

## **LOUGHTON TOWN COUNCIL**

### **Employment of ex-offenders**

#### **1 Introduction**

- 1.1 The Home Office has set up a Criminal Records Bureau (CRB) as an executive agency to exercise the powers and fulfil the responsibilities of the Secretary of State under the Police Act 1997. Its purpose is to act as a one-stop shop for accessing the Police National Computer, DoH records, DfES records and local police information.
- 1.2 The CRB has published a Code of Practice and accompanying explanatory guide. The Town Council is committed to ensuring that the principles of the Code of Practice will be observed by all recipients of Disclosure information.
- 1.3 The Town Council is committed to take all available steps to protect children and vulnerable groups within the community through good recruitment practice and through seeking relevant information on criminal, Department of Health (DoH) and Department for Education and Skills (DfES) records for:
- job applicants
  - volunteers
  - existing staff
- 1.4 At the same time, the Town Council is committed to ensuring that people who have been convicted are treated fairly and given every opportunity to establish their suitability for positions. To this end, the Town Council's recruitment literature carries a statement to the effect that a criminal record will not necessarily be a bar to obtaining a position, and this policy sets out the considerations which will be taken into account when determining the relevance of a criminal record to the post.

#### **2 Relevant Legislation**

- 2.1 The relevant legislation in this area, and on which this policy is based is:
- The Rehabilitation of Offenders Act 1974, which makes it illegal for an organisation to discriminate against an ex-offender on the grounds of a spent conviction.
  - The Rehabilitation of Offenders Act 1974 (Exceptions) Orders from time to time enacted and in force, which exclude certain, specified posts from the ROA.
  - The Police Act 1997, which introduces new arrangements for obtaining criminal record information. These arrangements are now encompassed in the establishment of the Criminal Records Bureau.
  - The Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000, which make it an offence for any organisation to offer employment that involves regular contact with young people under the age of 18 to anyone who has been convicted of certain specified offences, or is included on lists of people considered unsuitable for such work held by the DfES and the DoH.

### **3 Employment of ex-offenders – existing employees**

- 3.1 It is the organisation's policy to seek CRB disclosures only in relation to the posts identified in Appendix C. Disclosures will not be sought for existing employees who have previously been police checked. Existing staff for whom police checks were not available at the time of recruitment should only be asked to apply for a disclosure where there is cause for some suspicion or where they are recruited to a different post within the organisation which is listed in Appendix C.
- 3.2 All employees are required to declare any convictions or cautions which arise during the course of their employment. This is set out in the statement of written particulars which require any caution or conviction which arises during the course of employment to be declared.
- 3.3 Where it comes to light that an employee has failed to disclose a conviction, (including spent convictions for posts where the Rehabilitation of Offenders Exemption Orders apply) then that will be treated as a very serious matter.
- 3.4 The ACAS code of practice on Disciplinary and Grievance Procedures advises that criminal charges or convictions outside employment "should not be treated as automatic reasons for dismissal. The main consideration is whether the offence is one that makes workers unsuitable for their type of work. In all cases employers, having considered the facts, will need to consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure...".
- 3.5 Nevertheless, in view of the damage the failure to declare the offence will inevitably have done to the spirit of trust and confidence between the Town Council and the employee, it will cause the employee's continued employment to be questioned. It is Town Council policy that this may be treated as gross misconduct and there may be a disciplinary investigation, possibly resulting in dismissal. This is particularly the case in respect of employment involving work with vulnerable people.
- 3.6 In assessing the seriousness of failure to declare an offence by an existing employee, consideration should be given to both the breakdown in trust and confidence caused by the failure to declare an offence and to the degree of risk the conviction carries in relation to the post with regard to the factors outlined in para 5. below.

### **4 Employment of ex-offenders – potential employees**

- 4.1 Criminal record information will come to light through a CRB disclosure for the successful applicant to a relevant post.

- 4.2 Where there is a direct link between the offence and the job, a decision will be made in the light of this policy. Advice will be sought from personnel/legal advisers as appropriate.
- 4.3 Where the relationship between the offence and the job is less obvious, the applicant should be invited to comment on the conviction or caution during the recruitment process.
- 4.4 Any decision should be made with reference to the factors outlined in para 5. below.
- 4.5 Criminal record information which comes to light through a CRB disclosure will be treated as one tool in the overall recruitment process and will only be considered in relation to applicants where an offer of employment has been made. The successful applicant will be invited to discuss this information before a final recruitment decision is made.
- 4.6 Offers of employment should not normally be confirmed until the relevant disclosure has been obtained from the CRB. An exception might be, for example, an employee taken on to cover a vacancy existing on that day. In this event it is important that the employee has no substantial unsupervised access to children or vulnerable people.

## **5 Assessing the relevance of criminal records**

- 5.1 Having an unspent conviction (or a spent conviction for posts exempted from the Rehabilitation of Offenders Act under the Exemptions orders listed above) will not necessarily be a bar to employment. This will depend on the background and circumstances to the offence(s) and the risk assessment of such for the job in question. When considering the relevance of an offence to a particular post, the following factors should be taken into consideration:
- Whether a conviction or caution is relevant to the job e.g. child pornography offences would almost certainly disqualify any person required to work with children, fraud may disqualify employees from posts involving handling significant amounts of money.
  - The seriousness of the offence.
  - The length of time since the offence occurred e.g. offences which occurred many years in the past may often have less relevance than recent offences. However convictions for serious violent or sexual offences or serious offences involving substance abuse are more likely to give cause for continuing concern than, say an isolated case of dishonesty committed when the person was young. The chance for rehabilitation must be weighed against the need to protect children and vulnerable people.
  - Whether the applicant has a pattern of offending behaviour or whether the offence was a one-off – a series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction.
  - Whether the applicant's circumstances have changed since the offence.
  - The circumstances surrounding the offence and the explanation offered.
- 5.2 The relevance of some combinations of job and offence will be easy to establish e.g. theft and money/stock handling, child pornography offences and working with children. In other

cases, however, the decision may not be so clear-cut, hence the importance of discussing with the short-listed applicant or successful applicant any criminal records information which comes to light.

- 5.3 The decision on whether or not to appoint in the case of information which comes to light at the pre-employment stage must take account of the above factors.

**Appendix A – Professions, offices, employment and occupations exempted from the Rehabilitation of Offenders Act 1974 by the Rehabilitation of Offenders Act 1974 (exemption) Orders from time to time enacted and in force.**

**Professions:**

- (a) Medical Practitioner;
- (b) Barrister (England & Wales), advocate (in Scotland), solicitor;
- (c) Chartered accountant, certified accountant;
- (d) Dentist, dental hygienist, dental auxiliary;
- (e) Veterinary surgeon;
- (f) Nurse, midwife;
- (g) Ophthalmic optician, dispensing optician;
- (h) Pharmaceutical chemist;
- (i) Registered teacher (in Scotland);
- (j) Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under the Act.

The professions are exempt as far as entry into the profession is concerned. The relevant body can therefore ask questions about unspent convictions. However, when applying for individual jobs with the Authority, only details of unspent convictions need to be given.

**Regulated Occupations:**

- (a) Firearms dealer;
- (b) 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;
- (c) Director, controller, or manager of an insurance company, in respect of which the Secretary of State's authorisation is required under S.3(a) & (b) of the Insurance Act 1974 or to which Part II of that Act applies;
- (d) Dealer in Securities;
- (e) Manager or Trustee under a unit trust scheme;
- (f) Any occupation which is concerned with:
  - (i) the management of a place in respect of which the approval of the Secretary of State is required by S.1 of the Abortion Act 1967; or
  - (ii) in England and Wales, carrying on a nursing home in respect of which registration is required by S.187 of the Public Health Act 1936 or S.14 of the Mental Health Act 1959;
- (g) 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 S.43 of the Explosives Act 1875 to obtain from the police or a court of summary jurisdiction a certificate as to his/her fitness to keep explosives.

**Other Offices and employments:**

- (a) Judicial employments;
- (b) Director of Public Prosecutions and any employment in his/her office;
- (c) Prosecutors Fiscal and District Court Prosecutors, and any employment in their offices or in the Crown Office;
- (d) Justices' Clerks and their assistants;

- (e) Clerks and officers of the High Court of Judiciary, the Court of Sessions and the district court, sheriff clerks and their clerks and assistants;
- (f) Constables, persons appointed as police cadets and persons employed for the purposes of, or to assist the constable of, a police force establishment under any enactment; naval, military or air force police;
- (g) Any employment which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of a prison, remand centre, detention centre, Borstal institution or young offenders institution, and members of boards of visitors appointed under S.7 of the Prisons (Scotland) Act 1952;
- (h) Traffic Warden;
- (i) Probation Officer;
- (j) Jobs in Social Services: Any employment by a local education authority in connection with the provisions of social services or by any other body in connection with the provisions by it of similar services, being employed which is of such a kind as to enable the holder to have access to any of the following classes of person in the course of his normal duties, namely:
  - (i) persons over the age of 65;
  - (ii) persons suffering from serious illness or mental disorder of any description;
  - (iii) persons addicted to alcohol or drugs;
  - (iv) persons who are blind, deaf or dumb;
  - (v) other persons who are substantially and permanently handicapped by illness, injury or congenital deformity.
- (k) Any employment which is concerned with the provision of health services and which is of a kind as to enable the holder to have access to persons in receipt of such services in the course of normal duties;
- (l) Jobs involving contact with children in:
  - (i) a regulated position as defined by the Criminal Justice and Court Service Act 2000. (Appendix B defines Regulated Positions);
  - (ii) a further education institution where the normal duties of the work involves regular contact with persons aged under 18.
- (m) Building society employees convicted of a 'relevant offence' such as fraud.

**Details of the periods of time after which certain convictions become 'spent' for the purposes of the Rehabilitation of Offenders Act 1974**

<b>Sentence</b>	<b>Becomes Spent After</b>
For a sentence of imprisonment or youth custody exceeding six months but not exceeding 30 months	10 years
For a sentence of imprisonment or youth custody not exceeding 6 months	7 years
For a sentence in a young offenders institution	7 years
For a fine or other sentence not otherwise covered in the table	5 years
For an absolute discharge	6 months
For a probation order or community punishment order, conditional discharge or bindover, and for fit persons orders, supervision orders or care orders under the Children and Young Persons Act	1 year, or until the order expires (whichever

(and their Equivalents in Scotland)	is longer)
For cashiering, discharge with ignominy or dismissal from the Armed Forces	10 years
For a simple dismissal from the Armed Forces	7 years
For a detention by the Armed Forces	5 years
For detention by direction of the Home Secretary:	
For a period exceeding 6 months but not exceeding 30 months	5 years
For a period not exceeding 6 months	3 years
For a detention centre order	3 years
For a remand centre order, an approved school order, or an attendance centre order	The period of the order plus a further year after order expires
For a hospital order under the Mental Health Acts	The period of the order plus a further 2 years after the order expires (with a minimum of 5 years from the date of conviction).

### Notes

- (i) A sentence of more than 30 months imprisonment or youth custody can never become spent.
- (ii) If you were under 17 years of age on the date of conviction for any of the sentences except those under the heading "For detention by direction of the Home Secretary", please halve the period shown in the right hand column.
- (iii) It is immaterial for the purposes of calculating a spent conviction whether a sentence is suspended or not.

### Appendix B – Definition & Lists of Regulated Positions/level of check

The definition of Regulated Positions is defined in the Criminal Justice and Court Service Act 2000 (CJCSA). There are seven categories of 'regulated position' and all but one (definition 6) are limited to normal duties. References to children means persons under the age of 18.

- 1 Any staff whose normal duties involve carrying out work of any sort in certain types of establishments, namely:
  - A care home or residential care home which is exclusively or mainly for children;
  - An educational institution which is exclusively or mainly for the full-time education of children;
  - A children's home
  - A home provided under S.82(5) of the Children Act 1989
  - Includes all staff who work in one of these establishments, whether or not it is their base
- 2 A position whose normal duties include work on day care premises, where:
  - Children under 8 are looked after at least 2 hours per day.
  - Unlike 1 above, work which is carried out in a discrete part of the building or at times where the children are not on the premises is not counted.
- 3 A position whose normal duties include caring for, training, supervising or being in sole charge of children:
  - There is some overlap with 1 and 2 above.

- This definition enables an enhanced check to be requested.
- 4 A position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person, namely:
- A person in one of the establishments defined in 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 for;
- 5 A position whose normal duties include caring for children under the age of 16 in the course of the children’s employment.
- 6 The ‘great and the good’, e.g.:
- 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
- 7 A position whose normal duties include supervising or managing an individual in his work in a regulated position.
- Includes those who manage or supervise those in a regulated position as well as those with the power to dismiss them.

**Appendix C – List of posts and levels of disclosure**

Enhanced Disclosure	Standard Disclosure
	Parks and Amenities Warden

N.B. Some posts feature in both lists – this is because the duties of those posts may vary between specialisms and each post will need to be considered individually, in the light of its duties and responsibilities, at the time of recruitment.



## LOUGHTON TOWN COUNCIL

### Disclosure Security Policy

#### 1 General principles

As an organisation using the auspices of Essex County Council to access the Criminal Records Bureau (CRB) Disclosure service to help assess the suitability of applicants for positions of trust, the Town 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. This is its written policy on these matters, which is available to those who wish to see it on request.

#### 2 Storage and access

Disclosure information **will not** be kept on an individual's personal file although a record of the recruitment decision will be kept, either on the personal file (where an appointment is confirmed), or with the recruitment file for the post (where the appointment is not confirmed).

Disclosures will be kept separately and securely in lockable, non-portable filing cupboards for a period of 6 months, and then destroyed. Access will be strictly controlled and limited to the Town Clerk.

#### 3 Handling

In accordance with section 124 of the Police Act 1997, Disclosure information will only be passed to those staff in the Town Council who are authorised to receive it in the course of their duties.

In relation to job applicants, Disclosure information will be shared for discussion with the relevant manager or councillors. A joint decision will then be made about the applicant or employee's future employment position, with reference to the Council's policy on the employment of ex-offenders.

In relation to volunteers, Disclosure information will be shared with the relevant manager responsible for confirming such recruitments.

All relevant staff and members of the Town Council recognise that it is a criminal offence to pass this information on 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.

This includes disciplinary proceedings which are considered to be part of the employment process.

#### 5 Retention

Once a recruitment (or other relevant) decision has been made, the Town Council does not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes, complaints or disciplinary proceedings. If, in very exceptional

circumstances, it is considered necessary to keep Disclosure information for longer than six months, the Town Council will consult the CRB about this and will give full consideration to the data protection and human rights of the individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail. Information will be destroyed by shredding.