


Document Reference:	Document Title: Employing persons with criminal convictions policy
Authorisation Date: December 2007	Document Type: HR Agreement
Revision Date: December 2008	Responsible Authority: SPF
Signed off by:	
	

## EMPLOYING PERSONS WITH CRIMINAL CONVICTIONS POLICY

### 1. POLICY STATEMENT

- 1.1 This document outlines the East of England Ambulance Service NHS Trust (the Trust) Employing Persons with Criminal Convictions Policy and Procedure.
- 1.2 The Trust is committed to implementing fair and effective policy and practice for recruiting and retaining people with criminal convictions based on a full assessment of the risks involved.
- 1.3 This policy has been developed in accordance with recommended CRB and Chartered Institute of Personnel and Development (CIPD) guidelines, and has been written in partnership by management and staff side.

### 2. SCOPE

- 2.1 This Policy applies to all:
  - staff employed by the Trust
  - applicants to posts in the Trust
  - casual workers
  - volunteers

### 3. ACCESS TO THE PROCEDURE

- 3.1 All employees, applicants to posts, casual workers and volunteers are entitled to access to this policy which is located in the Human Resources Policies and Procedures Folders and/or on the Trust's Intranet. Copies are also available from the Human Resources Department.
- 3.2 Any employee or casual worker can seek guidance from line management, their trade union representative or the Human Resources Department.
- 3.3 External applicants to posts and volunteers can seek guidance from the Human Resources Department by calling their nearest office in either Bedford 01234 408972, Chelmsford 01245 443344, or Norwich 01603 424255.
- 3.3 Individuals and managers may also wish to consult related Trust policies such as the Criminal

Records Bureau Disclosure Policy and the Secure Storage, Handling, Use, Retention & Disposal of Disclosures and Disclosures Information Policy.

#### **4. ROLES AND RESPONSIBILITIES**

- 4.1 The Human Resources Department is responsible for keeping the provisions within this policy in line with employment legislation and best practice people management principles such as those set out in the CRB Code of Practice Guidelines.
- 4.2 Managers, HR staff and trade union representatives are responsible for providing advice and guidance to employees on the application of this policy and procedure. Advice for applicants, casual workers and volunteers will be provided by the Human Resources Department.
- 4.3 Management and trade union representatives are responsible for bringing any mutually beneficial improvements to this policy to the attention of the Trust.

#### **5. GATHERING INFORMATION ABOUT CRIMINAL RECORDS**

- 5.1 The Trust will determine whether, given the nature of the positions it wishes to fill, it is appropriate to ask about criminal records and obtain the relevant level of Disclosure. The Trust will seek a Disclosure where the position to be filled involves a degree of risk or where there is a legal requirement to do so.
- 5.2 Disclosures will not be used as a blanket requirement in all circumstances.
- 5.3 The Trust should advise in any advertisement, recruitment briefs to agencies recruiting on our behalf and contractors if a Disclosure will be required, particularly if the job is exempted from The Rehabilitation of Offenders Act (ROA) 1974.
- 5.4 Applicants should be informed at the outset if criminal record information will be requested from them. This will provide a basis for the applicant to decide whether or not to apply for the post. This information will be used only to assess the applicant's suitability for employment insofar as it is relevant as assessed in line with the principles outlined within this policy.
- 5.5 Where the Trust decides to ask applicants about criminal records, it will do so in such a way as to encourage honesty. For example, by issuing a statement expressing its willingness to consider ex-offenders.
- 5.6 Any information relating to criminal records required from applicants will be sought before making a final recruitment decision. At this stage, where appropriate, an application will be made to the relevant body for a Disclosure.
- 5.7 The process for dealing with Disclosures received at the point of a job offer is outlined in Appendix 1.

#### **6. LIMITATIONS OF DISCLOSURE**

- 6.1 It is acknowledged that where information is revealed by a Standard or Enhanced Disclosure, the Disclosure will generally only provide the basic facts such as the name, date of offences and the associated sentence. It will not put them into context.

6.2 Disclosures may not provide information on people convicted abroad, although the CRB will draw on data on the Police National Computer.

6.3 Disclosure information should not be relied upon as the sole means to determine suitability. They should support rigorous recruitment checks, not replace them.

## 7. CONFIDENTIALITY OF ENHANCED DISCLOSURE INFORMATION (NON-CONVICTION INFORMATION)

7.1 In some cases, an Enhanced Disclosure check may result in the police force disclosing non-conviction information to the registered body, by way of a separate letter, and not to the applicant. This may include information about a current investigation. **In such cases, the Trust will not pass this information on to the applicant, and acknowledges that to do so would be an offence under the Police Act 1974.**

7.2 In other cases, an Enhanced Disclosure check may result in the police force disclosing non-conviction information to the registered body on the Enhanced Disclosure, where this occurs, the Trust will consider this in the same manner as any conviction information.

7.3 Refer to Appendix 2 for details of the procedure for dealing with additional information received from the police at the point of a job offer.

7.4 Refer to Appendix 3 for details of the procedure for dealing with additional information received from the police for current staff.

## 8. ASSESSING THE RELEVANCE OF CRIMINAL RECORDS

8.1 The Trust acknowledges that deciding on the relevance of convictions to specific posts is not an exact science. In some cases the relationship between the offence and the post will be clear enough for the Trust to decide easily on the suitability of the applicant for the job. In other cases the suitability for employment of a person with a criminal record will be less clear and will vary depending on the nature of the job and the details and circumstances of any convictions.

8.2 The Trust will weigh up an assessment of an applicant's skills, experience and conviction circumstances against the risk assessment criteria for the job as outlined in Appendix 3.

8.3 An applicant's criminal record will be assessed in relation to the tasks that they will be required to perform and the circumstances in which that work will be carried out.

8.4 In line with best practice, the Trust will consider the following points when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers or clients?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance or items of value?
- Does the post involve direct contact with the public?
- Will the nature of the job present any opportunities for the post holder to re-offend in the course of work?

8.5 For a preferred candidate(s) who has met the requirements of the person specification and has disclosed a criminal record, the relevance of each offence will be considered by the Trust and/or where appropriate discussed with the applicant, taking into account the following issues:

- the seriousness of the offence and its relevance to the safety of other employees, customers, clients or property;
- the honesty of the applicant in disclosing the information when requested;
- the length of time since the offence occurred;
- any relevant information offered by the applicant about the circumstances which led to the offence being committed, for example, the influence of domestic or financial difficulties;
- whether the offence was a one-off, or part of a history of offending;
- whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely;
- whether the offence has been decriminalised by Parliament;
- the country in which the offence was committed. Some activities are offences in Scotland and not in England and Wales, and vice versa;
- the degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

8.6 A summary of the process for assessing the job for risk is included within Appendix 3.

## **9. MANAGING SENSITIVE INFORMATION**

9.1 The Trust will ensure that information regarding offences is kept confidential, so that applicants feel confident that information about their convictions will not be disclosed to anyone unless there is a specific reason for doing so.

9.2 Only persons directly involved in recruitment will be informed of an applicant's criminal record.

9.3 On request, a successful applicant will be informed who in the organisation has been told about the conviction and the reasons for this. If the individual's line manager was not directly involved in the recruitment process, they will only be informed of the offence if it is directly connected with the job.

9.4 Offence information and any additional police information provided separately under an Enhanced Disclosure will be stored and handled in accordance with the Trust's Secure Storage, Handling, Use, Retention & Disposal of Disclosure and Disclosures Information Policy.

## **10. RECRUITMENT DECISIONS**

10.1 Recruitment decisions will be made on the basis of all information released by the Criminal Records Bureau, including that contained in any separate letter, in accordance with good recruitment practice.

10.2 If the decision is made to withdraw a provisional offer of an appointment, the applicant will be informed of that decision. It may be that matters revealed in the Disclosure justify such a decision or, that information contained in a separate letter from the police as in the case of Enhanced Disclosures, provides evidence that, in the view of the Trust, the applicant is unsuitable for the position.

10.3 The Trust will not reveal the existence of any separate letter or its content as it is a criminal offence to disclose information of this type without the written permission of the police. (Refer to Appendix 2).

## **11. REVIEWING POLICIES AND PROCEDURES**

11.1 The Trust is committed to involving managers, employees and their representatives in its development of policy on employing people with criminal records.

11.2 All new posts will be reviewed by the Human Resources Department in conjunction with relevant management to assess whether they involve any risk.

11.3 Staff involved in recruitment will be provided with guidance on the employment of ex-offenders and the Rehabilitation of Offenders Act.

11.4 The Trust will provide all unsuccessful applicants with relevant feedback related to their convictions (subject to Section 10.3 above).

## **12. SEEKING DISCLOSURE FOR AN EXISTING EMPLOYEE FOUND TO HAVE A CRIMINAL RECORD**

12.1 All employees are contractually obliged to disclose all criminal convictions.

12.2 If it becomes appropriate to seek Disclosure information in relation to an existing employee and it is found that they have failed to disclose an unspent conviction, the Trust will firstly establish whether the conviction is relevant to the post.

12.3 All new information will then be assessed in terms of relevance to the job as per Section 8 of this policy.

12.4 If information is found to be relevant and serious, the Trust will consider a range of options, which might include the introduction of safeguards where this is reasonably practical and/or movement to another job or, potentially dismissal.

## **13. PEOPLE BANNED FROM WORKING WITH CHILDREN**

13.1 Under the Protection of Children Act 1999 and the Criminal Justice and Court Service Services Act 2000, a number of people are banned from working with children. These are:

- people on a list held under Section 142 of the Education Act 2002 (List 99);
- people on the Protection of Children Act (PoCA) list;
- people on the National Assembly of Wales list;
- people aged 18 or over convicted of certain specified offences against those aged under 18 (or 16 in some instances) and given a hospital or guardianship order or a custodial sentence of 12 months or more. Suspended sentences of 12 months or more are treated as qualifying sentences.

Examples of offences specified in Schedule Four of the Criminal Justice and Court Services Act 2000 include:

- intercourse with a girl under 16;
- having indecent photographs of children;
- gross indecency with a child.

13.2 The term `working with children' covers a number of areas. According to the Guide on the Protection of Children, broadly these are:

- **employment in certain establishments** that provide functions of various sorts exclusively or mainly for children such as schools, children's homes and children's hospitals. All staff, whether primary or secondary carers, or ancillary staff are deemed to be primary carers.
- **employment in daycare premises**, except where the work takes place in a different part of the premises to where daycare activities are situated, or if it occurs during times of the day when children are not being looked after.
- **caring for, training, supervising or being in sole charge of children**
- **a position where normal duties involve unsupervised contact with children.** This would cover, for example, a minicab firm whose drivers are employed to transport unaccompanied children on a regular basis, but not those who do this on an irregular or one off basis.
- **child employment.** Where the young person is under the age of 16, those responsible for caring for them in the course of their employment are covered by the definition.
- **positions of influence and control over children** which could place them at risk.

13.3 Juveniles – under 18s – should only be banned from working with children if a court believes that there is a likelihood of the offender in question committing a further offence against a young person.

13.4 The 1999 Act requires childcare organisations to refer to the names of individuals considered unsuitable for work with children on the government held lists. It also requires childcare organisations to not knowingly offer employment to anyone listed for any posts involving regular contact with children in a childcare capacity.

13.5 The 1999 Act applies to people disqualified in England Wales only. However, such people are committing an offence if they seek similar work in Northern Ireland. Similar schemes are being considered in Scotland and Northern Ireland. Those who are subject to disqualification in Scotland and Northern Ireland will be recognised as being disqualified in England and Wales.

#### 14. THE REHABILITATION OF OFFENDERS ACT 1974

14.1 The Rehabilitation of Offenders Act 1974 enables criminal convictions to become `spent', or ignored, after a `rehabilitation period'. After this period, with certain exceptions, a person with a conviction is not normally obliged to mention it when applying for a job. The Act is more likely to help people with few and/or minor convictions because further convictions usually extend rehabilitation periods. People with many convictions, especially serious convictions, may not benefit from the Act unless the convictions are very old.

#### 14.2 Rehabilitation Periods

The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served (refer to table below). Custodial sentences of more than two and a half years can never become spent.

Sentence	Rehabilitation Period for people aged <u>under 18</u> when convicted	Rehabilitation Period for people <u>aged 18 or over</u> when convicted
Prison sentences <sup>(1)</sup> of 6 months or less	3.5 years	7 years
Prison sentences of more than 6 months to 2.5 years	5 years	10 years
Borstal (abolished in 1988)	7 years	7 years
Detention centres (abolished in 1988)	3 years	3 years
Fines, <sup>(2)</sup> compensation, probation, <sup>(3)</sup> community service, <sup>(4)</sup> combination, <sup>(5)</sup> action plan, curfew, drug treatment and testing, and reparation orders	2.5 years	5 years
Absolute discharge	6 months	6 months

- (1) Including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution (abolished for those under 18 in 2000 and for those aged 18–20 in 2001).
- (2) Even if subsequently imprisoned for fine default.
- (3) For people convicted on or after 3 February 1995. These orders are now called community rehabilitation orders.
- (4) These orders are now called community punishment orders.
- (5) These orders are now called community punishment and rehabilitation orders.

### 14.3 Exceptions to the Rehabilitation of Offenders Act

Various kinds of employment, occupations and professions are exempted. The Exceptions Order overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Ex-offenders have to disclose information about spent, as well as unspent convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempted. Exempted occupations fall into the following categories:

- work involving matters of national security
- work that brings the person into contact with vulnerable groups such as the infirm, elderly, mentally ill and young people under 18
- posts concerned with the administration of justice, for example, police officers, lawyers
- Professions that have legal protection, for example, nurses, doctors, dentists, chemists etc
- Health Service appointments.

## 15. GLOSSORY OF TERMS

### **Cautions**

Given when there is sufficient evidence for a conviction but it is not considered to be in the public interest to institute criminal proceedings. Cautions have traditionally been used most for juvenile and first time offenders.

### **Code of practice**

Code published by the CRB that sets out the requirements with which organisations using Disclosure information must comply.

### **Conviction(s)**

Arise from offences tried at court.

### **Criminal records**

Contain details of convictions, as well as cautions, reprimands, final warnings, etc.

### **Fidelity bonding**

A form of insurance that organisations can buy to protect themselves against loss of money or property caused through the dishonest acts of employees. Also known as Fidelity Guarantee Insurance.

### **Police National Computer**

The central police database against which all checks will be made.

### **Registered body**

An employer or other agency registered with the CRB to administer Standard and Enhanced Disclosures.

### **Schedule Four offence**

Under the Criminal Justice and Court Services Act 2000, adults convicted of a Schedule Four offence and given a hospital or guardianship order or a custodial sentence of 12 months or more are banned from working with children.

## 16. USEFUL ORGANISATIONS

### **Advisory, Conciliation and Arbitration Service**

Head Office: Brandon House, 180 Borough High Street, London SE1 1LW  
Tel: 020 7210 3613 Website: [www.acas.org.uk](http://www.acas.org.uk)

### **Chartered Institute of Personnel and Development**

CIPD House, Camp Road, London SW19 4UX  
Tel. No. 020 8971 9000 Website: [www.cipd.co.uk](http://www.cipd.co.uk)

### **Criminal Records Bureau**

PO Box 110, Liverpool L69 3EF  
Tel: 0870 90 90 811 Website: [www.crb.gov.uk](http://www.crb.gov.uk)  
Disclosure information website: [www.disclosure.gov.uk](http://www.disclosure.gov.uk)  
*Code of Practice for Registered Bodies, CRB*

**Department for Education and Skills – Adult Disadvantage Policy Division**

8<sup>th</sup> Floor, Moorfoot, Sheffield, S1 4PQ

Tel: 0114 259 4806 Website: [www.dfes.gov.uk](http://www.dfes.gov.uk)

**Department of Health**

Richmond House, 79 Whitehall, London SW1A 2NL

Tel: 020 7210 4850 Website: [www.doh.gov.uk](http://www.doh.gov.uk)

*The Protection of Children Act 1999: A practical guide for all organisations working with children*, Department of Health

**Employment Service**

236 Grays Inn Road, London, WC1X

Tel: 020 7211 3000 Website: [www.employmentservice.gov.uk](http://www.employmentservice.gov.uk)

*Just for the record*, Employment Service

**Home Office**

50 Queen Anne's Gate, London, SW1 9AT

Tel: 020 7273 4000 Website: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

*Wiping the Slate Clean*, Home Office

*Safe from Harm: Safeguarding the welfare of children in voluntary organisations in England and Wales*, Home Office

*Criminal Justice and Court Services Act 2000: Protection of children guidance*, Home Office

**Trade Union Congress**

Congress House, Great Russell Street, London WC1B 3LS

Tel: 020 7636 4030 Website: [www.tuc.org.uk](http://www.tuc.org.uk)

**Rehabilitation of Offenders Act 1974**

[www.homeoffice.gov.uk/justice/sentencing/rehabilitation/obtain.html](http://www.homeoffice.gov.uk/justice/sentencing/rehabilitation/obtain.html)

**Police Act 1997**

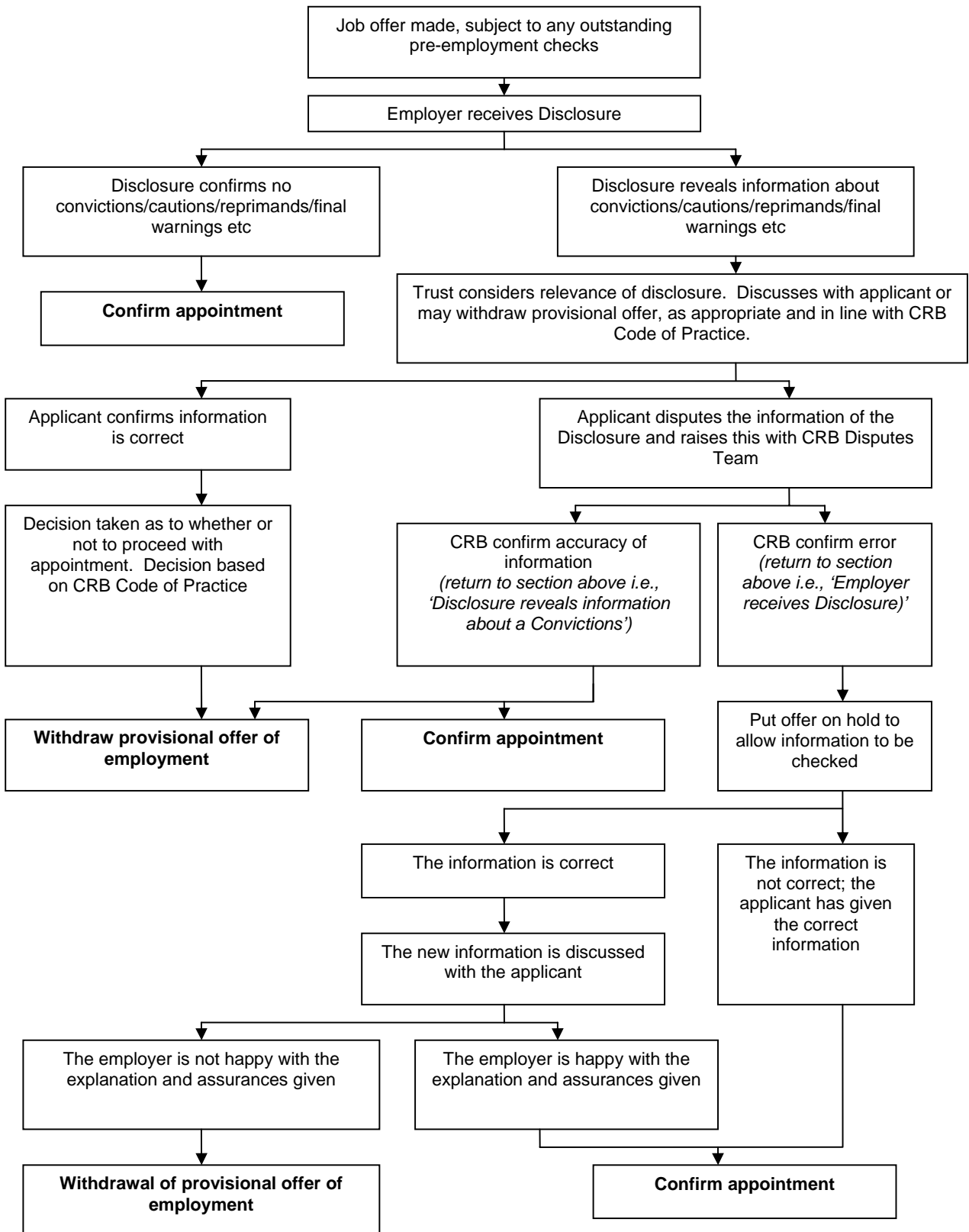
[www.hmso.gov.uk/acts/acts\\_1997/1997050.htm](http://www.hmso.gov.uk/acts/acts_1997/1997050.htm)

**17. POLICY REVIEW**

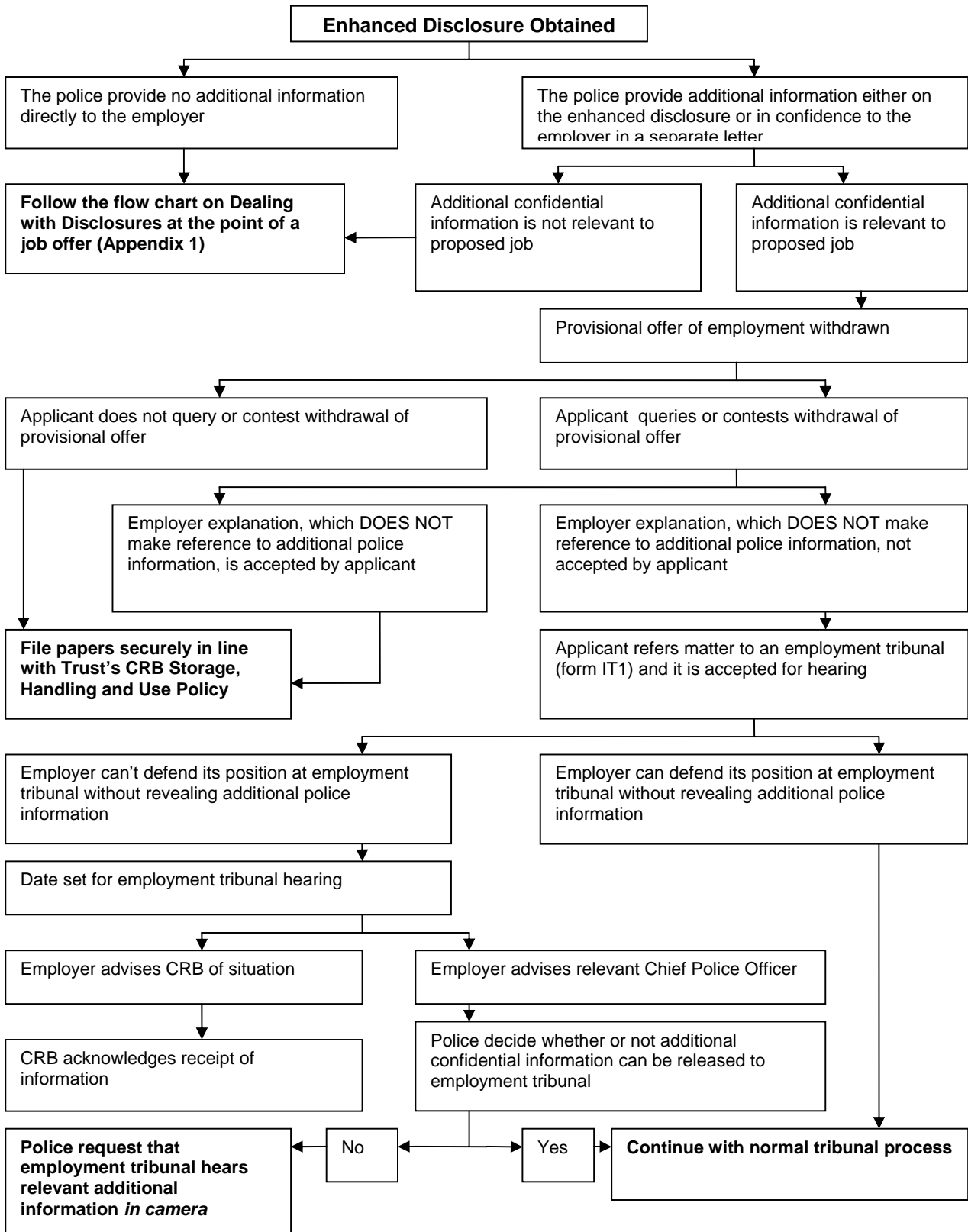
- 17.1 This policy will be reviewed annually or more frequently if significant changes to its effective operation are necessary.

**Dealing with Disclosures at the point of a Job Offer**

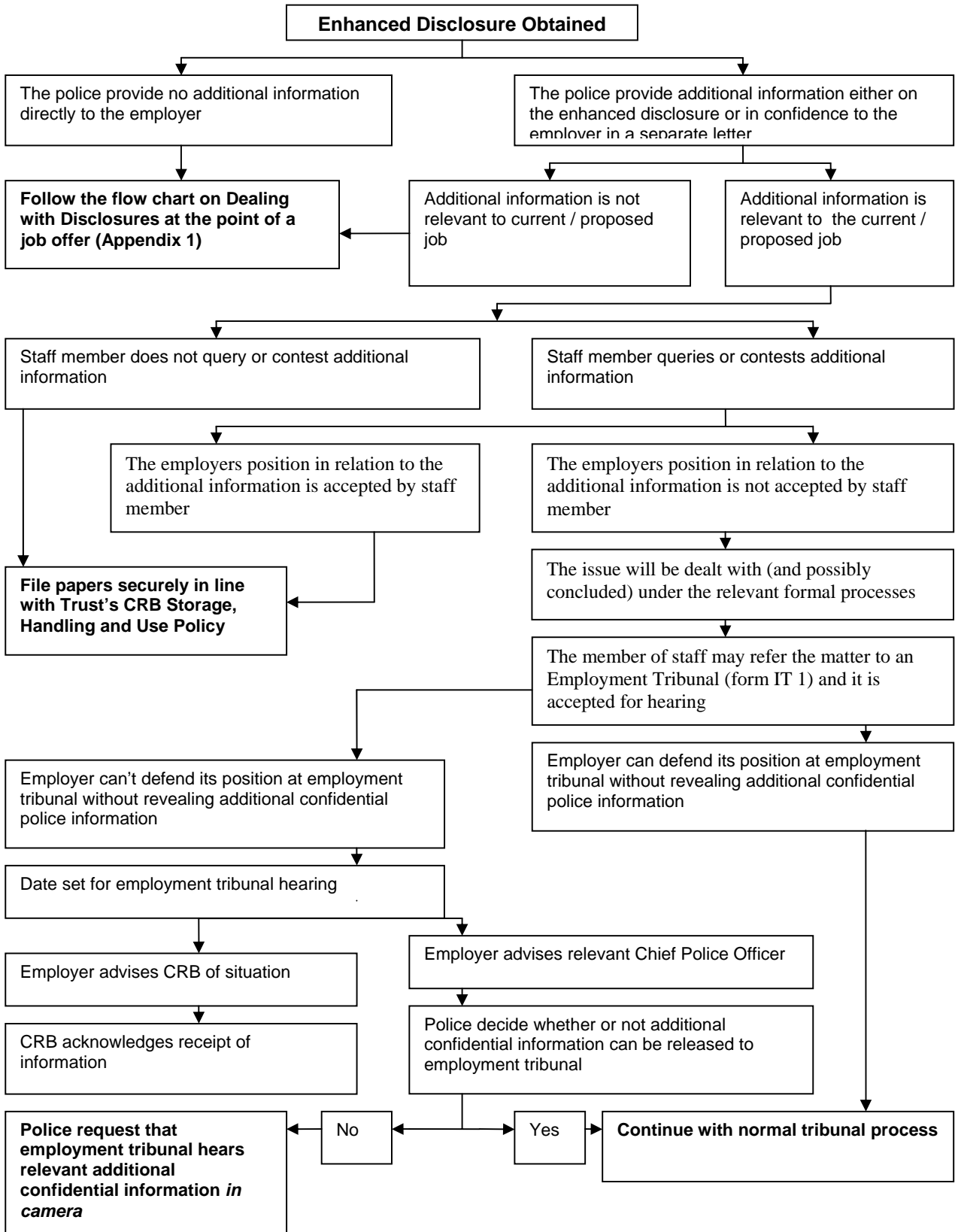
**APPENDIX 1**



**APPENDIX 2 Dealing with Additional Information from the Police at Point of Job Offer**



Appendix 3 Dealing with additional information from the Police in relation to current staff



APPENDIX 4

Assessing the Job For Risk

