



<b>Policy</b>	<b>Employment of Ex-Offenders</b>
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## 1. Background

The Rehabilitation of Offenders Act (ROA) 1974 ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. The Eastern Multi-Academy Trust is committed to safeguarding the welfare of those accessing the Trust's services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. However, this duty must be carried out with due regard to all other relevant legislation including the Protection of Freedoms Act (2012), the Data Protection Act (1998), the DBS Code of Practice and the Human Rights Act (1998).

The Exceptions Order 1975 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 Trust 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 that brings the person into contact with groups such as the infirm, elderly, mentally ill and young people under the age of 18.
- Professionals that have legal protection, for example, nurses, doctors, dentists, chemists, accountants.
- Posts concerned with the administration of justice, for example, police officers, lawyers, probation officers, and traffic wardens.
- Health service appointments.

Pre-employment checks and other safe recruitment practices are a requirement to ensure that people who may pose a threat to children and adults are not given positions of trust where they could exploit those entrusted to their care in most circumstances, including when applying for a job.

The Trust uses the Disclosure of Barring Service to check applicants' suitability for positions of trust. The Trust accordingly must comply with the DBS Code of Practice. This requires the Trust to treat all applicants fairly, and not to discriminate unfairly against the

subject of Disclosure on the basis of conviction or other information revealed and to have a written policy and procedure on the recruitment of ex-offenders.

This policy also applies to those seeking paid work or volunteering opportunities with the Trust. In addition, certain types of voluntary or seasonal work, student placements, school governors, preferred contractors and other regulated positions will also come under the provisions of the policy, particularly where they involve unsupervised contact with children or adults.

## **2. Policy**

- The Trust is committed to the fair treatment of its staff, potential staff or users of its services, regardless of any protected characteristics or their responsibilities for dependants or their offending background.
- The Trust has a written policy on the recruitment of ex-offenders, which will be made available to all DBS applicants at the outset of the recruitment process.
- The Trust actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records. We select all candidates for interview based on their skills, qualifications and experience.
- An enhanced DBS check is a requirement for all positions in the Trust. It will be made clear in all communications that a satisfactory enhanced DBS check is an essential condition of employment with the Trust and all offers of employment are subject to this provision.
- A DBS check will be requested after an offer of employment has been made, and the person has accepted the offer of employment.
- All applicants are required to provide details of their criminal record at an early stage in the application process. The nature of positions in the Trust allows us to ask questions about an applicant's entire criminal record as the majority of positions are exempt from the Rehabilitation of Offenders Act and the rules pertaining to "spent" convictions. Failure to provide full details of a criminal record or information that is directly relevant to the position sought could lead to the offer of employment being withdrawn or dismissal if the successful candidate has already commenced employment in the post.
- The Trust will assess the relevance and circumstances of offences to the role being applied for. Should the nature of the convictions disclosed mean that the applicant cannot be shortlisted they will be advised accordingly.
- At interview, or in a separate discussion, the Trust would ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position.
- The Trust makes every subject of a DBS check aware of the existence of the Code of Practice and will make a copy available on request.
- The Selection Panel (and any other school employee privy to such information) will be made aware that all information in relation to previous convictions given by applicants must be treated in the strictest confidence.
- The Trust undertakes to discuss any matter revealed in a DBS check with the person seeking the position before withdrawing a conditional offer of employment.
- The Trust will comply with its obligations under the Data Protection Act 1998 in its storage, handling, use, retention and disposal of disclosures and disclosure information.

### **3. Procedure**

#### **3.1 *At interview***

If the candidate reveals information about a conviction or other information, the panel must decide whether, in relation to the post in question, the nature of their background is sufficiently serious enough to justify non-selection for the post. In the event of the Selection Panel deciding not to select on the grounds of a declared criminal background, advice will be sought from the Trust's HR or Legal Advisor before any further action is taken.

The Selection Panel will be advised not to allow personal prejudices to 'cloud' their judgement and good practice. They will consider the relevance of offences (after seeking the appropriate advice) and be aware that no two offences are exactly alike e.g. a premeditated burglary that involves extensive damage to property and the physical intimidation of the occupant is different from the opportunist convicted of reaching in through an open window and stealing a purse.

It is important to note that the possession of a criminal background does not automatically debar an applicant from being offered employment with an Academy.

#### **3.2 *After an offer of employment has been made (before starting employment)***

On acceptance of an offer and before starting employment, the Trust will apply for a DBS check for the successful candidate. If a DBS check reveals details of convictions which may render the applicant unsuitable for the post applied for, a designated senior manager will (after seeking advice from the Trust's HR or Legal Advisor) discuss the situation with the applicant in line with the DBS Code of Practice and through use and completion of Appendix A: Cause for Concern Risk Assessment Proforma. The applicant will be asked to sign the completed risk assessment to verify the information provided.

When assessing any disclosure or declared conviction information received, consideration will be given to a range of issues and the risk assessment will support the designated senior manager's decision enabling them to assess the suitability of the applicant for their proposed position in light of matter(s) disclosed on their DBS certificate. In some cases, an HR Advisor will support the designated senior manager in these discussions.

Having a conviction will not necessarily automatically debar someone from starting employment with the Trust as the Trust will only take a criminal record into account when the conviction is relevant. Protection of the applicant's rights and interests will therefore be weighed against the rights and interests of students, employees and members of the public.

Managers will not allow personal prejudices to 'cloud' their judgement and good practice. They will consider the relevance of offences and be aware that no two offences are exactly alike.

If the candidate has made a false declaration on their application form then the Trust will not be able to confirm the appointment and any offer of employment will be withdrawn. If the disclosure certificate contains information that was not revealed by the candidate or additional information from the Police is received it will be necessary to hold a further

discussion with the candidate and undertake a further review against any risk assessment before deciding to confirm or withdraw the offer of employment. HR and legal advice will be sought at this point.

It is an offence for a barred person to work, apply to work or offer to work in Regulated Activity with a group they are barred from working with. Candidates on the Barred List will not be employed in Regulated Activity by the Trust. If the checks reveal that a candidate is on the Barred List for Regulated Activity the Trust will make a referral to DBS to notify them of the individuals attempt to apply for barred work.

### **3.3 *During Employment***

If, in the course of employment, the Trust becomes aware of information which they reasonably believe tends to show that a criminal offence has been committed, is being committed or is likely to be committed, the Trust will take necessary action with advice from the Trust's HR or Legal Advisor.

Where information comes to light, or an existing employee has a DBS recheck which subsequently reveals an adverse disclosure result, a designated senior manager will follow guidance from the Trust's HR or Legal Advisor and/or complete Appendix A: Cause for Concern Risk Assessment Proforma. It may be appropriate to move the employee to an alternative post with no access to children and/or vulnerable groups, property / information / resources etc. depending on the nature of the disclosures and pending the outcome of a full investigation. It may be that there are no suitable duties the employee could undertake during this period which do not bring them into contact with children/adults. If this is the case, the manager will give consideration to suspending the employee on full pay pending the outcome of the disciplinary investigation.

Employees are under an ongoing obligation to make the Trust aware of any criminal offence or information which may adversely affect their employment with the Trust.

## **4. Complaints and Appeals Process**

Applicants who are unhappy with any aspect of the DBS process, including the application of this policy, should initially raise their concerns through the Chair of the Selection Panel. Where this fails to produce a satisfactory resolution, applicants have the right to complain under the Trust's Complaints Procedure which is available on request.

Employees will have the right to raise their concerns under the relevant Disciplinary Policy and Disciplinary Appeals process or the Trust's Grievance Policy.

## **5. Useful Contacts**

- Local Authority Designated Officer (LADO for DBS Referral) –
  - Norfolk County Council 01603 223473
  - Cambridgeshire County Council 01223 727967

## **6. Further Information**

- Recruitment and Selection Policy (Including Safer Recruitment)

- ❑ Complaints Policy
- ❑ Disciplinary Policy
- ❑ Grievance Policy

## APPENDIX A: CAUSE FOR CONCERN RISK ASSESSMENT PROFORMA

Please complete this form fully and discuss with an HR Advisor, as it will form the basis of a decision to appoint/not to appoint someone into a position where adverse disclosures have been identified on a returned DBS check.

Name of Manager .....

Name of Applicant.....

Name of HR Advisor (consulted if required) .....

Position Applied For .....

School / Area .....

Date of Risk Assessment.....

Questions	Comments
Does the applicant meet all the essential criteria for the post in terms of skills, knowledge, experience and ability?	
Does the applicant agree that the information detailed on the DBS certificate is correct? In the event of a challenge from the applicant the matter needs referring to the disputes team at the DBS.	
Has the applicant been employed in a similar role previously and have references indicated no issues with their conduct.	
What was the nature of the crime, when did the relevant offence(s) occur e.g. less/more than two years ago, what were the circumstances involved and what was the sentence?	
Do the matters disclosed form any pattern? Was the offence a one-off, or part of a history of offending e.g. is the offence likely to re-occur?	
What is the seriousness of the offence(s) and relevance to the safety of other employees, students, service users and property?	

Are there any assessments and reports from those agencies involved in the applicant's process of rehabilitation e.g. probation service, specialists working in prison, other agencies?	
Are the type and/or nature of the offence(s) directly relevant to the post?	
What is the nature of the contact the applicant will have with children/adults/the public and how vulnerable are they? Will the applicant have access to finances or to items of value?	
Was the relevant offence committed at work (either paid or unpaid work)? Does the job present any opportunities for the applicant to re-offend in the place of work?	
Did the applicant declare the matters on the Academy application form or DBS self-disclosure application form?	
Are there any mitigating circumstances e.g. any relevant information offered by the applicant about the circumstances that led to the offence being committed e.g. the influence of domestic or financial difficulties?	
Has the applicant's circumstances changed since the offence was committed, making re-offending less likely (e.g. improved personal circumstances, drug addiction therapy etc.). Can the applicant demonstrate any efforts not to re-offend? eg. rehabilitation course	
Would the applicant do anything differently now - has their motivation changed? Does the individual regret the matter (degree of remorse) and what is their attitude towards the matters now?	
What level of and how much supervision is available to the applicant?	

Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?	
Any questions/additional comments from the applicant?	

Declaration by applicant and any additional comments in support of their employment

I understand that any offer of employment will be subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could make an offer of employment invalid or lead to termination of employment. I understand that this pro forma will be held securely by Academy for 25 years from the date of the assessment if appointed/12 months if not appointed. It will only be accessed if a) Regulatory/enforcement organisations ask for clarification on this recruitment decision, or b) any allegations are made against me during the course of my employment with the Academy, where an investigation would require access to this data. It will be destroyed in line with the Trust's Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

I consent to the above:

Signature: ..... Date:.....

Name:.....

Additional comments from the Manager

Signature: ..... Date: .....

Outcome of Risk Assessment (delete as appropriate):

Continue with offer of employment/withdraw offer of employment

Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions, safeguards to be implemented by the employer

Name of Authorising Officer: .....

Signature of Authorising Officer: .....

Safeguards to be put in place and by whom:

a)

b)

c)

d)

Date to be reviewed:

Name of Authorising Officer: .....

Signature of Authorising Officer: .....