

GENERAL PURPOSES AND LICENSING COMMITTEE – 12 SEPTEMBER 2008

CRIMINAL RECORD BUREAU CHECKS - PORTABILITY REPORT

1. INTRODUCTION

- 1.1 Portability refers to the re-use of a Criminal Records Bureau (CRB) check (Disclosure), obtained for a position in one organisation and later used for similar position in another organisation. The main stakeholders in portability are the Criminal Records Bureau, Local Authorities and the applicants. However later in 2008, the recently created Independent Safeguarding Authority (ISA) will bring major changes to the vetting of job applicants working with vulnerable persons.
- 1.2 CRB disclosure is required for many employment positions in Local Authorities and elsewhere. They are used where evidence of good character is required, generally in a position of honesty and trust and/or where the position would require contact with vulnerable persons such as children, the elderly or persons with special needs.
- 1.3 CRB checks are required for many licensing applications, including personal licences under Licensing Act 2003 and driver's/operator's licences for taxis and private hire vehicles.
- 1.4 CRB checks can take a number of weeks to process from the start of the application and the cost is met by the applicant – currently £36 per check. Until checks are completed no licence is issued.
- 1.5 To speed up the process and reduce cost, some Local Authorities accept portability (with conditions) i.e. CRB checks that have been carried out by other authorities. Hampshire County Council and most Borough/District Councils in Hampshire have portability arrangements. New Forest District Council do not carry out portability checks for other authorities and Hampshire County Council have asked for this to be reviewed in relation to mainly the taxi and private hire trade.

2. CRIMINAL RECORDS BUREAU ADVICE (CRB)

- 2.1 The CRB no longer facilitates portability. Organisations that choose to accept a previously issued Disclosure do so at their own risk.
- 2.2 If an organisation requires an individual to be CRB checked and that individual states that they already have a CRB check, the organisation can:
 - Ask the individual to show their copy of the CRB check.
 - Contact the Countersignatory named on the front of the CRB check and confirm that the reference number and identity details match.
 - Ask if the Countersignatory received any additional information - the Countersignatory can only confirm or otherwise the existence of such information – but not the content of the information.
 - If there is no additional information, carry out a formal risk assessment to decide whether to accept the CRB check.
 - If there was additional information, the individual is strongly advised to ask the individual to apply for a fresh check.

2.3 Limitations

- The CRB check may not be at the level you require - there are two different levels of check: Standard & Enhanced. If an Enhanced check is needed do not accept a ported Standard check.
- The CRB check may not have included a check of List 99, Protection of Children Act List (POCA) and/or the Protection of Vulnerable Adults List Act (POVA).
- A CRB check carries no formal period of validity and the older a check the less reliable the information is, as the information it contains may not be up to date. The date of the issue (on the individual's copy) should be used as a guide as to when to request a new CRB check.
- Information revealed through a CRB check always reflects the information that was available at the time of its issue.
- You may be required by law to carry out a fresh check with List 99, POCA and/or POVA. In certain circumstances, portability cannot be used e.g. care workers need a new POVA check each time they change employment.
- An original CRB check, not a photocopy, contains a number of security features to prevent tampering or forgery.
- You need to understand the meaning of the wording that appears in the information boxes on Disclosure. 'None recorded' means no information was found, 'Not requested' means that that check was not done.
- Once a recruitment decision (or other relevant decision – e.g. for regulatory or licensing purposes) has been made, a recipient of a Disclosure must not retain it, or any associated correspondence, for longer than is necessary for the particular purpose. In general, this should be for a maximum of 6 months.

2.4 Risks

- Using a previously issued CRB check does not constitute a fresh CRB check – the person's criminal record or other relevant information may have changed since its issue.
- Registered Bodies are responsible for the accuracy of the information provided to the CRB and on which it carries out its checks. By accepting a previously issued CRB check you are accepting the risk that the previous Registered Body provided the CRB with a fully validated applicant's identity on which to carry out its checks.
- Enhanced checks may contain 'approved' non-conviction information provided by the police from their local records. In the majority of cases, the CRB will print this information on both the applicant's and Registered Body's copy in the box entitled 'Other relevant information disclosed at the Chief Police Officer(s) discretion'. However, occasionally the Chief Police Officer may, if thought necessary in the interests of the prevention or detection of crime, withhold this information from the applicant's copy. The Registered Body's copy will contain the following words 'Please refer to letter sent under separate cover', printed under the date of issue on the Disclosure. If you choose to accept the applicant's copy you will need to find out from the previous Countersignatory if such information was revealed in a separate letter.

2.5 Risk Assessment Framework

If you are considering accepting a previously issued CRB check you should carry out a full risk assessment. You may also wish to take further independent advice. Any risk assessment should take into account the following:

- Is the level of CRB check the same as the level you need?
- How old is the CRB check?
- Is the position for which the previously issued CRB check was obtained similar to the position for which you need a CRB check?
- Have all checks that you need been carried out?
- Have you validated and authenticated the person's identity to ensure that the person presenting the CRB check is the person on whom the check was done? For instance, have you seen a range of identity documents that confirm their name, address, date and place of birth?
- Is the applicant still living at the same address as the one printed on the CRB check?
- If it is an Enhanced check, have you confirmed from the previous Countersignatory if any additional information was released by way of a separate letter?
- Have you obtained the consent of the applicant to approach the other organisation?

2.6 Code of Practice

The CRB's Code of Practice sets out the circumstances when the details of a CRB check can be passed to a third party. The Code states that information revealed through a CRB check can only be passed to individuals who need to see it as part of the recruitment decision, for which the CRB check was requested. This also applies to any additional information provided by the police under cover of a separate letter. If you are contacted by another organisation about a previously issued CRB check, you can only:

- Confirm or not, whether the information provided reflects that which appears on your copy of the CRB check.
- State if the police did or did not issue additional information issued under cover of a separate letter.

3. LOCAL AUTHORITIES

- 3.1 Most authorities within Hampshire use portability within six months of the date of disclosure. For some it is a 'one way' process, i.e. they facilitate it for Hampshire County Council but do not use the same process for their own checks. Some authorities use portability as a two way process.
- 3.2 Most authorities have designed their own paperwork to facilitate the process which generally includes a consent form from the applicant and an enquiry form for the other authority.
- 3.3 Portsmouth and New Forest District Council do not enter into agreed portability arrangements with other agencies for the following reasons:
- CRB do not support the practice.
 - The disclosure is only as good as the day it is issued. An applicant could have received a conviction or caution for an offence after the date of disclosure which would bring into question the suitability of that person working with vulnerable persons.

- Disclosures must be destroyed once their purpose is over and are destroyed immediately after the local decision is made. It is questionable whether authorities that keep the disclosures for six months after this are complying with CRB guidance as the purpose of obtaining the disclosure was for the original position not for a possible portability check in the future.

4. INDEPENDENT SAFEGUARDING AUTHORITY

- 4.1 The implementation of the Independent Safeguarding Authority (ISA) scheme, under the terms of the Safeguarding Vulnerable Groups Act 2006 will introduce the most stringent vetting and barring service yet. The ISA has been created to help prevent unsuitable people from working with children and vulnerable adults and will have a major impact on the recruitment and monitoring practices of people working or volunteering to work with children and vulnerable adults. The ISA scheme will replace some of the current regimes and will base its decisions by pulling together information held by various agencies and government departments and will work in partnership with the CRB to gather relevant information on every person who wants to work with vulnerable people. Once the scheme is fully rolled out, it will be illegal to hire someone in regulated activity who is not registered, and has therefore not been checked by the ISA. Potential employees and volunteers will need to apply to register with the ISA.
- 4.2 Applicants will be assessed using data gathered by the CRB, including relevant criminal convictions, cautions, police intelligence and other appropriate sources. Using this information the ISA will decide on a case-by-case basis whether each person is suited to the work. Information will be securely stored about people's ISA status for employers and voluntary organisations to use when they are recruiting. Only applicants who are judged not to pose a risk to vulnerable people can be ISA registered. Employers who work with vulnerable people will only be allowed to recruit people who are ISA registered.
- 4.3 A consultation process conducted by the ISA finished on 20 February 2008. The scheme will go live on 12 October 2009. The cost of registering with the ISA will be £64 per person which covers the ISA administration charges and the CRB costs as administrators of the applications. The important point to note is that ISA registration will be transferable. That is, if a person were to change jobs or take up a new voluntary activity, they would not need to apply again. The ISA scheme has a much wider remit than current provision, and will affect more workers and professions than before. Safeguarding will be improved as more professions and specific job roles will be closed to those who are barred under new lists. Currently it appears that the legislation will apply to all taxi and private hire drivers as they may all at some point drive either children or vulnerable adults in their vehicles. Although not confirmed, it is possible that all drivers will be required to have another CRB check to be registered with the ISA to enable them to continue to drive. There could be issues if the ISA refuse to register drivers that Local Authorities have already reviewed and permitted to drive.

5. COMMENTS FROM HACKNEY CARRIAGE AND PRIVATE HIRE OWNERS' ASSOCIATION

- 5.1 The Association had approached the Council with the request that portability procedure be put in place as taxi drivers had raised concerns regarding costs and time taken with applications.

6. FINANCIAL IMPLICATIONS

- 6.1 On the information available to date, there would be no direct additional costs to the Authority in relation to the administration of portability procedures. The implications for the proposed ISA procedures are however unknown at this stage.
- 6.2 Local Authorities have a duty of care when carrying out vetting procedures and issuing licences. Should the procedures be found to be negligent and an incident occurred then a Local Authority may be held to be liable.

7. ENVIRONMENTAL IMPLICATIONS

- 7.1 There are no environmental implications directly arising as a result of this report

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 There are crime and disorder implications arising from vetting and/or portability procedures. Should a licence be issued to a person with a criminal record where a recent conviction was missed, then crime implications could occur towards vulnerable persons.

9. EQUALITY AND DIVERSITY IMPLICATIONS

- 9.1 There are no equality and diversity implications directly arising from this report.

10. SUMMARY OF CONSIDERATIONS

- 10.1 Currently, NFDC do not carry out portability checks for other authorities (see 3.3 above).
- 10.2 Portability has financial and time advantages for the applicant. There are little administrative advantages for the organisations involved.
- 10.3 The CRB do not recommend the practice. They clearly recognise that it happens and have given some advice as to how to mitigate the chances of a procedural error occurring. However the onus and ultimate accountability rest with the organisation accepting the practice.
- 10.4 There are practical considerations in considering portability. The CRB state that once a recruitment decision (or other relevant decision – e.g. for regulatory or licensing purposes) has been made, a recipient of a Disclosure must not retain it, or any associated correspondence, for longer than is necessary for that particular purpose. Although it then states that in general, this should be for a maximum of 6 months, once authorities have issued their licence, disclosure certificates must be destroyed as it cannot be retained as the purpose for having it is over. It cannot be retained on the basis of a possible portability request in the future. Those authorities that keep their certificates may fall foul of the CRB.
- 10.5 New vetting procedures will be introduced by the ISA towards the end of 2008. Currently it is unclear how this will affect the licensing of taxi and PHV drivers, although it is likely that they will be included in the new procedures.

- 10.6 Using 'old' disclosures is not without risk. Should an applicant commit an offence during the six month period after a CRB check was carried out, the consequences for the public and the authority could be severe, particularly in the arena of protecting children and vulnerable persons.

11. RECOMMENDATIONS

- 11.1 That the Committee fully debate and consider the implications of this report and decide whether to:
- a) continue with the current NFDC practice of not carrying out portability requests from applicants or other authorities;
 - b) change to accepting portability requests from applicants and other authorities, with officers introducing administrative arrangements to meet CRB advice; and
 - c) await the results of the ISA procedures due to be introduced during 2009.

Further information
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Background papers
None