

# CODE OF PRACTICE FOR SAFER RECRUITMENT

## 1. Introduction & Aims

- 1.1 This Code of Practice sets out the standards and requirements that will apply in cases of appointment to positions involving contact with children and vulnerable adults.
- 1.2 Section 115 (4)(a) of the Police Act 1997 and the Police Act 1997 (Enhanced Criminal Record certificates) (Protection of Vulnerable Adults) Regulations 2002) provide that a “Vulnerable Adult” means someone who is:-
- a. aged 18 or over; and
  - b. receiving the type of services listed below; and
  - c. has 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; and
  - d. as a result of having such a condition has a disability which means that
    - (i) he/she is substantially dependant upon others in performing basic physical functions; or
    - (ii) his/her ability to communicate with those providing services, or to communicate with others, is severely impaired; or
    - (iii) his/her ability to protect himself or herself from assault, abuse or neglect is impaired.

The type of services which the person aged 18 or over must be receiving (as in b above) are:-

- accommodation and nursing or personal care in a care home; or
  - personal care in their own home from a domiciliary care agency; or
  - any services provided by an independent hospital, independent clinic, independent medical agency or national health service body; or
  - social care services; or
  - services provided in an establishment catering for a person with learning difficulties.
- 1.3 This Code is supplementary to the Recruitment & Selection Policy and should be read and applied in conjunction with it.
- 1.4 This Code recognises that this particular area requires a systematic and sensitive approach. It therefore requires that all those involved in the process of recruitment and selection to exempt posts, strictly adhere to the Code.

## 2. Safer Recruitment Policy Statement

- 2.1 As an Equal Opportunity employer, the Council aims to ensure that no job applicant or employee suffers unfair treatment on the basis of unjustifiable criteria - this includes discrimination on the grounds of criminal convictions, which are “spent” and/or are unrelated to the job in question.
- 2.2 We also recognise our responsibility for protecting vulnerable groups and individuals within our care.
- 2.3 Accordingly, and so that public confidence in our management of these sensitive areas is high, we undertake to ensure, so far as is reasonably practicable, that people who carry out work for us, or with us - including employees, Councillors, partners, agencies, consultants, contractors, volunteers, voluntary organisations and others - pose no risk to service users.
- 2.4 The provisions of this Code apply to:
- all permanent and temporary employees of the Council up to and including Chief Executive level, whose respective posts have been classified as “exempt”; and
  - all other groups and individuals, referred to in this Code, who may be engaged in work (paid or unpaid) which allows regular access to children or vulnerable adults, or to services that have exempt posts.

### **3. Rehabilitation of Offenders Act 1974**

- 3.1 The Rehabilitation of Offenders Act (1974) was designed to ensure that a person convicted of a criminal offence, which carried a sentence of up to 2½ years imprisonment and who subsequently did not re-offend for a specified period of time related to the severity of the sentence, would thereafter be freed from the stigma of the conviction and treated as if the offence, conviction and sentence had never occurred. The conviction would be regarded as “spent” and the person would not need to disclose the information when applying for a job, or if asked at interview or subsequently. Details of the specified Rehabilitation Periods are contained at Appendix A.
- 3.2 If a ‘spent’ conviction is known or disclosed to an employer, it must be ignored and should not be used, by itself, as justification for refusing to employ, promote or used as a reason for dismissing an employee.
- 3.3 Certain occupations and positions are exempt from the Act (including those involving work with children and vulnerable persons) and applicants for employment in these exempt occupations or posts must disclose all convictions if asked about them on application or at interview. Failure to do so may result in their elimination from the recruitment and selection process or, if appointed, their dismissal. Details of exempt occupations and posts are contained at Appendix B.
- 3.4 Some individuals who have committed certain offences are banned completely from working with children and these offences are set out at Appendix C.

3.5 A list of all posts within this Authority which have been identified as 'exempt' under the Rehabilitation of Offenders Act, will be held and maintained centrally within Human Resources, a copy of the current list is contained at Appendix D. The relevant Executive Director in liaison with the Assistant Chief Executive Human Resources, will make any additions or deletions to this list. The list is not exhaustive and as vacancies arise consideration should be given as to whether the vacant post falls within the exemptions.

#### **4. The Criminal Records Bureau (CRB)**

4.1 The Criminal Records Bureau (CRB) has been established under Part V of the Police Act 1997 and was set up by the Home Office. The CRB will undertake all criminal record checks in England and Wales.

4.2 The aims of the CRB are:

- To increase access to information to help provide protection for children and vulnerable people against those who might wish to harm them.

and

- To allow more informed recruitment decisions to protect customers, staff, volunteers and organisations.

4.3 The CRB will provide one of three different levels of criminal record checks called "Disclosures" on receiving an application from a "Registered Body".

4.4 A Registered Body is a person or organisation that is likely to ask exempted questions under the Rehabilitation of Offenders Act 1974 and which is registered as one. The London Borough of Havering is a "Registered Body" with the CRB and as such is committed to complying with the CRB's Code of Practice and is able to countersign applications for standard and enhanced disclosures.

4.5 There are three levels of Disclosure as follows:

- Enhanced Disclosure
- Standard Disclosure
- Basic Disclosure

4.6 The Council will only be involved in obtaining Enhanced and Standard level Disclosures.

4.6.1 Enhanced Disclosures will be available in respect of individuals applying for positions which

- (a) involve regularly caring for, training, supervising or being in sole charge of persons aged under eighteen or
- (b) are exempt from the Rehabilitation Act AND involve regularly caring for, training, supervising or being in sole charge of vulnerable adults.

4.6.2 An enhanced disclosure will contain the following information:

- details of convictions, including convictions 'spent' under the Rehabilitation of Offenders Act
- cautions held at national level
- information from local police records including relevant non-conviction information

4.7 Standard disclosure will be available for those whose duties involve regular contact with children or vulnerable adults or which are exempt from the rehabilitation of offenders Act (see Appendix B).

4.7.1 A standard disclosure will contain the following information:

- details of convictions, including convictions 'spent' under the Rehabilitation of Offenders Act
- cautions held at national level

4.8 Therefore, the difference between information provided on a standard and an enhanced disclosure is that an enhanced disclosure will contain relevant non-conviction information whereas a standard disclosure will not.

4.9 Basic disclosures can be obtained for any post. Such a disclosure will show all convictions held at national level which are not 'spent' under the Rehabilitation of Offenders Act 1974 but will not show 'spent' convictions or cautions.

4.10 Applications for Enhanced and Standard Disclosures will need to be counter-signed by an authorised person within the Council. A list of the authorised counter-signatures is contained at Appendix E. The list will be maintained by the Assistant Chief Executive Human Resources although the appropriate Human Resources Teams will be responsible for informing the Assistant Chief Executive Human Resources as and when countersignatories move jobs or leave the Council.

4.11 A summary of the Disclosures available is contained at Appendix F and further guidance on deciding on the appropriate level of Disclosure is contained at Appendix G.

4.12 Successful candidates to exempted posts should not commence employment until a satisfactory Disclosure is received.

4.13 Normal recruitment procedures i.e. taking up of references and medical checks etc. should not be held up because of the requirement to undertake a Disclosure.

4.14 There may be instances where a disclosure issued for one position could be used for another job or voluntary position, i.e where the level of disclosure required is the same. However, the overriding consideration must be 'safety' and the age of the disclosure is therefore relevant; the disclosure should be no more than 3 years old (see para 5.2).

4.15 Checks on all agency employees working in exempt positions are essential whatever the potential period of employment. These should be undertaken by the

agency and current written evidence that a satisfactory Disclosure has been obtained must be provided to the Council.

- 4.16 A flow-chart showing the impact of Disclosure on the recruitment process and what to do once the Disclosure is received is given at Appendix H and a copy of the Council's Exempt Post Assessment Form is at Appendix I.

## **5. The Council's Position on the Recruitment of Ex-offenders**

- 5.1 As an organisation using the Criminal Records Bureau (CRB) Disclosure service to assess applicants' suitability for positions of trust, the Council complies with the CRB Code of Practice and will treat all applicants for positions fairly. The Council will not discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
- 5.1.1 The Council is committed to the fair treatment of its employees, potential employees or users of its services, regardless of race, gender, disability, age, marital status, sexuality, religion, background, personality and workstyle or offending background.
- 5.1.2. This written policy statement on the recruitment of ex-offenders, will be made available to all Disclosure applicants at the outset of the recruitment process.
- 5.1.3. The Council actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience.
- 5.1.4 A Disclosure is only requested after a thorough assessment has indicated that it is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, 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.
- 5.1.5 To ensure that applicants are clear at the time of application whether a post is exempt at the time of application Human Resources Teams will ensure that:
- The appropriate wording is used in the advertisement and on the Job Profile (Appendix J)
  - Appendix K accompanies all application forms despatched
  - Appendix L accompanies all application forms despatched in connection with exempted posts
- 5.1.6 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 the Council and we guarantee that this information is only seen by those who need to see it as part of the recruitment process.
- 5.1.7 Unless the nature of the position allows the Council to ask questions about entire criminal records we only ask about "unspent" convictions as defined in the Rehabilitation of Offenders Act 1974.

- 5.1.8 We ensure that all those in the 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 1974 and relevant legislation.
- 5.1.9 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.
- 5.1.10 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.
- 5.1.11 We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.
- 5.1.12 Having a criminal record will not necessarily bar individuals from working with the Council. This will depend on the nature of the position and the circumstances and background of the offences.

## **5.2 The Position of Employees Already in Post**

- 5.2.1 Employees in posts, which require disclosure checks, will be subject to being re-checked every 3 years. The relevant Human Resources Teams will monitor this.
- 5.2.2 If an employee comes into contact with the criminal justice system as a suspect or offender, they are required to advise their Line Manager as soon as possible. The manager will treat this sensitive information as strictly confidential, if this has to be disclosed to another party, they will maintain confidentiality.
- 5.2.3 Once the manager has been informed they will need to consider the nature of the offence and determine whether this affects the employee's duties. The manager will need to decide:
- if the employment can continue (if it can not the Disciplinary Procedure should be followed);
  - to remove some or all of the duties of the exempt post
  - if the employee can continue to work unsupervised
  - if the employee should be re-deployed
- 5.2.4 A written record should be made of the steps taken in response to the information, the decision made and who has made the decision.
- 5.2.5 If the employee fails to notify their line manager and this later comes to the manager's attention this may lead to disciplinary action being taken against the employee for failing to inform the designated manager (Refer to the Council's Disciplinary Procedure)

- 5.3 If an allegation is made that an employee has committed a Schedule One offence or is a Schedule One offender (this is an offence which falls within the Children and Young Persons Act 1933), it will require immediate, confidential investigation.
- 5.3.1 Managers should remember that at this stage only an allegation has been made or a rumour has been started and they should not jump to conclusions or form an opinion. Objectivity and confidentiality is important.
- 5.3.2 If an allegation has been made the Head of Service, Executive Director, Chief Executive, Assistant Chief Executive Human Resources, the Chair of the appropriate Service Committee and the Leader may all need to be informed immediately in the strictest of confidence.
- 5.3.3 The Executive Director will consider whether it is appropriate to prepare a press release and will consider the need for media coverage to address the allegations if they are publicly known. If the allegation is not in the public domain the Executive Director will need to consider a contingency plan should the allegation become a public issue.
- 5.3.4 The manager will need to meet with the employee to discuss the allegation and consider steps needed to be taken in respect of the employee's situation. Following the initial discussion consideration may be given to suspending the employee should this be appropriate in the circumstances. This decision will be made in conjunction with the Assistant Chief Executive Human Resources in accordance with the disciplinary procedure.
- 5.3.5 If the employee does not have access to children, as part of their role during the initial meeting with the employee, they should be asked if they have access to children in any other capacity or use their post to establish a relationship of trust and confidence with children e.g. Scout Leader. If the employee has, they must be advised that the appropriate authority will be notified that an unsubstantiated allegation has been made about the individual and that the allegation is being fully investigated.
- 5.3.6 If the employee works with children, the Council will not allow the employee to continue in their role. Under these circumstances they will be suspended from duty to enable the allegation to be fully investigated in accordance with the disciplinary procedure.
- 5.3.7 If the employee is a Council tenant and is subject to victimisation by the public/clients or employees in their home as a result of the allegation, consideration will be given to rehousing/relocating the employee if there is a strong possibility that the threats will be or have been carried out.
- 5.3.8 Management will inform the police (if they are not already involved) and assist them during their enquiries.
- 5.3.9 The disciplinary procedure will be followed in respect of investigating the allegation and considering appropriate action. Should there be a case to answer, the

employee will have the right to be represented in accordance with the disciplinary procedure.

5.3.10 It must be noted that management may not always be able to carry out a disciplinary investigation immediately, if there is police involvement in a case.

## **6. The Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information**

- 6.1 As an organisation using the Criminal Records Bureau (CRB) Disclosure service to help assess the suitability of applicants for positions of trust, the 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 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and this written statement of policy is available on request to those who wish to see it.
- 6.2 Disclosure information will not be kept on an applicant's personal file and is always kept separately and securely, in lockable, non-portable, storage containers (e.g. a lockable filing cabinet) with access strictly controlled and limited to those who are entitled to see it as part of their duties.
- 6.3 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.
- 6.4 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.
- 6.5 Once a recruitment (or other relevant) decision has been made, we do 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 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 individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.
- 6.6 Once the retention period has elapsed, we 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). We 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, we 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 of the Disclosure and the details of the recruitment decision taken.

## **7. Acting as an Umbrella Body**

- 7.1 Before agreeing to act as an Umbrella Body (one which countersigns applications and receives Disclosure information on behalf of other employers or recruiting organisations), the Council will take all reasonable steps to ensure that the other employer/recruiting organisation can comply fully with the CRB Code of Practice.
- 7.2 The Council will also take all reasonable steps to satisfy ourselves that the relevant employer/recruiting organisation will handle, use, storage, retain and dispose of Disclosure information in full compliance with the CRB Code and in full accordance with this policy. The Council will also ensure that any body or individual, at whose request applications for Disclosure are countersigned, has such a written policy and, if necessary, will provide a model policy for that body or individual to use or adapt for this purpose.
- 7.3 The Council will not act for an organisation or individual as an Umbrella Body if we are not satisfied that the organisation/individual is entitled to ask an exempted question; appears unable to comply with the CRB Code of Practice or where there is a belief that the organisation/individual may be acting illegally.
- 7.4 The Council will report all incidents to the CRB where it appears that an organisation/individual may be acting illegally or if there are any concerns about the way that the Disclosure information is being handled.

## **8. Legislation**

- The Rehabilitation of Offenders Act 1974
- The Rehabilitation of Offenders Act (Exceptions) order 1975 (SI 1975 / 1023)
- The Police Act 1997
- The Police Act 1997 (Enhanced Criminal Record Certificates) (Protection of Vulnerable Adults) Regulations 2002
- Protection of Children Act 1999 and Criminal Justice and Court Services Act 2000
- Data Protection Act 1998
- Human Rights Act 1998

## **9. References**

- Code of Practice for Registered Persons and other recipients of Disclosure Information - Publisher: Criminal Records Bureau
- Recruiting Safely - Guidance for employers and other bodies in the health & social care field - Publisher: Nacro on behalf of the forum on the Employment of Ex-offenders in Care Settings (August 2001)
- Employing People with Conviction  
Publisher: CIPD (April 2001)
- Becoming an Umbrella Body – Publisher: Criminal Records Bureau

- Criminal Records Bureau Website - [www.crb.gov.uk](http://www.crb.gov.uk)
- Disclosure Website - [www.disclosure.gov.uk](http://www.disclosure.gov.uk)

**Rehabilitation of Offenders Act - Specified Rehabilitation Periods**

Sentence	Rehabilitation Period	
	People aged 18 or over when convicted	People aged 17 or under when convicted
Prison sentences of 6 months or less	7 years	3½ years
Prison sentences <sup>1</sup> of more than 6 months to 2½ years	10 years	5 years
Borstal training (abolished in 1983)	7 years	6 years
Detention centres (abolished in 1988)	3 years	3 years
Fines <sup>2</sup> , compensation, probation <sup>3</sup> , community service, combination, action plan, curfew, drug treatment and testing, and reparation orders	5 years	2½ years
Absolute discharge	6 months	6 months

With some sentences the rehabilitation period varies:

**Sentence****Rehabilitation Period**

\*Probation/Supervision, order committing young person to care of a fit person, conditional discharge or bind-over (whichever is longer).

1 year or until the order expires

Attendance Centre orders

1 year after the date on which the order expires

Hospital orders (with or without a restriction order)

5 years from date of conviction or 2 years after the date on which the order expires (whichever is longer)

\* For people convicted before 3 February 1995

- 1 Including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution.
- 2 Even if subsequently imprisoned for fine default.
- 3 For people convicted on or after 3 February 1995.

Offences committed whilst serving in the Armed Forces are dealt with in accordance with the Rehabilitation of Offenders Act. For specific types of military sentences the following rehabilitation periods apply:

Offence	Rehabilitation Period	
For cashier discharge with ignominy or dismissal with disgrace	10 years	The rehabilitation period is halved for offenders under the age of 18
For simple dismissal from the service	7 years	
For detention	5 years	

**Prison sentences of over 2½ years are never spent.**

## **Occupations exempt from the provisions of the Rehabilitation of Offenders Act 1974**

Where an occupation/post/job is exempt from the Act, all convictions spent, current or pending must be disclosed.

The professions, jobs and employment relevant for local government are set out below:

### **1. Relevant Professions:**

- Solicitor
- Chartered or certified accountant
- Registered teacher (in Scotland)

These professions are exempt as far as entry to the relative profession is concerned. Therefore, it is the relevant professional body who can seek information about spent convictions. For example, a solicitor would have to declare all convictions whether spent or unspent if asked about this by the Law Society. However, if a solicitor were to apply for a job as a solicitor with a local authority he or she would be entitled to treat any question regarding convictions as applying only to unspent convictions.

### **2. Other types of employment and work:**

Other types of exempt employment and work are listed below. Social services jobs and those involving contact with children are given more detailed consideration.

#### **Miscellaneous**

- Justices Chief Executives, justices clerks and their assistants
- Police officers and those employed for the purposes of, or to assist police officers
- Any employment carried out wholly or partly in the precincts of a prison, remand centre or young offender institution
- Traffic wardens
- Probation officers
- Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable that person to have access to persons in receipt of such services in the course of his normal duties

#### **Jobs in social services**

This exemption covers any employment by a local authority in connection with the provision of social services which enables the holder to have access to any of the following classes of person in the course of this normal duties, namely those who are:

- Over the age of 65

- Suffering from serious illness or mental disorder of any description
- Addicted to alcohol or drugs
- Blind, deaf or without speech
- Substantially and permanently disabled by illness, injury or congenital deformity

The Council's view is that, in this context, 'access' is given the normal dictionary definition. If an employee carrying out their normal duties potentially has an opportunity to abuse a vulnerable person, he or she would be considered to have 'access'.

Examples include:

- sheltered housing wardens
- carers in residential establishments for older people
- residential workers in establishments for people with learning difficulties

#### Jobs involving contact with children

This is a new definition which came into effect on 31 March 2001. It replaces the old definition which covered individuals concerned with the provision of certain kinds of services to people under 18. The new category covers any work which is:

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

'Regulated position' is a definition which is contained in the Criminal Justice and Court Services Act 2000 (CJCSA). The CJCSA sets out eight categories of 'regulated position'. All but one of the definitions (def 6) of regulated position are limited to normal duties. Therefore, it should be part of normal duties. One-off work is excluded.

Where the definitions refer to children this means persons under the age of 18.

#### Definition 1

Any staff whose normal duties involve carrying out work of any sort in certain types of establishment.

For local authorities, establishments which will be covered are:

- A care home or residential care home which is exclusively or mainly for children
- An educational institution (this means one which is exclusively or mainly for the full-time education of children. Therefore, schools would be covered)
- A children's home or voluntary home
- A home provided under s.82(5) of the Children Act 1989

This will cover all staff who work in one of these establishments, whatever their duties and also staff who, although office based, have normal duties, which involve carrying out work at, for example, schools.

Examples include; teachers, residential workers, learning support assistants, caretakers, cleaners and catering staff at any of these establishments.

### Definition 2

A position whose normal duties include work on day care premises.

The definition of day care premises means premises on which children under the age of 8 are looked after for at least two hours per day. (It does not include domestic premises). Like definition 1, this depends on the nature of the establishment rather than the job that is being carried out. Work is not counted as being on day care premises if the work takes place in another discrete part of the building or is carried out at a time when children are not being looked after. For example, a cleaner who works after the children have left for the day would not be covered.

### Definition 3

A position whose normal duties include caring for, training, supervising or being in sole charge of children.

There is clearly some overlap between this definition and definitions 1 and 2. This definition is important as it is these positions where an individual can ask for an enhanced disclosure from the CRB. This will cover a wide range of employees including teachers, social workers and other care staff.

### Definition 4

A position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person.

In this context 'a responsible person' means one of the following:

- A person in one of the positions in definition 6 below
- The child's parent or guardian and any adult with whom the child lives
- A person in charge of an establishment under definition 1 above
- A person registered under Part XA of the Children Act for providing day care premises on which the child is cared

'Unsupervised' means in the absence of a responsible person or a person in a position in definition 3, above.

### Definition 5

A position whose normal duties include caring for children under the age of 16 in the course of the children's employment.

This is unlikely to apply to local authorities. The example given in Home Office guidance is of persons caring for children in the entertainment industry.

#### Definition 6

A position a substantial part of whose normal duties includes supervising or training children under the age of 16 in the course of the children's employment.

#### Definition 7

'The great and the good' - a school governor, a local authority member who discharges education or social services functions of a local authority, a chief education officer, a director of social services.

The Government guidance to the CJCSA says that these positions are ones which may provide privileged access to children. It may be implicit that the holder of such a post is a person who can be trusted with children. Therefore, they are included even if contact with children is not a regular part of the position.

#### Definition 8

A position whose normal duties include supervising or managing an individual in his work in a regulated position.

The purpose of including this category is that such people may facilitate or cover up any misconduct which has occurred. Government guidance is that it covers those with the authority to dismiss an individual in a regulated position as well as immediate managers and supervisors.

### **People banned from working with children**

Under the Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000, a number of people are banned from working with children. These are:

- people on the DfES List 99
- people on the DoH List
- people on the National Assembly of Wales List
- people aged 18 or over convicted of certain specified offences against those aged under 18 (or 16 in some instances) and given a hospital or guardianship order or a custodial sentence of 12 months or more. Suspended sentences of 12 months or more are treated as qualifying sentences.

The specified (schedule one (Children & Young Persons Act 1933) offences - where the offence is committed on a child or young person - include:

- murder or manslaughter
- rape or burglary with intent to commit rape
- grievous bodily harm
- cruelty
- kidnapping, false imprisonment and abduction
- indecent assault
- sexual intercourse
- buggery
- indecency
- abuse of trust
- incest and related offences
- assault with intent to commit buggery
- offences relating to or encouraging child prostitution
- offences relating to child pornography

The term 'working with children' covers a number of areas. According to the Guide on Protection of Children, broadly these are:

**employment in certain establishments** which provide functions of various sorts exclusively or mainly for children such as schools, children's homes and children's hospitals. All staff, whether primary or secondary carers or ancillary staff, are deemed to be primary carers.

**employment in day care premises**, except where the work takes place in a different part of the premises to where day care activities are situated, or if it occurs during times of the day when children are not being looked after. A cleaner, for instance, who entered the day care premises each day after the children had left would not be considered to be working with children.

**caring for, training, supervising or being in sole charge of children a position where normal duties involve unsupervised contact with children.** This would cover, for

example, a minicab firm whose drivers are routinely employed to transport unaccompanied children on a regular basis, but not those who do it on an irregular or one-off basis.

**child employment.** Where the young person is under the age of 16, those responsible for caring for them in the course of their employment would be covered by the definition.

**positions of influence and control** over children which could place them at risk.

Juveniles - under 18 year olds - should only be banned if a court believes that there is a likelihood of the offender in question committing a further offence against a young person.

The 1999 Act requires childcare organisations to refer the names of individuals considered unsuitable for work with children to the DoH and DfES lists. It also requires childcare organisations not to knowingly to offer employment to anyone listed for any posts involving regular contact with children in a childcare capacity.

The Act applies to people disqualified in England and Wales only. However such people are committing an offence if they seek such work in Northern Ireland. Similar schemes are being considered in Scotland and Northern Ireland. Those who are subject to disqualification in Scotland and Northern Ireland will be recognised as being disqualified in England and Wales also.

**London Borough of Havering**  
**List of exempt posts**

**This list is not exhaustive. Please seek guidance from your Human Resources Team on conducting a Post Exemption Assessment (Appendix I) on all posts, which are within the remit of this Code but are not specifically listed below:**

**Council-wide Areas**

- a) Paid or voluntary positions, whether full or part-time, involving unsupervised access to children and/or vulnerable adults;
- b) Existing employees transferring to work with children and/or vulnerable adults;
- c) Agency staff, contractors and consultants having direct contact with children and/or vulnerable adults;
- d) Temporary and relief employees having direct contact with children and/or vulnerable adults.
- e) Any position where the normal duties of the post includes work in educational establishments
- f) All security employees

**Social Services and Housing**

- a) Social Workers/Care Managers (including Team and Service Managers);
- b) Posts having direct contact with children; elderly or disabled people; chronically sick; or persons addicted to drugs or alcohol;
- c) Executive Director and Heads of Service;
- d) Social Work students;
- e) Day Care and Residential posts;
- f) Asylum Seekers posts;
- g) Home Care Employees/Team Leaders/Organisers
- h) Occupational Therapists/OT Assistants
- i) Front Line Social Care Receptionists;
- j) Library Employees;
- k) Housing and Resident/Mobile Caretakers;
- l) Welfare and Estate Officers;
- m) All Wardens;
- n) All park employees;
- o) Hall Stewards/concierge;
- p) Recreation and Leisure Staff Attendants/Coaches/Instructors;
- q) Housing Maintenance and Housing Aid Employees (including Seniors);
- r) Housing Investigating/Benefit Investigating Officers;
- s) Community Link and Response Group (CLARG)
- t) Area Community Housing Employees
- u) Debt Recovery Employees
- v) Hostel Support and Homeless Employees
- w) Housing Allocations Employees

### **Children & Lifelong Learning**

- a) Teachers/Tutors/Instructors/Lecturers;
- b) Executive Director and Heads of Service;
- c) Laboratory/Workshop Technicians;
- d) Non-teaching employees in educational establishments;
- e) Education Inspectors, Advisors and Advisory Teachers;
- f) Education and Psychiatric Social Workers and Welfare Officers;
- g) Educational Psychologists;
- h) Nursery Nurses;
- i) Mid-day Supervisory Assistants;
- j) All volunteers in Educational Establishments (including School Governors);
- k) All workers and volunteers in Youth Clubs and Centres;
- l) Caretakers and Assistants;
- m) Trainee Youth Workers;

### **Environment & Enterprise**

- a) Sports Development Officers and Assistants;
- b) Play Organisers and Play Leaders;
- c) Environmental and Educational Co-ordinators
- d) Leisure Attendants/Coaches/Instructors in Sports and Leisure Centres;
- e) Coach Drivers, Attendants and Escorts;
- f) Schools Based Catering Staff;
- g) Meals on Wheels Drivers/Assistants;
- h) School Crossing Patrols/Road Safety Employees;
- i) Parks and Schools Grounds Maintenance Staff;
- j) Convenience Attendants

### **Resources**

- a) Community Area Managers;
- b) Community Development Workers;

### **Customer Access & Services**

- a) ICT Services Engineers/Technicians

**London Borough of Havering**  
**List of counter signatories**

Julie Shead (Lead Countersignatory)  
Senior HR Advisor  
Human Resources

Tricia Lawlor  
Human Resources Manager

Joanne Hatfield  
Human Resources Manager

Louise Howard  
Human Resources Manager  
Education

Sandra Brown  
Human Resources

Colin Hooker  
Human Resources

Val Field  
Human Resources

Frances Whitehead  
Human Resources

Janine Wynne  
Human Resources  
Education

Catherine Smith  
Human Resources  
Education

Diane Polain  
Human Resources  
Education

Ruth Jenkins  
Head of Family Services  
Social Services

Michael Organ  
Leisure Manager

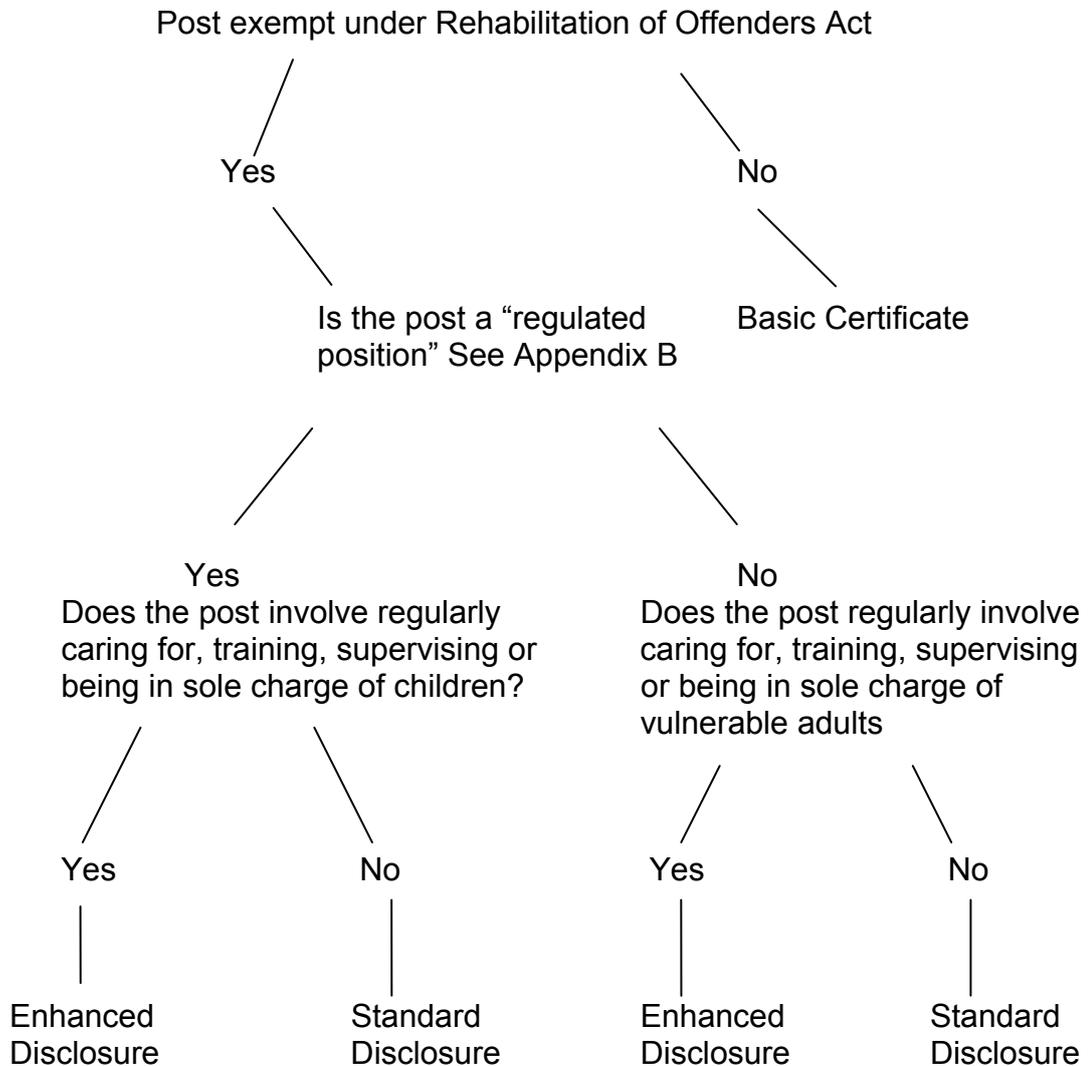
Allen Burbidge  
Transport Commissioning Manager  
Environment

Maureen Smith  
Governing Body Support Unit  
Education

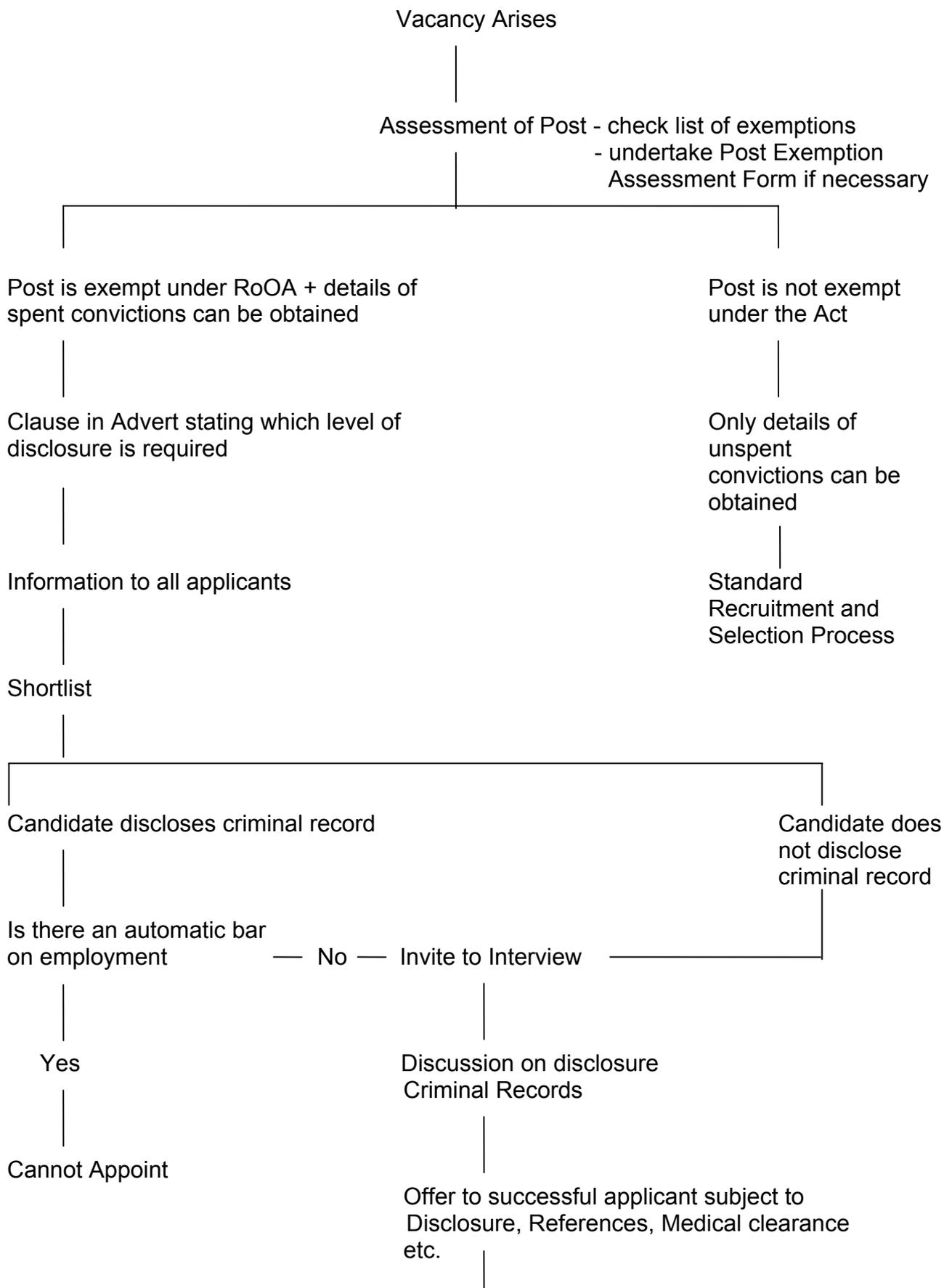
**Summary of Disclosures**

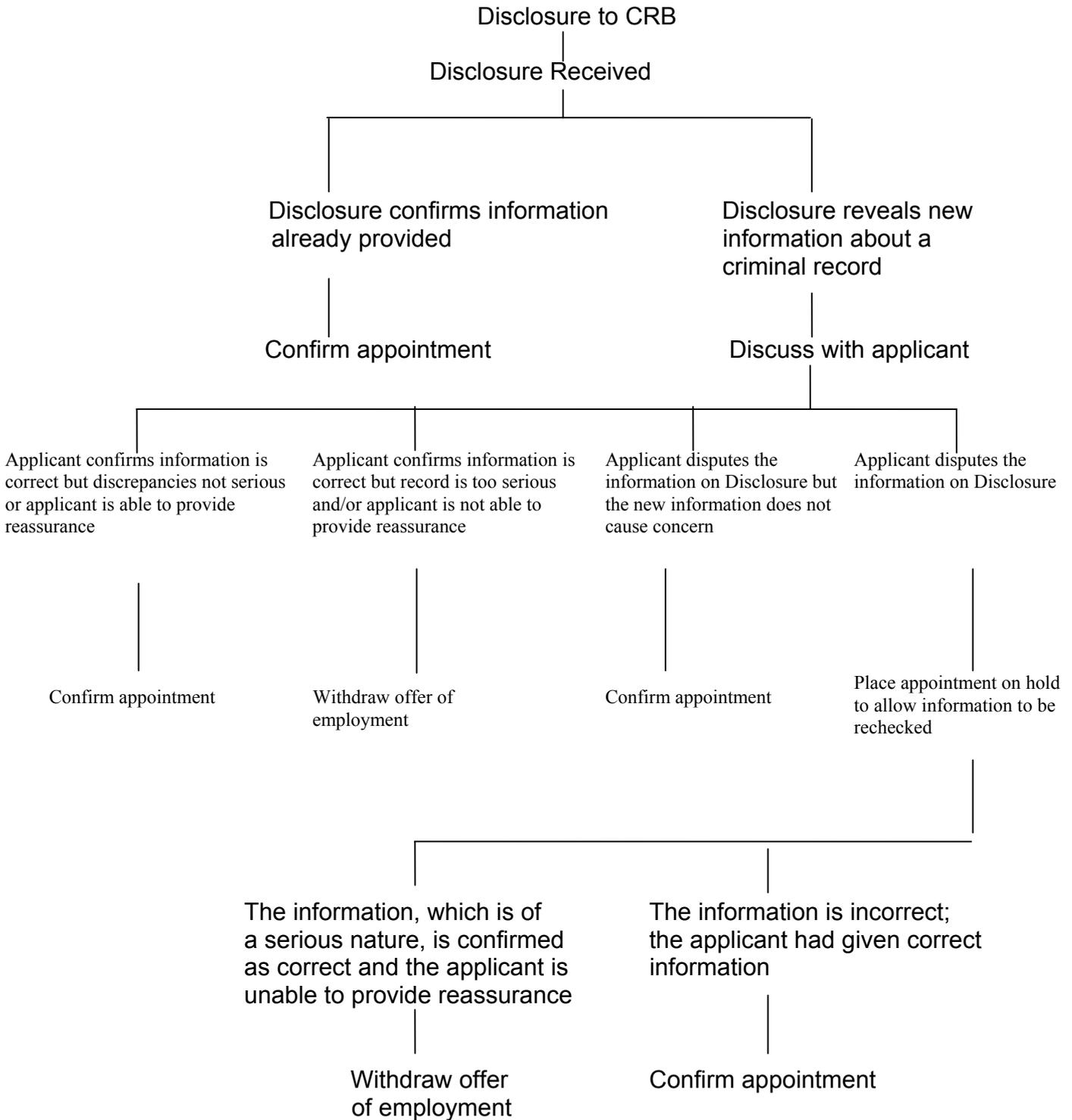
	LEVEL OF DISCLOSURE		
	Enhanced	Standard	Basic
<b>For which posts can a disclosure be sought?</b>	A post (i) involving regularly caring for, training, supervising or being in sole charge of persons aged under eighteen. (ii) which is exempt from the Rehabilitation of Offenders Act AND involves regularly caring for, training, supervising or being in sole charge of vulnerable adults.	Exempt from the Rehabilitation of Offenders Act. <b>This includes</b> the following: <ul style="list-style-type: none"> <li>• Work in a position where normal duties would allow contact with children. The relevant positions are regulated positions as defined by the CJSA.</li> <li>• Those working with elderly, sick or disabled people</li> <li>• Those involved in the administration of the law</li> <li>• Those employed in certain other sensitive areas and professions</li> </ul>	Any post
<b>Who applies for and receives the disclosure?</b>	Individual plus the registered body	Individual plus the registered	Individual
<b>What information is provided in the disclosure?</b>			
<ul style="list-style-type: none"> <li>• Unspent convictions</li> <li>• Spent convictions</li> <li>• Cautions held at national level</li> <li>• Inclusion on lists of individuals considered unsuitable to work with children/vulnerable adults</li> <li>• Relevant non-conviction information held at local level</li> </ul>	4 4 4 4	4 4 4 4	4 5 5 5

**Deciding on the appropriate level of Disclosure**



**Impact on Recruitment Process**





## Exempt Post Assessment Form

<b>1. Post Title:</b>		
<b>2. Directorate:</b>		
<b>3. Department:</b>		
<b>4. Service Area:</b>		
<b>5. Briefly describe the purpose/main duties of the post:</b>		
<b>6. Will the post holder have contact with the following groups of individuals in the normal course of their duties?</b>		
i) <b>Persons aged over 65</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
ii) <b>Persons with a disability (learning, physical, sensory)</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
iii) <b>Persons who are addicted to drugs or alcohol</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
iv) <b>Persons under the age of 18</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>7. How regular is the contact with the particular group of individuals? (please select one of the following)</b>		
Continuous <input type="checkbox"/> At specific times only <input type="checkbox"/> Occasional <input type="checkbox"/> In exceptional circumstances <input type="checkbox"/>		
Please give details:		
<b>8. Is the contact unsupervised? i.e., where no other responsible adult is likely to be present (please select one of the following)</b>		
Always <input type="checkbox"/> At specific times only <input type="checkbox"/> Occasionally <input type="checkbox"/> In exceptional circumstances <input type="checkbox"/>		
Please give details:		
<b>9. Does the position involve one-to-one contact with persons from one of the particular groups mentioned above? i.e., contact separate from other adults (vulnerable or otherwise) or children</b>		
Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>10. Any additional reasons why the position should/should not be subject to Disclosure by the CRB:</b>		
<b>Form completed by:</b>	<b>Name:</b>	
	<b>Position:</b>	
	<b>Date:</b>	
<b>To be complete by relevant Service Manager</b>		
<b>Findings: Post should be subject to a Disclosure by the CRB</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Level of Disclosure required</b>	Enhanced <input type="checkbox"/>	Standard <input type="checkbox"/>
	Basic <input type="checkbox"/>	<input type="checkbox"/>
<b>Name:</b> _____ <b>Signed:</b> _____		
<b>Position:</b> _____ <b>Date:</b> _____		

## Disclosure of Criminal Records Suggested Wording

On adverts:

***This post is exempt from the provisions of the Rehabilitation of Offenders Act 1974 and, because of the [sensitive] nature of the duties that the postholder will be expected to undertake, a satisfactory Standard/Enhanced\* Disclosure will be required in the event of a successful application.***

On Job Profiles:

***As above, but omit the words ‘...in the event of a successful application...’***

In Offer Letter

***Due to the [sensitive] nature of the duties that you are required to undertake, your appointment is subject to the receipt of a satisfactory Standard/Enhanced\* Disclosure from the Criminal Records Bureau. I would confirm that these have now been obtained/are still outstanding. However, see the attached Statement of Terms and Conditions of appointment concerning your obligations with regard to this employment.***

On Statement of Terms and Conditions of Employment:

***As a condition of your contract as an employee working in a post which is exempt from the provisions of the Rehabilitation of Offenders Act 1974 and, because of the [sensitive] nature of the duties that you are expected to undertake, you are required to notify your Head of Service of any future criminal justice record details, including when you know you are under investigation for a criminal offence; or charged; and convictions, cautions, reprimands, warnings and other information (e.g. bindovers and acquittals), so that the Council can take a view as to whether this has a bearing on your employment. Similarly, you are expected to have declared any past criminal record details as requested at the time of your application and appointment. Failure to comply with any of the above is likely to lead to disciplinary action which could include dismissal under the Council's Disciplinary procedure.***

[sensitive] – Use when appropriate

\* Delete Standard/Enhanced as applicable

## REHABILITATION OF OFFENDERS ACT 1974 GUIDANCE NOTES FOR APPLICANTS

*This Post is not Exempt from the Act*

The application form for employment with the London Borough of Havering asks you to provide details about previous convictions for criminal offences. You should read these guidance notes before completing the questions.

Under the Rehabilitation of Offenders Act 1974, you do not need to provide details about previous convictions, which are 'spent', but see below with respect to exemptions from the Act.

A conviction becomes spent after a certain length of time, which depends upon the sentence imposed and the individuals age at the time of conviction.

Examples are:

Sentence	Rehabilitation Period	
	People aged 18 or over when convicted	People aged 17 or under when convicted
Prison sentences of 6 months or less	7 years	3½ years
Prison sentences of more than 6 months to 2½ years	10 years	5 years
Borstal training (abolished in 1983)	7 years	6 years
Detention centres (abolished in 1988)	3 years	3 years
Fines, compensation, probation, community service, combination, action plan, curfew, drug treatment and testing, and reparation orders	5 years	2½ years
Absolute discharge	6 months	6 months

Note: If a person is sentenced to life imprisonment, his/her conviction can never become 'spent'.

The following sentences are exempt from the Act:

- a) a sentence of imprisonment for life.
- b) a sentence of imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding 30 months.
- c) a sentence of preventive detention.
- d) a sentence of detention during Her Majesty's pleasure or for life or a sentence of detention for a term exceeding 30 months given to a young offender convicted of a grave crime or detention of more than 30 months of a child convicted on indictment or a Court Martial punishment.

e) a sentence of custody for life.

Any information given will be treated as confidential and used only in connection with this application.

An offer of employment may be withdrawn or dismissal may result if previous convictions for 'unspent' criminal offences are not disclosed.

If you have any doubts about whether you have to declare a previous conviction, you should contact your local Probation Office or the Citizens Advice Bureau, or your solicitor.

Thank you for your co-operation.

**REHABILITATION OF OFFENDERS ACT 1974  
GUIDANCE NOTES FOR APPLICANTS**

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*This Post is Exempt from the Act  
All convictions spent or unspent must be disclosed*

The application form for employment with the London Borough of Havering asks you to provide details about previous convictions for criminal offences. You should read these guidance notes before completing the questions.

You must disclose all convictions irrespective of whether they are spent or not.

Any information given will be treated in confidence and used only in connection with this application.

An offer of employment may be withdrawn or if already employed, dismissal may result if previous convictions for spent or unspent criminal offences are not disclosed.

If you have any doubts about whether you have to declare a previous conviction, you should contact your local Probation Office or the Citizens Advice Bureau, or your solicitor.

Thank you for your co-operation.