



DCC SAFEGUARDING – MANAGING INFORMATION DISCLOSED DURING EMPLOYMENT

**This applies to all employees in posts which are subject to a
Criminal Records Bureau check**

For Schools:

This Policy was adopted by the Full Governing Body of

Ottery St Mary Primary School on

8th March 2016

Policy Date: 31st July 2010

Human Resources
Policy & Strategy Team
Personnel & Performance Directorate

If you require further help in the interpretation of this policy you can contact the HR Helpdesk at hrsshelp@devon.gov.uk or Schools Personnel Helpdesk at hrealaid@devon.gov.uk.

If this document has been printed please note that it may not be the most up-to-date version.

For current guidance please refer for Corporate Users to – [The Source](#); For Schools – [Schools Personnel Policies](#) (<http://staff.devon.gov.uk/schoolspersonnel.htm>). Version date: 31.07.2010

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1. POLICY

- 1.1 This Policy only applies to those employees who are in posts within the organisation which are subject to a Criminal Records Bureau (CRB) disclosure, including those within schools where this Policy has been adopted (which is recommended). These employees will typically be in posts that have regular contact with children and/or vulnerable adults, access to certain data in relation to children and vulnerable adults or where their post is based in a regulated establishment, such as a school or children's home. For further clarification on whether a post applies contact the Records Disclosure Service on 01392 383266.
- 1.2 Since 1st January 2009 it has been a condition of employment for all employees in posts which are subject to a CRB disclosure to disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, reprimand, bind-over or final warning received during the course of their employment. This may be either since the employee's last CRB disclosure, or where a CRB disclosure has never been carried out, all criminal information must be disclosed.
- 1.3 Following the launch of the first phase of the new Vetting & Barring Scheme on the 12th October 2009, key safeguards and legal duties were introduced including a legal duty to refer information to the ISA on individuals who pose a risk to children or vulnerable adults. A new body, the Independent Safeguarding Authority (ISA) was set up to make decisions as to who should be barred from working with vulnerable groups. Anyone who is barred under the new scheme from working in regulated activity with children, vulnerable adults or both will be committing an offence if they work in such regulated activity. See [ISA Referral Policy & Procedure](#) for further information.
- 1.4 Failure to disclose information, as per para.1.2 above, may result in disciplinary action being taken; as may the nature of any criminal offence (depending upon its impact on the employment) and this may result in dismissal from the Authority.

2. PRINCIPLES

- 2.1 The organisation, through its managers and staff, has a duty of care to protect the well-being of the people of Devon and, in particular, those groups or individuals in its care who are considered to be especially vulnerable or at risk, such as children, the elderly and those with disabilities.
- 2.2 The organisation will take every step to ensure that those employees who work with or otherwise come into contact with these vulnerable groups are suitable to do so.
- 2.3 If a person seeks to work in a position that involves working with children and/or vulnerable adults they are required to reveal all criminal history, including spent convictions and will be subject to a CRB check. See definitions at Appendix 5.

- 2.4 The Records Disclosure Service (RDS) processes CRB checks for staff and volunteers within the organisation working with children and vulnerable adults. The Records Disclosure Service enables the organisation to make safer recruitment decisions by checking the background of applicants to ensure they do not have a history that would make them unsuitable for the position for which they have applied and also ensuring that staff working with vulnerable people are not on one of the ISA barred lists.
- 2.5 Possessing a criminal record is not necessarily a bar to working for the organisation, but it may preclude working in certain positions. This will depend on the nature of the position and the circumstances and background to the offences committed. However, it is a criminal offence for an individual to work or seek to work in regulated activity if they are on one of the ISA barred lists. For a definition of regulated activity see Appendix 3.
- 2.6 The organisation will comply with the CRB Code of Practice and undertakes not to discriminate against any employee on the basis of a conviction or any other disclosed information.
- 2.7 All sensitive information disclosed will be managed via Human Resources (HR) and RDS which operates within the strict CRB Code of Practice. It also complies fully with its obligations under the Rehabilitation of Offenders Act, Data Protection Act and other relevant legislation pertaining with the safe handling, use, storage, retention and disposal of disclosure information. If the employee works within a school, information disclosed will be managed by the Headteacher or in the case of a disclosure by a Headteacher then this would be managed by the Chair of Governors.
- 2.8 If an employee asks to meet with their Line Manager, Headteacher or in the case of a Headteacher the Chair of Governors (CoG) to make a disclosure, a request to be accompanied by a Trade Union / Professional Association Representative or fellow work colleague should not be unreasonably refused.

3. PROCESS

3.1 Disclosure of conviction, caution, reprimand, bind-over or pending criminal proceedings during employment.

- 3.1.1 There is an established process in operation across all Directorates and within Schools for managing information disclosed by employees relating to convictions, cautions, reprimands, a bind-over and any pending criminal proceeding. A flowchart at Appendix 1 illustrates this process.
- 3.1.2 Appendix 2 sets out how the line manager/Headteacher/CoG will assess information that is disclosed, including assessing any risk(s) and verifying information by requesting a new CRB disclosure.

- 3.1.3 Where it is deemed appropriate to take formal action following the disclosure this will be managed in line with the [Corporate Conduct Policy](#) or the [Schools Conduct Policy](#) .

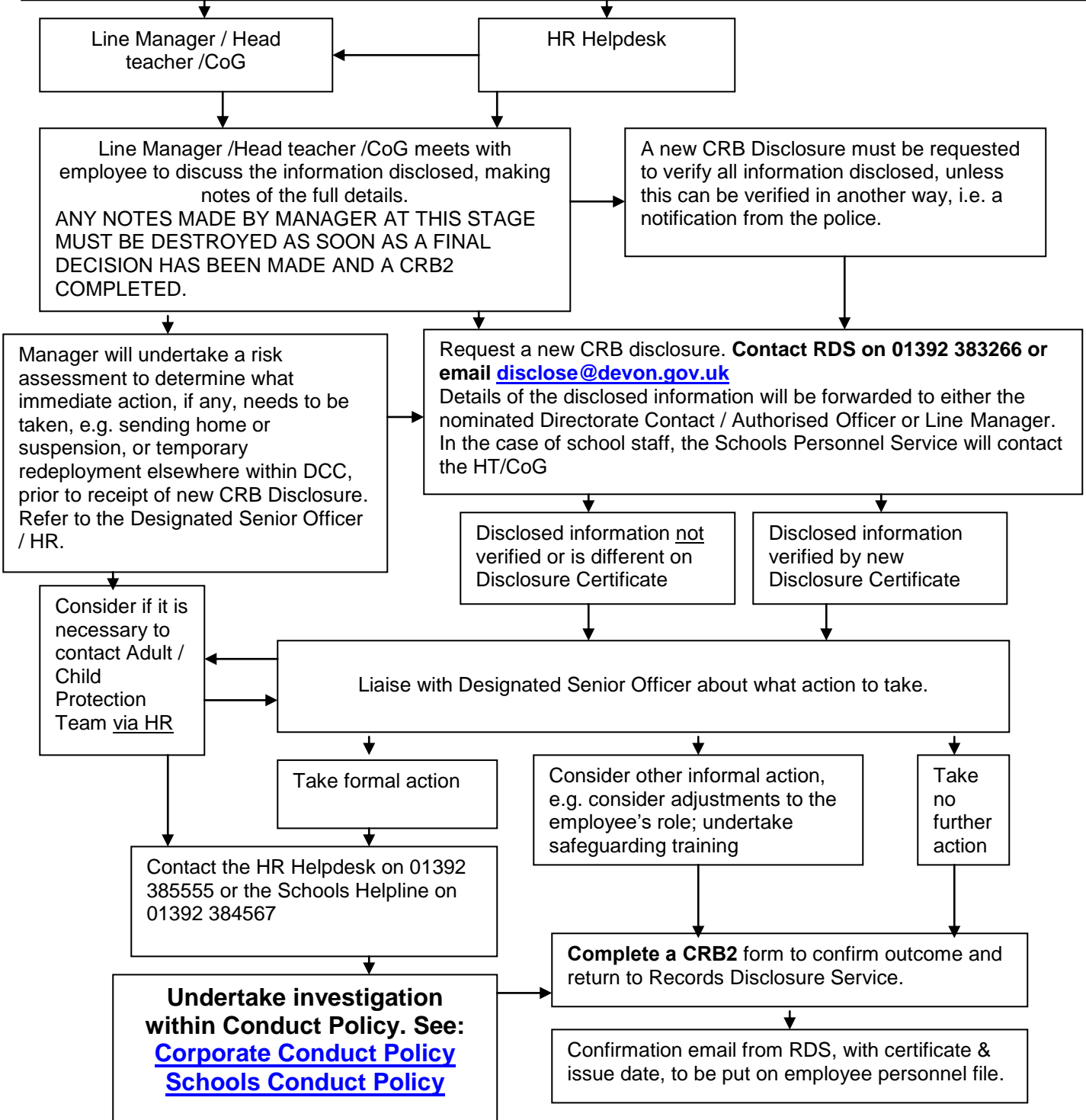
4.0 EQUALITY

- 4.1 Devon County Council, including all schools, is committed to equality in its 'Managing Information Disclosed during Employment' Policy.
- 4.2 No employee will be unlawfully disadvantaged on the grounds of sex/gender, gender re-assignment, race (nationality, national and ethnic origin or skin colour), sexual orientation, religion or belief, age or disability within the operation of this policy.

CRB DISCLOSURE INFORMATION – PROCESS FLOWCHART

APPENDIX 1

Employee informs Line Manager / HR Helpdesk or for school staff inform the HT or in the case of the HT inform CoG of any pending criminal proceedings for which they have been formally charged, any conviction, caution, reprimand, bind-over or formal warning received during their employment either:
 1) Since the employees last CRB disclosure, or;
 2) Where a CRB disclosure has never been carried out. all criminal information must be disclosed.



1.0 The Line Manager / Head Teacher / CoG must ensure that any discussion with an employee who discloses information must be carried out in complete confidence and no information should be shared with any unauthorised person.

2.0 A new CRB Disclosure must be requested to verify the information disclosed by the employee, unless the manager is able to verify it in some other way, perhaps by way of a notification from the police.

3.0 The employee must be allowed to give a full account of the information disclosed and any extenuating circumstances. Any separate notes taken detailing the disclosed information MUST be destroyed, apart from that contained in the CRB2, once a decision has been made following completion of the CRB2 form. Retention of criminal offences information is against the CRB Code of Practice.

4.0 Having a criminal record is not necessarily a bar to working for the organisation, so it is vital to gather as much information from the employee as is possible, so that a balanced decision can be made. However, it must be remembered that it could be illegal to employ a person with a certain conviction in a specific job. The Protection of Children Act / Criminal Justice and Court Services Act list those convictions that prevent a person working with children. Contact HR or RDS for further information.

5.0 Assessing the risk of employing people following disclosed information needs an objective, common sense approach which takes account of matters such as legislative requirements, job requirements, safeguarding against offending at work, assessing the nature and circumstances of the offence and listening to the explanations of the employee.

6.0 Once the risk criteria have been identified for the position, the relevance of all disclosed information can be assessed in the light of these. It is important to keep an open mind at all stages of this process to ensure that the employee is treated fairly and to remember that many people with criminal records are safely employed in positions of trust. See the Managers Toolkit Risk Assessment Table which can be accessed <http://staff.devon.gov.uk/ppriskassmanagerstoolkit.doc>

Additional advice and support can be obtained by contacting the HR Helpdesk on 01392 385555 or the Schools Personnel Helpline on 01392 384567.

7.0 Consideration will need to be given whether any immediate action is necessary to reduce the risks, prior to receiving the new CRB certificate. This might include moving the employee to work elsewhere temporarily, putting in closer supervision on a temporary basis or sending the individual home. In the most serious situations the manager might consider instigating the formal Conduct Policy and formally suspending

the employee from work. Advice must be sought from HR and the Designated Senior Officer in these circumstances.

8.0 Failure by an employee to disclose all relevant information may result in disciplinary action being taken, as may the nature of the offence (depending upon its impact on their work) and this may result in dismissal from the County Council's employment.

See the [Corporate Conduct Policy](#) or [Schools Conduct Policy](#).

9.0 Each Directorate has Designated Senior Officers who are responsible for making employment decisions in situations where information is disclosed that may impact upon the employee's ability to undertake their job. When the new CRB certificate is received by RDS, details of the disclosed information will be forwarded to either the nominated Directorate Contact / Authorised Officer or Line Manager who will liaise with the Designated Senior Officer to sign off the decision and action taken or in the case of school staff to the Schools Personnel Service who will contact the Head teacher/Chair of Governors. A CRB2 form will need to be completed and returned to RDS to confirm the outcome.

1.0 CONVICTION

A person found guilty of an illegal act / offence through Court prosecution. They may have pleaded Guilty or Not Guilty.

2.0 CAUTION

Imposed by the Police on an adult as an alternative to prosecution for an offence. The offender **MUST** have admitted guilt before the caution can be imposed. Used for less serious offences or where culpability is lower.

There are two types of cautions; i) simple caution – previously known as a formal caution – is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from court and to reduce the likelihood of them offending again, ii) conditional caution – introduced by the Criminal Justice Act 2003 – differs from a simple caution in that the offender must comply with certain conditions to receive the caution and avoid prosecution for the offence they have committed.

3.0 REPRIMAND

Imposed on a young person, 10 – 17 years, as an alternative to prosecution for an offence. The offender **MUST** have admitted guilt before the reprimand can be imposed. Used for less serious offences or where culpability is lower.

4.0 FINAL WARNING

Imposed on a young person 10 – 17 years who will have committed and admitted to an offence. It will usually be given to a young person who has previously received a Police Reprimand. Slightly more serious than a reprimand, but not serious enough to warrant prosecution.

Cautions, Reprimands and Final Warnings are not convictions but the offender would have to admit to the offence to be issued with the sanction. They all remain on the person's criminal record and would be cited in future criminal proceedings in the same way as convictions.

5.0 BIND-OVER

A bind-over order is not a conviction or a penalty. It is an undertaking as to future conduct. Its purpose is to prevent offences being committed in the future.

6.0 UNSPENT CONVICTION

A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed.

7.0 SPENT CONVICTION

The Rehabilitation of Offenders Act (ROA) 1974 sets out to make life easier for many people who have been convicted of a criminal offence and who have since lived on the right side of the law. A person convicted of all but the most serious criminal offences and who receives a sentence less than 2.5 years in prison, benefits from the Act if they are not convicted again during a specified period. This is called the rehabilitation period.

In general terms, the more severe a penalty is, the longer the rehabilitation period. Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'. Once a conviction has been spent, the convicted person does not have to reveal it or admit its existence in most circumstances. However, there are some exceptions to the general principle that spent convictions do not have to be declared.

If an individual works with children and/or vulnerable adults then the provisions of the ROA regarding non-disclosure of spent convictions will NOT apply because of the work it entails, as detailed in the Exceptions Order. The individual must disclose details of ANY convictions in a court of law no matter when they occurred or what the nature of the offence was.

1. HR Helpdesk
Email: hrsshelp@devon.gov.uk
01392 385555
2. Schools Personnel Helpline
Email: hrealaid@devon.gov.uk
01392 384567
3. Records Disclosure Service(RDS)
disclose@devon.gov.uk
Telephone: 01392 383266
4. Criminal Records Bureau (CRB)
<http://www.crb.gov.uk/>
5. CRB Policy
<http://staff.devon.gov.uk/criminalrecordsbureau.htm>
6. Disqualification from Caring for Children
<http://staff.devon.gov.uk/pp/er/recruitment/disqualificationchildren.htm>
7. Recruitment Standards
<http://staff.devon.gov.uk/recruitment.htm>
8. Child Protection in Schools
<http://staff.devon.gov.uk/childprotection.htm>
9. General Teaching Council (GTC)
<http://www.gtce.org.uk/>
10. Department for Children, Schools & Families (DCSF)
<http://www.dfes.gov.uk/>
11. CYPS Directorate – Management Action –
Managing Recruitment & the Disclosure Process
<http://staff.devon.gov.uk/cypsman24.pdf>
12. Applicants Referral List - Safeguarding Vulnerable People Referral Policy &
Procedure
<http://staff.devon.gov.uk/cr/er/gap/applicantsreferrallist.htm>
13. General Social Care Council
<http://www.gsccl.org.uk/Home/>

POLICY HISTORY

Policy / Version Date	Summary of change	Contact	Implementation Date	Review Date
1.10.12008	<p>A new clause requiring all those employees in posts which are subject to a CRB Disclosure to disclose any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, reprimand, bind-over or final warning received during the course of their employment will be incorporated into the contract of employment for all existing employees with effect from 1.01.2009.</p> <p>All existing affected employees are given three months notice of this change with effect from 1.10.2008.</p> <p>From 1.10.2008 all new employees with DCC and new appointments of existing employees into posts which are subject to a CRB disclosure will be issued with a contract of employment within which this new contractual term takes immediate effect.</p>	P&S	1.10.2008	
	<p>Unison, GMB and TGWU were informed of this change 10.06.2008. Teacher Unions were informed of this at TCC 16.07.2008</p>			
6.10.2008	HR Helpdesk and Schools Personnel Helpline email details updated. Additional sentence to para.2.7 relating to those employed within schools.	P&S	6.10.2008	October 2009 -ISA Registration
12.10.2008	Process amended to take account of HT/CoG role. Para's 3.1 and 9 amended to take account of new CRB Policy.	P&S	12.10.2008	October 2009 -ISA Registration
31.07.2010	Policy re-written as CRB contractual requirement is now imbedded into practice so no longer a need to set out timescales for the introduction of this contractual term. Reference made to ISA referral policy at para. 1.3.	P&S	31.07.2010	ISA Registration