

## **EAST AYRSHIRE COUNCIL**

### **POLICY AND RESOURCES COMMITTEE – THURSDAY 18 APRIL 2002**

#### **DISCLOSURE OF CRIMINAL HISTORY INFORMATION**

##### **Report by Depute Chief Executive/Director of Corporate Resources**

### **1. PURPOSE OF REPORT**

1.1 The purpose of this report is to

- a) advise the Committee of the establishment of Disclosure Scotland and the changes in the arrangements for the provision of criminal history information for employment purposes, and
- b) seek approval of proposed arrangements for the payment of related charges for disclosures of information by Disclosures Scotland.

### **2. BACKGROUND INFORMATION**

2.1 Under the Council's current Recruitment and Selection Policy and Procedures, all applicants for employment with the Council are required to complete a criminal convictions form. In addition, Police Checks are undertaken in respect of applicants recommended for certain posts which are listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

2.2 Police checks are also undertaken in respect of certain other services provided to Council clients, for example taxi and coach drivers, foster parents etc.

2.3 Police Checks are currently provided by the Scottish Criminal Records Office (SCRO) in respect of posts meeting the criteria laid down in Scottish Office Circulars issued to Education, Health and Social Work Services. There has been no charge for this service.

2.4 The SCRO service which has been in place since 1989 is scheduled to terminate on 26 April 2002 due to the introduction of new procedures contained within Part V of the Police Act 1997. Information and instructions have only recently been issued by Disclosure Scotland to Councils and hence the relatively late reporting of the matter to Committee.

### **3. NEW PROCEDURES**

3.1 The new legislation allows greater access to criminal history information and also formally extends its criteria to cover persons who will have contact with an extended vulnerable client group e.g. Leisure Attendants working with children. This direction is in line with a national emphasis on enhancing the safety in recruitment and selection of employees and others within Local Government who come in contact with 'vulnerable' clients. Disclosure Scotland has been created for the purpose of administering this new legislation and will be solely responsible for the disclosure of criminal history information for the Council's purposes.

3.2 Disclosure Scotland will issue certificates which will give details of convictions and/or other information or indicate that there is no such information held. There will be three levels of Disclosure: -

- **‘Basic Disclosures’**, expected to be available from August 2002, are the lowest level of Disclosure and are not necessarily job related. These will show details of all convictions considered to be unspent under the Rehabilitation of Offenders Act 1974 or state no such convictions. Basic Disclosures will be available to anyone who applies in the appropriate manner.
- **‘Standard Disclosures’**, expected to be available from 29 April 2002, are applicable for those applying for positions listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. The main categories of occupations eligible for disclosure will be those whose duties involve regular contact with children and young people under the age of 18, the elderly, sick and disabled people etc. A Standard Disclosure will contain details of all convictions on record whether spent or unspent under the Rehabilitation of Offenders Act 1974.
- **‘Enhanced Disclosures’**, expected to be available from 29 April 2002, are the highest level of Disclosures and will initially be available for positions which involve a greater degree of contact with children or vulnerable adults. This will involve those regularly caring for, training, supervising, or being in sole charge of children and young people. Enhanced Disclosures will also be issued in respect of applicants for various licences and statutory child care positions. Enhanced Disclosures will include all of the details contained in a Standard Disclosure but may also contain non-conviction information held locally by the police where this is considered relevant to the post.

### **3.3 Applications for all Disclosures require to be made by the individual concerned.**

Standard and Enhanced Disclosures will be an essential requirement for applicants for certain posts within the Council and must be countersigned by an appropriate officer of the Council.

**3.4** The new Disclosure service will be self-financing and therefore there will be a charge for issuing Disclosures. The fee to be charged for all levels of Disclosure is £13.60.

**3.5** With the introduction of a charge, together with an anticipated increase in demand for criminal history information, the question of who will pay requires to be addressed. The Council may wish to consider paying the charge but it is the applicant who is responsible under the Police Act for the fee.

**3.6** It is **recommended** that in terms of employment the Council's Recruitment and Selection policy and procedure require only those candidates (internal and external) who are being recommended for appointment to a post covered by the Rehabilitation of Offenders Act 1974 (exceptions) Order 1975 will be expected to meet the cost of the Basic, Standard or Enhanced Disclosure. It is recognised that the fee may be a financial disincentive to some job applicants and it is therefore proposed that the Council pay the fee on behalf of the preferred candidate and recover the fee from an early wage/salary. If the content of the disclosure enquiry led to the preferred candidate not being appointed then it is recognised that the Council would assume this cost in the interests of ensuring safe appointments to its workforce.

**3.7** It should be noted that Disclosures for volunteer workers in the voluntary sector will be free of charge. However Disclosures for potential Foster Parents and volunteer workers with the Council such as parent helpers in Schools will be subject to the charge. In these circumstances it is **recommended** that the Council meet the cost of the Standard or Enhanced Disclosure.

- 3.8** In relation to other categories of Disclosure checks undertaken by the Council e.g. taxi and coach drivers it is **recommended** that where such service providers receive remuneration for their services then the person meet the cost by including personal payment with their Disclosure application.
- 3.9** The Council is required to formally register with the Disclosure Bureau in order to process requests for disclosures of criminal history information. There will be a one-off registration fee of £150 which will cover the cost of registration and the first countersignatory. An additional fee of £10 is payable for each subsequent countersignatory or change to a countersignatory. There are currently 24 authorised signatories within the Council and this number may increase as a result of the extension of the Disclosure criteria.
- 3.10** As part of the registration process the Council is required to have a written policy statement on the secure handling, use, storage and retention of Disclosure information (see appendix 1).
- 3.11** The relatively tight timescale requires our early action. The Senior Staff Management Team at its meeting on 8 April 2002 considered the implications of the extended Disclosure criteria in respect of all service operations. The Chief Executive has asked all Directors to ensure, subject to the Committee's decision on the undernoted recommendations, that suitable and appropriate arrangements are in place from 26 April 2002 which ensure both continuity of service and safe appointment of employees and others.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1** The administrative cost to the Council in respect of registering with the Disclosure Bureau, based on the current number of authorised signatories, will be £380. This cost will be met from within existing budgets.
- 4.2** If the Council agree to meet the cost of all enhanced and standard disclosures required, the potential cost, based on the current level of demand for the service (1870 enquiries in the period April 2001 to March 2002) and a fee of £13.60, would be £25,391 per annum. With a view to the recommended approach to charging 80% of disclosures would relate to employment (see para 3.6) and other categories of service providers (see para 3.8) who receive remuneration. The proposed 20% funding costs for those volunteers, foster carers etc referred to in para 3.7 will be met from within service departments' existing budgets.

#### **5. POLICY/LEGAL IMPLICATIONS**

- 5.1** As outlined in paragraph 3.10, a written policy statement on the secure handling, use, storage and retention of Disclosure information has been prepared and will ensure that the Council meets its legal obligations.
- 5.2** The Council's Recruitment and Selection Policy and Procedures will be amended to reflect the new disclosure arrangements.

#### **6. RECOMMENDATIONS**

- 6.1** The Sub-Committee is requested to:-

- (a) approve the recommendations regarding charges as outlined in paragraphs 3.6, 3.7 and 3.8 above;
- (b) agree to recommend to Council approval of the proposed policy statement appended to this report;
- (c) ask the Depute Chief Executive/Director of Corporate Resources to make the appropriate arrangements to register with the Disclosure Bureau; and
- (d) otherwise note the content of this report.

Fiona Lees  
Depute Chief Executive/Director of Corporate Resources  
GH/JS  
12 April 2002

#### **LIST OF BACKGROUND PAPERS**

1. Correspondence received from the Scottish Criminal Record Office dated 15 March 2002.
2. Disclosure Scotland Booklet on Protecting the Vulnerable by Safer Recruitment.

Anyone wishing further information concerning this report should contact Fiona Lees, Depute Chief Executive/Director of Corporate Resources, telephone (01563) 576103.

## PROTECTING THE VULNERABLE BY SAFER RECRUITMENT

### POLICY ON THE SECURE HANDLING, USE, STORAGE AND RETENTION OF DISCLOSURE INFORMATION

#### Introduction

Part V of the Police Act 1997 is aimed at helping employers and other organisations assess the suitability of applicants for particular posts and to make safer recruitment decisions in relation to positions of trust by widening access to criminal record information. To this end, the Act provides for the issue of criminal conviction certificates, criminal record certificates, and enhanced criminal record certificates. In Scotland, these certificates will be issued by Disclosure Scotland. In practice, the certificates will be known as Basic, Standard and Enhanced Disclosures.

#### Policy Statement

##### 1. General Principles

East Ayrshire Council complies fully with the Code of Practice, issued by Scottish Ministers, regarding the correct handling, holding and destroying Disclosure information provided by Disclosure Scotland under Part V of the Police Act 1997, for the purposes of assessing applicants' suitability for positions of trust. It also complies fully with 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. This policy is available to anyone who wishes to see it on request.

##### 2. Usage

We use Disclosure information only for the purpose for which it has been provided. The information provided by an individual for a position within, provision of service to, or any other appropriate purpose as required by East Ayrshire Council is not used or disclosed in a manner incompatible with the purpose. We process personal data only with the express consent of the individual. We notify the individual of any non-obvious use of the data, including further disclosure to a third party, identifying the Data Controller, the purpose for the processing, and any further relevant information.

##### 3. Handling

East Ayrshire Council recognises that, under section 124 of the Police Act 1997, it is a criminal offence to disclose Disclosure information to any unauthorised person. We, therefore, only pass Disclosure information to those who are authorised to see it in the course of their duties. East Ayrshire Council will not disclose information provided under section 115(8) of the Act, namely information which is not included in the Disclosure, to the applicant.

##### 4. Access and Storage

We do not keep Disclosure information on an individual's personnel file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled to authorised and named individuals, who are entitled to see such information in the course of their duties.

## **5. Retention**

We do not keep Disclosures or Disclosure information for any longer than is required after a recruitment (or any other relevant) decision has been taken. In general, this is no longer than six months. This is to allow for the resolution of any disputes or complaints. Disclosure information will only be retained for longer than this period in exceptional circumstances, and in consultation with Disclosure Scotland. The same conditions relating to secure storage and access will apply during any such period.

## **6. Disposal**

Once the retention period has elapsed, we will ensure that Disclosure information is immediately destroyed in a secure manner i.e. by shredding, pulping or burning. East Ayrshire Council will not keep Disclosure information which is awaiting destruction in any insecure receptacle (e.g. a waste bin or confidential waste sack). We will not retain any image or photocopy or any other form of the Disclosure information. We will, however, keep a record of the date of issue of the Disclosure, the name of the subject, the Disclosure type, the reason for which the Disclosure was requested, the unique reference number of the Disclosure and details of the decision taken.

## **7. Umbrella Bodies**

Before acting as an Umbrella Body (i.e. a body which countersigns applications for Standard or Enhanced Disclosures on behalf of another organisation), East Ayrshire Council will take all reasonable steps to ensure that the organisation on whose behalf we are acting can comply with the Scottish Code of Practice, and in full accordance with this policy. We will also take all reasonable steps to satisfy ourselves that they will handle, use, store, retain, and dispose of Disclosure information in full compliance with the Code of Practice, and in full accordance with this policy. We will also ensure that any body or individual at whose request applications for Disclosures are countersigned, has such a written policy and, if necessary, will provide a model policy for that body or individual to use or adapt for this purpose.

## **8. Payment of Disclosure Fee**

In terms of employment, disclosure certificates will be requested from the candidate(s) (internal and external) who are being recommended for appointment to a post covered by the Rehabilitation of Offenders Act 1974 (exceptions) Order 1975. The cost of the Disclosure fee will be met by the candidate although the Council will arrange to pay the fee and recover it from candidate's early wage/salary once they have commenced employment.

Disclosures for volunteer workers in the voluntary sector are provided free of charge by Disclosure Scotland. Charges applicable to volunteer workers with the Council (e.g. Parent Helpers) and Foster Parents will be met by the Council.

In relation to other categories of disclosure checks undertaken by the Council (e.g. taxi and coach drivers) then where the applicant receives remuneration for their services then the cost of the disclosure fee will be borne by the applicant. In these circumstances, the applicant should enclose personal payment with their application for the appropriate Disclosure certificate to Disclosure Scotland.

**AGENDA**

April 2002