

Rossendale Borough Council

Members' Criminal Records Bureau Guide

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1. Introduction

- 1.1 The Elected Member is the public face of the Council. He or she will have a diverse role which involves all sectors of the community.
- 1.2 The Members Code of Conduct sets out protocol for the behaviour of Elected Members whilst holding a public office. This document sets out an additional voluntary measure which any Councillor can elect to undertake, to further demonstrate their integrity.
- 1.3 At its meeting held on 24th August 2005 the Council resolved to provide the facility for Members to undertake Criminal Records Bureau (CRB) Checks on a voluntary basis. These checks will provide the Council with details of any current or previous criminal convictions.
- 1.4 The Council does not often appoint Members to regulated positions, the Council is mindful of the potential contact with vulnerable members of the community, and undertake this initiative on the basis of continued confidence in the standing of Rossendale Borough Councillors.
- 1.5 The purpose of this document is to assist Elected Members in understanding the role of the Council in reducing the risk of allowing sole access to persons deemed "Vulnerable" by Section 115(4)(a) of the Police Act 1997, and to prevent Members from being appointed to regulated positions, when they have been disqualified from working with children.
- 1.6 It seeks simply to offer guidance on some of the issues, which most commonly arise.
- 1.7 Although the CRB Disclosure checks are intended to provide a further tool to assist in preventing unsuitable people from working with children and other vulnerable persons, it is critical to understand that all involved in such work understand that none of this will replace, or lessen the need for, a continuing *culture of vigilance*. However, used properly, these measures will provide Members with a means of proving one aspect of their suitability to their position.

2. Vulnerable Persons

- 2.1 A person may be considered to be vulnerable:
- 2.2 If he or she is under the age of 18 and considered under the law to be a child;
- 2.3 If he/she receives
 - accommodation and nursing or personal care in a care home, or
 - personal care in his own home through a domiciliary care agency, or
 - healthcare services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body, or

- services provided in an establishment catering for a person with learning difficulties

and, in consequence of any one, or any combination, of the following factors, namely:

- a substantial learning or physical disability, or
- a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs, or
- a substantial reduction in physical or mental capacity due to advanced age, he is substantially dependent upon others in performing basic physical functions, or his ability to communicate with those providing services, or to communicate with others, is severely impaired, and, as a result, he would be incapable of protecting himself from assault or other physical abuse, or there is a potential danger that his will or his moral well-being may be subverted or over-powered.

3. **Rossendale Borough Council Statement on ‘regulated positions’ of Elected Members**

- 3.1 Under the Criminal Justice and Court Services Act 2000 it is an offence for a person who has been disqualified from working with children to be employed in a ‘regulated’ position. (Section 35.1)
- 3.2 In addition it is an offence to knowingly offer work in a ‘regulated’ position to someone who is disqualified from working with children. (Section 35.2)
- 3.3 Regulated positions include being a Member of a “relevant local government body”. (Section 36(i)(g), 36(6)(b), 36(7)) By law individuals are Members of a relevant local government body if they:
- 3.4 Discharge education or social services functions as an individual – Rossendale Borough Council does not carry out these functions as they are County Council functions.
- Are Members of a Cabinet of a Council which discharges such functions- i.e. are members of the Cabinet at the County Council.
- 3.5 Are Members of a Committee which discharges such functions – e.g. Members of the County Council, Overview and Scrutiny Committees on Education and Social Services.
- 3.6 Are conducting an inspection visits to social services establishments i.e. Section 33 visits.
- 3.7 Are a Member of a governing body of an educational institution, Rossendale Borough Council appoint Members to be governors at various schools within the Borough.

- 3.8 It is important to note that it is the positions that are regulated, this applies whether or not the Member has contact with children or other vulnerable people.
- 3.9 The Council has no way of knowing without doing a CRB check whether a person is disqualified. If a CRB check is not carried out then the Council risk prosecution if it emerges that a disqualified person discharges the functions. Also the individual risks prosecution.
- 3.10 As an organisation using the CRB Disclosure Service to assess Members' suitability for regulated positions, the Council will comply fully with the CRB Code of Practice.
- 3.11 We encourage all Members to provide details of their criminal record at an early stage in the CRB check process. We request that this information is sent under separate, confidential cover, to a nominated person within Rossendale Borough Council who is managing the CRB check process and we guarantee that this information is only be seen by those who need to see it as part of the CRB check process.
- 3.12 We ensure that all those in Rossendale Borough Council who are involved in the CRB check process have been suitably trained to identify and assess the relevance and circumstances of offences.
- 3.13 We will make every Member aware of the existence of the CRB Code of Practice and make a copy available on request. (see Appendix 1- Code of Practice for Registered Persons and Other Recipients of Disclosure Information)

4. The Rehabilitation of Offenders Act 1974

- 4.1 This Act provides that if a convicted person completes a specified period without being convicted of further offences the conviction can be regarded as 'spent'. These sentences then do not have to be revealed and may not be used as grounds for exclusion from holding regulated position. Certain occupants are not covered by the Act. (see Appendix 3- Rehabilitation of Offenders Act- Guidance on Spent Convictions)

5. The Rehabilitation of Offenders Act- Exceptions Order

- 5.1 This Exceptions Order applies to regulated positions involving contact with children and young people.
- 5.2 Exceptions Order applies to those have access to the following classes of person:
- 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.

5.3 Where there is an exemption to the ROA Act a person who is asked a question regarding their convictions must be told, by virtue of the order, that spent convictions must be disclosed.

6. The Criminal Records Bureau

6.1 The CRB will act as a central access point for checks made on Elected Members. It will undertake criminal record checks for individuals, on application, in exchange for a fee.

6.2 There are two levels of disclosure:-

- **Standard Disclosures-** are for positions that involve regular contact with those aged under 18, or people of all ages who may be vulnerable for other reasons. They may also be relevant for people involved in certain other sensitive areas and professions.

The Disclosure will contain details of ALL convictions on record including current and spent convictions (i.e. those that happened some time ago and are defined as spent under the Rehabilitation of Offenders Act). In addition, they include details of any cautions, reprimands or warnings held on the police national computer. If a regulated position involves regular contact with children or vulnerable adults in education or health care, a Standard Disclosure will also give information contained on government department lists of those unsuitable to work with children or vulnerable adults in these areas.

- **Enhanced Disclosures** - are for posts involving greater contact with children or vulnerable adults. Such work might involve regularly caring for, training, supervising or being in sole charge of such people. As well as the information that would be on a Standard Disclosure for work involving regular contact with children, Enhanced Disclosures may also contain information that is held locally by the police including relevant non-conviction information.

7. Process for Elected Members Criminal Records Checks

7.1 A Disclosure Application Form will be issued to Elected Members by the Democratic Services Manager (Julian Joinson) on a voluntary basis.

7.2 Participating Elected Members will complete the Disclosure Application Form and return to the Democratic Services Manager with identification evidence (i.e. one piece of photo related I.D. such as a passport or driving licence and two pieces of address related I.D. such as a utility bill - not a mobile phone bill. If no photo I.D. is provided, an original marriage or birth certificate or paper driving licence must be provided). Please note that only original documents must be provided.

7.3 The Democratic Services Manager will check the Disclosure Application Form and ID evidence and make a file note, which will be kept on the Members CRB

file. Each Member will have a CRB Personal file which will be kept by the Monitoring Officer. These files and all the information contained will remain confidential

- 7.4 The Disclosure Application Form will be sent to the Counter Signatory by the Democratic Services Manager. Applications will need to be countersigned by an authorised person who has registered with the CRB and who is acting on behalf of the Council. The Monitoring Officer will be the Counter Signatory for Members Application Forms.
- 7.5 The Counter Signatory will complete the relevant parts of the Member's Disclosure Form and send it to the CRB.
- 7.6 Individual Members will receive their Disclosure in the post. A copy of the Disclosure will also be sent to the Monitoring Officer (Mark Weston) in his absence the Deputy Monitoring Officer (Angela Foster).
- 7.7 The Disclosure Certificate shall be placed on the Members CRB Personal file. If it is Clear Certificate a note confirming that he/she is eligible to hold a regulated position based on the CRB clearance shall be recorded on the file.

A copy of the note shall be sent to the Member within 7 working days of receiving the Clearance Certificate.

- 7.8 A Disclosure Certificate with details of convictions or other information, shall trigger the Monitoring Officer to arrange a meeting with the Member and other relevant senior officers (i.e. the Chief Executive and or Executive Director of Resources) and take advice from other relevant senior officers. The Member shall be entitled to bring their Group Leader to the meeting. Notes shall be made at the meeting and a copy given to the Member within 7 working days. Based on the outcome of this discussion, a decision shall be made, by the Chief Executive or the Monitoring Officer whether to continue to allow the Member to hold a regulated position or to ask the Group Leader to remove them from the regulated position. This decision should be based upon the details of the discussion with particular emphasis on the nature of the criminal record and take into account whether or not the individual Member had previously disclosed convictions. The Member will have already received a copy of their disclosure direct from the CRB. In some cases additional information sent under separate cover will accompany the enhanced disclosure.
- 7.9 After a decision has been made a Disclosure Information form (Appendix 4) shall be completed by the Monitoring Officer confirming whether or not the Member can hold a regulated position which shall be sent to the Member and placed on the Members CRB Personal file. The Standards Committee may also be requested to consider any findings resulting from the CRB disclosure, and make appropriate recommendations.

- 7.10 **Having a criminal record will not necessarily remove the Member from regulated positions.** This will depend on the nature of the position and the circumstances and background of offences. The CRB clearance form together with details of any recorded convictions will be returned to the Monitoring Officer.
- 8. When the CRB Disclosure shows criminal convictions or an entry on a register showing people banned from work with children (This is important information as it covers ‘regulated positions’)**
- 8.1 Under the Protection of Children Act 1999 and the Criminal Justice Act 2000, a number of people are banned from working with children. Also some offences carry an automatic ban from undertaking a regulated position with children. These are detailed in Appendix 5 - People Banned from Working with Children.
- 8.2 If any of the provisions contained in the paragraph above apply to a Member, then the Monitoring Officer shall immediately inform the Chief Executive and the relevant Group Leader so that the disqualified Member can be immediately removed from the regulated position.
- 9. When the CRB Disclosure shows criminal convictions but the offences do not carry an automatic ban**
- 9.1 For offences that do not carry an automatic ban from undertaking a regulated position, the following factors shall be taken into consideration:
- whether the conviction or other matter revealed is relevant to the position in question,
 - the seriousness of any offence or other matter revealed,
 - the length of the time since the offence or other matter occurred,
 - whether the Member has a pattern of offending behaviour or other relevant matters,
 - whether the Member’s circumstances have changed since the offending behaviour or the other relevant matters, and
 - the circumstances surrounding the offence and the explanation(s) offered by the convicted Member
- 9.2 The detail of the conviction shall be discussed at a meeting with the Monitoring Officer. (see para 8.2) Account shall also be taken of any statutory guidance that may apply.
- 9.3 If after discussing the result of the CRB a decision is made to allow the Member to continue to hold a regulated position, a note shall be made on the individual Member’s CRB file together with the notes of the discussion and the offer to allow the Member to continue to hold the regulated position confirmed.

9.4 If after discussing the result of the CRB a decision is made for a Member not to put themselves forward to elect for a particular position within the Authority, the reasons for this decision shall be recorded and a copy of this note along with a copy of the notes from the meeting shall be placed on the Member's CRB.

10. Secure Storage, Handling, Use, Retention & Disposal of Disclosures & Disclosure Information

10.1 The Monitoring Officer shall be responsible for the confidential maintenance of CRB Checks and Members CRB personal files

Appendix 1- Criminal Records Bureau Code of Practice for Registered Persons and other Recipients of Disclosure information

Introduction

This Code of Practice is published under section 122 of the Police Act 1997 ("the Act") in connection with the use of information provided to registered persons ("Disclosure information") under Part V of that Act.

Disclosure information is information

- contained in criminal record certificates under section 113 of the Act (which are referred to in this Code as "Standard Disclosures"), or
- contained in enhanced criminal record certificates under section 115 of the Act (referred to in this Code as "Enhanced Disclosures"), or
- provided by the police under section 115(8) of the Act.

Except where indicated otherwise, the Code of Practice applies to all recipients of Disclosure information - that is to say

- registered persons,
- those countersigning Disclosure applications on behalf of registered persons, and
- others receiving such information.

Where reference is made to "employers", this should be read as including any person at whose request a registered person has countersigned an application, including

- voluntary organisations and others engaging, or using the services of, volunteers, and
- regulatory and licensing bodies.

Further information in relation to the Code, and other matters relating to registered persons and others having an involvement with Disclosure information, is contained in an Explanatory Guide.

Purpose of the Code

The Code of Practice is intended to ensure - and to provide assurance to those applying for Standard and Enhanced Disclosures - that the information released will be used fairly.

The Code also seeks to ensure that sensitive personal information is handled and stored appropriately and is kept for only as long as necessary. Guidance to employers on other matters will be issued separately. The obligations of the code are as follows.

1. Fair use of Disclosure information

Recipients of Disclosure information shall:

- observe guidance issued or supported by the Criminal Records Bureau ("the Bureau") on the use of Disclosure information - and, in particular, recipients of Disclosure information shall not unfairly discriminate against the subject of Disclosure information on the basis of conviction or other details revealed.

In the interest of the proper use of Disclosure information and for the reassurance of persons who are the subject of Disclosure information, registered persons shall

- have a written policy on the recruitment of ex-offenders, so that a copy can be given to all applicants for positions where a Disclosure will be requested.
- ensure that a body or individual at whose request applications for Disclosures are countersigned has such a written policy and, if necessary, provide a model for that body or individual to use.

In order that persons who are, or who may be, the subject of Disclosure information are made aware of the use of such information, and be reassured Employers shall

- ensure that application forms for positions where Disclosures will be requested contain a statement that a Disclosure will be requested in the event of a successful application, so that applicants are aware of the situation;
- include in application forms or accompanying material a statement to the effect that a criminal record will not necessarily be a bar to obtaining a position, in order to reassure applicants that Disclosure information will not be used unfairly;
- discuss any matters revealed in Disclosure information with the person seeking the position before withdrawing an offer of employment.

- make every subject of a Disclosure aware of the existence of this Code of Practice, and make a copy available on request; and
- in order to assist staff to make appropriate use of Disclosure information in reaching decisions, make available guidance in relation to the employment and fair treatment of ex-offenders and to the Rehabilitation of Offenders Act 1974.

2. Handling of Disclosure information

Recipients of Disclosure information

- must ensure that Disclosure information is not passed to persons not authorised to receive it under section 124 of the Act. Under section 124, unauthorised disclosure is an offence;
- must ensure that Disclosures and the information they contain are available only to those who need to have access in the course of their duties;
- must securely store Disclosures and the information that they contain;
- should retain neither Disclosures nor a record of Disclosure information contained within them for longer than is required for the particular purpose. In general, this should be no later than six months after the date on which recruitment or other relevant decisions have been taken, or after the date on which any dispute about the accuracy of the Disclosure information has been resolved. This period should be exceeded only in very exceptional circumstances which justify retention for a longer period.

Registered persons shall

- have a written security policy covering the correct handling and safe-keeping of Disclosure information; and
- ensure that a body or individual at whose request applications for Disclosures are countersigned has such a written policy, and, if necessary, provide a model for that body or individual to adopt.

3. Assurance

Registered persons shall:

- cooperate with requests from the Bureau to undertake assurance checks as to the proper use and safekeeping of Disclosure information.
- report to the Bureau any suspected malpractice in relation to this Code of Practice or any suspected offences in relation to the misuse of Disclosures.

4. Umbrella Bodies

- (a) An Umbrella Body is one which has registered with the Bureau on the basis that it will countersign applications on behalf of others who are not registered.
- (b) Umbrella Bodies must satisfy themselves that those on whose behalf they intend to countersign applications are likely to ask exempted questions under the Exceptions Order to the Rehabilitation of Offenders Act 1974.
- (c) Umbrella Bodies must take reasonable steps to ensure that those to whom they pass Disclosure information observe the Code of Practice.

5. Failure to comply with the Code of Practice

The Bureau is empowered to refuse to issue a Disclosure if it believes that

a registered person, or someone on whose behalf a registered person has acted has failed to comply with the Code of Practice.

Appendix 2- Rehabilitation of Offenders Act
- guidance on spent convictions sentences imposed upon Adults

TYPE OF SENTENCE IMPOSED <i>on adults aged 18 years and over at the time</i>	NUMBER OF YEARS from date of conviction BEFORE CONVICTION BECOMES 'SPENT'
Imprisonment or detention in a young offender institution (previously known as youth custody) between 6 months and 2 and a half years	10 years
Imprisonment or detention in a young offender institution (previously known as youth custody) of 6 months or less	7 years
A fine or any other sentence for which a different rehabilitation period is not provided (eg: a compensation or community service order, or a probation order received on or after 3 February 1995)	5 years
An absolute discharge	6 months

Except an absolute discharge, all of the periods above are **halved** if the person convicted was **under 18** at the time. If you were under 18 and received a probation order on or after 3 February 1995, the rehabilitation period is 2 and a half years or until the order expires - whichever is longer.

Sentences on Young People

In the past there were sentences that could be imposed **only on young people**. The rehabilitation periods for sentences like this are as follows.

TYPE OF SENTENCE IMPOSED <i>on young people aged under 18 years at the time</i>	NUMBER OF YEARS from date of conviction BEFORE CONVICTION BECOMES 'SPENT'
Borstal	7 years
Detention Centre	3 years
An order for custody in a Remand Home or an Approved School order	1 year after the order expires

Sentences with variable rehabilitation periods

TYPE OF SENTENCE IMPOSED <i>on young people aged under 18 years at the time</i>	NUMBER OF YEARS from date of conviction BEFORE CONVICTION BECOMES 'SPENT'
A probation order received before 3 February 1995, a conditional discharge or a bind over	1 year, or until the order expires (whichever is longer)
A care order or supervision order	1 year, or until the order expires (whichever is longer)

An Attendance Centre order	1 year after the order expires
A Hospital order (with or without a restriction order)	5 years, or 2½ after the order expires (whichever is longer)

In Scotland, supervision requirements made by Children's Hearings have the same rehabilitation periods as care or supervision orders.

People in the Armed Services

Rehabilitation periods for imprisonment in the services are the same as in civilian life. For specific service offences, the periods are as follows:

TYPE OF SENTENCE IMPOSED <i>on men or women in the armed services</i>	NUMBER OF YEARS from date of conviction BEFORE CONVICTION BECOMES 'SPENT'
A sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service	10 years
A sentence of dismissal from Her Majesty's service	7 years
A custodial order under the relevant Schedules and sections of the Army, Air Force and Naval Discipline Acts - where the maximum period of detention specified in the order is more than 6 months	7 years
A sentence of detention in respect of a conviction in service disciplinary proceedings	5 years
A custodial order under the relevant Schedules and sections of the Army, Air Force and Naval Discipline Acts - where the maximum period of detention specified in the order is 6 months or less	3 years

These periods are **halved** if the offender was **under 18** at the time.

What about further convictions, after the original offence?

It depends. Later convictions only affect the rehabilitation periods of earlier convictions if they are imposed before the first conviction is completely 'spent'. If it is one of the less serious offences, which can be tried only in a magistrates' court (some more serious offences can be tried both by a Crown Court and by magistrates) the first conviction becomes spent at the time originally fixed. The rehabilitation period for the second offence will then run for its normal length. However, if the later conviction is for an offence which could be tried in a Crown Court (for example, stealing) then neither conviction will become spent until the rehabilitation periods for both offences are over. If, however, the second conviction is so serious that it incurs a prison sentence of more than 2 and a half years, then neither the second nor the first conviction will ever become spent.

Appendix 3- People Banned from Working with Children. The term working with children covers the regulated positions mentioned elsewhere in this guide.

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. Those are:

1. People on DfES List 99
2. People on the DoH list
3. People on the national assembly of Wales List
4. People aged 18 or over convicted of certain specified offences against those aged 18 or under (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 four) offences are:

- Murder and manslaughter
- Rape or burglary with intent to commit rape
- Grievous bodily harm
- Cruelty to children
- Kidnapping, false imprisonment and abduction
- Cruelty to children
- Indecent assault on a man or a woman
- Sexual intercourse with a child under 13
- Intercourse with a girl aged between 13 and 16.
- Buggery with a child under 16
- Indecency between men
- Abuse of trust
- Incest and related offences
- Assault with intent to commit buggery
- Indecency with children under the age of 14
- Offences relating to or encouraging child prostitution
- Offences relating to child pornography

Rossendale Borough Council

Criminal Records Bureau

Model Disclosure Information Investigation Form

Members' Name: _____

Regulated Position: _____

Date of Birth: _____

Date of Disclosure Receipt: _____

A Disclosure was received from the CRB containing information that needs to be discussed with the Member before taking a decision as to whether or not to confirm their regulated position.

Please indicate by placing a tick in the box which statement applies.

Either

"The information contained within the Disclosure has been discussed with the member and a decision made to confirm the Member be allowed to hold a regulated position."

Or

"The information contained within the Disclosure has been discussed with the Member and a decision made not to confirm their appointment to the above post."

Further information about the decision is available from: -

Notes of the Disclosure Investigation Meeting have been retained by:

Signed: _____ Date: _____