

# **Policy and Procedure on Protection of Children and Protected Adults**



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## DOCUMENT CONTROL

### Policy

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### Committee Approval

<b>Version</b>	<b>Committee</b>	<b>Committee Date</b>
1.0	Council Executive	9 October 2012
2.0	Council Executive	23 February 2021

**POLICY AND PROCEDURE ON PROTECTION OF CHILDREN AND PROTECTED  
ADULTS**

**(Covering Employees, Volunteers and Other Workers)**

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## **POLICY AND PROCEDURE ON PROTECTION OF CHILDREN AND PROTECTED ADULTS**

### **1. POLICY STATEMENT**

- 1.1 The council is committed to complying fully with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 by ensuring that robust procedures are in place to protect children and protected adults from harm while under its care or in receipt of its services.
- 1.2 Only individuals who have membership of the Protection of Vulnerable Groups (PVG) Scheme will be made an unconditional offer by the council to undertake regulated work with children or protected adults as defined within the 2007 Act.
- 1.3 The responsibilities of those officers in the council, who have a key role in ensuring compliance with the 2007 Act, are set out in **Appendix 1** to this document.
- 1.4 This policy and procedure should be read in conjunction with the council's [Policy and Procedure on Recruitment and Selection](#), [Disciplinary Procedures and Disciplinary Code](#) and the [Code of Conduct for Employees](#).

### **2. PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007**

- 2.1 The Protection of Vulnerable Groups (Scotland) Act 2007 provides statutory protection to children and protected adults from harm and defines work (paid or unpaid) with children or protected adults as 'regulated work'.
- 2.2 The Protection of Vulnerable Groups (PVG) Scheme is central to the Act and is designed to ensure that those individuals, who are unsuitable, do not gain access to children or protected adults through their work. It also aims to ensure that those individuals who become unsuitable are detected early and prevented from continuing to work, or from seeking work, with children or protected adults.
- 2.3 The PVG Scheme is managed by Disclosure Scotland, which is the body responsible for establishing lists of individuals who are barred from working with children and/or protected adults. Those lists provide the council and other registered bodies with the means of identifying whether prospective or existing employees, volunteers or workers are barred from undertaking regulated work. It is an offence under the PVG Act for the council to employ or offer regulated work to an individual who is listed as barred from undertaking that work.

### **3. REGULATED WORK**

- 3.1 Regulated work falls into two categories - regulated work with Children and regulated work with Protected Adults. Both types of work are defined within Schedules 2 and 3 of the PVG Act by reference to:
  - the activities that a person does;
  - the establishments in which a person works;
  - the position that they hold;
  - or the people for whom they have day to day supervision or management responsibility

- 3.2 Detailed guidance for the purposes of assisting Services identify roles that fall within the definition of regulated work is set out within **Appendix 2** of this document.

#### **4. LISTING AND BARRING**

- 4.1 The PVG Act establishes two separate lists, one which contains the names of those individuals who are unsuitable to do regulated work with children and another for those who are unsuitable to do regulated work with protected adults.
- 4.2 'Listing' refers to the inclusion of an individual in the PVG Children's List or the PVG Adults List. 'Barring' is the consequence of listing.
- 4.3 Through the PVG Scheme checking process, Disclosure Scotland will advise the council if an applicant is being considered for listing or is barred from carrying out regulated work with children and/or protected adults (where the council has requested a disclosure record for the type of work to which the consideration for listing or barring relates). Where an individual is listed they can no longer be a PVG Scheme Member for the type of work to which the listing relates.
- 4.4 Disclosure Scotland will issue a PVG Scheme Record to individuals who are not barred. Where an individual is being considered for listing, this would be disclosed on the Scheme Record. The Scheme Record provides vetting information relating to any unspent and some spent criminal convictions that an individual may have and/or relevant information held by the Police. This information enables the employing service to carry out a risk assessment to determine an applicant's suitability for the position for which they have applied.

#### **5. RECRUITMENT & VETTING**

- 5.1 The PVG Act makes it a criminal offence for an individual to undertake regulated work from which he/she has been barred and also for the council to offer the person that type of work.

##### **Offers of Employment**

- 5.2 PVG Scheme Record checks will only be carried out on the preferred candidate who will be issued with a conditional offer of employment.
- 5.3 No unconditional offer of employment or engagement (either verbal or written) will be made to any applicant for a role designated as regulated work with children and/or protected adults until a satisfactory PVG check and other satisfactory recruitment checks have been received. This applies equally to casual workers, contracted workers and volunteers.
- 5.4 The PVG Scheme provides the following categories of checks;
- PVG Scheme Membership Statement (applied for by individuals)
  - PVG Scheme Record (undertaken by organisations)
  - PVG Scheme Record Update (undertaken by organisations)

- 5.5 Only individuals with a satisfactory PVG Scheme Record or a PVG Scheme Record Update obtained by the council (as the employing organisation) will be engaged in a regulated role. It should be noted in this regard that, the PVG Scheme Membership Statement (available to an individual from Disclosure Scotland) confirms that the individual is not barred from participating in regulated work but **does not itself provide vetting information and therefore is not suitable for assessing overall suitability for employment.**
- 5.6 **An unconditional offer of employment to carry out regulated work with children and/or protected adults will not be made until all satisfactory employment checks have been received including the PVG Scheme Record check.**

### **Internal Appointments**

- 5.7 PVG checks must also be obtained for internal applicants who are successful in applying for posts that involve regulated work. If an internal applicant is already a PVG member there will be no requirement to obtain a new PVG record unless the employee is applying to work with a different protected group (eg. moving from regulated work with children to protected adults).
- 5.8 Where an employee is moving to work with a different protected group, the employee would need to join the PVG Scheme in respect of work with the relevant workforce.

### **Unsatisfactory PVG Checks**

#### Barred from Regulated Work

- 5.9 Where confirmation is received that a preferred candidate is barred from regulated work, any conditional offer of employment made to that individual will be withdrawn in writing in accordance with the provisions of the council's [Policy and Procedure on Recruitment and Selection](#).

#### Under Consideration for Listing

- 5.10 If confirmation is received that a preferred candidate is being considered for listing, the Service Manager will decide whether to;
- a) await the outcome of the consideration process, or
  - b) withdraw the conditional offer prior to employment.

The consideration for listing process can be a lengthy one (PVG Act limits the process to 6 months) and accordingly managers will need to consider the impact of the potential delay on the recruitment process/service needs.

Following the consideration process, an individual will either be listed and barred from regulated work or will become a PVG member. If, an individual's PVG membership is subsequently confirmed, it will not be an offence for the council to employ that individual subject to satisfying the normal risk assessment process to determine suitability for employment.

## Criminal Convictions

- 5.11 Where it is confirmed that the preferred candidate is not barred or being considered for listing, but vetting information on criminal convictions is provided by Disclosure Scotland, the Service Manager will determine suitability in consultation with Human Resources. If, having discussed the position with the candidate, the individual is considered to be unsuitable for the post, the conditional offer of employment will be withdrawn in writing.

### **Assessing Vetting Information and Determining Suitability**

- 5.12 The PVG Scheme Record will list any unspent and some spent criminal convictions in accordance with the Rehabilitation of Offenders Act 1974 and the Age of Criminal Responsibility (Scotland) Act 2019.
- 5.13 When considering vetting information and determining an individual's suitability for employment in a regulated role, the recruiting manager should consider:
- the nature and relevance of the offence
  - the date of the offence
  - the individual's age at the time of the offence
  - the penalties applied (as an indication of the gravity of the offence)
- 5.14 If, as a result of the vetting information, it is likely that a conditional offer of employment will be withdrawn, the recruiting manager should meet with the candidate to discuss the matter and obtain any additional information necessary to inform his/her decision.
- 5.15 A PVG Scheme Record Update does not contain vetting information, but will indicate whether any new vetting information has been added to the PVG Scheme Membership Record. Recruiting managers must be satisfied that they have all relevant vetting information from previous records. If the manager is not satisfied that all vetting information is available or where new vetting information has been added, application for a fresh PVG Scheme Membership Record that details all current vetting information should be made.

### **Professional Registration**

- 5.16 Where it is a condition of professional registration that an employee/prospective employee has PVG Scheme membership, the relevant governing body (eg GTCS, SSSC) will be responsible for conducting the necessary check as part of the registration process. The council will, however still be required to carry out a PVG Scheme Record Update as part of the recruitment process. This Scheme Record Update will register the council's interest in the individual for the purposes of obtaining future information from Disclosure Scotland. Where new vetting information has been added then an upgrade to a Scheme Record would be required. Where no new vetting information has been added then the Scheme Record Update along with a copy of the original Scheme Record will provide the Council with vetting information.

## **6. PVG REFERRAL PROCESS**

- 6.1 If the council becomes aware of information or conduct which indicates that an individual may be unsuitable to do regulated work, the council is obliged to pass

on information to Disclosure Scotland so that a full evaluation can be made and appropriate action taken as necessary. A summary of the PVG Referral Process is attached at **Appendix 4**.

- 6.2 Information calling into question an individual's suitability to engage in regulated work may come to the council's attention as a result of for example, misconduct in the workplace, an incident reported by a member of the public or a client, or a police report received.

#### **Grounds for Referral to Disclosure Scotland**

- 6.3 The process of providing information to Disclosure Scotland in relation to an employee's conduct is called 'making a referral'. The PVG (Scotland) Act 2007 places a duty on the council to make a referral in circumstances whereby;
- (a) an individual doing regulated work is considered to have done something to harm a child or a protected adult; and
  - (b) the impact is sufficiently serious for the employing organisation to permanently remove (or would have removed) the individual from regulated work
- 6.4 Behaviour which may result in referral does not necessarily have to take place in the course of employment. The person who is the subject of the referral must have done one or more of the following;
- harmed a child or protected adult
  - placed a child or protected adult at risk of harm
  - engaged in inappropriate conduct involving pornography
  - engaged in inappropriate conduct of a sexual nature involving a child or a protected adult
  - given inappropriate medical treatment to a child or protected adult

Further guidance on the definition of 'harm' and 'risk of harm' is contained in **Appendix 5**.

#### **Notification of Incidents Requiring Potential Referral**

- 6.5 Where there are grounds to suspect that an individual, who is currently working in a regulated role, has done something to harm a child or a protected adult (whether or not in the course of his/her work) the matter must be immediately notified to the relevant Head of Service.
- 6.6 Information regarding an employee's conduct or recent conviction may come from a variety of sources including: colleagues, customers, clients, a member of the public or confidential police disclosure. Receipt of any such information should be discussed with Human Resources to agree appropriate action.



## **Risk Assessment and Investigation Process**

### Employees

- 6.7 If the individual concerned is employed by the council under a contract of employment, the Head of Service in conjunction with Human Resources, will consider the information available and conduct an immediate risk assessment (Appendix 3). Based on the outcome of that risk assessment, the Head of Service will determine the most appropriate course of action including whether the matter is to be investigated under the terms of the council's disciplinary procedures. Temporary removal from regulated work or precautionary suspension from duty may be appropriate at this stage depending on the outcome of the risk assessment.

### Volunteers/Other Workers

- 6.8 If the individual is engaged in a capacity other than under a contract of employment (for example, a volunteer) the Head of Service will ensure that as much relevant information as possible is gathered to enable a decision to be taken regarding the individual's continued engagement by the council and any necessary subsequent referral to Disclosure Scotland.

### Former Employees/Workers

- 6.9 Should information subsequently come to light that an individual formerly employed/engaged by the council in a regulated position, has harmed a child/protected adult or put a child/protected adult at risk of harm (whether or not in the course of their work), the matter must be immediately notified to the relevant Head of Service so that a decision on referral can be determined.

## **Role of the PVG Referral Assessment Panel**

- 6.10 The PVG Referral Assessment Panel is responsible for determining whether the criteria have been satisfied to merit a referral to Disclosure Scotland under the relevant provisions of the Protection of Vulnerable Groups (Scotland) Act.
- 6.11 The core Panel comprises three members, the Head of Corporate Services, the council's Chief Solicitor and the Head of Social Policy or the Head of Education Services. Where a member of the core panel is unavailable, another officer of equivalent seniority may be nominated to attend. Other officers may be required to attend the panel to provide additional background information where necessary.
- 6.12 A member of the Human Resources team will also attend in an advisory capacity and will ensure that all relevant supporting information and formal referral documentation is available to the Panel members.
- 6.13 On each occasion it meets, a Chairperson will be appointed from the core panel members. Where the Panel determines that a referral is to be made to Disclosure Scotland, the Panel Chairperson will sign off the official referral documentation on behalf of the council. The decision of the Panel, whether to refer or not must be endorsed by the Chief Executive.

- 6.14 Specific guidance to assist members of the panel in determining whether or not referral is appropriate in any given circumstance is provided separately to this policy and procedure and can be accessed [here](#).

### **Referral Assessment Process**

#### Referral Following Disciplinary Action - Timescales

- 6.15 If a decision is taken to either dismiss the employee or permanently remove the employee from regulated work, the Nominated Officer must consult the HR Services Manager on whether it is appropriate to convene a PVG referral panel. The decision whether or not to convene a PVG referral panel will be recorded on case management.
- 6.16 Where it is determined that a PVG panel should be convened, the Nominated Officer will request that the Head of Corporate Services arranges for a meeting of the PVG Referral Assessment Panel.
- 6.17 In order to assist the council in meeting Disclosure Scotland referral timescales (see Paragraph 6.20 below), **a panel should normally be convened within 4 weeks of the decision being taken to either dismiss or permanently remove the employee from regulated work.** It would be helpful however, if the panel were aware of any appeal lodged by the employee before meeting. Any such appeal must be lodged within 10 days of the effective date of dismissal.
- 6.18 The Nominated Officer, in conjunction with Human Resources, will ensure that all the relevant information is made available for consideration by the PVG Referral Assessment Panel in determining whether the criteria for referral to Disclosure Scotland have been met.
- 6.19 Where an employee, who is suspected of harming a child or a protected adult, leaves the council's employment, for whatever reason, before an investigation or subsequent disciplinary proceedings have been concluded, the PVG Referral Assessment Panel must consider the available evidence and determine whether it is reasonable to conclude that dismissal or removal from regulated work would have been a likely outcome.
- 6.20 Where the PVG Referral Assessment Panel has determined that the relevant criteria have been met, referral must be made to Disclosure Scotland **within 3 months of the decision being taken to either dismiss or permanently remove the employee from regulated work.** Disclosure Scotland provide a referral form for this purpose which can be downloaded from the [Disclosure Scotland website](#)
- 6.21 **It should be noted that, where there are grounds, a referral must still be made irrespective of whether the individual challenges the decision through the council's Disciplinary Appeals process or external Employment Tribunal process.**
- 6.22 Following a decision to make a referral, the Head of Corporate Services will arrange for the employee concerned to be advised of the decision in writing. Any subsequent acknowledgement or notifications from Disclosure Scotland will be advised to the PVG Referral Assessment Panel.

### Retrospective Receipt of Information

- 6.23 Where the council subsequently receives information that a former employee harmed or placed a child or protected adult at risk of harm (whether or not in the course of the employee's work), and this information was not available at the time the employee left the council's employment, a referral must still be made to Disclosure Scotland in the circumstances set out in paragraph 6.9.
- 6.24 If the PVG Referral Assessment Panel concludes that had the information been available before the individual left the council's employment, he/she would or might have been dismissed or removed from regulated work a referral must be made to Disclosure Scotland.
- 6.25 There is no time bar on making referrals. The nature of the harm or risk of harm to a child or protected adult, the availability and adequacy of evidence and the wider public interest will determine whether referral is to be made by the council rather than merely the passage of time since the alleged incident took place.

### Referral of Other Workers

- 6.26 Where a decision has been taken to dispense with the services of a volunteer/worker engaged by the council in a regulated role, on the basis that there are grounds to believe that they have harmed or placed at risk of harm a child or protected adult, the PVG Referral Assessment Panel shall refer the details to Disclosure Scotland.
- 6.27 The same considerations that apply in respect of retrospective information received concerning former employees will also apply to volunteers/helpers formerly engaged by the council in a regulated role in relation to whether they are to be referred to Disclosure Scotland.

## **7. CONSIDERATION FOR LISTING & BARRING**

### Consideration for Listing

- 7.1 The Council will be notified automatically by Disclosure Scotland if a PVG Scheme member working for the council is under consideration for listing or is barred if the Council has requested a disclosure record for the type of work for which the individual is considered for listing or barred.

### Notification by Council's PVG Scheme Lead Signatory - Listing

- 7.2 Where the Council is advised that an employee/worker is being considered for listing the Council's Lead Signatory for the PVG Scheme shall notify the relevant Head of Service immediately.
- 7.3 The Head of Service in conjunction with Human Resources must arrange for a risk assessment (Appendix 3) to be undertaken to consider whether, pending the decision of the consideration process, the individual should be:
- allowed to continue in the regulated post (subject to appropriate risk management measures);

- temporarily transferred into a non-regulated post (where temporary transfer is considered appropriate, the individual should be transferred to a post on the same salary grade where possible. Where this is not possible, the employee should continue to be paid at their substantive grade);
  - suspended on full pay pending a disciplinary investigation; or
  - in the case of a volunteer/supply worker, temporarily removed from their regulated role.
- 7.4 If Disclosure Scotland have not provided sufficient information on the reasons for the employee being considered for listing, the line manager or other appropriate officer, may need to meet with the employee to obtain as much information as possible to inform the risk assessment process. It may also be necessary to obtain a new PVG scheme record in order to view the latest vetting information.

Notification by Council's PVG Lead Signatory - Barred Individuals

- 7.5 Where the Council is notified that an employee/worker is listed and therefore barred from undertaking regulated work, the council's PVG Scheme Lead Signatory shall notify the Head of Service who will arrange for the immediate removal of the employee from regulated work.
- 7.6 Pending a full investigation, the employee shall be transferred to non-regulated work or where that is not practicable, the employee shall be suspended on full pay. The Head of Service or other nominated senior officer will meet the employee and the action taken will be confirmed to the employee in writing in accordance with the council's Disciplinary Procedures.
- 7.7 The Head of Service will nominate an appropriate senior officer to investigate the matter under the terms of the council's Disciplinary Procedures.
- 7.8 Becoming barred from undertaking regulated work will not necessarily result in an employee's dismissal and the possibility of redeployment into a non-regulated post may be an option depending on the merits of the case.
- 7.9 Where a volunteer/helper is barred from undertaking regulated work, the Head of Service will confirm the termination of their engagement by the council in writing.

**8. RE-CHECKING POLICY**

- 8.1 As a registered body for PVG Scheme purposes, the Council is notified automatically if an employee is being considered for listing or has been barred from regulated work if the Council has requested a disclosure record for the type of work for which the individual is considered for listing or barred. However, the council is not automatically advised of convictions of a less serious nature which would not trigger consideration for listing or barring. For example: An individual employed in residential care who was convicted of theft may not be barred from regulated work, however by its very nature the conviction is likely to render such an individual unsuitable for work in a residential care home.

- 8.2 To ensure the continued suitability of individuals for regulated work therefore, the Council requests a PVG Scheme Record Update **every 3 years** in line with Care Inspectorate recommended best practice. Should a Scheme Record Update indicate that new vetting information has been added since the last check, a full up to date PVG Scheme Membership Record will be obtained to enable the information to be assessed. If a full up to date PVG Scheme Membership Record is to be obtained this will require the employee's consent.

## **9. DUTY TO DISCLOSE**

- 9.1 In addition to disclosing criminal convictions, it is a condition of employment for council employees who carry out regulated work with children or protected adults that they disclose details of any of the following that occur prior to commencing, or during the course of employment:

- Involvement in police investigations
- Criminal charges
- Police cautions
- Disciplinary action taken by professional or regulatory bodies.

- 9.2 The Council will assess the information disclosed and decide whether or not it materially affects the individual's suitability to work with children or protected adults. Minor issues or offences will be disregarded if they have no direct relevance to an individual's job.

- 9.3 The relevant provisions are reflected in the following policies and procedures:

- Disciplinary Procedures (Paragraph 9.2) and Teachers' Procedures, Paragraph 10.2)
- Disciplinary Code (sections relating to Theft, Fraud and Misrepresentation and to Other Forms of Gross Misconduct)
- Code of Conduct for Employees (Section 13, Duty to Disclose Personal Information)

## **10. ENGAGEMENT OF CONTRACTORS**

- 10.1 The Council must be satisfied that contractors (including the Council's own in-house contracting services) comply with the terms of the Protection of Vulnerable Groups (Scotland) Act 2007. Contractors should be subject to the same restrictions and arrangements that apply to non-disclosed employees. The Service Manager responsible for engaging a contractor must undertake a risk assessment before a contractor commences work. Where staff of the contractor are to carry out regulated work with children or protected adults or both, that Service Manager must ensure that he/she is provided with written confirmation that all such staff have been PVG vetted. However, the Council is not entitled to view PVG disclosure records in these circumstances.

- 10.2 Where contractors/trades persons are to carry out maintenance/repairs/works at (a) schools, or (b) homes which are exclusively or mainly for children or (c) care homes or residential establishments (provided under the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003) occupied mainly or exclusively by individuals aged 16

years or over the Head Teacher or Manager responsible for engaging the contractor/trades persons must apply the following tests:

Tests numbered 1 and 2 below apply to regulated work with children and tests numbered 1, 2 and 3 below apply to regulated work with protected adults.

1. Is it part of the individual's normal duties? Normal duties are something the individual might be expected to do as part of their post on an ongoing basis (e.g. appearing in a job description). For example, a plumber called in for one emergency would not be working as part of his normal duties. If the normal duties test is satisfied, the test below should be considered.
2. Does anything permitted or required in connection with the position give the opportunity for unsupervised contact with children or protected adults? This does not include individuals who may have the opportunity for unsupervised contact if they act outside their authority. For example, a builder permitted to work in part of a school which is sealed off for refurbishment who goes into part of the school which is in use is going beyond what is permitted or required of him.
3. Where there is contact with protected adults, is the individual doing anything permitted or required in connection with the position which is more than incidental? For example, in the case of a repairman on a call out contract to a care home to carry out repair work which involves being in residents' rooms, the contact would be more than incidental as being in residents' rooms is an essential part of carrying out the repair. However, in the case of a decorator who has been contracted to carry out work in part of a care home which has been sealed off for refurbishment (and has to walk through functioning parts of the home to get to his work location), any contact with protected adults would only be incidental.

If tests 1 or 2 are not satisfied it is not regulated work with children. If tests 1, 2 or 3 are not satisfied it is not regulated work with protected adults. If it is not regulated work, good recruitment practices can still be used e.g. checking references, skills and qualifications. Any individual can also apply for a basic disclosure in their own name. This only discloses unspent convictions. PVG vetting is not applicable where it is not regulated work.

If it is regulated work, confirmation should be obtained from the contractor that the individual has been PVG vetted. However, the Council is not entitled to view the PVG disclosure records.

## **11. ENGAGEMENT OF VOLUNTEERS AND OTHER WORKERS**

- 11.1 Services must assess whether volunteers and other workers engaged in work with children or protected adults are carrying out regulated work and require PVG membership.

## **12. SECURITY ACCESS**

- 12.1 Managers must ensure that staff whose jobs may require them to visit schools, nurseries or other premises where children or protected adults are present comply strictly with the security measures in place at those establishments at all times. It is essential that individuals display their employee identification badge or be prepared to provide alternative evidence of their identity on request.

## **13. STORAGE OF INFORMATION**

- 13.1 Counter-signatories (under the direction of the council's Lead Signatory) are responsible for ensuring that PVG records are stored in secure conditions in accordance with the Code of Practice in connection with the use of disclosure information and with the functions of registered persons. Certain of the requirements of that Code are set out in a sub-policy covering at **Appendix 6**.
- 13.2 Documents should be kept in lockable and non-portable containers. Access to documents should be restricted to the council's Human Resources Administration Team or counter-signatories.
- 13.3 Legislation prohibits the photocopying or retention of other images of PVG Scheme Records. Disclosure information must not be retained in an employee's personal file.
- 13.4 Once a recruitment decision has been made PVG records must be securely shredded.
- 13.5 For the purposes of providing evidence to inspection bodies that appropriate checks have been carried out, Human Resources will retain details on a secure database (limited to: Date the PVG check was requested, disclosure Reference Number, Date of the PVG Record and Name of the individual for whom it was carried out).
- 13.6 The purpose of PVG disclosure is to determine suitability for regulated work and aside from certain limited exceptions, it is an offence to share PVG records with a third party.

**Human Resources  
December 2020**

## **ROLES AND RESPONSIBILITIES**

### The PVG Referral Assessment Panel

The role of the Panel is to determine whether the criteria have been satisfied to merit a referral to Disclosure Scotland under the relevant provisions of the Protection of Vulnerable Groups (Scotland) Act 2007.

Where the Panel concludes that the individual in question is to be referred to Disclosure Scotland, the Panel Chairperson will sign off the official referral form on behalf of the council. It is the responsibility of the Panel Chairperson to ensure that:

- Decisions of the PVG referral panel are appropriately recorded;
- Decisions of the PVG referral panel to refer or not refer are endorsed by the Chief Executive prior to any subsequent referral; and
- Referrals are made to Disclosure Scotland within 3 months of the decision to dismiss or permanently remove from regulated work.

### Heads of Service

Heads of Service are responsible for ensuring that:

- managers, teachers and other supervisory staff in their services are aware of and comply with the PVG Act in so far as it impacts on their roles and functions.
- communication systems are in place to ensure that incidents, which may require the potential referral of individuals to Disclosure Scotland, are reported at the earliest opportunity.
- incidents that may require potential referral of individuals to Disclosure Scotland are investigated and appropriate action taken in line with the council's disciplinary and referral procedures as appropriate.
- where a decision has been taken to refer an individual to the List, appropriate steps are taken to notify the police and any appropriate professional bodies.
- regulated post assessments are conducted within their service in relation to all work with children or protected adults undertaken by employees, volunteers or other workers.
- arrangements are in place to review regulated post assessments annually.
- adequate resources are made available to support the PVG checking process in their service.
- the Recruitment & Vetting procedures set out within Section 5 of this policy and as set out in the council's Recruitment and Selection Policy and Procedure in respect of PVG checks are rigorously applied.



## Line Managers and Head Teachers

Line Managers and Head Teachers are responsible for ensuring that:

- through the Human Resources service, PVG Scheme Membership checks are taken up for individuals being recruited to work in regulated positions as defined within the PVG (Scotland) Act 2007.
- incidents that require potential referral to Disclosure Scotland are notified to the Head of Service at the earliest possible opportunity.
- that managers acting in the capacity of Nominated Officers notify the Head of Corporate Services immediately following an employee's dismissal or removal from regulated work to enable a meeting of the PVG Referral Assessment Panel to be convened within appropriate referral timescales.
- the Recruitment and Vetting provisions set out within Section 5 of this Policy and Procedure and Procedure in respect of PVG Scheme Membership checks are rigorously applied.
- individuals who are being considered for listing or are barred from regulated work are not appointed/engaged in posts involving work from which they are barred.
- regulated post assessments are conducted within their service in relation to all work with children or protected adults undertaken by employees, volunteers or other workers.
- arrangements are in place to review regulated post assessments annually.
- regulated post assessments are conducted when changes to posts and working arrangements arise through service restructuring, to identify any implications for protection of vulnerable groups; and that any necessary changes to existing disclosure practice are implemented accordingly.
- approved protocols and practices in respect of the engagement of contractors, engagement of volunteers/helpers and the letting of council premises are rigorously observed.
- identifying all posts that fall within the definition of regulated work as defined under the PVG (Scotland) Act 2007 and as summarised in Appendix 2 of this policy,
- advising Human Resources of changes to the duties and responsibilities of any post that either brings that post under the definition of regulated work or removes it from that definition.

## Head of Corporate Services

The Head of Corporate Services is responsible for ensuring that:

- As part of the recruitment process, PVG checks are obtained from Disclosure Scotland for those individuals appointed to regulated posts.

- Advice is provided to managers and Head Teachers on the vetting and appointment of individuals to regulated posts, and the process for referral of individuals to Disclosure Scotland.
- Following notification from the relevant Nominated Officer, PVG Referral Assessment Panels are convened and appropriate advice and support is provided to those panels.
- A written security policy is in place for handling, holding and destroying Disclosure information and that the processing of disclosure information is in line with the Code of Practice published by the Scottish Ministers under Section 122 of the Police Act 1997 – Code of Practice in connection with the use of disclosure information and with the functions of registered persons.

#### Audit, Risk and Counter Fraud Unit

The council's Audit, Risk and Counter Fraud Unit has a monitoring role and will be responsible for reviewing compliance with the requirements of the PVG Act and this Policy.

In particular, the Audit, Risk and Counter Fraud Unit will consider whether effective systems are in place for ensuring that:

- Services have carried out PVG Scheme Membership checks for all individuals engaged in regulated positions;
- Services have conducted assessments for all regulated posts and put in place a system for reviewing those assessments on an annual basis;
- Arrangements in place for engaging contractors and the letting of council premises satisfy PVG requirements.

#### Council's PVG Scheme Lead Signatory

The council's PVG Scheme Lead Signatory (currently the council HR Services Manager) is responsible for ensuring that the relevant Head of Service is advised of notifications received from Disclosure Scotland regarding individuals who have either been barred or are being considered for listing for barring from regulated work.

#### Human Resources

Human Resources are responsible for ensuring that:

- a record of all regulated positions is maintained;
- PVG Scheme Membership applications are processed and managers advised of scheme record information timeously;
- appropriate advice and support are provided to PVG Referral Assessment panels;
- a database of all PVG Scheme Membership Records is maintained for employees in regulated work;

- PVG Membership Scheme Records are handled, stored and destroyed in accordance with the Code of Practice published by the Scottish Ministers under Section 122 of the Police Act 1997 – Code of Practice in connection with the use of disclosure information and with the functions of registered persons;
- a record of the decisions of any PVG referral panels is maintained.

#### Corporate Procurement Unit

The Corporate Procurement Unit is responsible for ensuring that contracts contain appropriate wording with regard to the Protection of Vulnerable Groups (Scotland) Act 2007 where contracts involve or may involve the contractor, its staff, its sub-contractors or others for whom it is responsible in law carrying out regulated work with children or adults or both as defined in the Protection of Vulnerable Groups (Scotland) Act 2007.

## REGULATED WORK

### 1. Identification of Regulated Posts

To determine whether a post requires a PVG check to be carried out on an applicant, a regulated post assessment must be conducted. The assessment will involve an analysis of the duties of the post and the potential for the post holder to come into contact with children and/or protected adults.

Regulated post assessments should be reviewed on an annual basis or earlier if changes to posts and working arrangements arise in order to identify any implications for protection of vulnerable groups. A record of the assessment decision should be recorded and retained by the Service.

Services must advise Human Resources of any posts that require to be added or removed from the master list of Regulated Posts held by Human Resources.

Further information on the type of posts that require a PVG check can be found at <https://www.mygov.scot/pvg-scheme/types-of-work-covered-by-pvg/>

### 2. Regulated Work with Children

The PVG Act defines children as an individual aged under 18 years.

#### 2.1 An individual may be doing regulated work with children if their work involves any of the following activities as part of their normal duties:

- Caring for children
- Teaching, instructing, training or supervising children
- Being in sole charge of children
- Unsupervised contact with children under arrangements made by a responsible person
- Providing advice or guidance to a child or to particular children which relates to physical, emotional well-being, education or training
- Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children
- Providing, or working for an organisation which provides an independent health care service which is provided exclusively or mainly for children
- Work on any part of day care premises at times when children are being looked after in that part.
- Being a host parent.
- Providing, or working for an organisation which provides, a care home service which is provided exclusively or mainly for children.

#### 2.2 An individual may be doing regulated work with children if they work in any of the following establishments as part of their normal duties:

- An institution which is exclusively or mainly for the detention of children
- A hospital which is exclusively or mainly for the reception and treatment of children
- A school
- A further education institution

- A hostel used mainly by pupils attending a school or further education institution
- A home which is exclusively or mainly for children and is provided by a council under social work or mental health legislation.

One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children.

2.3 An individual is doing regulated work with children if they hold any of the following positions without exception:

- Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel – as defined in establishments (but not a member of a council).
- Member of certain council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to children
- Member of a children’s panel or certain related committees
- Chief Social Worker of a council
- Commissioner for Children and Young People in Scotland or member of that Commissioner’s staff
- Registrar of Independent Schools in Scotland
- Foster Carer
- Charity trustee of a children’s charity
- National Convener of Children’s Hearings Scotland.
- Principal Reporter.
- Chief education officer (however called) of a council.

2.4 An individual may be doing regulated work with children if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.

### 3. Regulated Work with Adults

3.1 The PVG Act defines a protected adult as an individual aged 16 or over who is provided with (and thus receives) certain care, support or welfare services.

3.2 There are four categories of services receipt of any one of which makes an individual a protected adult:

- Registered Care Services – a service by a person carrying on a support service; an adult placement service; a care home service; or a housing support service
- Health Services
- Community Care Services – social work and mental health services provided or secured by a council, or self-directed support paid for by a council
- Welfare Services – a welfare service includes any service which provides support, assistance, advice or counselling to individuals with particular

needs, meeting out the following conditions. The service must be a service that:

- (a) is provided in the course of work to one or more persons aged 16 or over
- (b) is delivered on behalf of an organisation
- (c) requires training to be undertaken by the person delivering the service
- (d) has a frequency and formality attached to the service and
- (e) either requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out, or is personalised to an individual adult's needs.

3.3 Most adults are likely to be a protected adult at some time in their lives, for example receiving treatment in hospital or receiving care in later life. But an individual is only a protected adult at the time they receive the service.

3.4 It is possible for 16 and 17 year olds to be both children and protected adults. The assessment as to whether or not they are protected adults is no different to that undertaken in respect of any other adult.

3.5 An individual may be doing regulated work with adults if their work involves any of the following activities as part of their normal duties:

- caring for protected adults
- teaching, instructing, training or supervising protected adults
- being in sole charge of protected adults
- providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training
- inspecting adult care services (including inspecting any premises used for the purposes of providing such services).

3.6 An individual may be doing regulated work with adults if they work in any of the following establishments as part of their normal duties:

- a care home – meaning accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service
- a residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under social work or mental health legislation

3.7 One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and where contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, which is more than incidental.

3.8 An individual is doing regulated work with adults if they hold any of the following positions without exception:

- member of certain council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to protected adults.
  - Chief social work officer of a council
  - Charity trustee of certain charities
- 3.9 An individual may be doing regulated work with adults if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.
4. Normal Duties
- 4.1 The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of an activity or the work in the establishment must be part of the individual's normal duties.
- 4.2 An activity or work is likely to be normal duties when:
- it appears in an individual's job description, task description or contract
  - it can be reasonably be anticipated; or
  - it occurs regularly
- 4.3 An activity or work is unlikely to be 'normal duties' when:
- done in response to an emergency (unless by an emergency worker)
  - arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or
  - done as a one-off activity of short duration which is not part of the individual's normal routine or occupation.

Further guidance on the definition of regulated work can be found in the [Protecting Vulnerable Groups Scheme](#)

**PVG RISK ASSESSMENT FORM**

This form should be used when:

- investigating an allegation of harm to a child or protected adult and/or awaiting the outcome of PVG referral
- awaiting the outcome of a consideration for listing process

**SECTION A - POST/POSTHOLDER DETAILS**

Post:		Postholder/Candidate:	
Service:		Date of Assessment:	

**SECTION B - INVESTIGATION OR CONSIDERATION FOR LISTING**

Please describe the background to the situation.

What are the perceived risks of allowing the individual to continue in regulated work?



What control measures could be put in place to minimise risks?

With control measures in place, please assess the severity and likelihood of potential risks (See attached Impact & Probability Rating form for severity, likelihood and risk rating definitions/scores).

Severity:

Likelihood:

Risk Rating:

High Risk: Employee must be removed from regulated duties or suspended on full pay.

Medium Risk: Employee must be removed from regulated duties or appropriate supervisions arrangements put in place.

Low Risk: Employee may be allowed to continue in regulated work with appropriate supervision arrangements in place.

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

**PVG RISK ASSESSMENT**

**IMPACT AND PROBABILITY RATING**

**CONSEQUENCE-** Potential impact of an incident

<b>Catastrophic</b>	5	Broad range of extremely serious implications, such as loss of life, which would be subject to external review
<b>Major</b>	4	Generating a number of substantive issues of a serious nature, which could be subject to external review
<b>Moderate</b>	3	Some serious issues arising, requiring internal review
<b>Minor</b>	2	Some potential issues, but not of a serious nature
<b>Insignificant</b>	1	Little or no perceptible ramifications

**LIKELIHOOD -** The possibility of there being an issue

<b>Very likely</b>	5	A high probability of this issue arising
<b>Likely</b>	4	It's more likely than not this will be an issue
<b>Fairly Likely</b>	3	Given the circumstances it's conceivable this could be an issue
<b>Unlikely</b>	2	It's unlikely that this risk might be realised
<b>Very Unlikely</b>	1	Wouldn't anticipate this ever being a problem

**Consequence (C) x Likelihood (L) = Risk Rating**

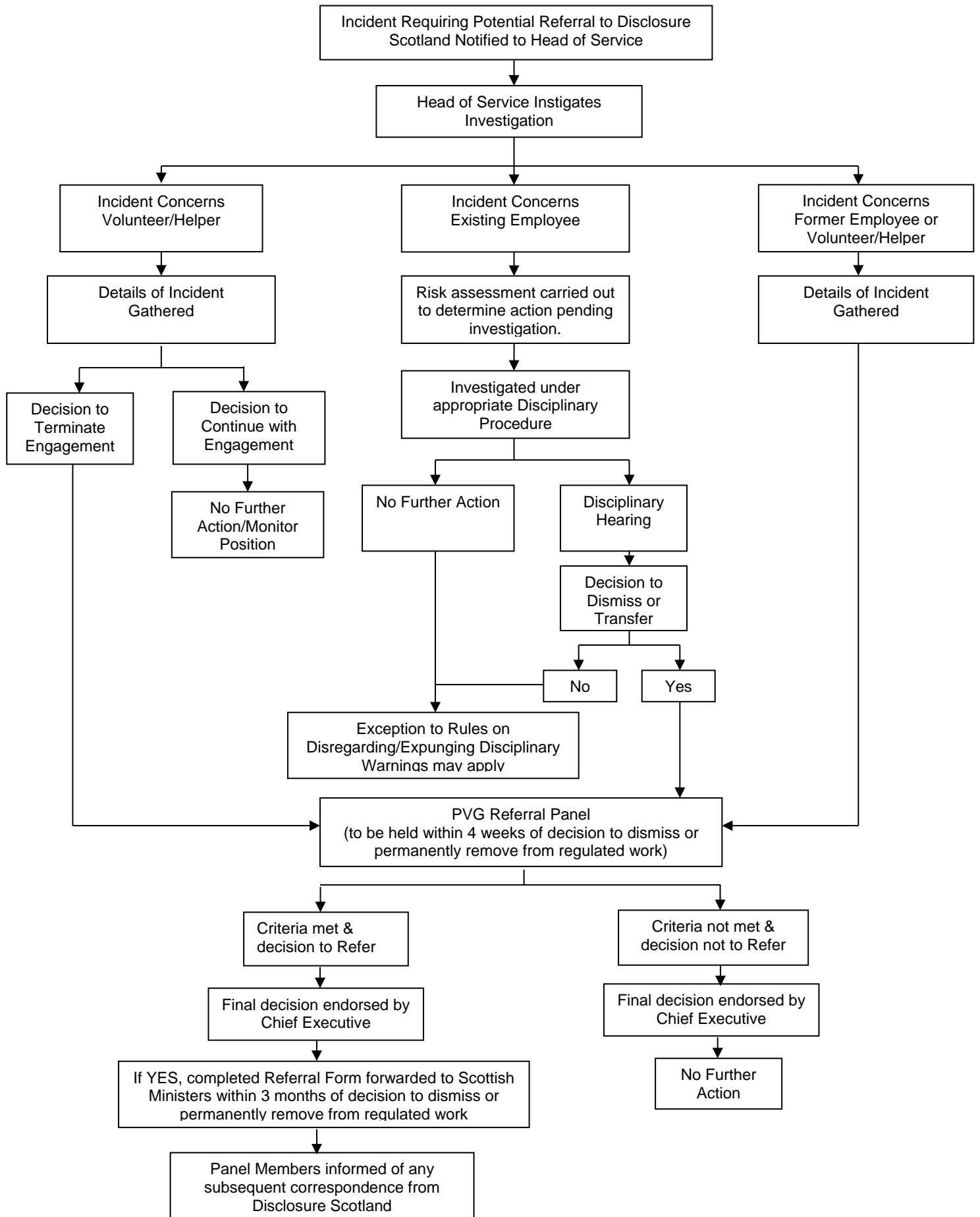
	L = 1	L = 2	L = 3	L = 4	L = 5
C=1	1	2	3	4	5
C=2	2	4	6	8	10
C=3	3	6	9	12	15
C=4	4	8	12	16	20
C=5	5	10	15	20	25

**RISK RATING**  
**1 - 5 = ACCEPTABLE**  
 Risk is being managed appropriately. Continue to monitor controls to ensure safe working methods are being maintained.

**6 - 9 = ADEQUATE**  
 Controls are adequate but the appropriate level of supervision must be in place to ensure safe working methods are being maintained.

**10 - 15 = TOLERABLE**  
 Risks remain and consideration should be given to lowering the risk level further. This may involve an element of dynamic risk assessment prior to and whilst the activity is being carried out. Increased level of supervision may be required to ensure the safe working methods are being adhered to at all times.

**17 - 25 = UNACCEPTABLE**  
STOP the activity cannot take place. The risk of injury is too high! Further actions are required and stronger controls introduced to reduce the level of risk involved. Once new controls have been identified the activity/task should be re-assessed.



**EXTRACT FROM THE PROTECTING VULNERABLE GROUPS SCHEME****MEANING OF HARM**

The meaning of the word 'harm' is key to the first two grounds for referral.

Harm includes:

- physical harm
- psychological harm (for example: causing fear, alarm or distress); and
- unlawful conduct which appropriates or adversely affects another person's property, rights or interests (for example: theft, fraud, embezzlement or extortion).

The Act also provides a meaning for 'risk of harm' which includes:

- attempting to harm another;
- trying to get someone else to harm another;
- encouraging someone to harm themselves; or
- conduct otherwise causing, or likely to cause, another to be harmed.

When considering the terms 'harm' and 'risk of harm', it is important for individuals and employers to develop an understanding of what sort of actions might result in someone being harmed, or placed at risk of harm. Examples of harmful behaviours include:

- emotional abuse, perhaps by controlling a child with extreme verbal threats;
- neglecting a person's needs, for example by inappropriate feeding or failing to provide appropriate sanitation;
- inappropriate physical restraint;
- failing to attend to whatever health and safety requirements may be in force;
- supplying illegal or unauthorised drugs.

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

### **Policy Statement**

The council complies with the Code of Practice in connection with the use of disclosure information and with the functions of registered persons. The Code is published by Scottish Ministers under Section 122 of Part V of The Police Act 1997 ("the 1997 Act").

The Code sets out obligations for registered bodies, counter-signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") with particular reference to the handling, holding, storage, destruction and retention of disclosure information provided by Disclosure Scotland.

The Council also complies with the Data Protection Act 1998 ("the 1998 Act") in regard to the use of disclosure information.

### **Usage**

The council will use disclosure information only for the purpose for which it was requested and provided. Disclosure information will not be used or disclosed in a manner incompatible with that purpose nor will it be shared with a third party unless the subject has given their written consent and has been made aware of the purpose of the sharing.

### **Handling**

In accordance with Section 124<sup>1</sup> of the 1997 Act and Sections 66 and 67 of the 2007 Act, it is a criminal offence to disclose disclosure information to any unauthorised person. Disclosure information is only shared with those authorised to see it in the course of their duties. The Council will not disclose information provided under subsection 113B(5)<sup>2</sup> of the 1997 Act, namely information which is not included in the certificate, to the subject.

*1 The Serious Organised Crime and Police Act 2005 ("the 2005 Act") schedule 14, paragraph 12 amended section 124*

*2 Subsection 163(2) of the 2005 Act inserted subsection 113B into the 1997 Act. Subsection 113B(5) of the 2005 Act replaces subsection 115(8) of the 1997 Act.*

## **Access and Storage**

The Council does 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 and is limited to authorised named individuals, who are entitled to see such information in the course of their duties.

## **Retention**

To comply with the 1998 Act, the Council does not keep disclosure information for longer than necessary. For the 1997 Act, this will be the date the relevant decision has been taken, allowing for the resolution of any disputes or complaints. For the 2007 Act, this will be the date an individual ceases to do regulated work for this organisation.

The Council will not retain any paper or electronic image of the disclosure information. The Council will, however, record the date of issue, the individual's name, the disclosure type and the purpose for which it was requested, the unique reference number of the disclosure and details of our decision. The same conditions relating to secure storage and access apply irrespective of the period of retention.

## **Disposal**

The Council will ensure that disclosure information is destroyed in a secure manner i.e. by shredding. Disclosure information which is awaiting destruction will not be kept in any insecure receptacle (e.g. a waste bin or unlocked desk/cabinet).

Human Resources  
Reviewed December 2020