclosure is essential?

It should be stated as an Essential requirement on the Person Specification for the post. This will inform prospective applicants at the earliest opportunity that a Disclosure is required for the post.

At what point should I take up the CRB check?

At the point you make the offer of employment. The appointment will be subject to a satisfactory Disclosure.

Is there any special provision made for transgender applicants?

Yes, the CRB has a special application procedure for transgender people who do not wish to reveal details of their previous gender to the person who asked them to complete an application form for a CRB check. For further information contact the CRB on Tel. No. 0151 676 1526 to discuss the matter in confidence.

Who to contact for help

The HR Service Centre can help to discuss your requirements as well as talking through the options with you. If in doubt then please contact them on;

HR Service Centre
Warwickshire County Council
Wedgnoek House
Warwick CV34 5AP

Tel.: 01926 73 8444
Email: crb@warwickshire.gov.uk