



Zest Academy Trust

Employment of Ex-Offenders and DBS Policy

Approved & Adopted By Trust Board: 21/06/2016

Review Period: Biennial

Policy Date Last Reviewed/Approved: 14/12/2022

Person Responsible: Executive Team

Version Number: 6

Employment of Ex-Offenders and DBS Policy

Principles

Zest Academy Trust supports and seeks to promote the rehabilitation of offenders and to treat ex-offenders fairly in accordance with its equality policy. The Trust recognises that many people with past criminal records do not present a risk in employment but work as responsible and productive members of the workforce.

The Trust also has a duty of care to protect from criminal activity and abuse those who use its services, the public and public funds, and a duty to comply with relevant legislation, codes of practice and national standards.

An applicant for employment or voluntary work with criminal convictions will be assessed on their relevant skills, qualifications and experience and will only be prevented from taking a job with the Trust or ones of its academies where any past offences are directly relevant to the job concerned and where it is judged that the applicant, if appointed, would pose a significant risk to the public, pupils, staff, property or public funds.

The Trust undertakes to operate effective and appropriate systems to comply with and fulfil these principles and requirements.

Definition of “Conviction”

In this policy the term “conviction” relates to a finding of guilt following a hearing in a court of law, including Courts Martial. Prospective employees for jobs exempt from the Rehabilitation of Offenders Act working with children or vulnerable adults will also be asked to declare official warnings, reprimands, registration as a sex offender, cautions, bind-overs and other relevant matters. These will be taken into consideration. Where “soft information” is made available by the Disclosure and Barring Service, the police or other relevant organisations this will also be taken into consideration.

Employees, Volunteers and Contractors

Existing employees of the Trust may be re-checked during their employment.

All applicants for employment and voluntary work, will be asked to declare any un-spent convictions, cautions, warnings, reprimands, bind-overs and any cases pending, in Great Britain or elsewhere, when applying to the Trust. Further particulars supplied to applicants for all jobs will indicate where the job is exempt from the Rehabilitation of Offenders Act 1974 and where appointment will be subject to a satisfactory Enhanced DBS check.

Where the Trust enters into contracts with external organisations which employ staff for the provision of services on the Trust or Academy's behalf, it will ensure that the contractor's employment systems comply with this policy.

Spent Convictions

Managers will not ask about or take into consideration an applicant's spent convictions unless the application relates to a job which is exempt from the provisions of the Rehabilitation of Offenders Act or is covered by the legislation relating to the protection of children and vulnerable adults and their records.

Convictions become "spent" after a "rehabilitation period" has passed. The length of the rehabilitation period depends on the sentence given – not the offence committed or, in the case of a custodial sentence, the sentence served. **N.B. In the case of work with children, young people and vulnerable adults or their records, or for custodial sentences of more than 2.5 years, convictions can never become spent.**

Statement of Policy and Purpose of Policy

All convictions which are not spent must be declared by applicants for work or volunteering. In all cases, where an applicant with un-spent convictions fulfils the requirements for a job sufficient to be appointed, or is seriously considered for voluntary work, the appointing manager will, before deciding whether to appoint the applicant, undertake and record a risk assessment, taking into consideration the nature, severity, frequency and timing of the convictions and the nature and requirements of the work.

Applicants for work and voluntary service with the Trust who have declared un-spent convictions will only be appointed where the risk assessment carried out by the appointing manager indicates that the risks are judged to be low or where adequate supervision and management arrangements can be put in place to bring the risks down to an acceptable level. In all cases where appointments are made subject to conditions the appointing manager will obtain **prior** written agreement from the Head of School.

The Trust recognises the importance of appropriate and consistent managerial decision making. If in any doubt the appointing manager must seek advice from senior management, the Schools People HR Consultant or the Trust's solicitor, as appropriate. Where appropriate the manager will discuss the convictions with the applicant to determine background information.

The line manager of the employee or supervisor of the volunteer will monitor conditional arrangements and review them during the probationary period and afterwards, at least

annually. The appointing manager will, in the case of employees, inform the HR Manager, as appropriate, who will ensure a note is placed on the personal file. In the case of volunteers, he/she will keep a record of the conditions on another appropriate file.

Criminal Cases Pending

Where an applicant has criminal proceedings pending at the time an application for a job is made, full consideration will be given to the individual case before deciding on any offer of employment.

Special Checking Requirements for Employment and Voluntary Work with Children, Young People and Vulnerable Adults

All applicants, including casual, agency and volunteers who are selected to undertake work concerning children, young people and vulnerable adults or their records will be required to undergo a fresh check by the Disclosure and Barring Service (DBS) in accordance with the Disclosure Code of Practice and in addition to declaring any spent and un-spent convictions. Where an applicant has been living abroad checks will be carried out with the relevant countries, if deemed necessary. The types of work where applicants must be subjected to a DBS check are listed in the Criminal Justice Act 2003.

Appointees to employment or voluntary work with children, young people and vulnerable adults or with their records will not normally start work until a fresh satisfactory disclosure has been received from DBS.

Where it is necessary to allow service provision to continue, an appointee to work or volunteer with children and young people or their records may be permitted to start work prior to receipt of the fresh disclosure **ONLY** where a previous satisfactory Enhanced DBS disclosure is available and where a risk assessment has been undertaken by the appointing manager and the appropriate senior line manager for the job.

The risks must be judged to be low with adequate supervision, management and monitoring arrangements in place to minimise the risks.

Employees working with children may be re-checked during their employment, depending on their length of service.

In all cases where an appointee has started work subject to special conditions or has been re-checked, as soon as the DBS disclosure is obtained the appointing manager will assess

the appointee's suitability to continue in the appointment in accordance with this policy. Where the employee's suitability is confirmed the appointing manager will notify the employee and the HR Manager who will record this decision. In cases where information is disclosed by DBS which the appointing manager judges renders the appointee unsuitable for work with vulnerable groups, or a re-check discloses information which the manager judges renders the employee unsuitable for work with vulnerable groups, he/she will immediately discuss the disclosure with the appointee/employee and take into consideration what he/she has to say on the matter. The manager will, in discussion with the Head of School and HR Manager, as appropriate, re-deploy or suspend the appointee/employee from this type of work. Where the appointing manager judges, after proper consideration including taking into account the employee's comments that the DBS disclosure renders him/her as inappropriate, an appropriate course of action will be taken, which may lead to dismissal or redeployment of the employee concerned. Where employment is not ruled out by the DBS disclosure a risk assessment will be undertaken by the manager to assess the suitability of the employee for continued employment.

In cases where the DBS advise that a crime is currently under investigation, or if 'soft' information is disclosed which cannot be shared with the employee, special arrangements will be discussed and agreed with senior management, the police, the Trust's solicitor and the Schools People HR Consultant, as appropriate.

The trust is responsible for ensuring that their employees, Trustees, members, governors, volunteers, visitors, contractors, and others who have access to children are adequately checked in line with current recommendations and for maintaining appropriate records.

Dishonesty in Making a Declaration

Where a prospective employee is not able to verify that his/her declaration of convictions is exhaustive he/she must obtain a schedule of these from DBS and submit this before appointment can take place.

Where a DBS check discloses convictions which have not been declared by an appointee the appointing manager will consider whether it is necessary to redeploy or suspend the employee from working and act accordingly. He/she will discuss the disclosures with the appointee and take into consideration what he/she has to say on the matter. Where the appointing manager judges, after proper consideration that the appointee has acted dishonestly in not making a full declaration he/she will agree with the Head of School and the Schools People HR Consultant, as applicable an appropriate course of action which may lead to the dismissal of the appointee.

Where it becomes known that an employee may have a criminal record which he/she did not declare when asked, the line manager will consider whether to redeploy or suspend the employee and will act accordingly. Where it becomes known that an employee who works with children, young people or vulnerable adults has failed to disclose offences with respect to these vulnerable groups, this will normally lead to summary dismissal. The manager will agree with the Head of School and the Schools People HR Consultant, as appropriate, to take appropriate action to check the validity of this information and, where appropriate, take action under either the Probationary Procedures or Disciplinary procedures.

Where the line manager judges that service users, the public, Trust funds or property may have been subject to significant risk of criminal action or abuse by an employee or volunteer an appropriate investigation must be undertaken. The line manager must bear in mind that secrecy from the individual may be important in investigating or detecting a crime and must straight away seek advice from the Head of School, Local Authority Designated Officer, Schools People HR Consultant, COO and the Trust solicitor as appropriate.

Records

The Trust will keep all records confidential and disclose them only on a need to know basis to appropriate persons in accordance with the Trusts Policy on DBS Secure Storage, Retention and Disposal of Disclosures and Disclosure Information and Data Protection.

The Trust will comply with the UK General Data Protection Regulation 2018 in respect of all records of criminal convictions. Where there is a conflict between disclosing information in possible contravention of the General Data Protection Regulation and the safety of vulnerable groups a course of action will be agreed with the Trust's solicitor.

Annexes to Policy

Annex 1 – Guidance on the category of offences which may lead to refusal to appoint or require a risk assessment before appointment can take place.

This advice cannot be exhaustive. If you are in doubt consult the COO.

- 1. Employment and voluntary work with children, young people and vulnerable adults or their records**
 - a) Sexual offences.

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any sexual offence involving a child or a vulnerable adult, but see a) (v) below.
- II. Any sexual offence involving violence.
- III. Any sexual offence involving the misuse of drugs.
- IV. Any sexual offence involving organising sexual activity.

An assessment of risk needs to be undertaken when considering applicants with convictions for the following offences:

- V. Where an applicant was convicted of sex with an underage person when they themselves were of a similar age.
- VI. Other sexual offences.

b) Violent offences

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any violent offence against a child or vulnerable adult will normally disqualify.
- II. Murder, manslaughter, grievous bodily harm, aggravated bodily harm.
- III. See a) (II) for violent sexual offences.
- IV. Domestic Violence.

An assessment of risk needs to be undertaken when considering applicants with convictions for the following offences:

- V. Actual bodily harm, wounding, assault and battery
- VI. Possessing an offensive weapon.
- VII. Death by reckless or dangerous driving.
- VIII. Any other violent offence.

c) Offences relating to alcohol and drugs.

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any offence relating to dealing, cultivating or supplying controlled drugs or substances.

An assessment of risk needs to be undertaken when considering applicants with

convictions for the following offences:

- II. Possession of a class A, B or C drugs.
- III. Offences involving supplying alcohol to young people and children
- IV. Repeated offences involving alcohol.
- V. Being drunk or under the influence of drugs in charge of a motor vehicle. This will be a serious matter where jobs involve driving or transporting others.
- VI. Other offences involving alcohol or drugs.

d) Offences involving theft and dishonesty.

Convictions for the following offences will normally disqualify an applicant from appointment:

- I. Any offence involving theft or dishonesty with a child or vulnerable adult
- II. Any offence involving theft or dishonesty, including benefit fraud, and associated violence.
- III. Burglary, aggravated burglary, robbery, blackmail, going equipped to commit burglary.

Other convictions involving dishonesty will be subject to a risk assessment.

e) Offences relating to misuse of the Intranet or Records

Convictions for misuse of the internet or records, involving child or other illegal pornography, using records for purposes of abusing others or involving violence or racism or similar will normally disqualify an applicant for appointment.

f) Other relevant matters which relate to children and young people.

The following will normally disqualify an applicant from appointment:

- I. Any offence against children, young people or other vulnerable adults.

An assessment of risk needs to be undertaken when considering applicants who declare the following:

- II. Where he/she has had a child taken into care, placed under a safety order for reasons relating to abuse or neglect.

- III. He/she has been dismissed from employment due to misconduct.
- IV. He/she has been convicted of the misuse of information.

2. Other employment and voluntary work

Only un-spent offences can be taken into consideration when deciding on the appointment of an applicant for jobs which do **not** involve children, young people or vulnerable adults.

In all cases the offence must be directly relevant to the duties and responsibilities of the job applied for or the environment in which the work takes place. Annex 2 goes into details of undertaking a risk assessment in order to come to a conclusion on whether to appoint an individual with convictions to a particular post.

Certain offences will usually debar an applicant from work in the Trust including the following:

- Murder
- Offences involving serious violence or threats of violence
- Offences involving serious theft or fraud where duties allow access to substantial financial resources
- Serious burglary, arson, where duties involve substantial responsibility for security of buildings or equipment
- Offences relating to “hate” crime”

Annex 2 – Guidance on Undertaking a Risk Assessment

The following guidance is to assist managers in assessing the risks of employees re-offending at work associated with different types of job and criminal convictions.

A risk assessment form is available at Annex 3 of this policy to assist in the process and to record risk assessments.

The risk assessment process consists of the following steps:

Step 1:

Ensure you have all of the relevant information about the individual and the job.

Step 2:

Assess the risks associated with the job and the opportunity for re-offending.

Step 3:

Assess the type of offence and the risk of re-offending in the job under consideration.

Step 4:

Consider if protective measures can be reasonably put in place to bring the risk down to an acceptable level.

Step 5:

If the risk cannot be rendered acceptable you cannot offer the appointment to this applicant. Discuss this with your Manager and HR Manager.

Step 6:

If the risk can be rendered acceptable, record the measures required to render the risk acceptable. Discuss these with your Manager and HR Manager and those who are enforcing the measures to reduce the risk. Discuss them with the applicant and secure their agreement in writing to abide by the measures. Make the appointment/continue the employment subject to these conditions.

Step 7:

Monitor the appointment during the probationary period and at least annually afterwards to ensure the measures are working adequately.

General Guidance on the Level of Risk Associated with Different Categories of Jobs.

Category 1 Risk Jobs:

The highest degree of risk is in jobs where:

1. There is one to one access to children or vulnerable adults, especially where those service recipients cannot look after their own interests and rely on the service provider.
2. Work in residential settings.
3. Work involving personal care or other close contact.

Category 2 Risk Jobs:

Second degree of risk involves other work with children and vulnerable adults or their records where supervision is not constant and the opportunity to exploit might be developed.

Category 3 Risk Jobs:

Third degree of risk involves jobs where there is an opportunity to commit crime because of the availability of money, valuables, property.

Category 4 Risk Jobs:

Fourth degree of risk involves jobs which are generally low risk but which may have particular features relating to certain convictions, for example cleaners and caretakers and arson, passport fraud and working with asylum seekers.

Category 5 Risk Jobs:

Other jobs may be regarded as low risk.

Factors to consider in assessing risks.

The following factors must be taken into consideration when assessing the risks associated with the employment of people with positive DBS disclosures.

Risks associated with the job:

- a. Does the post involve one to one contact with children or other vulnerable groups or their records?
- b. What level of supervision will the post holder receive?
- c. Does the post involve direct responsibility for finance or items of value?

d. Does the post involve direct contact with the public?

e. Will the nature of the job present any opportunities for the post-holder to re-offend in the place of work?

Risks associated with the offence:

a. The seriousness of the offence in its relevance to the safety of other employees, customers, clients and property.

b. The length of time since the offence occurred. If more than 10 years this may significantly reduce risk. If within last 2 years, the risk of re-offending is higher. Beware of recurring patterns over extensive periods of time e.g. regular gaps or periods when couldn't offend due to being in prison etc.

c. The age and maturity of the applicant when the offence occurred. (Research indicates that risk reduces after age 24)

d. Any relevant information offered by the applicant about the circumstances which led the offence being committed. For example, the influence of domestic and financial difficulties.

e. Whether the offence was a one off or part of a history of offending.

f. Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely. Evidence of positive change in lifestyle/stability e.g. accommodation, relationships, employment, training and education, associates, drugs and alcohol, emotional wellbeing, out of rehab for over 2 years.

g. The country in which the offence was committed, e.g. some activities are offences in Scotland but not in England or Wales and vice-versa.

h. Whether the offence has since been decriminalised by Parliament.

i. The awareness and degree of remorse expressed by the applicant and the motivation to change, although bear in mind the possibility for attempts to deceive.

Annex 3 – DBS Check Risk Assessment

This form can be used to assist in assessing and recording the risks of allowing someone to start work or volunteering before a DBS (Disclosure and Barring Service) Check is received or where a DBS disclosure shows relevant convictions or other relevant information. The risk assessment must be undertaken in accordance with the Policy on Employment of Ex-Offenders and Disclosure and Barring Service Checks.

The completion of this risk assessment form is the responsibility of the COO. It must be authorised by the Head of School and Chair of Governor **before** the person can start or continue working with children or vulnerable adults or their records. This completed risk assessment form must be placed on the individual's personnel file or other appropriate file and made available to, Audit, Safeguarding and Ofsted inspections.

In **very exceptional circumstances** staff (but not volunteers) who work with children, vulnerable adults or their records may work without a clear enhanced DBS disclosure if they are closely supervised (within sight and sound of someone with a clear DBS check). However, this will normally **only be permissible when not to allow them to work would disrupt the care of children and vulnerable adults; e.g. where there is a regulatory requirement to have a ratio of staff to number of children or vulnerable adults. People may only work in these circumstances when the following applies:**

The appointment is necessary to allow the service provision to continue.

In the case of children, the person has an enhanced DBS disclosure issued within the last year by another body and the person provides the original enhanced DBS disclosure certificate to the appointing manager as evidence.

An enhanced, DBS check has been applied for.

The person has no unsupervised contact with children or vulnerable adults.

They have no access to sensitive records, particularly information about individual children or vulnerable adults.

This risk assessment and risk management plan has been completed and signed off by the Head of School

Due to the high risks involved appointees to work in one to one situations or in residential care or similar environments must not start work until the fresh DBS disclosure has been



received.

Please note that candidates may be able to carry out induction, training and supervised tasks whilst waiting for the DBS disclosure to be returned.