

<b>Policy</b>	<b>Disclosure &amp; Barring Service checks and the Employment of Ex-Offenders</b>
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## 1. Introduction

- 1.1 This policy document sets out the procedures for Disclosure and Barring service (DBS) checks. These checks are essential and undertaken as part of a sound and safe recruitment process in Academies. Safer employment processes extend beyond recruitment and Academies and the Trust should ensure each worker understands their duty of care as well as which behaviours make up safer practice and which behaviours to avoid.
- 1.2 Criminal record and barred list information plays a crucial part in: safeguarding vulnerable groups, including children; protecting the welfare of all those accessing our services; managing risk; protecting the reputation of the Trust; and ensuring appropriate levels of trust and confidence in those delivering Trust services. This policy sets out how this information is used in the workplace and relates to employees, partnership workers, volunteers, agency staff, contractors and subcontractors. In other words, anyone working for or on behalf of the Trust (including those who work in schools).
- 1.3 The Trust is committed to complying with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information.
- 1.4 The Trust fully complies with its obligations under the Data Protection Act and other relevant legislation regarding the safe handling, use, storage, retention and disposal of Disclosure information.
- 1.5 This policy should be read alongside the Trust's Employment of Ex-Offenders Policy (Appendix D).
- 1.6 The Trust reserves the right to require an individual whose work requires them to have a DBS check to undergo a re-check at any point where it has good reason to do so.

## 2. Legal position

### 2.1 Legal framework

#### **The Rehabilitation of Offenders Act 1974 and The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2014**

The Rehabilitation of Offenders Act 1974 aims to ensure that a person who has been convicted of a criminal offence in the past and who has not re-offended for a specified period is, so far as possible, freed from the stigma of that conviction, and is treated as if the offence and conviction for it never occurred.

Under the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2014 some jobs and categories of employment are exempt from the provisions of the Act and in such cases 'spent' convictions must be disclosed. If a person is employed in an Academy or the Trust they must disclose their convictions.

The amendments to the Exceptions Order 1975 (2014) provide that certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account. This filtering is applied by the DBS.

### 2.2. Legal requirements of the DBS

- All staff on the Trust's payroll, whether supervised or not remain in regulated activity and checks on these individuals will continue in the same way. This includes all staff such as cleaners and caretakers working in Academies.
- Enhanced DBS checks can be obtained where a post or situation meets the criteria outlined in Schedule 4 of the Safeguarding vulnerable Groups Act 2006. Where reference is made to this check throughout this policy this criteria will need to be met.
- A volunteer in an Academy will not be in regulated activity if they are supervised to a reasonable level in which case an enhanced DBS check with barred list check would not be a requirement (for guidance on what is a reasonable level of supervision see Appendix B). An enhanced DBS check without the barred list check is required for a supervised volunteer. If the volunteer is unsupervised, they will be in regulated activity and will therefore be required to receive an enhanced DBS check with barred list check.
- It is an offence for an employer to engage in regulated activity someone whom they know has been barred by the DBS.
- A person who is barred by the DBS from working in regulated activity will be breaking the law if they work or volunteer, or try to work or volunteer in regulated activity.
- If the Academy provides regulated activity and dismisses a member of staff or a volunteer because they have harmed, or posed a risk of harm to a child or vulnerable adult, or the Academy would have dismissed if they had not left, the

Academy must refer this information to the DBS. The Trust will support Academies in making this referral.

- Police may use common law powers to provide information directly to employers in cases where this is necessary, for example to prevent harm to others. Where information is disclosed from the police using their common powers this must not be fed back to the candidate(s)/ employee. Discussions must take place and an agreement reached with the police in terms of the information that will be provided to the candidate/ employee to ensure current police investigations are not compromised.

### 2.3 Validity of DBS disclosure certificates

There is no period of validity for a Disclosure, which is technically out of date on the day it is issued because a new or further criminal conviction, caution, etc may be recorded against the individual at any time after the issue date.

All employees are issued with the Trust's code of conduct which states that if, following an individual's appointment, they are subsequently arrested, cautioned or convicted of a criminal offence, they must inform their line manager. Failure to do so may lead to disciplinary action. The line manager should immediately seek advice from HR on the appropriate steps to take, for example a risk assessment, or investigation and action (where appropriate) under the Trust's Disciplinary Policy and Procedure.

The Trust does not accept DBS checks issued by other organisations for new employees unless it is supported by the DBS Update Service.

### **DBS Update Service**

Individuals can now subscribe to the DBS Update Service for a small annual fee. This enables an individual to take their DBS check with them from role to role, within the same type of workforce (i.e. working with children and/or working with adults), where the same type and level of check is required. Employers can then go online to see if the information presented is still current and valid, i.e. carry out a "status check". The Academy must see the original check to ensure that they are undertaking a check at a similar level and for similar work eg an enhanced check with barred list check for children. If it is not the same check at the same level then a new DBS check is required. The individual's written consent is required to check the update service, this could be via email or a signed letter and should be kept on the personnel file with the Update Service print-out.

Applicants are able to subscribe to the DBS Update Service when the DBS application is under way. If they wait to subscribe with their DBS certificate number they will only have 14 calendar days, from the date the certificate is issued, to subscribe.

If the individual does not subscribe to the DBS update service (this is not mandatory) or they do not give their permission for the update service to be used to support their DBS certificate then a DBS check must be requested in the usual way. The update service only states whether the information contained within the certificate has changed or not. It is therefore mandatory to see the original DBS certificate to which

the update service record is aligned. If the response to the check via the update service is that something has changed since the DBS was done then a new full DBS must be applied for by the Trust.

### **3. Trust position**

- 3.1 As part of the application process for any employed role at the Trust an application form must be completed. Part of this form includes a self-declaration regarding previous cautions, convictions, etc. All candidates should declare any previous history, including those convictions considered 'spent'. Failure to disclose this information may lead to any offer of employment being withdrawn (see Employment of Ex-Offenders, Appendix D)

An enhanced DBS check with barred list check is compulsory for all new appointments to the Trust regardless of role. A DBS update service check can be undertaken in place of a full DBS check, if the individual is subscribed to the service and gives their consent for the check to go ahead as outlined in 2.3 above. If this is the case the Academy must see the individual's original DBS certificate along with ID to check the name on the certificate matches the identity of the individual and ensure that it is for the same level of check and for the right workforce. The Trust will conduct teacher prohibition checks also as applicable.

- 3.2 The Trust does not have a policy on re-checking staff in its Academies. Therefore checks will only be done on new appointments regardless of whether they have worked in schools/Academies previously. The Trust may also carry out checks including barred list checks when an existing employee changes their role within the Trust and will also undertake teacher prohibition checks/Section 128 checks as appropriate.
- 3.3 All regular volunteers will also be checked prior to commencement to ensure there will be no safeguarding issues.
- 3.4 The Trust will also check all Governors and Directors of the Trust at appointment to an enhanced level.
- 3.5 Contractors for services eg cleaning, catering, grounds maintenance are required to provide staff lists of those employed within the Academy including assurance that they have an enhanced DBS check in place. This can be in the form of a 'comfort letter' or simple spreadsheet confirming the contractors name, date of the check, level of the check and if it was satisfactory. Contractors will follow their own procedures with regards to risk assessing any checks that are not clear.
- 3.6 For senior post holders within the Trust and Governors/Directors section 128 checks will also be undertaken to ensure they are not barred from managerial positions within the Trust.

### **4. The deployment of staff**

- 4.1 Offers of employment to successful candidates, including NQTs, are conditional upon a satisfactory enhanced DBS check with barred list check where applicable (or update service check). A copy of the check will be taken**

**as evidence and to enable it to be recorded on the Single Central Record. A copy of the DBS certificate should be taken, and should be signed and dated by the person taking the copy. This should be done at the very top of the certificate (the addressee label) so that the rest of the certificate need not be retained.**

**Please note that until a satisfactory enhanced DBS check with barred list check (and a clear prohibition from teaching check, as appropriate) has been received, the person must not be deployed to work directly with children or in a situation where they can have unsupervised access to children.**

4.2 However, if an enhanced DBS check with barred list check has been applied for but has not been received before they are due to start work, the Trust does have the discretion to allow the person to start work provided that the Principal is confident that all other pre-employment checks have been carried out, i.e.:-

- obtaining and scrutinising comprehensive information from the person, and taking up and satisfactorily resolving any discrepancies
- obtaining independent professional and character references that answer specific questions to help assess the person's suitability to work with children and following up any concerns
- a face to face interview that explores the person's suitability to work with children as well as their suitability for the post
- verifying the person's identity
- verifying that the person has any academic or vocational qualifications claimed
- checking their previous employment history and experience
- verifying that they have the health and physical capacity for the job
- a check against the DBS children's barred list. This list contains details of those who are banned or restricted from working in an education setting
- check of their eligibility to work in the UK
- prohibition from teaching check or Section 128 check – if applicable
- reviewing any recent previous DBS check the individual may have from another organisation

and provided that the person is not deployed to work directly with children or in a situation where they can have unsupervised access to children. In other words, all possible action has been taken to ensure that no risk to children could arise. In these situations, a full risk assessment must be undertaken – see Appendix A.

**DBS barred individuals seeking to undertake work with vulnerable groups may face a prison sentence or a fine. Employers in regulated activity who knowingly employ barred individuals may face a prison sentence or a fine.**

4.3 Detailed records relating to the recruitment and selection process for all staff will be retained securely as evidence that sound and safe processes have been followed. This includes recording information on the single central record. Recruitment appointment information should be kept on the successful candidate's personal file for the time they are employed plus 7 years. For unsuccessful candidates information will be retained for one year before being destroyed. The Trust will only retain the top part of the DBS Disclosure which holds the individual's information, the disclosure number and the date on their file as evidence checks have been carried out.

## **5. Agency Supply teachers**

- 5.1 If the Academy is using a supply agency, the Academy must receive written confirmation and evidence that all relevant checks have been undertaken. DBS checks must be enhanced and include a check of the barred list. The Academy must require the supply agency to provide the written notifications and copies of the enhanced DBS check with barred list check where appropriate through the contract or other arrangements which it makes with the supply agency. Where there are matters disclosed a risk assessment should be undertaken and signed off by the relevant member of the Trust's Senior Leadership Team and Principal. The Academy should check and take copies of ID of agency supply staff on arrival to place with the other documentation.

## **6. Invigilators/casual staff**

- 6.1 By the very nature of examinations and casual employment, there will necessarily be gaps between periods of employment. Provided that an enhanced DBS check with barred list check was obtained when the individual was first employed, together with all the other pre-employment checks listed above, we can reasonably advise that where a casual member of staff is used regularly by the Academy, it will not be necessary to seek further DBS disclosures each time they are subsequently used.
- 6.2 However, if there is a significant gap between periods of employment of over 3 months a further DBS check will be necessary or further check via the update service.

## **7. Overseas teachers**

- 7.1 As the DBS cannot access criminal records held overseas, an enhanced DBS check or an enhanced DBS check with barred list check may not provide complete picture of an individual's criminal records. The DBS will not normally be able to provide a disclosure if an applicant has never previously lived in the UK, no purpose will be served by seeking a disclosure through the DBS on their arrival in this country as the person concerned will not have a criminal record in this country nor will they appear on DBS barred lists.

- 7.2 Any candidate who has lived overseas should obtain an equivalent 'police check' from each country where they have resided during the last 10 years.

The gov.uk website includes information on how to apply for these checks on the link below:

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

The Trust is not liable for any costs associated with overseas police checks.

- 7.2 In some countries, applicants can apply to their home Police Force for a "Certificate of Good Conduct". The level of information contained in these certificates varies from country to country: some are complete extracts from the criminal record; others are partial. The applicant will be required to access and provide information to show

their previous record prior to commencing employment. Certificates should be originals, not copies and a copy will be retained for the file and for recording on the Single Central Record.

- 7.3 The Trust will also ensure that the normal pre-employment checks of identity, qualifications and references are carried out thoroughly before confirming an appointment, i.e. to confirm that all reasonable steps have been taken to ascertain the integrity and identity of the person concerned.
- 7.4 Overseas teachers must have the right to work in the UK. The Immigration, Asylum and Nationality Act 2006 as updated places an onus on the Trust to ensure that employees start work on or after 26 February 2008 having the right to work in the UK. Academies will be subject to a significant fine for negligently employing a worker who is not a resident of a European Economic Area Country. For deliberately employing such workers there will be an unlimited fine or imprisonment. Before a potential employee starts work, the Trust must check and copy for employee files, documents which confirm the person's identity and right to work in the UK. Where a photographic document is utilised, the photograph must be clearly identifiable from the copied image, therefore it is advisable that a colour copy or scanned image is retained. Guidance on documents required to ensure the Trust is not employing illegal workers is available on this link.  
<https://www.gov.uk/disclosure-barring-service-check/documents-the-applicant-must-provide->

## **8 Volunteers**

- 8.1 Children see volunteers as safe and trustworthy adults. For avoidance of doubt and the need for supervision, all regular volunteers will require an enhanced DBS check. The volunteer will be unable to commence until the Trust has seen the DBS Disclosure and a copy has been taken for the records and entry on the Single Central Record.
- 8.2 for full information see the Policy on Volunteers and Work Experience. In all cases ID checks should be undertaken and letters of assurance retained or DBS copied even if provided from another organisation.
- 8.3 In other circumstances, e.g. where a volunteer's role will be "one-off", accompanying teachers and pupils on a day outing, helping at a concert or Academy fete, those kind of measures would, in the majority of cases, not be eligible for an enhanced DBS check with barred list check. Academies need to consider this and ensure that a Risk Assessment has been undertaken and the volunteer is supervised at all times.
- 8.4 Parents who voluntarily transport pupils for Academy activities (e.g. sports activities and visits) would not expect to undergo an enhanced DBS check with barred list check if this is agreed with the other parents. However, if the transport is organised by the Academy **and** is a regular occurrence (4 or more days in a 30 day period) there would be a requirement for the parent to undergo an enhanced DBS check with barred list check if they are not supervised by someone who is in a regulated activity.
- 8.5 Where volunteers recruited by another organisation to work in a Academy, e.g. sports coaches from a local club, the Academy should obtain written assurance from

that organisation that the person has been properly vetted and this confirmation should be retained by the Academy and produced if required during an Ofsted inspection.

- 8.6 Where volunteers will be working unsupervised in a Academy they are in regulated activity so will be required to undergo full checks including an enhanced DBS check with barred list check or a check by the Update service.

## **9 Contractors**

- 9.1 Where Academies use contractors that are provided by a contractor, it is the responsibility of that contractor to have its staff checked. This must be a specific requirement contained in any contract for these services with the Academy. The Academy should seek written confirmation that these checks have been carried out by the contractor and we would encourage Principals to routinely check with workers the contractor sends to the Academy that they have had an enhanced DBS check and bring to the attention of the contractor any concerns arising. Academies are not able to request an enhanced DBS check with barred list check on contractors unless they meet the definition of regulated activity under the Protection of Freedoms Act 2012. The Trust can carry out a DBS Check on behalf of the contracting company and will re-charge the cost of such a check to them if they are unable to carry out the check themselves. The re-charge can be via the raising of an invoice or by way of a credit note from the contractor offset against their invoice A check can be undertaken via the Update Service if appropriate.

## **10 Educational visits (including residential)**

- 10.1 All employees and volunteers accompanying residential visits must hold an enhanced DBS check with barred list check before the visits take place. For day visits only, where volunteers will be supervised at **all** times, there is no requirement to undertake an enhanced DBS check.
- 10.2 When planning residential visits it is important to plan well in advance to give sufficient time for the DBS process to be completed.
- 10.3 Academies should satisfy themselves that the appropriate safeguarding procedures have been followed in terms of checks on employees and volunteers going on the trip.
- 10.4 When using external providers for activities, transport or accommodation where their staff could have significant unsupervised access to young people, the Academy should seek assurances that the provider has sufficient safeguarding systems in place by ensuring they have supplied the relevant information on checks for the staff involved in the activities.

### **10.5 Academies should refer to the Trust's Educational Trips and Visits Policy for further guidance.**

## **11 Work experience placements**

When work placements for pupils are arranged, the Academies must ensure that employers and training organisations are aware of safeguarding issues and asked to cooperate in putting appropriate safeguards in place.

There is no requirement to request enhanced DBS checks with barred list checks for staff supervising children aged 16 to 17 on work experience. However, Academies may be concerned about whether a children's barred list check should be carried out on staff specifically designated to supervise a child under the age of 16 while on work experience. In many instances it may not be necessary. It depends on the circumstances of the work experience, in particular the nature of the supervision and the frequency of the activity being supervised, to determine if any checks are necessary. The considerations would include whether the person will be:

- unsupervised: and
- providing the teaching/training/instruction/supervision frequently (at least once a week or on more than three days in a 30 day period, or overnight)

If the person working with the child is unsupervised and the same person is in frequent contact with the child, the work is likely to be in a regulated activity. If this is the case Academies could ask the employer providing the work experience to ensure the person providing the supervision is not a barred person. Academies should not ask an employer to conduct a check on staff who are simply working alongside the student.

Enhanced DBS checks with or without a barred list check cannot be requested for anyone who is under the age of 16.

Where work experience gives the candidate a benefit (such as access to further training, allowing them to meet criteria for a role in the future) this would be deemed by the DBS to be a check that must be paid for. The cost of such a check will be met by the candidate. The check should be paid for in advance, and will include the cost of the DBS check and our DBS check providers administration fee only. The Trust will not make an additional charge themselves for the processing of this check.

If the work experience is a requirement for a course, such as Access to Teaching, trainee teacher placements, etc, the course provider should undertake the check and provide details to the Academy in the form of a comfort letter.

### **13. Storage and Access**

Disclosure information in its entirety will not be kept on the personnel file. Once received, only the top part of the Disclosure containing the number and date and details of the individual and level of disclosure will be kept. The top section must be signed and dated by the person who has seen the original DBS certificate. No information on any convictions will be retained. The lower part of the form will be destroyed in a suitably secure manner.

Access to personnel files is strictly limited, which are held by the central HR team.

### **14. DBS Outcomes**

14.1 If a clear Disclosure is received then arrangements can be made for the individual to commence work provided all other checks have been satisfactorily completed.

14.2 Where the DBS check has been received and shows criminal convictions, the employment cannot be confirmed until and unless the Principal and relevant member of the Trust's Senior Leadership Team has given authorisation. In the decision making process the following will be considered:-

- Whether it has been declared by the applicant during the recruitment process
- Number of the convictions
- The period of time covering any convictions
- Type of convictions and relevance to the role
- How recently the conviction(s) occurred

This process may include meeting with the individual to gain more information.

The Trust's decision will be final and will be recorded and communicated by the HR department.

14.3 This applies equally to employees, supply staff, volunteers and contractors.

## Appendix A – Risk Assessment for those without a DBS in place

This form is **for use in exceptional circumstances only** to justify the exemption from the standard requirement to obtain a valid Enhanced Disclosure and Barring Service (DBS) check prior to an employee commencing their new role working with children.

If the Principal believes there are sufficient grounds for allowing work to commence before a DBS check is complete, they must complete this form in full and hold this on the employee's file with an appropriate note being made in the Single Central Record. The Enhanced DBS process must be completed as soon as possible. **No employee can be allowed to commence work without a satisfactory Barred List check and a prohibition from teaching check being completed (where applicable).**

This form will be completed by the relevant manager and signed off by the Academy Principal once they are happy that appropriate measures have been put in place to minimise any risk to the organisation and its pupils.

Individual's Details	
Mr / Mrs / Miss / Ms / Other	
First name	
Surname	
Name of current/last employer	
Length of service with that employer	
Is the previous service in a relevant role	
Proposed start date	
Post Details	
Post on offer	
Is this in regulated activity	
Is the post essential to the provision of statutory services	
Current arranged for covering the post	
How long has the post been vacant	
Reason for the need to fill this post prior to gaining the appropriate DBS clearance	
Employment Checks undertaken	
Has an interview been undertaken exploring the applicant's suitability to work with children	
Have 2 satisfactory written references been received (one from the last/most recent employer) which do not raise concerns about the candidate's suitability to work with children	
If references raise concerns – what action has been taken	
Have any gaps in employment history been accounted for – give details	
Has the candidate indicated they have convictions in their equal opportunities information submitted with their	

application. If so provide the details of offences and dates	
Date DBS submitted	
Has a DBS barred list check been undertaken – give date and result	
Has the person had a DBS check in the last 12 months – if so attach copy and state if clear	
Has the employer for the DBS check one of the referees above	
Has the prohibition from teaching check been done – give date and outcome	
To your knowledge has the applicant ever been subject to an investigation or disciplinary enquiry in respect of their conduct towards children or young people If so give details of the discussion with the relevant manager – with the candidate's permission	
Has satisfactory medical information been received from the candidate	
Have the candidate's academic and vocational qualifications been verified – copies should be kept on file	
Has the candidate's identify been verified	
Has the candidate's right to work in the UK been verified	
Will the individual's induction include cover the child protection and safeguarding process and standards required by the Academy	
What other measures will be taken to minimise the risk to pupils and the organisation should the individual commence work before the DBS check is complete Eg supervision for majority of work.	

I confirm that the information on this form is accurate.	
Signature:	Date:

The Principal should review this information and confirm on the basis of the content of this form whether or not they are in agreement to the candidate commencing work without a DBS check being received. If there are any fundamental concerns then authorisation should not be given. If in doubt please refer to HR for assistance.

**Authorisation by the Principal**

I am / am not (please delete as appropriate) in agreement for the candidate to start without a DBS check being received

Signed:

Date:

Name:

## Appendix B: Regulated Activity – Children

Regulated activity relating to children comprises of:-

- (i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- (ii) Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, Academies, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly. Regularly means carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period (or in some cases, overnight). The statutory guidance about supervision of activity, which would be regulated activity if unsupervised (for volunteers in Academies) is included in summary form in Appendix B.

- (iii) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
- (iv) Registered childminding; and foster-carers

## **Appendix C: Supervision guidance for Academies (volunteers)**

This guidance applies when an Academy decides to supervise a volunteer with the aim that the supervised work will not be regulated activity (when it would be, if it was not supervised). Where the volunteer is being supervised the law makes three main points to ensure that the supervision provided is robust enough for the volunteer to remain out of regulated activity:

- the volunteer must be supervised by a person who is in regulated activity
- supervision must take place “on a regular basis”. This means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the volunteer has just started or has been doing the activity for some time.
- The supervision must be reasonable in the circumstances: within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Academies should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:
  - ages of the children, including whether their ages differ widely;
  - number of children that the individual is working with;
  - whether or not other workers are helping to look after the children;
  - the nature of the individual’s opportunity for contact with children;
  - how vulnerable the children are (the more they are, the more a Academy might opt for volunteers to be in regulated activity);
  - how many workers would be supervised by each supervising worker.

In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.

## **Appendix D**

### **Employment of Ex-Offenders**

#### **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.

#### **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 is available on our website for all applicants and potential applicants and referred to as part 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 Trust 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.
- All decisions in relation to staff or applicants who have criminal convictions must be ratified by the Principal and relevant Trust Director in advance of any decision being given to the individual.

## **Procedure**

### **At application stage**

All applicants are requested to declare any criminal convictions as part of the application process. If at that stage, HR identify any applicants with convictions which would mean they would not be able to be shortlisted, this will be discussed with the relevant Director. If it is agreed, HR will contact those applicants and advise them that they cannot be taken forward in the selection process. It may be that HR will contact the applicant to request more information to enable that decision to be made.

### **At interview**

No information about criminal convictions will be shared with shortlisting panels or interview panels. If the candidate, however, reveals information about a conviction, charge 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 Department 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.

Any decision must be ratified by a member of the Trust's leadership team whom the Chief Executive has delegated authority to prior to the individual being advised.

### **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 or Head of HR will 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. 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.

Any decision must be ratified by a member of the Trust's leadership team to whom the Chief Executive has delegated authority to prior to the individual being advised.

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 may lead this or their advice will be sought at this point.

This may be dealt with under providing false information on an application form and any offer withdrawn.

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.

### **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 department.

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 department and 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 Principal, in conjunction with the Trust's senior leadership team, 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 as outlined in the Trust's code of conduct and contracts of employment.

### **Agency/supply staff and contracted staff eg catering**

Any agency or supply staff have to have DBS checks prior to commencing any period of work at the Trust or its Academies. For teaching staff, the Agency will normally confirm that all checks have been carried out and provide written confirmation.

For support areas, all staff must be checked prior to commencing any assignment. Many agencies do not undertake this and it may therefore be a requirement of the Trust or its Academies to do this.

The case is the same where services are contracted out such as catering, cleaning. The company who has the contract for those services must confirm to the Trust that the staff have been cleared and provide DBS numbers and dates and confirmation of the level of the DBS check.

Any temp or agency supply with a criminal conviction must be approved by a member of the Trust's leadership team, prior to coming on to Trust premises.

### **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.

Agency or temp staff should raise any concerns via the Trust's Complaints Policy.

## **Further Information**

- ❑ Recruitment and Selection Policy (Including Safer Recruitment)
- ❑ Complaints Policy
- ❑ Disciplinary Policy
- ❑ Grievance Policy



**APPENDIX A: CAUSE FOR CONCERN RISK ASSESSMENT PROFORMA**

This form should be fully completed and discussed 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 .....

Position Applied For .....

Academy .....

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?	

<p>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</p>	
<p>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?</p>	
<p>What level of and how much supervision is available to the applicant?</p>	
<p>Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?</p>	
<p>Any questions/additional comments from the applicant?</p>	

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: .....

**Recommendation**

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: .....

For Chief Executive use only: (please delete)

I agree with the recommendation above.

I do not agree with the recommendation above.

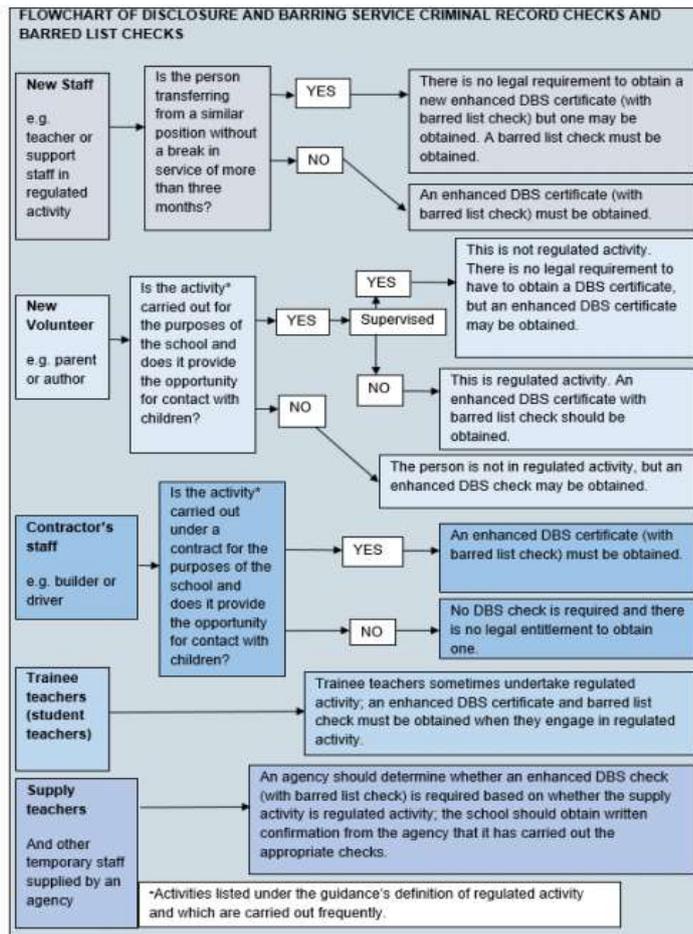
Reason:

Signed:

Date:

## Appendix E

### What is regulated activity?



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