



Policy for responding to Disclosure Certificates showing convictions or other information

The Protection of Children (Scotland) Act 2003 (PoC(S)A)

PoC(S)A is intended to prevent unsuitable people from moving from one childcare position to another without detection. To meet the requirements of the Act this means that organisations are required to apply for an enhanced Disclosure Check for everyone who is newly appointed (as of 11th April 2005) to a childcare position (as defined in schedule 2 of PoC(S)A) whether as a volunteer or as a paid employee. This is to ensure that the legal requirements of PoC(S)A are met by allowing organisations to check that no volunteer is appointed to a childcare position who is Fully Listed on the Disqualified from Working with Children's List

The Act includes its own definitions of 'organisation' and 'childcare position' which means it covers a wider set of positions, some of which might not normally be thought of as childcare positions, such as a Charity Trustee of an organisation whose main aim is to provide benefits for children. It has been deliberately drafted to cover a very wide range of organisations from the large and structured to the small and informal. This is to ensure that children are protected whenever they are taking part in activities organised by groups of individuals or are in their care.

A Disclosure Check is only valid for the organisation which applies for it. People who work with children and/or adults at risk in several different organisations therefore have to undergo a separate Disclosure Check for each organisation with which they are involved. However, those communal organisations that delegate the Scottish Council of Jewish Communities to act on their behalf can effectively rely on a single Disclosure Check, as if they were, for example, two different departments in the same organisation, thereby reducing both their own administrative burden and the burden on potential volunteers and employees.

Definitions:

The Council: The Scottish Council of Jewish Communities

Participating organisations: Organisations operating within the Scottish Jewish community which have delegated the Council to act on their behalf with regard to Disclosure Checks.

Applicant: Person on whose behalf a Disclosure application has been submitted.

Child: For the purposes of PoC(S)A and Part V of the Police Act 1997 a child is defined as anyone under the age of 18.

Childcare position: Is defined in schedule 2 of PoC(S)A and includes a voluntary or paid position which includes those whose normal duties are to care for, train, supervise or have sole charge of children. In addition, it also includes all trustees of charities whose main purpose is to provide benefits for children *whether or not the trustees have contact with children.*

Adults at Risk: means a person aged 18 or over, who receives a particular service to support them in daily living due to illness or disability.

Adult at Risk position: A position which enables a person in the course of his or her duties (paid or unpaid) to have contact with an adult at risk.

Important notes:

1. Not all information included on a Disclosure Certificate will be relevant to whether someone is suitable to work with children and/or adults at risk.
2. Although the Council submits applications at the request of individual participating organisations, the Disclosure Certificate received by the Council is confidential to it, so the Council will be unable to give a participating organisation reasons for its advice as to whether or not an applicant should be permitted to work with children and/or adults at risk.
3. If information included on a Disclosure Certificate reveals that the applicant is fully listed on the Disqualified from Working with Children List (DWCL) the Council will advise the participating organisation requesting the Disclosure Check that POC(S)A prohibits them from taking on the childcare position applied for. The Council will respond in the same terms to any subsequent participating organisation that enquires about the same applicant. In such a case the applicant will have no right of a hearing or appeal other than to the courts as provided by POC(S)A, so long as he or she remains on the List. **Any organisation that employs such a listed individual to work in a childcare position, whether paid or as a volunteer, is committing a criminal offence. An individual who applies for such a post knowing that he/she is fully listed on the DWLC also commits a criminal offence.**
4. Organisations have a legal duty to report for inclusion in the DWCL any individual working in a childcare position who harms a child or puts a child at risk of harm **and** is dismissed or moved away from access to children as a consequence **or** if they would have been dismissed if they had not resigned, retired, been made redundant or left at the end of a temporary contract.
5. If an applicant is not listed on the DWCL, but has relevant convictions or non-conviction information the Council and its Panels can only advise that an applicant should not be permitted to work with children and/or adults at risk, and can neither bar them from doing so, nor bar a participating organisation from taking on such an applicant.

6. The Disclosure process may in certain circumstances result in **confidential information about the applicant being disclosed to the registered body without it appearing on the Disclosure Certificate or being copied to the applicant. Participating organisations should therefore not assume that an applicant who is in possession of an apparently clear Disclosure Certificate is necessarily an appropriate person to work with children and/or adults at risk.**
7. Because of this, and since a participating organisation may take on an applicant as an employee or volunteer contrary to the advice of the Council, all participating organisations should be aware of the importance of making a fresh enquiry about each new appointment, and should not presume that an applicant who works for another participating organisation has been cleared to do so even if the applicant hold what appears to be a clear Disclosure Certificate.
8. Participating organisations should be aware that if they choose to ignore advice that an applicant should not be permitted to work with children and/or adults at risk, they would be entirely exposed in the event of any legal proceedings arising from a future incident or complaint.

Initial consideration:

1. Where information included on a Disclosure Certificate reveals that an applicant is fully listed on the DWCL participating organisations enquiring about that applicant will be advised of that fact and informed that it would be a criminal offence to allow them to work (paid or unpaid) in a childcare position.
2. Where information included on a Disclosure Certificate concerns an event which is:
 - more than 10 years old
and
 - has not been repeated
and
 - is not a serious offence
and
 - did not result in a prison sentence
and
 - is not relevant to work with children and/or adults at risk

an administrative decision will be taken to recommend that the applicant be permitted to work in participating organisations with children and/or adults at risk whether as a paid employee or a volunteer

In such cases participating organisations enquiring about that applicant will be advised that, in the Council's view, the Disclosure did not reveal any reason not to permit that applicant to work with children and/or adults at risk. This will be written in the same terms as will be used of applicants whose Disclosure is clear.

Reference to Independent Panel

1. Where any such information does not fall into either of the above categories it would not be appropriate to deal with it without further consideration. In such cases the decision as to whether or not to recommend that the applicant be permitted to work in participating organisations with children and/or adults at risk will be referred to a Panel consisting of three members. Panel members, one of whom will be from without the Jewish community, will all be senior and experienced members of either the Council's Management Team or of other appropriate organisations. At least one Panel member will have knowledge and experience of the type of organisation for which the applicant wishes to work. Each of the Panel members must have a clear Enhanced Disclosure.
2. The applicant will be advised that a Panel is to be convened to consider whether to recommend that he or she should or should not be permitted to work in participating organisations with children and/or adults at risk, and will be given the opportunity to provide further information, or to withdraw his or her application.
3. The Panel will normally be convened within one calendar month of a relevant Disclosure Certificate having been received.
4. The Panel will normally provide the applicant with a written decision, including its reasons for the decision, within one week of sitting. This information will not be made available to any other party.
5. In cases where the Panel is satisfied that information included on a Disclosure Certificate does not indicate that the applicant is unsuitable to work with children and/or adults at risk, participating organisations enquiring about the applicant will be advised that the Disclosure did not reveal any reason not to permit that applicant to work with children and/or adults at risk. This will be written in the same terms as will be used of applicants whose Disclosure is clear.

Appeal against Panel Decision

1. The applicant has an automatic right of appeal against the Panel's decision
2. An applicant who wishes to appeal against the Panel's decision must inform the Council in writing within two weeks of having been informed that the Council intends to advise the participating organisation that the Panel has recommended that he or she should not be accepted for paid or voluntary employment in a participating organisation as a result of information received through a Disclosure Check.
3. The Appeal Panel will normally be convened within one calendar month of receiving notice of an appeal.
4. The Appeal Panel, one of whom will be from without the Jewish community, will all be senior and experienced members of either the Council's Management Team or of other appropriate organisations. At least one Appeal Panel member will have knowledge and experience of the type of organisation for which the applicant

wishes to work. Each of the Appeal Panel members must have a clear Enhanced Disclosure. It will not include any member of the Panel which made the original decision in respect of the relevant Disclosure Certificate, nor any person with a present or recent connection with any organisation at whose request the Disclosure application was submitted.

5. The Appeal Panel will invite the appellant to provide written and/or oral evidence and argument to support his/her appeal. The appellant will have the right to be accompanied by a friend at the hearing. The accompanying person may, at the Appeal Panel's discretion, assist the appellant to present his/her appeal.
6. The Appeal Panel will normally provide the appellant with its decision at the end of the hearing unless it reserves judgment. This decision will be final.
7. The Appeal Panel will normally confirm its decision to the appellant in writing, together with the reasons for its decision, within one week of the appeal having been heard. The reasons will not be made available to any other party.
8. If the appeal is allowed, participating organisations enquiring about this applicant will be advised that the Disclosure did not reveal any reason not to permit that individual to work with children and/or adults at risk. This will be written in the same terms as will be used of applicants whose Disclosure is clear.
9. If the appeal is not allowed, or if the applicant did not appeal the decision of the original panel, the participating organisation at whose request the Disclosure application was submitted and subsequent participating organisations enquiring about this applicant will be advised that the Disclosure revealed information which leads the Council's Panel to recommend that this applicant should not be permitted to work with children or adults at risk.

Advice to Participating Organisations

1. If a Disclosure Certificate reveals that an individual has been fully listed on the DWCL the Council will advise participating organisations in the strongest possible terms that to allow that individual to take on a childcare position would be to commit a criminal act. If a Disclosure Certificate reveals that an individual is provisionally listed on the DWCL the Council will advise participating organisations that the individual be not employed until the listing is resolved.
2. The Council and its Panels can only advise participating organisations, and cannot bar an applicant from working with children and/or adults at risk, or a participating organisation from taking on an applicant whom they have recommended should not be permitted to work with children and/or adults at risk. While the Disclosure Certificate and other information received by the Council as a result of a Disclosure check (see (6) above) is confidential to the Council the applicant receives an apparently identical certificate and is at liberty to display it to any other party. Although in most cases they are in fact identical, participating organisations should bear in mind that **the Council may have been given information about the applicant that does not appear on the Disclosure Certificate, and they should**

not, therefore, assume that there is no relevant information about an applicant who is in possession of an apparently clear Disclosure Certificate.

Acting contrary to the Council's advice would leave the participating organisation entirely exposed in the event of any legal proceedings arising from a future incident or complaint, and the Council would strongly advise all participating organisations against such a course of action.

3. If an applicant whom the Council has advised should not be permitted to work with children and/or adults at risk is nonetheless employed or taken on as a volunteer by a participating organisation contrary to its advice, the Council will nonetheless respond to any enquiry from any other participating organisation about that applicant that the Council has recommended that he or she should not be permitted to work with children and/or adults at risk. Participating organisations should therefore be aware that they must make a fresh enquiry about each new appointment, and not presume that because an applicant works for another participating organisation, he/she has been cleared to do so.
4. Where the Council has recommended against the employment of an individual, but it comes to the attention of the Council that the organisation has nonetheless employed him or her, the Council shall refer the matter to its Panel, which may, if it thinks the risk sufficiently serious, determine that the matter be referred to the relevant authorities for further investigation, but shall not do so without first discussing the matter with the organisation concerned.