



St Mary's Academy Trust

DBS Checks and Criminal Convictions

Policy

Date to be Reviewed: 23rd February 2023

Date Agreed by HR Committee: 23rd February 2021

1. Introduction

- 1.1 St. Mary's Academy Trust has a duty of care to its staff and children and therefore needs to be informed of any alleged criminal activity and or/ convictions by any applicant to the Trust and employees.
- 1.2 The Disclosure and Barring Service (DBS) helps the Trust make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).
- 1.3 This document outlines the Trust's policy on the use of DBS checks and recruitment of staff or volunteers with criminal convictions or those who are barred from working with vulnerable groups.
- 1.4 This policy applies to all staff and will be made available at the outset of the recruitment process where a DBS request for disclosure of their criminal record will be required as part of the applicant process.

2. Disclosure of Criminal Convictions

- 2.1 It is the Trust's policy to require applicants to disclose any 'unspent' criminal convictions. Under the Rehabilitation of Offenders Act 1974 (amended) ex-offenders are not required to disclose to prospective employers, convictions defined as 'spent' under the Act. However, those working with vulnerable groups, in positions of trust or sensitive areas are exempt from these provisions, and in these cases all convictions must be declared and DBS clearance obtained prior to starting employment.
- 2.2 Shortlisted applicants will be asked to provide details of all unspent convictions and those that would not be filtered, to the date of the interview. Shortlisted applicants may be asked for further information about their criminal history during the recruitment process. If their application is successful, this self-disclosure information will be checked against information from the Disclosure and Barring Service before your appointment is confirmed. Failure to reveal information relating to unspent convictions will lead to withdrawal of an offer of employment, or termination of employment.
- 2.3 St. Mary's Academy Trust will not discriminate against applicants with a criminal record. Having a criminal record will not necessarily bar an applicant from working for the Trust; the nature of a disclosed conviction and its relevance to the post in question will be considered. This is with the exception of; a person who has unspent convictions for violence, assault or damage to property, which are likely to be incompatible with working for the Trust or; a person who is barred from working with vulnerable groups.

3. Current Employees

- 3.1 If at any time during employment with St. Mary's Academy Trust an employee is arrested by the police and charged with a criminal offence, the employee must confidentially report this immediately to their Head Teacher and the Chief Executive. If they are sent to trial, the Trust must be kept informed at all stages either by the employee or by their legal representative. If the employee is convicted then this must be reported along with details of any sentence imposed.
- 3.2 Conduct which may constitute a criminal offence may also amount to misconduct under the Trust's Disciplinary Policy and Procedure. Therefore, in addition to any criminal process, the employee may be subject to disciplinary action by the Trust.
- 3.3 If at any time during an employee's employment it is made known that the employee has a previously unspent criminal conviction that they failed to disclose at the point of application or notify the Trust in a timely manner, then they will be subject to the Trust's Disciplinary Policy and Procedure.
- 3.4 For the avoidance of doubt, it is deemed a disciplinary offence not to have disclosed any unspent conviction(s) at the point of application, regardless of whether the conviction is subsequently spent at the time of actual disclosure or when such information is made known to the Trust.

4. Applicants

- 4.1 Shortlisted applicants to St. Mary's Academy Trust must declare any relevant, unspent criminal conviction(s).
- 4.2 Relevant criminal offences include convictions, cautions, admonitions, reprimands, final warnings, binds over orders or similar involving one or more of the following:
 - A. Any kind of violence including (but not limited to) threatening behaviour, offences concerning the intention to harm, or offences which resulted in actual bodily harm;
 - B. Offences listed in the Sex Offences Act 2003;
 - C. The unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking;
 - D. Offences involving firearms;
 - E. Offences involving arson;
 - F. Offences listed in the Terrorism Act 2006.
- 4.3 If your conviction involved an offence similar to those set out above, but was made by a court outside of Great Britain, and that conviction would not be considered as spent under the Rehabilitation of Offenders Act 1974, you should declare it as you would any other unspent conviction.
- 4.4 If, after completing a criminal convictions disclosure form, you are subsequently convicted of a relevant criminal offence as outlined in 4.2 (A-F), then you must notify the Trust immediately.

4.5 Warnings, penalty notices for disorder, anti-social behaviour orders or violent offenders' orders are not classed as convictions for the purpose of this section, unless you have contested a penalty notice for disorder or breached the terms of an anti-social behaviour order or a violent offender order and this has resulted in a criminal conviction.

5. Disclosure and Barring Service

5.1 The Trust uses the Disclosure and Barring Service checking service to help assess the suitability of applicants for positions of trust, the Trust fully complies with the code of practice regarding correct handling, use, storage, retention and disposal of certificates and certificate information.

5.2 The Trust also complies fully with the General Data Protection Regulation 2018, and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information.

5.3 The Trust engages an umbrella body to process its DBS checks. An umbrella organisation is a body which is registered to countersign applications and receives certificate information on behalf of other employers or recruiting organisations. The Trust takes all reasonable steps to satisfy itself that the umbrella organisation will handle, use, store, retain and dispose of certificate information in full compliance with this policy and with its obligations under the General Data Protection Regulations 2018. Information is available to us via a portal which we only re-access after the recruitment decision is made if there is a dispute.

5.4 In accordance with section 124 of the Police Act 1997, certificate information is only passed to those who are authorised to receive it in the course of their duties. The Trust maintains a record of all those to whom certificates or certificate information has been revealed and it is a criminal offence to pass this information to anyone who is not entitled to receive it.

5.5 Usage – DBS disclosure information will only be used for the specific purpose for which it was requested and for which the applicant's full consent will have been obtained, this is on the application form.

5.6 Members of the transgender community may contact DBS for a sensitive check which does not reveal their gender identity history. All subjects of a DBS disclosure request will be made aware of this policy.

5.7 The Trust will accept portability of DBS checks, which individuals may have from previous employers, as proof of satisfactory clearance when:

- A. The disclosure is at the correct level i.e. Standard/ Enhanced/ Enhanced + Barred List.
- B. Free from any offences that would prevent them being employed by the Trust and the individual has subscribed to the update service which states that there is no change to the certificate.
- C. An applicant's clearance must be in place before they start work or, for existing employees, any project or new role involving regulated activity.

6. Appointments Requiring a DBS Disclosure

- 6.1 An appointee may be required to submit a standard DBS disclosure where they work in positions of trust which are defined by the Rehabilitation of Offenders Act Exceptions Order 1975.
- 6.2 An appointee will be required to submit a standard and enhanced DBS disclosure request which includes a barred list check, where they will be working in 'regulated' activity with vulnerable groups as defined by the Safeguarding Vulnerable Groups Act 2006.

6.3 'Regulated' Activity – Children

Regulated activity for children is –

- Unsupervised activities on a *frequent* or *intensive* basis; teaching, training, instruction; care or supervision; advice or guidance on wellbeing; or driving a vehicle for children.
- Work in a 'specified place' on a frequent basis with opportunity for contact including: schools and childcare premises.

6.4 'Frequency' and 'Intensivity'

Activity which is described as 'frequent' and 'intensive' covers the meaning given in the Safeguarding Vulnerable Groups Act 2006.

- Frequent activity can be defined as, once a week or more often on an ongoing basis.
- Intensive activity can be defined as, three or more occasions in a 30-day period.

7. Procedure for Where a Criminal Conviction is Declared

- 7.1 Shortlisted applicants who have listed criminal convictions or cautions on their application form, should have 2 interviews. Interview 1 should be as per usual procedures, and interview 2 should be to discuss anything disclosed on the form. The Chair of the Panel should contact HR for advice prior to the interviews taking place.
- 7.2 HR will check all applications that have been received to see whether a criminal conviction has been declared. If the conviction box is ticked then it will be flagged as a clearance check for use at a later date.
- 7.3 The recruitment panel will consider all applications on merit, to determine the suitability of the applicant. If the panel deem the application to be unsuccessful when considering the application on merit, there will be no further action taken regarding the conviction. If the panel decide upon an offer to the applicant based on merit grounds only, no formal offer will be made until the panel has checked with HR that there is no declaration of a criminal record.

- 7.4 Where a declaration has been made, HR will refer to the criminal convictions clearance check and will write to the applicant asking for information about the conviction, giving an appropriate response date. Upon receipt of a response, Human Resources will confer with the Chief Executive regarding the nature of the conviction and decide whether it is considered of a serious and complex nature.
- 7.5 At this point, the Chief Executive has the discretion to make a decision and make an offer. However, if the conviction is deemed to be of a serious and complex nature, they will refer the details of the offence to the HR Committee who will meet to discuss the exact nature of the conviction and the potential impact on staff and children (if any). The HR Committee may invite members of staff to the meeting to ensure the necessary expertise is available to carry out an informed risk assessment and to enable a final decision.
- 7.6 The HR Committee will take the following into consideration in the making their decision:
- A. The nature of the offence and its relevance to the job;
 - B. The circumstances that influenced the offence and which may no longer apply, e.g. personal or social factors;
 - C. When the offence was committed;
 - D. Any factors that minimise the impact of the offence;
 - E. Any of the applicant's achievements since the conviction.
- 7.7 If, having received the initial response from the applicant, the HR Committee still feels that it does not have all the necessary information to make a decision, it may go back to the applicant to request further clarification. It may also request the applicant's permission to contact their probation officer to liaise with them about the case.
- 7.8 The relevant Headteacher will be informed of any applicants who have disclosed a relevant criminal conviction, but only after they have accepted their offer of employment with the Trust. No details other than that the applicant has disclosed a criminal conviction will be made known. The risk assessment shall be disclosed to the Headteacher and details shared with key colleagues only when necessary and relevant, in order for appropriate measures and duty of care obligations to be put in place. During this process, the Trust will fully comply with and will not breach the General Data Protection Regulations 2018.
- 7.9 Human Resources will be responsible for recording decisions relating to criminal convictions confidentially and keep an electronic file of correspondence and documentation relating to the employment decision. This file will be kept for the duration of employment plus 6 years thereafter. Any application where the applicant has not been employed will be destroyed 6 months after the end of the recruitment and selection process. Should the applicant not accept the offer of employment with the Trust, and choose to reapply to the Trust again in the future, they should follow the criminal conviction declaration procedure again from the beginning.
- 7.10 If the applicant is dissatisfied with the panel's decision, they may request a review of the procedure. A review may only be requested on the grounds that there has been a procedural irregularity in the processing of their application.

8. Data Impact Assessment

- 8.1 At all stages of this procedure data obtained will be used only for the purpose for which it is intended and will be stored securely with restricted access to those involved in the process. Following the process data will be stored on the electronic personal file for the duration of the employees' employment with the Trust and for 6 years thereafter. The data will be destroyed at this time using a confidential shredding service.

9. Equality and Diversity

- 9.1 This policy has been impact assessed by the HR Committee, if on reading this policy you feel there are any equality and diversity issues, please contact HR who will if necessary ensure the policy is reviewed.