



PRESTON MUSLIM GIRLS
— HIGH SCHOOL —

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MAKING RECRUITMENT DECISIONS FOLLOWING RECEIPT OF DBS

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This document provides advice and guidance to schools on the employment of people with a criminal record, who will be working with children, young people or vulnerable adults.

The information below offers guidance for Headteachers, who are required to make recruitment and employment decisions following receipt of Disclosure and Barring Service (DBS) disclosure information. This information from the DBS may include details of convictions, cautions, reprimands, or final warnings.

The decision to recruit an employee in cases where information comes to light on their DBS disclosure form can only be taken by the Headteacher. This responsibility cannot be delegated to any other member of staff in school.

In some cases, the Police can use their common law powers to provide relevant information directly to the employer (i.e., LCC Recruitment Team/Local Authority Designated Officer (LADO)). Advice from the Police should be sought about whether such information can be shared with the applicant.

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 provides that where a person is applying for a post that involves access to children and other vulnerable service users during that person's normal duties, criminal convictions will not be regarded as "spent" and must be declared on any application form for posts of that nature.

Some minor offences are now 'filtered' and will not appear on a DBS certificate. These are known as 'protected offences.' If an employee declares an offence which does not appear on the DBS certificate, this information should not be taken into account in making a decision on whether to continue with the offer of employment, as to do so would be unlawful.

In the case of posts where the employee does not have direct access to children or service users, the conviction can be regarded as "spent" and does not therefore need to be declared if the conviction is 3,5,7 or 10 years old depending on the nature of the convictions and age of offender. However, a sentence of imprisonment for 30 months or more is always excluded from rehabilitation, irrespective of the post.

Cautions, reprimands and final warnings are not criminal convictions, are not covered by the Rehabilitation of Offenders Act 1974 and are therefore never spent.

The County Council is registered to access criminal record checks for employee and volunteer appointment purposes with the DBS, including acting on behalf of Lancashire schools, where it has been contracted to do so. Details of a conviction and other information can become known either as a result of a prospective employee declaration, as a result of a Disclosure and Barring Service check or as a result of a notification from the Police.



Sanctions - definitions

Conviction A person is found guilty of an illegal act/offence through Court prosecution. They may have pleaded guilty or not guilty.

Caution Imposed by the Police on an adult as an alternative to prosecution for an offence. The offender **MUST** have admitted guilt before a caution can be imposed. Used for less serious offences or where culpability is lower.

Reprimand* Imposed on a young person (14–18 years) as an alternative to prosecution for an offence. The offender **MUST** have admitted guilt before the reprimand can be imposed. Used for less serious offences or where culpability is lower.

Final Warning* The next level of seriousness from a reprimand - issued to a young person (14–18 years) who has admitted the offence. A final warning is slightly more serious than a reprimand, but not serious enough to warrant prosecution.

NB.

Cautions, reprimands and final warnings are not convictions, but the offender would have to admit to the offence to be issued with the sanction. They all remain on the person's criminal record and would be cited in future criminal proceedings in the same way as convictions would.

* Following implementation of the *Legal aid, sentencing and punishment of offenders act (2012)*, reprimands and final warnings were replaced with a sanction known as a 'youth caution'.

Management guidance

The following provides guidance to Headteachers when making recruitment and other employment related decisions or recommendations.

At all times it is important to remember that in some circumstances, deciding on the relevance of convictions to specific posts is not an exact science. However, the care and well-being of children, young people or vulnerable adults is paramount, and each decision should have this interest as the primary consideration. An applicant's criminal record should be assessed in relation to the tasks he or she will be requested to perform and the circumstances in which the work is to be carried out.

In some areas the relationship between the offence and the post will be obvious as evidenced in section (a) below. In others, the position is not quite as clear.

Whilst it will not be possible to carry out a thorough risk assessment on each individual, the Risk Management Framework attached at Appendix 1 may assist headteachers in considering such cases.

To provide some additional guidance to Headteachers, offences have been identified that would normally exclude consideration for appointment [Section (a)] and certain



other offences are listed [Section (b)] where the reasonable application of these guidelines may facilitate a consideration of appointment after a period of time has elapsed.

If an application is received from, or an offer of employment made subject to DBS clearance, to a person that is on one of the DBS' barred lists (either children and young people and/or vulnerable adults), no further consideration of the candidate's application needs to be undertaken, and any offer of employment can be legitimately withdrawn.

Section (a) Offences that may lead to the withdrawal of a conditional offer of employment

There are a number of convictions and cautions that can prevent a person from working with children and/or vulnerable adults. These are the offences that are contained within the Disclosure and Barring Services (DBS) list of 'relevant (autobar) offences'.

1. "Automatic barring with no right to make representations"

This list covers the most serious offences against children and vulnerable adults, which indicate that an individual poses a risk of harm to children or vulnerable adults in every conceivable case. There is no opportunity for the individual to make representation to the DBS as to why they should not be barred because there can be no mitigating circumstances that might explain why these offences were committed.

Possession of a caution or conviction for any of these offences would preclude an applicant from being employed by a school or the Authority in any post involving contact with children, young people or vulnerable adults.

2. "Automatic barring with the right to make representations"

This list covers other serious offences that indicate a very probable risk of harm to children or vulnerable adults but not necessarily in every conceivable case. Therefore it is necessary to give individuals the opportunity to make representations. Under changes in legislation that commenced on 10 September 2012, the DBS now seeks and considers any representations, prior to making a decision as to whether a person should be included on a barred list.

Possession of a caution/conviction for any of these offences would also preclude an applicant from being employed by a school or the Authority in any post involving contact with children, young people or vulnerable adults, until such time as clearance has been received from the DBS. However, the DBS will not clear an individual unless it is satisfied that the individual does not pose a risk of harm to children and/or vulnerable adults.

A list of the relevant (autobar) offences is located on the Disclosure and Barring Service website

NB. It is illegal to employ a person noted as "barred" by the Disclosure and Barring Service. This "barred" status will be noted on the DBS form. Therefore, if an



application is received from/offer of employment made subject to DBS clearance to a person that is on one of Disclosure and Barring Service's barred list (either children and young people and/or vulnerable adults), no further consideration of the candidate's application needs to be undertaken, and any offer of employment can be legitimately withdrawn.

3. Other offences

In addition to offences on the DBS list of relevant (autobar) offences, the school may decide that other offences of violence, aggression, abuse or fraud that are not on either list may preclude an applicant from being considered, as may convictions/cautions involving employers, their premises or service users' premises. For example: -

- theft from an employer;
- criminal damage to the property of an employer or of a service user;
- drunk and disorderly offences where these have occurred at work.

or other serious convictions/cautions; for example: -

- possession, selling or the supplying of or dealing in drugs regardless of drug classification;
- burglary whether or not involving theft;
- where the duties of the post have a substantial driving element, motoring offences that call into question the integrity of the offender: for example, driving whilst disqualified, driving with no insurance, careless driving, and driving under the influence of drink where limit only marginally exceeded, or under the influence of drugs;

Because of the nature of these offences, the person's suitability to be placed into a position of trust working with children, young people and vulnerable adults is called into question. As a result, a person having such a record would not normally be considered suitable for such employment.

Decisions regarding suitability for employment in light of a conviction/caution should be made if that candidate is considered to be the most suitable person to be offered the post after interview. Consideration needs to be given to the nature of the post to be occupied and any service-specific issues, when determining the suitability of the candidate. It is also important to recognise that certain factors, such as the length of time since such an offence was committed, the extent of the conviction/caution and subsequent behaviour post-conviction/caution may be taken into consideration, if the Headteacher believes that exceptional circumstances apply. The Headteacher may wish to discuss such a case with a member of the Schools HR Team as appropriate.

A list of the offences that will never be filtered from a criminal record can be found here:

<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>



Section (b) - Convictions/cautions/reprimands/final warnings

The following types of convictions/cautions/reprimands/final warnings may be categorised as being of a less serious nature and so may not necessarily disqualify the applicant.

The convictions/cautions listed below are only examples and are not exhaustive:

- motoring offences that call into question the integrity of the offender: for example, driving whilst disqualified, driving with no insurance, careless driving, driving under the influence of drink where limit only marginally exceeded, or under the influence of drugs, where the post does not have a substantial driving element. (For posts involving a substantial driving element, see Section 3. (Other Offences))
- theft, such as shop-lifting.

For these types of offences, appointment might be considered after a reasonable amount of time has elapsed between the last conviction/caution and the commencement date of the appointment or placement. Headteachers will need to consider the suitability of an offer being made following consideration of all the facts of the case. The Risk Management Framework at Appendix 1 will assist in this decision-making process.

In any event, selection panels, headteachers and other school managers should be aware that the concessions suggested above can only be implemented when the person declares his or her convictions/cautions. If convictions/cautions were not declared on a prospective employee's self-declaration form and subsequently come to light at a later date, an investigation into why they were not declared should be undertaken immediately, which may lead to the withdrawal of any offer of employment or disciplinary action (if the person has commenced employment with the school).

Where it becomes clear that the person has obtained employment by deception (namely, by not declaring convictions/cautions), action may be taken under the disciplinary procedure. In some instances, the matter may be reported to the police. No appointment to a post which is subject to a DBS disclosure will be confirmed until the DBS check has been completed.



Information from the police

In cases where the Police have used their common law powers to notify the employer of information which they believe is relevant, the manager or headteacher must ensure that the content of this information is taken into account in any risk assessment of the safety of the person being employed with children, young people and/or vulnerable adults.

Disciplinary matters

Offers of employment to persons who have a record of disciplinary action or sanctions against them will be given the same degree of consideration as that used in relation to convictions/cautions and other records.

It must be emphasised that, whilst guidelines cannot be mandatory, headteachers and other school managers should adequately assess the risks of employing someone with a disciplinary record related to working with children, young people and/or vulnerable adults. This emphasises how importantly the school views the expectation of the highest possible standards of personal/professional conduct to employees within the service/school.

Employment decisions in schools will be taken having regard to current DfE Guidance 'Keeping Children Safe in Education - 2021'. The Recruitment & Selection Guidance document, provided by LCC is also available for advice. The documents can be found on the Schools Portal

For further information in relation to the operation of this guidance document, please contact AskHRschools@lancashire.gov.uk.

For more complex queries in relation to making employment decisions when DBS disclosure information comes to light, please contact a member of the Schools HR Team



APPENDIX 1

Employment of Ex Offenders - Risk Management Framework

Name:

Address:

.....

.....

Date of Birth:

NI Number:

School/establishment name:

Post title:

Identify the inherent hazards within the role:

- Does the post have personal contact with children or vulnerable adults? Yes/No
- Is there formal/informal supervision on a regular basis? Yes/No
- Is there a direct responsibility for money or value items? Yes/No
- Is there a requirement to have personal contact with the public? Yes/No
- Does the nature of the post provide opportunity to reoffend in the workplace? Yes/No
- What level of 'hazard' does the job present? Low/medium/high

Identify the risk presented by the applicant:

- How serious is the offence? Low/medium/high Category 1/Category 2
- Is it relevant to other staff, service users, third parties or property? Yes/No
- When was the offence committed? Less than 7 years ago
Less than 10 years ago
More than 10 years ago
- Was any mitigation offered? Yes*/No

*If yes, please give details

- Was this a one-off offence or is the applicant a repeat offender? One off/repeat
- Have the applicant's circumstances changed since committing the offence? Yes/No



- Has the offence been decriminalised subsequently? Yes/No
- Has the applicant expressed remorse and commitment to change? Yes/No
- Is there any additional information that may affect the risk assessment? Yes*/No

*If yes, please give details

- Has this information been discussed with the applicant? Yes^/No*

*If no, please detail the reasons

^If yes, please detail the discussions (use additional sheets if necessary)

Identify who or what is at risk

Children & young people/vulnerable adults/applicant/other employees/service users/property or money/other (give details)

- Can any preventative measures be put into place to reduce the risk? Yes*/No

*If yes, please give details

- Is the appointment to be confirmed Yes/No

| | |
|--------------------------|--|
| Headteacher name: | |
| Signed: | |
| Date: | |

