

# Kenton Schools Academy Trust

## Code of Practice on Disclosure of Criminal Convictions



### 1. Purpose

The purpose of this code of practice is to give details of the disclosure and barring checks that need to be made for all people who wish to work in a school setting, as well as for volunteers. In the case of applicants for paid employment, it includes guidance on how these checks relate to the recruitment process. It will help schools adopt robust vetting procedures that minimise the risk of employing people who pose a risk of harm to children.

### 2. Legal Considerations

- This code of practice reflects the School Staffing (England) Regulations which require Trustees and Governing Bodies to undertake all relevant employment checks for all new appointments to the school workforce.
- Provisions on the scope of 'Regulated Activity' as defined by the Safeguarding Vulnerable Groups (SVG) Act 2006, as amended by the Protection of Freedoms Act 2012.
- All paid employment posts in schools are exempt from the Rehabilitation of Offenders Act 1974, as amended in 2013 and 2020.
- Requirements for additional checks on those providing or responsible for the management of 'relevant childcare' under Disqualification under the Childcare Act 2006 statutory guidance as amended in 2018.

### 3. General Policy on Disclosures

- Person specifications for all Trust posts refer to the requirement for disclosures at the Enhanced Level with Children's Barred List check.
- Possession of a conviction or indication of any other matter on a certificate of disclosure will not necessarily prevent the person being employed. The Chief Executive Officer/Principal will consider relevant factors before reaching a decision.
- The Trust pay for the cost of Certificates of Disclosure directly. The process is administered by Employee Services at Newcastle City Council through Service Level Agreement.
- Checks for volunteers are free however it must be noted that volunteers are NOT generally checked against the barred list for working with children as it is assumed that they will not meet the definition of 'regulated activity' as defined in legislation ie they will be supervised. A risk assessment process will take place before any voluntary work is offered and where volunteers will be unsupervised, an enhanced disclosure and children's barred list check must be undertaken as for paid staff in school.

- Before an offer of appointment is confirmed the Chief Executive Officer/Principal must confirm whether the candidate's record is clear or shows a trace ie convictions are on record. This requirement applies in all cases, except if the candidate is registered with the online update service and gives permission for their certificate to be verified online.
- The Trust will receive notification from GBG (the Local Authority's online DBS checking provider). The Certificate of Disclosure is sent directly to the applicant. In all cases, this original DBS Certificate of Disclosure must be presented to HR prior to commencement of employment.
- Where a trace is identified this must be considered by the Chief Executive Officer/Principal, before an offer of appointment is confirmed.
- A request for a disclosure including Children's Barred List check may be made at any time if the school or authority has grounds for concern about the person's suitability to work with children.
- If the candidate disputes the information provided on the certificate of disclosure, it is their responsibility to contact the DBS direct and arrange for further checks to be made.
- Human Resources and Employee Administration at Newcastle City Council will maintain a record of the date of the disclosure, the name of the subject, the type of disclosure, the position in question, the unique number issued by the DBS and the recruitment decision taken.

#### **4. Individuals who require a DBS check including a 'Barred from working with children' check**

##### **4.1 Enhanced disclosures and barred list check for all employees**

Enhanced DBS disclosures, including the barred from working with children check, are mandatory for **all new** appointments to the school workforce. All school employees are considered to be in 'regulated activity' - working in unsupervised activity in a specified place ie a school.

A new appointment is defined as anyone who has not previously worked in a school or service within the Trust;

Where existing staff change jobs within their current school or within the Trust, a further disclosure is not necessary if a relevant check has been obtained.

It is not necessary to ask existing staff in post, who were not previously eligible for criminal background check (including those recruited before the establishment of the CRB) to apply for a DBS Disclosure unless:

- there are concerns about the person's suitability to work with children; or
- an individual moves to work with children and their previous work did not require an Enhanced Disclosure and barred list check.

## 4.2 Portability Policy

**4.2.1** Portability describes the process of using a DBS Disclosure which has been gained in one job and applying it to another job. Kenton Schools Academy Trust do not use portability. Therefore unless an applicant is registered with the online update service, a new Enhanced DBS Certificate with Children's Barred List Check will be required for all new appointments.

If individual is registered with the online update service, has a certificate at the right level (enhanced) and for the right workforce group (children); an on line status check can be undertaken with their permission. If this is clear then the certificate can be accepted; if there have been updates/changes since the certificate was issued then a new check would need to be undertaken in the normal way.

In order for the online check to be completed and accepted, the following criteria must be met:

- the original DBS disclosure and supporting identity/proof of address documents have been seen and verified by Human Resources;
- it is at the enhanced level including a children's barred list check;
- it is for the right client group that is children;
- no issues relevant to the post have been identified on the DBS Disclosure; and
- other checks such as identity, qualifications, prohibition, disqualification, right to work in the UK and references have been checked.

## 4.3 Volunteers

To qualify for a free disclosure a volunteer must be a person engaged in an activity which involves spending time, unpaid (except for travel and other approved out of pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative.

It is assumed that in most cases, volunteers will be supervised and therefore schools are not permitted to undertake a barred list check. An enhanced DBS check can still be undertaken and this is recommended safer recruitment practice.

The Chief Executive Officer/Principal should consider obtaining enhanced DBS disclosures where the volunteering is regular and involves contact with children as follows:-

- the duration, frequency and nature of contact with children; and then,
- what the school knows about the volunteer, including formal or informal information offered by staff, parents and other volunteers;
- whether the volunteer is well known to others in the school community who are likely to be aware of behaviour that could give cause for concern;
- whether the volunteer has other employment, or undertakes voluntary activities where referees would advise on suitability; and,
- any other relevant information about the volunteer or the work they are likely to do.

If a volunteer will be undertaking unsupervised work then they will be in regulated activity and therefore must have an enhanced DBS disclosure and barred list check undertaken as for paid employees.

A risk assessment in order to determine the appropriate and necessary level of checks must be completed in all cases and submitted to HR before an agreement to permit the voluntary work is made.

#### **4.4 Third parties on school premises**

Requirements placed upon the trust and schools relating to existing staff and volunteers extend to incorporate those involved in the provision of extended services.

Where services or activities are provided directly under the supervision or management of trust or school staff, the trust's arrangements for criminal record checks and record keeping will apply.

Where a third party is responsible for running the services there should be clear lines of accountability and written agreements setting out responsibility for carrying out the checks on staff.

Where services or activities are provided separately by another body, the trust should be satisfied that the provider concerned has appropriate policies and procedures in place regarding safeguarding children and child protection including those for staff appointments. There should also be arrangements to liaise with the school on those matters as appropriate.

Children should not be allowed in areas where builders are working for health and safety reasons, so these workers should have no contact with children. However, the trust and schools should ensure that arrangements are in place with contractors, via the contract where possible, to make sure that any of the contractors' staff that come into contact with children have appropriate checks in place.

PFI contract staff must be checked by the contractor in the same way as school employees.

## **5. Individuals who do not require a DBS check**

It is not necessary to check visitors who will only have contact with children on an ad hoc or irregular basis for short periods of time, or secondary pupils undertaking voluntary work or work experience in other schools. Examples of people who do not require a DBS disclosure include:

- visitors who have business with the Principal or other staff based on the schools site or who have brief contact with children with a member of staff present;
- visitors or contractors who come on site only to carry out emergency repairs or service equipment and who would not be expected to have unsupervised access to children;
- volunteers or parents who only accompany staff and children on one off outings or trips that do not involve overnight stays, or who only help at specific events e.g. a sports day or a school event;
- secondary pupils on KS4 work experience, in other schools or nursery classes; secondary pupils undertaking work in another school as part of voluntary service, citizenship or vocational studies; or KS5 or 6<sup>th</sup> Form pupils in connection with a short career or subject placement. (In these cases the school placing the pupil should ensure that he/she is suitable for the placement in question);
- people who are on site before or after school hours when children are not present: e.g. local groups who hire premises for community or leisure activities.

## **6. Appointments to posts subject to an enhanced disclosure**

### **6.1 Procedure for obtaining a declaration of criminal convictions and DBS certificate of disclosure**

All posts involving direct contact with children are exempt from the Rehabilitation of Offenders Act 1974. However, amendments to the Exceptions Order 1975 (2013 and 2020) provide that certain spent convictions and cautions are 'protected.' These are not subject to disclosure to employers and cannot be taken into account. Guidance and criteria on the filtering of these cautions and convictions can be found on the Ministry of Justice website.

All short-listed candidates will be asked to provide details of all unspent convictions and those that would not be filtered, prior to the date of the interview through completion of a Self-Disclosure Form. Applicants may be asked for further information about their criminal history during the recruitment process. If the application is successful, the information provided through the self-disclosure process must be checked against the information from the Disclosure and Barring Service before an appointment is confirmed.

Under no circumstances should an unconditional offer of employment be made.

Only the candidate who has been offered the job conditionally is required to apply for a certificate of disclosure. Human Resources will provide the candidate with a Disclosure Registration Form. The form provides the candidate with guidance and information to enable

them to register direct with GBG Online Disclosures and to complete their DBS application on line.

The candidate's original supporting documents used for the registration process must be seen and verified by Human Resources or the school. Photocopies will be taken and retained on file. HR or the school will verify sight of these via GBG Online once the candidate has registered their details. When the applicant's identity has been verified HR/the school will authorise GBG to carry out all necessary DBS checks. We anticipate that the majority of criminal record checks undertaken through the GBG on line process should be completed within 5 days.

The trust will look to ensure that all staff obtain DBS Disclosures within a reasonable timescale.

Where a DBS check is clear, the individual can start work and the school can proceed with the appointment process. A copy of the GBG confirmation will be held on the employees file, with details logged of the date the original Certificate of Disclosure was seen and checked on the single central record.

Where GBG indicates that a check is **not clear** the school/trust must ask the candidate to provide them sight of the original certificate containing the conviction information within five working days to determine whether or not to proceed with the appointment.

A risk assessment process will be undertaken in order to reach a decision on whether to continue with the appointment. When a decision is reached to continue with the appointment the Chief Executive Officer/Principal must complete and authorise a DBS trace form giving their approval to appoint and send it to Human Resources who will hold it on the individual's file.

A photocopy of the original certificate will be retained with the DBS Trace Form.

## **6.2 Dealing with a declared criminal record before or at interview**

The existence of a criminal record or other relevant matters is not necessarily a bar to an individual obtaining a position. Obviously, some convictions are of such a nature as to render a person unfit to work with children or vulnerable adults; however, it is impossible to compile an extensive list of offences which automatically prevent someone from working with children.

In deciding whether a declared conviction or other relevant matters affects an applicant's suitability, the information supplied to the employer must be discussed with the candidate before or at interview. This includes seeking more information about the detail of the conviction where necessary.

The following factors must be considered before making a decision on whether the candidate is suitable to appoint:

- whether the conviction or other matters is relevant to the position in question;

- the seriousness of any offence revealed;
- the length of time since the offence or other matter occurred;
- whether the applicant has a pattern of offending behaviour or other relevant matters; and,
- whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters.
- Whether the person is to work in relevant childcare provision and therefore whether the disqualification regulations are applicable ie is the person disqualified including 'by association'.

The school/trust decision is final.

If an individual's criminal record makes them unsuitable for employment in the post they have applied for, they should be informed of this as soon as the relevant information is received and has been considered.

### **6.3 DBS certificate of disclosure - undisclosed convictions revealed**

Where the information provided by the DBS differs from that provided by the applicant, the Chief Executive Officer/Principal must discuss the discrepancy with the applicant. A decision on whether they believe the disclosure information means the applicant does not meet the requirement on the person specification to have no adverse convictions must be made.

In making this decision consideration will also be given to the fact that the candidate did not disclose the information when invited to do so on the self-disclosure Safe Recruitment Form.

If the applicant disputes the information provided on the certificate, then they should be advised to contact the DBS who will look into the matter. In such circumstances the Chief Executive Officer/Principal should seek advice from HR S.

If, following the discovery of convictions and consideration of their implication by the Principal/CEO, it is decided that the individual is unsuitable for employment:

- a conditional offer of employment is withdrawn. A note must be made on the safe recruitment form and candidate assessment form that an unsatisfactory certificate of disclosure has been received. These documents should then be returned to the person co-ordinating the recruitment exercise for inclusion in the recruitment documents file;

### **6.4 Casual Workers with employee status**

Casual workers need to apply for a new disclosure when they are re-engaged if they have a break in service of more than three months.

### **6.5 Staff appointed from overseas**

DBS Disclosures will not generally show offences committed by individuals whilst living abroad. Therefore, in addition to an enhanced DBS Disclosure, additional checks such as obtaining certificates of good conduct from relevant embassies or police forces are necessary.

If it is not possible to get this information within a reasonable time scale, the delegated person(s) must take extra care in taking up references and carrying out other background checks. For example, additional references should be sought and references followed up by telephone as well as letter.

## **7. Considerations for agency staff, volunteers, trustees and governors**

- Where staff are engaged through an external agency a satisfactory enhanced certificate of disclosure, children's barred list check, and prohibition check (for teachers and those in teaching activity)) must be a pre-requisite to the individual commencing work at the school. Supply agencies will be asked to verify that the relevant checks have been made in writing before the assignment starts.
- On entry to the school site, an identity check must be completed by appropriate staff to ensure that the person who comes to them from an Employment Agency is the person referred to.
- Where appropriate, volunteers should be asked to complete the safe recruitment form and apply for an enhanced certificate of disclosure. A barred list check will not automatically be undertaken as volunteers do not generally meet the definition of working within regulated activity. As with employing staff, any convictions declared or revealed for volunteers should be considered by the Chief Executive Officer/Principal in accordance with 'Dealing with a declared criminal record before or at interview' above. As with employees, volunteers may be engaged pending receipt of the disclosure certificate but the CEO/Principal must ensure that a risk assessment and supervision are in place first.
- Guidance on procedures for trustees and school governors can be obtained from HR, but it is trust policy to ensure that all new Trustees and Governors have an Enhanced DBS check. If a criminal conviction is declared or stated on the DBS form, the considerations noted above in Section 8 will be followed.

## **8. Policy on security of disclosure information**

The trust will comply with all requirements of the Disclosure and Barring Service on the security of information provided on Certificates of Disclosure. This policy covers the security of Disclosure documentation whilst in the possession of the trust, and the confidential destruction of the documentation as appropriate.

### **8.1 Retention and Security of Disclosure Documents**

Certificates of disclosure and associated correspondence will be retained where it is considered necessary in order to demonstrate compliance with

statutory requirements. They will be stored securely and only accessed by those who are involved in recruitment.

## 8.2 Disposing of disclosure documents

Disclosure documentation should be destroyed by shredding. Whilst awaiting destruction the documentation should be kept in a secure container.

## 9. Monitoring and review

Feedback is encouraged from the trust and Principals on the effectiveness of this code of practice. It will be reviewed on a regular basis to ensure it is appropriate in light of recommended best practice and complies with statutory regulations. In the event of any conflict with statutory regulations, the legal provisions will have precedence over this procedure in all cases.

<b>Record of Published Versions</b>	
<b>Date</b>	<b>Status</b>
31 December 2007	NCC Model Policy approved by Executive Director of Children's Services
April 2015	Update re Disqualification Regs
Spring 2016	Update re Online DBS checks
26 March 2021	Updated to cover ROA Amendments 2020 – Agreed by F&GP Committee