

## **Disclosure & Barring Service Policy 2021**

The Link Academy Trust is a company limited by guarantee and an exempt charity, regulated by the Education & Skills Funding Agency (ESFA). All Members of the Board of Trustees of the exempt charity are also Directors of the company; the term 'Trustee' used in this document also means Director. This Policy applies to all Academies within the Link Academy Trust

### **Introduction**

1. This DBS checks policy and procedure:
  - outlines the Trust's procedure for obtaining disclosure and barring service (DBS) checks;
  - Confirms the Trust will undertake enhanced DBS checks as part of its pre-employment processes for all posts;
  - Confirms there is no automatic update for current DBS checks unless new information is added to the employee's criminal record due to a new warning, caution, reprimand or conviction.

### **Scope**

#### **Who is included in these arrangements?**

2. This policy applies to anyone applying for a post with or working for the Link Academy Trust.
3. It also applies to proprietors of the Trust and volunteers, including Members, Trustees and Governors.

#### **Who is excluded from these arrangements?**

4. Ordinary visitors to the Trust although visitors must be accompanied at all times when on visit.

#### **Commitment to safer recruitment and safeguarding**

5. The Board of Trustees is committed to safer recruitment and safeguarding.
6. The Trust is committed to promoting the safety and wellbeing of all pupils and employees, particularly those who would be incapable of protecting themselves from physical, mental or sexual abuse, financial exploitation, or where there is a potential danger that their will or moral wellbeing may be subverted or over-powered.
7. The Trust is committed to safer recruitment practices when recruiting new employees to work for the Trust or when using volunteers.
8. Enhanced disclosure and barring service checks are required for all roles at the Trust as they are all regulated activities, and for proprietors of the Trust. DBS checks are only one element of a wider framework of safer recruitment practices the Trust undertakes.

## **Working with children and young people**

9. The Trust will ensure all employees, temporary staff and volunteers act in accordance with the following guidelines – guidance for safer working practice for adults who work with children and young people.

## **Agency workers**

10. The Academy Administrator of the academy where the worker will be based will be responsible for checking that the agency has carried out an up to date DBS check for the role. The Administrator will ask to have sight of this and/or ask the agency to confirm the date of the DBS check and that it was obtained in relation to the role the agency worker will now be carrying out with the Trust. It may not be sufficient to use a previous DBS check – a new one may need to be applied for.
11. Breaks in employment will be investigated.
12. Advice will be sought from the HR Officer or the Agency as required.

## **TUPE transfers**

13. Where employee(s) transfer to the Trust as part of a service transfer under the Transfer of Undertakings (TUPE) Regulations, the DBS checks of such employee(s) will transfer to the Trust.
14. The Trust HR Officer will continue to work with the Disclosure and Barring Service and will comply with the DBS guidelines and regulations as part of its role as a registered body.
15. The Trust HR Officer will strive at all times to ensure that all applications are legitimate applications based on the specific DBS category codes. Refer to <https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>.

## **Obtaining DBS checks**

16. At the point of having a DBS check the employee can opt to subscribe to the DBS's online update service which has an annual subscription fee payable by the employee. A DBS check from a previous role or employer within the same workforce will be portable if the employee has subscribed to this online DBS update service. 'Within the same workforce' means within and across academies of the Trust.
17. For all employees who have subscribed to the DBS online update service, the Trust will request permission from the employee to check the status of their DBS check, which is carried out online. The Trust will apply for a new DBS check if additional information has been added to the DBS check since it was last issued. Additional information means:
  - A new caution
  - A new warning
  - A new reprimand
  - Been banned from working with children or vulnerable adults or both
  - A new conviction
  - Any new, relevant, police information.
18. For employees who are not subscribed to the online update service the Trust will apply for a DBS check in the usual way via the ebulk service which the Trust has access to.

19. The DBS check will be sent to the applicant / employee by the DBS. The Trust will not have sight of the check first. The Trust will request from the applicant/employee, sight of the original DBS check as part of the safer recruitment process. This will be checked before the applicant / employee can begin work.

### **Information required from the applicant**

20. In order to carry out thorough DBS disclosure checks, the Trust will need to know any names, name changes, or aliases by which the applicant may have been known in the past, including maiden names, assumed name of step parent, change of name by deed poll, etc. The applicant will be required to produce originals of three documents from three specific lists, including an original copy of their birth certificate. The Trust will also need to see the applicant's original DBS certificate, if one was previously issued.
21. This information is also required as part of the recruitment procedure to meet with the Trust's obligations under the Asylum Act 2002.
22. For employees who choose to subscribe to the DBS online service the Trust will ask for permission to check their DBS check online.

### **Overseas candidates**

23. If a candidate has not previously worked in the UK, or has lived overseas for some time it will be necessary to obtain a 'certificate of good character' (a criminal record check) from their country of origin. The process for obtaining such a certificate varies from country to country. Further information can be found here – <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.
24. The Trust should also request references and follow up any written references by telephoning the referees and noting that this has been done on the single central record.

### **Ex-service personnel who have served abroad**

25. Where an offer of employment is made to a member of the armed forces it will be necessary to not only carry out a DBS check into the successful candidate's background, but also to ask for the relevant branch of the armed forces (RAF, Army, Navy) to confirm in writing whether the candidate has a criminal record.
26. Partners of former armed forces personnel who are returning to work in the UK from abroad, for the Trust, will need to supply a 'certificate of good conduct' from the country they were based in.

### **DBS check application forms** *(only used in exceptional cases as online ebulk is the accepted way to apply for a DBS check)*

27. The Trust HR Officer will complete a section of the DBS check application form to confirm specific details about the position for which the DBS check is required.

### **Regulated activity at the Trust**

28. Regulated activity relating to children is defined as work that a barred person must not do. All posts at a Trust are considered regulated activity. Enhanced DBS checks are required for all posts within the Trust and for proprietors of the Trust.
29. A DBS check is not required in respect of the activities in 27 above if the person undertaking these activities is a supervised volunteer.

**Administrators' role – checking the DBS check**

30. The Trust does not receive a copy of the DBS check from the DBS. The administrators are responsible for asking candidates/employees to bring in their copy of the DBS certificate to be checked.

**Disclosure of past convictions – for all roles exempted from the Rehabilitation of Offenders Act 1974**

31. Where a role is exempted from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 the applicant / employee is required to be completely honest in disclosing all convictions throughout their entire life, from the age of criminal responsibility (10 years).
32. All posts at the Trust are exempted from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, and no conviction will ever be considered spent and applicants/employees must declare it, unless it is a 'protected conviction/caution' (see below).
33. Applicants / employees need to be informed that if they have accepted a caution, warning or reprimand from the Police these must be declared as relevant offences.

**Protected convictions/cautions**

34. All roles at a Trust are exempted from the Rehabilitation of Offender Act 1974 (Exceptions) Order 1975. Applicants are required to be completely honest in disclosing all convictions and cautions throughout their entire life, from the age of criminal responsibility (10 years) except for protected convictions or protected cautions.
35. Where an applicant or employee has accepted a caution, warning or reprimand from the police then these must be declared as relevant offences.
36. A conviction is a "protected conviction" if:
  - It does not relate to a "listed offence", such as violent and sexual offences.
  - No custodial sentence was imposed.
  - The individual has no other convictions. (Where the individual has more than one conviction, all convictions will be included on the certificate.)
  - It was received by a person aged under 18 at the time of the conviction and five and a half years or more have elapsed.
  - It was received by a person aged 18 or over at the time of the conviction and 11 years or more have elapsed.
37. A caution is a protected caution if:
  - It does not relate to a listed offence.
  - It was given to a person aged under 18 at the time of the caution and two years or more have elapsed.

- It was given to a person aged 18 or over at the time of the caution and six years or more have elapsed.

### **The employment of ex-offenders**

38. The Trust is committed to equality of opportunity and recognises its responsibilities under the Rehabilitation of Offenders at Work Act. Unlawful treatment of ex-offenders, i.e. failure to employ an ex-offender without lawful justification, where this cannot be justified by the nature of the work, will not be tolerated. Refer to the Trust's Equal Opportunities Policy.

### **Barred lists**

39. The children's barred list is held and administered by the Disclosure and Barring Service. The Trust; or the Trust's alternative DBS umbrella provider will continue to work with the DBS to check applicants / employees against the names of individuals appearing on these lists.
40. All applicants/employees are required to declare if they are barred from working in any roles.
41. There are some offences which may result in a person having been made subject of a Disqualification Order (DO). It is an offence for this person to apply for a post that is restricted under the DO. If a person is subject to a DO and they apply for a restricted post, the Trust will report them to the police.
42. Any person who has been convicted of an offence under Schedule 1 of the Children and Young Persons Act 1933 (as amended by subsequent legislation) will not be eligible to apply for a restricted post.
43. A person will never be allowed to work or volunteer at the Trust if they have been barred from carrying out a restricted post.

### **Prohibition orders - teachers**

44. Every time a teacher commences employment at the Trust (for a supply teacher this will be for each time they undertake a period of supply work), the Trust must check whether the teacher is the subject of a prohibition order by checking the employer access online site which is maintained by the National College for Teaching and Learning (NCTL).
45. Prohibition orders are an additional check to that undertaken as part of the enhanced DBS check.

### **Transgender applications**

46. An applicant may contact the DBS sensitive applications team if they are a transgender applicant who does not want to reveal details of their previous identity to the Trust.

## **Handling of DBS data**

### **Secure storage and handling of data**

47. Any information provided by the DBS as part of a DBS disclosure will be securely stored and handled and the content will be confidential to the HR Officer of the Trust who is authorised to fulfil this role.
48. The Trust will observe the DBS Code of Practice including the opportunity for the applicant to appeal to the DBS about the check information provided.

## **Policy issues**

### **The Disciplinary Policy**

49. For any employee who does not comply with the terms of the Trust's DBS Policy and where the Trust feels they have behaved in a way which is felt to be dishonest in respect of this Policy or which brings the Trust's reputation into question, the employee may be subject to the Trust's Disciplinary Policy. This could result in a dismissal from employment with the Trust.

### **New offences for existing employees**

50. All employees at the Trust are required as part of their contract of employment to inform the Academy Head (in the case of the Academy Head, the Chief Executive Officer) of any police investigation, charge, caution, reprimand, warning, fine or conviction against them immediately. All such disclosures will be handled in accordance with the relevant procedure, and consideration will be given as to whether suspension from duties is required while an investigation takes place.

## **Roles and responsibilities**

### **Applicant and employee responsibilities**

51. To be completely honest in declaring all convictions before employment.
52. To be completely honest in declaring subsequent convictions after having been employed.
53. To provide such information as is requested in order for a DBS check to be carried out.
54. For those who choose to subscribe to the DBS online checking service, to notify the HR Officer and to give permission to carry out an online check either when joining the Trust for the first time or when a subsequent recheck is to be carried out.
55. To bring in their DBS check to be checked by the administrator.

### **HR Officer responsibilities**

56. To ensure that the need for a DBS check is recorded on the job description for the role.
57. To assess whether safeguarding training is required for employees or volunteers and liaise with the Academy Heads/line managers to ensure they attend such training and any refresher courses.

58. To confirm on all recruitment materials relevant to a role whether it is exempt from the Rehabilitation of Offenders Act (under the Rehabilitation of Offenders Act (Exceptions) Order 1975), and that an enhanced DBS disclosure will be required for the successful candidate.
59. To undertake all safer recruitment reference checking including DBS checks.

#### **Chief Executive Officer responsibilities**

60. When information is received regarding a candidate's offending background, to confirm whether the information is relevant to the role being applied for.
61. To defer a decision not to employ a candidate on the basis of a DBS check outcome until they have discussed this with the candidate and the HR Officer.
62. Not to unfairly discriminate against an applicant with a criminal record.
63. To undertake safeguarding training themselves and any refresher courses.

#### **Related Information**

- Safeguarding Vulnerable Groups Act 2006
- Police Act 1997
- Rehabilitation of Offenders Act 1974
- Rehabilitation of Offenders (Exceptions) Order 1975
- Guidance on the Rehabilitation of Offenders Act 2014
- section 142 of the Education Act 2002
- section 15 of the Teaching and Higher Education Act 1998
- section 6 of the Protection of Children Act 1999
- sections 35 and 36 of the Criminal Justice and Court Services Act 2000
- Data Protection Act 1998
- Education (Academy/School Teachers Qualifications) (England) Regulations 2003
- Education (Specified Work and Registration) (England) Regulations 2003
- Education (Prohibition from Teaching or Working with Children) Regulations 2003
- Academy Staffing (England) Regulations 2009
- Protection of Freedoms Act 2012
- Equality Act 2010
- Keeping Children Safe in Education 2020
- Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2014
- Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014
- General Data Protection Regulation 2018

This Policy is reviewed by the Trustees on a 2 yearly cycle

**Approved by the Board of Trustees: 24 May 2021**