
Report to Resources & Audit Committee

Date of Meeting: 24 September 2015

Subject: Disclosure Scotland Compliance Audit Report

Report by: Head of Resources & Governance

1.0 Purpose

- 1.1. To update Committee on the recent compliance audit undertaken by Disclosure Scotland.

2.0 Recommendations

- 2.1. The Committee is asked to note, comment on and challenge the Disclosure Scotland Compliance Audit report.

3.0 Considerations

- 3.1. The Code of Practice published by Scottish Ministers under section 122 of Part V of the Police Act 1997 identifies obligations which registers persons and other recipients of disclosure information require to meet.
- 3.2. Failure to comply with the Code may result in Scottish Ministers refusing to issue disclosures.
- 3.3. A number of posts within the Council are considered to require membership to the PVG Scheme as they involve work with what is termed regulated groups i.e. Children or Protected Adults.
- 3.4. In addition the Council may require individual employees in specific posts to complete Basic, Standard or Enhanced Disclosure Checks.
- 3.5. The audit is aimed at ensuring an organisation fully understands the disclosure process, the different types of disclosures, their responsibilities in relation to making referrals to Disclosure Scotland and their understanding of the barring of individuals from regulated work.
- 3.6. 5 recommendations were identified 3 of which are mandatory.
- 3.7. Actions have been put in place to address the mandatory recommendations highlighted and these will be delivered within the timeframes outlined in the report.

4.0 Sustainability Implications

4.1. N/A

5.0 Resource Implications

5.1. There are no resource implications arising from this report

6.0 Exempt Reports

6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) **Our Priorities** (Please double click on the check box)

- The area has a positive image and attracts people and businesses
- Our communities are more cohesive and inclusive
- People are better skilled, trained and ready for learning and employment
- Our communities are safer
- Vulnerable people and families are supported
- Substance misuse and its effects are reduced
- Health is improving and health inequalities are reducing
- The environment is protected and enhanced for all
- The Council is effective, efficient and recognised for excellence

(2) **Council Policies** (Please detail)

8.0 Equalities Impact

8.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?

Yes No

9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Compliance Audit Report

11.0 Background Papers



11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes (please list the documents below) No

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Chris Alliston	HR and Payroll Team Leader	2184

Approved by

NAME	DESIGNATION	SIGNATURE
Stephen Coulter	Head of Resources & Governance	
Nikki Bridle	Depute Chief Executive	

COMPLIANCE AUDIT REPORT

CLACKMANNANSHIRE COUNCIL

REGISTERED BODY CODE: CLA168

10 AUGUST 2015

Assurance Level	Partially Compliant
Number of Recommendations	5 (3 of which are mandatory)
Compliance Manager	Lesley Maguire

Lead Signatory Name: Chris Alliston
Location of Audit: Clackmannanshire Council, Human Resources, Kilncraigs, Greenside Street, ALLOA FK10 1EB
RB Representatives: Stephen Coulter (Lead Signatory), Chris Alliston
Date of Audit: 10 August 2015

Introduction

The Code of Practice (“the Code”) is published by Scottish Ministers under section 122 of Part V of the Police Act 1997 in connection with the use of disclosure information provided to registered persons and with the discharge of any functions by registered persons under that Act.

The Code identifies obligations which registered persons or the nominee of a registered person (countersignatory) and other recipients of disclosure information require to meet. Failure to comply with the Code may result in Scottish Ministers refusing to issue disclosures.

Assurance and Audit

The Code advises that Disclosure Scotland may carry out compliance audits to be satisfied and thus ensure that those receiving Disclosure information are acting lawfully and within the Code.

Methodology

The audit asked a series of questions specifically designed to elicit information from the Lead Signatory and others from the Registered Body on their understanding of the Disclosure process, including the different types of disclosures and when to ask for them, the Code of Practice, their responsibilities in relation to making referrals to Disclosure Scotland and their understanding of the barring of individuals from regulated work.

This report will identify any areas of compliance and non-compliance of the Code and will make any recommendations (see Schedule 1) which Disclosure Scotland considers necessary to ensure that the Registered Body fully complies with the Code and the law.

Question	Compliant? (Fully/ Partially/Not)
Section 1 – Structure of the Registered Body	
Registered body are aware of, and are complying with, legal requirement to pay annual fee for registration.	Fully Compliant
Countersignatory list is up to date.	Fully Compliant
Lead Signatory has appropriate authority over the other countersignatories in relation to disclosure matters	Fully Compliant
Countersignatories receive adequate information and/or training in the disclosure process.	Fully Compliant
Disclosure information is disseminated by Lead and/or periodic discussions take place.	Fully Compliant
Level of errors is acceptable (<10%).	Partially Compliant
<p>Comments:</p> <p>Mr Coulter is new to the Lead Signatory role but there is no exposure here as he is supported by a team of experienced countersignatories. Fees are paid by invoice and Disclosure Scotland finance confirm that all due invoices have been paid. Mr Coulter has line management responsibilities for some of the countersignatories and the others are in a parallel department. All are located in the same building and although there have been no meetings dedicated to disclosure matters since the preparations for PVG, should a need arise this would not present a problem. Clackmannanshire Council has well-defined policies and procedures surrounding disclosure and related matters, these are given to new countersignatories along with a copy of the Code of Practice. There is peer support available and advice is sought for difficult cases.</p> <p>The rate of avoidable errors for the past 12 months is 26.4% with address history queries and discrepancies in passport, driving and national insurance numbers accounting for the highest percentage of these errors. A full breakdown of type of error and corresponding percentage was provided and this was supplemented by a corresponding list of application errors attributed to individual countersignatories. This will be used to identify training needs and to drive improvement.</p>	
Recommendation(s) made at Schedule 1?	Yes
Section 2 – PVG Scheme and Regulated Work	
Good knowledge of regulated work criteria.	Fully Compliant

Question	Compliant? (Fully/ Partially/Not)
Good knowledge of different PVG forms. Good knowledge of different types of PVG disclosures and how/when to use them.	Fully Compliant
Notes of interest in PVG members is kept up to date.	Partially Compliant
Good understanding of offences in relation to PVG disclosures.	Fully Compliant
<p>Comments:</p> <p>Mr Alliston showed a good knowledge of the meaning of Regulated Work for children and protected adults and was familiar with Schedules 2 and 3 of the PVG Act. Where there is dubiety surrounding whether a position is eligible for Scheme membership, there will be a discussion between the CSG and the relevant head of service to gain a full understanding of 'normal duties' for that position and this in turn is applied to the 5-step plan as outlined in the PVG guidance. If at the end of this process there is still some uncertainty, they will seek advice from Disclosure Scotland.</p> <p>CSGs use SRU and SR application forms appropriately and critically analyse and interpret the information contained in the certificates received.</p> <p>Mr Alliston was provided with a report of all scheme members where Clackmannanshire Council is recorded as an interested party. Significant work is underway on the authority's HR systems which will see PVG membership numbers linked to individual HR records; reconciliation will form part of this exercise and the authority will notify Disclosure Scotland of PVG members on that report in whom it no longer has an interest. It should be noted that the HR system will be restricted to staff members who have a legitimate need to access this information and all access to disclosure information will be lawful.</p>	
Recommendation(s) made at Schedule 1?	Yes
Section 3 – Consideration for Listing, Barring and Referrals	
Registered Body are aware of their legal obligations to make referrals.	Fully Compliant
Registered Body are aware of timescales within which a referral must be made.	Fully Compliant
Good knowledge of referral criteria.	Fully Compliant
Good knowledge of meaning of "harm".	Fully Compliant
Good understanding of meaning of "under consideration for listing", and	Fully Compliant

Question	Compliant? (Fully/ Partially/Not)
appropriate response to disclosure of consideration status.	
Good understanding of meaning of “barred” and obligations as an employer.	Fully Compliant
<p>Comments:</p> <p>CSGs are familiar with the referral grounds and definition of harm as set out in the Protection of Vulnerable Groups (Scotland) Act 2007 at sections 2 and 93. CSGs are aware of the relevant timescales for making a referral and the consequences of failing to do so.</p> <p>The Registered Person has contingencies in place should they receive notification that an individual has been placed under consideration for listing. This process includes advising the relevant ‘Head of Service’, conducting a robust risk assessment and where appropriate removal from regulated work. Where a notification is received that an individual, whose normal duties met the criteria for regulated work, is barred, this would lead to immediate removal from regulated work with the relevant workforce. Suspension and disciplinary procedures would ensue to identify if it was appropriate to continue to employ the individual in another capacity which did not meet the criteria.</p>	
Recommendation(s) made at Schedule 1?	No
Section 4 – Police Act Disclosures under Part V of The Police Act 1997	
Good knowledge of eligibility for different disclosure levels and information contained on disclosures.	Fully Compliant
Appropriate use of Basic disclosures (if applicable).	Fully Compliant
Good understanding of Part V offences.	Fully Compliant
<p>Comments:</p> <p>The Registered Person has a wide range of positions requiring different levels of disclosure. For the most part, the small number of Basic disclosures stem from Public Sector Network requirements and Enhanced disclosures from posts based in Glenochil Young Offenders Institution.</p> <p>Original PVG and higher-level PAD certificates are not retained; reference numbers are recorded, date received and date of last Scheme Record (where appropriate) are recorded and the certificate is securely destroyed. Basic Disclosures are sent to individuals who then show these to the HR officer.</p>	
Recommendation(s) made at Schedule 1?	Yes

Question	Compliant? (Fully/ Partially/Not)
Section 5 – Identity Checks	
Disclosure ID checks carried out appropriately.	Fully Compliant
Good understanding of recommended types of ID.	Fully Compliant
<p>Comments:</p> <p>The Registered Person adopts best practice; HR staff seek 3 forms of identification, one of which is to be photographic (a government document) wherever possible. Copies are not accepted.</p>	
Recommendation(s) made at Schedule 1?	No
Section 6 – Disclosure Scotland Code of Practice	
Good understanding of the provisions of the Rehabilitation of Offenders Act and the “exempt question”.	Partially Compliant
Countersignatories are aware of their obligations under the Code of Practice and have access to a copy.	Fully Compliant
Applicants are appropriately informed of the need for a disclosure and how the information will be used.	Fully Compliant
Relevant policies are in place and made available to applicants.	Fully Compliant
Certificates are handled, stored and destroyed securely.	Fully Compliant
Disclosure tracking and retention of information is appropriate.	Fully Compliant
Disclosure information is used appropriately and fairly.	Fully Compliant
<p>Comments:</p> <p>The Registered Person is in the process of introducing a new HR system which will retain Disclosure reference numbers and dates; this information is currently held on a spreadsheet. Policies are in place and these are made available within the recruitment pack and at the offer of appointment as appropriate.</p> <p>A range of application forms were presented in advance of the audit and in one the Rehabilitation</p>	

Question	Compliant? (Fully/ Partially/Not)
<p>of Offenders Act (ROA) provision was not properly captured. On this form, the Registered Person articulated the ROA provision as a requirement and in doing so mandated the higher level of disclosure. Leaving aside those instances where higher level disclosure is mandated by regulatory bodies, the inclusion of the provision as currently drafted is potentially misleading and consideration should be given to rephrasing this provision in terms of 'can' rather than 'must' If this is accepted and actioned it will make it clear that it is Clackmannanshire's policy decision to seek this level of disclosure rather than a legislative mandate. This in no way deflects from the clear rationale of the authority in seeking higher levels of disclosure for a prescribed purpose.</p>	
<p>Recommendation(s) made at Schedule 1?</p>	<p>Yes</p>
<p>Section 7 – Umbrella Bodies (not currently applicable)</p>	
<p>Registered Body has documented arrangements in place with organisations on whose behalf they countersign.</p>	
<p>Appropriate checks on disclosure eligibility are made by the Registered Body.</p>	
<p>Processes in place for ensuring organisations observe Code of Practice and legislation.</p>	
<p>Sufficient ID verification arrangements are in place.</p>	
<p>Countersignatories aware of their obligations under the Code of Practice when countersigning as an umbrella body.</p>	
<p>Certificates handled in accordance with Code of Practice.</p>	
<p>Good knowledge of interested party status and obligations to provide information.</p>	
<p>Comments:</p>	
<p>Recommendation(s) made at Schedule 1?</p>	
<p>Section 8 – Qualifying Voluntary Organisations (not applicable)</p>	

Question	Compliant? (Fully/ Partially/Not)
Good understanding of the legislative criteria for free checks.	
Appropriate maintenance of notes of interest in respect of volunteers.	
Comments:	
Recommendation(s) made at Schedule 1?	

Conclusions

1. Having conducted the Compliance Audit and after examination of the documents and evidence produced, it is confirmed that Clackmannanshire Council is partially compliant with the Code of Practice as laid down by section 122 (1) of Part V of the Police Act 1997 (see Annex A).
2. The Registered Body requires to take action in respect of the recommendations detailed in **SCHEDULE 1** (if any) to ensure that they are **fully** compliant with the Code and the law and that they are following 'best practice' as recommended.
3. Provided any recommendations are acted upon, Clackmannanshire Council remains suitable to receive disclosure information.

Action Required

The Registered Body should:

1. Confirm receipt of this report in writing, either by email (preferred) or letter to the undernoted Compliance Manager.
2. Provide responses to the recommendations, together with copies of any revised documentation if applicable, by the date(s) shown against the respective recommendations.
3. Advise the named Compliance Manager if the Registered Body does not agree with any of the findings or recommendations detailed in this report, outlining any points where there is disagreement.
4. Note that Disclosure Scotland reserves the right to revisit a Registered Body to determine whether or not the recommendations have been acted upon.

Compliance Manager Contact Details

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Designation:	Compliance Manager
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Signed/Approved

Date: 12 August 2015



Compliance Manager

RECOMMENDATIONS

No.	Report Section	Recommendation	Is this a mandatory requirement?	Response required by:
1	1	The Registered Person, Clackmannanshire Council, should use the information provided to reduce the level of error to less than 10% within the next quarter. Follow up reports will be made available on request.	Yes	30 November 2015
2	2	The Registered Person, Clackmannanshire Council, should undertake a reconciliation exercise and notify Disclosure Scotland of all scheme members in which it on longer has an interest.	Yes	30 September 2015
3	4	<p>The Registered Person should confirm that, in the following document, the reference to the secondary legislation named as ‘The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (SSI 2003/231) have been amended to read ‘The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (SSI 2013/50):</p> <ul style="list-style-type: none"> • Clackmannanshire Council – Rehabilitation of Offenders – September 2012 – Version 1 	Yes	30 September 2015
4	4	The Registered Person, Clackmannanshire Council, should consider reviewing all application forms to ensure that where a position is eligible for PVG scheme membership this is clearly indicated on the form itself as well as in the job profile and the advertisement. This practice strengthens the authority’s stanceonce the section 34 offence is brought into force should a barred individual apply for a position with Clackmannanshire Council which meets the criteria for regulated work.	No	30 September 2015
5	6	The Registered Person, Clackmannanshire Council, should consider reviewing the Rehabilitation of Offenders declaration on certain application forms to clarify that it is able to	No	30 September 2015

		request this level of disclosure rather than mandated to do so. Where appropriate this could include a general caveat to cover the requirements of regulatory bodies.		
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Definition of Assurance

Assurance:

<p>Fully Compliant <i>Disclosure processes are robust and well managed</i></p>	<p>Countersignatories have a sound understanding of their legal obligations in relation to disclosure eligibility and the PVG Scheme. The Registered Body's disclosure practices and procedures are in accordance with the Disclosure Scotland Code of Practice and are effective in supporting the delivery of safer recruitment. Any exposure to potential weakness is low and the materiality of any consequent risk is negligible.</p>
<p>Partially Compliant <i>Disclosure processes are adequate but require improvement</i></p>	<p>There are some weaknesses in the knowledge and/or practices & procedures that either do, or could, affect the Registered Body's compliance with the law and/or Code of Practice, or delivery of safer recruitment. Exposure to the weaknesses identified is moderate and being mitigated.</p>
<p>Not Compliant <i>Disclosure processes are not acceptable and have notable weaknesses</i></p>	<p>There are significant weaknesses in the current knowledge and/or procedures in relation to disclosures, to the extent that the Registered Body may be acting unlawfully, in breach of the Code of Practice, or failing to deliver safer recruitment. Exposure to the weaknesses identified is sizeable and requires urgent mitigating action.</p>