

Finance and Resources Committee 19 June 2008

## Criminal Records Bureau (CRB) Disclosures – Fitness to Practise Department

### Executive summary and recommendations

#### **Introduction**

Criminal records checks via CRB disclosures are currently conducted on employees whose duties may bring them into contact with vulnerable adults in accordance with provisions of the Police Act 1997. These checks therefore apply to a limited number of HPC employees (the Fitness to Practise Department and the Chief Executive).

The current practice requires those candidates who have been invited to interview for a Fitness to Practise role to complete and return a self-declaration form with their job application. These are returned in a sealed envelope which is not opened by the HR department. The self-declaration forms of the unsuccessful after interview candidates are securely and confidentially disposed of and the successful candidate's self-declaration form is kept on a secure file while a CRB Disclosure is requested.

As the HPC carries out less than 100 checks per year, we cannot register directly with the CRB and are required to use the services of an umbrella body. The HPC uses the recruitment agency Josephine Sammons for this service and a representative attends the HPC to collect the appropriate documentation from the employees concerned and to then request the disclosures from the CRB.

It usually takes between three to six weeks to receive the disclosure after the documentation has been collected by Josephine Sammons. The umbrella body has however had occasions when it takes longer than this if delays are experienced in the final stage of the process when the documents are sent to the Police.

No employees with checks undertaken have ever had a criminal record.

The CRB cannot currently access overseas criminal records or other relevant information as part of its Disclosure service. The CRB can provide contact details for government agencies of 22 different countries but organisations are required to make contact directly with the country concerned and the type and

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2008-05-14	a	HRD	AOD	CRB Checks Paper F&R June 08	Final	Internal
					DD: None	RD: None

standard of check available varies between countries. The HPC does not currently carry out any additional checks on overseas employees.

The Committee discussed on 24 April 2008 whether it would be possible for new employees not to work with or have contact with vulnerable adults when they commence employment, until their CRB check has been received. The current practices undertaken within the Fitness to Practise Department are in accordance with the two safeguards suggested by Jonathan Bracken (see Appendix 1).

At the last meeting the Committee considered whether the commencement of employment should be delayed until a clear CRB check had been received by the HPC. The implications of this are loss of candidates due to the time it would take (particularly in instances where it does take more than six weeks for the clearance to come back to the HPC). A second implication is increased expenditure and management time to train temporary workers to fill the gap between an employee resigning and a new employee with a clear CRB taking up the post. Further, these temporary workers would only be able to parts of the post, not having a CRB check themselves.

### **Decision**

The Council/Committee is asked to:

- Discuss the current policy and practice of conducting checks at the HPC; and;
- Approve either continuation of the existing process whereby checks are conducted after the employee commences employment, or agree a new process where checks are conducted prior to the employee commencing employment with the financial/resourcing implications outlined above.

### **Background information**

At the Finance and Resources Committee Meeting of 24 April 2008, the Committee noted that new employees in the Fitness to Practise Department were subject to checks with the Criminal Records Bureau (CRB), as their duties may bring them into contact with vulnerable adults (witnesses or registrants). The Committee noted the current practice, on the basis of legal advice received, whereby employees complete a self-declaration form as an interim check pending the outcome of a CRB disclosure. The Committee noted that it could take about six weeks or more to receive the result of a check and also noted that if employment was delayed for six weeks or more, candidates could be lost. The Committee agreed that it should receive a copy of the legal advice at its next meeting.

## **Resource implications**

Should the Committee change the existing practice, this will have resourcing implications as gaps between employees leaving and new employees starting would increase, resulting in operational difficulties in maintaining current workloads. Output levels would decrease proportionately to the length of the gap.

## **Financial implications**

Should the Committee change the existing practice, this will have financial implications as gaps between employees leaving and new employees starting would result in an increase of agency workers.

## **Appendices**

Appendix 1 – Legal Advice concerning CRB Checks

Appendix 2 – Policy on Recruitment of Ex-Offenders

Appendix 3 - Policy on Criminal Record Checks and Disclosure

## **Date of paper**

13 May 2008

## **Appendix 1 – Legal Advice from Jonathan Bracken (Memorandum)**

To: Kelly Johnson  
From: Jonathan Bracken  
Date: 29<sup>th</sup> May 2008  
Re: **CRB Checks**

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Kelly,

You asked me to confirm in writing the advice which I gave orally some time ago concerning the practice of new recruits to FTP being permitted to work in the department before their CRB check had been satisfactorily concluded. I understand that the practice is adopted because of the sometimes lengthy delays which occur between requesting and receiving from the Criminal Records Bureau.

CRB checks on the FTP team are undertaken because of the prospect that members of the FTP team will be working with children or vulnerable adults. In reality, the risk posed is relatively low and the need for checks is largely driven by the fact that, in law, the definition of “vulnerable adult” is quite broad and encompasses many adults who are simply receiving treatment for a physical or mental illness. The nature of many of the complaints received by HPC means that complainants, victims and, in some instances, registrants will often be classified as vulnerable adults for this purpose even though they would not be regarded as “vulnerable” in the ordinary sense of that word.

In broad terms, the FTP team’s access to children and vulnerable adults arises in two ways:

- direct contact in the course of conducting investigations or at hearings – for example, interviewing complainants, taking witness statements, providing witness/victim support at hearings etc.; or
- indirect access to information from files which could be used for improper purpose, such as “grooming” or taking advantage of truly vulnerable individuals.

It will only be appropriate to allow a new member of the FTP team to commence work prior to the receipt by HPC of a satisfactory CRB check if some basic safeguards are put in place to ensure that the person concerned does not pose an unacceptable risk to children or vulnerable adults.

Those safeguards should, as a minimum:

- limit the person's contact with and access to children or vulnerable adults. In particular, the person should be prohibited from making sole direct contact with children or vulnerable adults and, for example, should not be permitted to undertake interviews, provide victim/witness support or act as hearing officer in a case involving a child or vulnerable adult without another member of the FTP team being present and aware of the limitations on the role that their colleague may take;
- control the person's access to information about children or vulnerable adults. The person should only be given limited access to files, required to undertake discrete and appropriate tasks and be closely supervised.

As you know, a substantial volume of FTP casework involves cases where there is no prospect of contact with children or vulnerable adults, such as misconduct or conviction cases reported by an employer or the police and where no children or vulnerable adults are involved. Consequently, on a practical level, it should be possible to structure an individual's workload to prevent inappropriate contact until such time as their CRB check is satisfactorily resolved.

Although it is not part of the advice I was asked to give, in such circumstances, employment offers should always be conditional upon receipt by HPC of a satisfactory CRB check and the person's probationary period should not be permitted to end until after that CRB check has been received.

**JB**

Kelly Johnson  
Director of Fitness to Practise  
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Your Ref  
  
Our Ref  
JKB/Y030370  
  
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Dear Kelly

## Criminal Record Bureau (CRB) Checks

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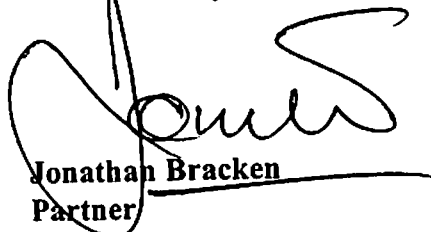
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As you know, a substantial volume of FTP casework involves cases where there is no prospect of contact with children or vulnerable adults, such as misconduct or conviction cases reported by an employer or the police and where no children or vulnerable adults are involved. Consequently, on a practical level, it should be possible to structure an individual's workload to prevent inappropriate contact until such time as their CRB check is satisfactorily resolved.

Although it is not part of the advice I was asked to give, in such circumstances, employment offers should always be conditional upon receipt by HPC of a satisfactory CRB check and the person's probationary period should not be permitted to end until after that CRB check has been received.

Yours sincerely,



**Jonathan Bracken**  
Partner

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## Appendix 2: Policy on Recruitment of Ex-Offenders (Section 6d of the Employee Handbook)

### 1. Policy

- 1.2 As an organisation using the Criminal Records Bureau (CRB) Disclosure service to assess applicants' suitability for positions of trust, the HPC complies fully with the CRB Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of a conviction or other information revealed.
- 1.3 The HPC is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
- 1.4 We have a written policy on the recruitment of ex-offenders, which is made available to all Disclosure applicants at the outset of the recruitment process.
- 1.5 We actively promote 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 knowledge.
- 1.6 A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms, job adverts and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
- 1.7 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 HPC and we guarantee that this information will only be seen by those who need to see it as part of the recruitment process.
- 1.8 Unless the nature of the position allows the HPC to ask questions about your entire criminal record, we only ask about "unspent" convictions as defined in the Rehabilitation of Offenders Act 1974.
- 1.9 We ensure that all those in the HPC who are involved in the recruitment process can identify and assess the relevance and circumstances of offences.



- 1.10 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.
- 1.11 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.
- 1.12 We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

Having a criminal record will not necessarily bar someone from working with us. This will depend on the nature of the position and the circumstances and background of the offences.

## Appendix 3 - Policy on Criminal Record Checks and Disclosure (Section 6e of the Employee Handbook)

### 1. Policy

- 1.1 If you accept employment with the Health Professions Council (HPC) your duties may bring into contact with children or “vulnerable adults”. The HPC therefore relies, as part of the recruitment process, on self-declarations and on criminal record checks to ensure employees are suitable to take up positions that require contact with children or vulnerable adults. This is because there are particular and significant risks involved for the HPC, its clients, customers or others, and there is no less intrusive and reasonably practicable alternative to confirming suitability for employment.
- 1.2 Conducting criminal record checks enables the HPC to check the background of new employees to ensure they do not have a history that would make them unsuitable to work with children or vulnerable adults.

### 2. Criminal Records Bureau

- 2.1 The CRB aims to help employers make safer recruitment decisions by identifying applicants who may be unsuitable for certain work, especially work which involves children or vulnerable adults. This is achieved through a service called “Disclosure”.
- 2.2 A “Disclosure” is a document containing certain information. As well as providing details of a person’s criminal record, a Disclosure will include convictions, cautions, reprimands and warnings that are held on the Police National Computer (PNC). Depending upon the level of disclosure, it may also contain certain information held by local police forces, the Department of Health and the Department for Education and Skills.
- 2.3 The CRB issues three types of Disclosure, each representing a different level of check. The level of check is determined by the duties of the particular position or job involved. The CRB will advise what type of Disclosure is appropriate in individual cases. However, in general, work with children or vulnerable adults will qualify for the most detailed checks.

2.4 In respect of the type of work you may undertake at the HPC two types of Disclosure will be relevant:

2.4.1 **Standard Disclosures** show spent and unspent convictions and cautions.

2.4.2 **Enhanced Disclosures** show spent and unspent convictions and cautions. The police may also provide details of acquittals or other non-conviction information held on local police records, which are relevant to the job or voluntary position being sought.

2.5 The cost of Disclosure will be paid for by the HPC.

2.6 Should you require information about the CRB before submitting your application to the HPC, please access the CRB internet site at [www.crb.gov.uk](http://www.crb.gov.uk). You may also want to consider the CRB's guide entitled "Applicant's Guide to the CRB's Disclosure Service (DIP 017)".

2.7 If you have concerns about what may be revealed by a CRB check, you should contact Nacro (020 7840 6464), a crime reduction charity working with ex-offenders, which will be able to assist you.

### 3. **Relevance of Criminal Convictions**

3.1 The HPC will judge an applicant's suitability for the position in the light of the results of all the relevant pre-appointment checks undertaken as part of the recruitment process. If you have a criminal record you will not automatically be deemed unsuitable for work with children or vulnerable adults. The HPC will make a judgment about your suitability, taking into account only those offences that may be relevant to the particular job in question. In deciding the relevance of convictions a number of points will be considered:

3.1.1 The nature of the offence. In general, convictions for sexual, violent or drug offences will be particularly strong contra-indications for work with children

3.1.2 The nature of the appointment. Often the nature of the appointment will help to assess the relevance of the conviction. For example, serious sexual, violent, drug or drink offences would give rise to particular concern where a position involves working with children or vulnerable adults. For example, driving or drink offences would be relevant in situations involving transport of children.

3.1.3 The age of the offence. Offences that took place many years ago may 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, for instance, an isolated case of dishonesty committed when the person was young

- 3.2 If you object to the HPC seeking Disclosure from the CRB, the HPC is within its rights not to progress your job application.
- 3.3 If you already have a Disclosure and would like to use it for this position, the HPC will take into account the length of time that has elapsed since the Disclosure was issued, the level of Disclosure, the nature of the position for which the Disclosure was issued, and the nature of the position for which you have applied.

#### **4. Recruitment Process**

- 4.1 The HPC will not seek to obtain information about criminal convictions from sources other than from you or the CRB.

##### **4.2 Invite for Interview**

If you are short-listed and invited for interview at the HPC, you will be asked to complete a declaration form relating to criminal convictions. Applicants do not have to declare spent convictions.

##### **4.3 Successful Applicant**

If your application for the vacancy is successful and you accept a position with the HPC, we will contact the Criminal Records Bureau (CRB) to establish whether you are suitable to perform duties that bring you into contact with children or vulnerable adults. The information received from the CRB will be used to assess your suitability for employment insofar as it is relevant, and you will be considered on your merit and ability. We will not discriminate against you unfairly in respect of irrelevant criminal convictions.

- 4.4 Although you may be able to start work for the HPC before your CRB Disclosure is produced, you will not be able to undertake work with children or vulnerable adults until the HPC has received confirmation of criminal convictions. However, if the information received from the CRB indicates that you are not suitable to have contact with children or vulnerable adults, the job offer is likely to be withdrawn, or, if you have started work with the HPC before the CRB information is received, your employment is likely to be terminated.

#### **5. Recruitment Information & Confidentiality**

- 5.1 The recruitment and selection process necessarily involves the HPC collecting and using information about applicants. Those who are offered employment with the HPC and who may, during their day to day duties, come into contact with children or vulnerable adults will be subject to verification of details supplied by them during the recruitment process to ensure they are accurate and complete, including any relevant criminal convictions.

- 5.2 The HPC recognises that much of this information is personal in nature and can affect a person's privacy. This is particularly so in respect of information relating to criminal convictions. However, employing workers with certain responsibilities means that special checks are justified, such as criminal record checks. Information received from the CRB will be kept secure.
- 5.3 The collection, use and retention of personal data obtained as part of the recruitment process will be carefully monitored to ensure compliance with the Data Protection Act 1998. Any information you provide and which relates to criminal convictions, will be classed as sensitive personal data. The HPC will also abide by the CRB'S Disclosure Code of Practice in obtaining and handling disclosure information.
- 5.4 Only the people directly responsible for recruitment, whether or not in the Human Resources department, will be informed of an applicant's criminal record. We will not disclose to any other employers or potential employers information relating to criminal convictions that was provided by you by way of the declaration or that was obtained through a Disclosure from the CRB.
- 5.5 In respect of successful applicants, we will delete information about criminal convictions collected in the course of the recruitment process once it has been verified through a CRB Disclosure unless, in exceptional circumstances, the information is clearly relevant to the ongoing employment relationship. As a general rule, we will only record whether or not a check yielded a satisfactory or unsatisfactory result.

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

- 6.1 The Rehabilitation of Offenders Act 1974 provides that if a convicted person successfully completes a specified period, which varies with the nature of the sentence imposed and is termed the "rehabilitation period", such prior convictions are 'spent' (or ignored) and, generally, are not to be taken into consideration when considering employing that person or that person's continued employment. This means that after the rehabilitation period, with certain exceptions, a person with a conviction is not normally obliged to mention it when applying for a job.
- 6.2 However, certain categories of employment and professions are excluded from the Act. In addition, certain sentences are excluded from rehabilitation under the Act. These excluded sentences, and a table giving the relevant rehabilitation periods, are contained in section 5 of the Act.

Sentence	Rehabilitation Period (Aged under 18 when	Rehabilitation Period
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	<b>convicted)</b>	<b>(Aged over 18 when convicted)</b>
Prison sentence of 6 months or less ( <i>including suspended sentences, youth custody, and detention in young offender institutions</i> ).	3½ years	7 years
Prison sentence of more than 6 months to 2½ years ( <i>including suspended sentences, youth custody, and detention in young offender institutions</i> )	5 years`	10 years
Prison sentence of more than 2½ years	Never become “spent”	Never become “spent”
Detention Centre	3 years	3 years
Fines, compensation, probation (community rehabilitation orders), community service (community punishment orders), combination (community punishment and rehabilitation orders), action plan, curfew, drug treatment and testing, and reparation orders	2½ years	5 years
Absolute discharge	6 months	6 months

## 7. Concealing Offences

7.1 If you secure employment with the HPC only by concealing a past criminal conviction, for example by failing to disclose it on request by way of self-declaration, and if the Rehabilitation of Offenders Act 1974 is inapplicable, you will be dismissed for false concealment on the basis the information was deliberately withheld.

## 8. Disclosure Information

### 8.1 General principles

8.1.1 As an organisation using the Criminal Records Bureau (CRB) Disclosure service to help assess the suitability of applicants for positions of trust, HPC complies fully with the CRB Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under

the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters, which is available to those who wish to see it on request.

## 8.2 Storage and access

8.2.1 Disclosure information will be kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

## 8.3 Handling

8.3.1 In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.

## 8.4 Usage

8.4.1 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.

## 8.5 Retention

8.5.1 Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six months, we will consult the CRB about this and will give full consideration to the data protection and human rights of the individual before doing so. Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

## 8.6 Disposal

8.6.1 Once the retention period has elapsed, we will ensure that any Disclosure information is immediately destroyed by secure means (i.e. by shredding, pulping or burning). While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (i.e. 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.

8.6.2 However, notwithstanding the above, we may 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.

## 9. Definition of Vulnerable Adults

9.1 Vulnerable Adults are those who are aged 18 or over who have:

- a) A learning or physical disability,
- b) A dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions,
  - i. severe impairment in the ability to communicate with others, or
  - ii. impairment in a person's ability to protect him or herself from assault, abuse or neglect.
- c) A physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- d) A reduction in physical or mental capacity.