

# New Swannington Primary School



## Employment of Ex-Offenders Policy

Approved by Governors: June 2022

Signed on behalf of the Governing Body

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(Chair of Governors)

## **Purpose**

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**This document applies to the recruitment and selection of all teachers (including the Head teacher), support staff, volunteers and Governors, and should be read in conjunction with the school's Recruitment and Selection policy.**

**For individuals who work at the school via a 3<sup>rd</sup> Party Supplier, e.g. catering and cleaning staff, the school will ensure that confirmation is received from the supplying organisation that relevant checks in relation to the employment of ex-offenders have been undertaken.**

**The purpose of this policy is to outline the process of assessing:**

- **a job applicant's suitability to work within this school where a criminal conviction is disclosed by either:**
  - **the job applicant directly,**
  - **the Disclosure and Barring Service, on an Enhanced DBS certificate.**
  - **The Police or other Law Enforcement Agency, as additional information alongside the Enhanced DBS certificate.**
  
- **An existing employee's suitability to continue to work within this school where they have received a criminal conviction or caution during the course of their employment.**

**This policy outlines a fair and transparent process to enable school leaders to make fully informed and objective decisions on whether to continue with the appointment (or the employment) of an individual, whilst also ensuring the school meets its safeguarding obligations.**

**For the purposes of this document a "conviction" refers to a criminal conviction, caution, reprimand or warning, or where legal action is being taken against an individual which may result in a legal penalty.**

### **1. Rehabilitation of Offenders**

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- 1.1 **The Rehabilitation of Offenders Act 1974 (The Act) allows most convictions, cautions and reprimands to be considered "spent" after a certain length of time has elapsed. This is known as the "rehabilitation period" and is determined by the sentence or disposal given. The Act provides individuals with spent convictions the legal right not to disclose them when applying for most jobs.**
  
- 1.2 **However, most school-based roles will fall under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, e.g. where the post is involved in regulated activity with**

children and other activities which involve working closely with children such as caring for, training, supervising or being solely in charge of children under the age of 18, and are exempt from the provisions of The Act. The school is therefore entitled to request details of spent **and** unspent convictions and cautions that are not protected (i.e. eligible for filtering, see below). This information will be taken into account when determining an applicant's suitability for the role applied for in school.

- 1.3 Having a criminal record will not necessarily prevent an individual from working in this school. Decisions on whether or not to recruit an individual will only be taken following a detailed and considered assessment of all the circumstances.
- 1.4 The school will not discriminate unfairly against any individual on the basis of a conviction or other information revealed.

## 2. Pre-Employment Checks

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- 2.1 It is unlawful for the school to employ anyone who is barred from working with children. Similarly, it is a criminal offence for any person who is barred from working with children to apply for a position at the school.

### 2.2 Shortlisting of Applicants:

During the recruitment process, all short-listed applicants will be asked to disclose any relevant spent or unspent convictions and cautions prior to interview using the Criminal Records Self-Disclosure Form (Appendix 1). This form should be returned to the school in a sealed envelope and will remain un-opened until the end of the interview process.

- 2.3 Under the Exceptions Order the following must be disclosed:

- all unspent convictions and cautions, **and**
- spent cautions and convictions if they meet the circumstances described in the table below:

Disposal	Age when given/sentenced	How long since given/sentenced?
Caution for specified offence	18 years or over	Any time
Caution for non-specified offence	18 or over	Less than 6 years
Conviction for specified offence	Any age	Any time
Conviction resulting in custodial sentence	Any age	Any time
Conviction for non-specified offence	18 or over Under 18	Less than 11 years Less than 5 and half years

- 2.4 A 'specified offence' is serious and relates to:

- sexual offending,
- violent offending and/or are relevant to safeguarding children and vulnerable adults.

The full list of "specified offences" can be found on the DBS website.

<https://www.gov.uk/government/publications/filtering-rules-for-criminal-record-check-certificates>

2.5 Where the applicant is successful at the interview stage the envelope containing their Criminal Records Self-Disclosure form will be opened by the chair of the panel and the other panel members informed of the contents. Where a criminal record is disclosed refer to **Section 3** of this policy.

2.6 **Where a conditional offer of employment is made:**

A job applicant who is successful at the interview stage will receive a conditional offer of employment. This offer will be subject to a satisfactory Enhanced Criminal Record check with a barred list check (where appropriate) by the Disclosure and Barring Service before an appointment is confirmed.

2.7 An Enhanced DBS certificate will always include:

- convictions that resulted in a custodial sentence,
- “specified offences” where they resulted in a conviction, **or**
- an adult caution regardless of when they were received.

2.8 Cautions, reprimands and warnings received when an individual was under the age of 18 will not automatically appear on an Enhanced DBS certificate.

2.9 As a result of the amendments to the Rehabilitation of Offenders Act 1974 (exceptions order 1975) in 2013 and 2020, some minor offences are now ‘Protected’ or ‘filtered’ convictions or cautions and should **not** be disclosed or included on a DBS Disclosure Certificate. Information volunteered by an applicant relating to ‘protected’ convictions and cautions will be disregarded.

Further information can be found on the [Ministry of Justice](#) website.

2.10 Furthermore, there may be occasions where the police choose to disclose information relating to a protected caution or conviction along with the Enhanced Disclosure where it is considered relevant to the role that the individual has applied for. This information will be taken into account as part of the vetting process.

2.11 **Failure to disclose a previous conviction may lead to an application being rejected or an offer of employment withdrawn. Where it is discovered, after employment has started, that an individual did not disclose a criminal record, this may lead to disciplinary action being taken. A failure to disclose a previous conviction may also amount to a criminal offence.**

2.12 The School will make a report to the Police and/or the DBS if:

- it receives an application from a barred person;
- it is provided with false information in, or in support of an applicant's application; or
- it has serious concerns about an applicant's suitability to work with children.

### **3. When A Job Applicant Declares a Criminal Conviction/Caution**

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- 3.1 Where a panel consider a job applicant is appointable following interview, the panel will open the envelope containing the Criminal Records Self Disclosure Form. If a conviction, caution or other offence has been disclosed on the form, a further interview with the applicant will take place to discuss the declared information. The school will then determine whether or not the information provided has an impact on the applicant's ability to undertake the role they are applying for, before a final recruitment decision is made.
- 3.2 The Chair of the Panel will arrange a meeting with the individual, as soon as practically possible in order to complete the Impact Assessment Form ([Part 1](#) and [Part 2](#)). Following the meeting the chair of the panel will:
- Conclude whether or not the declared information impacts on the role applied for,  
**And**
  - Provide a clear rationale of the reasons behind the conclusion.
- 3.3 The completed Impact Assessment Form will be retained with all other documentation relevant to the individual's application.

NB. Part 2 does not always need to be completed. This is dependent on the circumstances. See attached forms at Appendix 2. Where necessary HR advice will be sought.

#### **4. When A DBS Disclosure Certificate Identifies A Criminal Record**

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- 4.1 Prior to confirming an offer of employment, the school must have sight of the applicant's original DBS certificate. Where an applicant does not have a current DBS certificate, the school will apply for one.
- 4.2 Where a criminal record is stated on the DBS Certificate (and/or additional information is provided by the Police), and where the Chair of the Recruitment Panel did not complete the Impact Assessment at the Interview stage (due to no convictions being stated on the Criminal Convictions Self-Disclosure Form), the Head Teacher will undertake an assessment which may determine:
- due to the age and/or nature of the offence(s) there is no impact on the role the individual will be undertaking. The Head Teacher will complete the [Impact Assessment Form Part 1 only](#) and place this in the individual's personal file.
- OR**
- that further investigation is required before any decision can be taken on whether an appointment can be confirmed. The Head Teacher will complete the Impact Assessment Form [Part 1 & Part 2](#). The form will be retained on the individual's personal file. Any copies taken of the Disclosure Certificate will be destroyed.
- 4.3 In instances where an individual disputes the contents of the DBS disclosure certificate issued to them, the school has the discretion to suspend the recruitment process until such time as the dispute is resolved

- 4.4 The Head Teacher will seek advice from their HR Adviser and the LADO where the disclosure or additional information was of a safeguarding nature.

## **5. When A Criminal Conviction is Declared by a Current Employee/ Volunteer**

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- 5.1 Where an employee/volunteer declares a criminal record or advises the Head Teacher of pending criminal action, an Impact Assessment will be undertaken to establish whether this affects the individual's suitability to continue to undertake their role.
- 5.2 Where appropriate, the Head Teacher will complete the Impact Assessment Form [Part 1](#), and depending on the nature of the criminal record, [Part 2](#), and place this on the individual's personal file. The Head teacher may conclude:
- a. Where the impact assessment concludes that there is no impact on the individual's employment, no further action will be taken.
  - b. Where the assessment concludes that there is an impact, action will be taken in accordance with the School's Disciplinary Procedure. For Volunteers/casual staff, continued use of such individuals may cease.

Where necessary HR advice will be sought.

- 5.3 The Head Teacher will seek advice from their HR Provider and/or the LADO where the disclosure or additional information was of a safeguarding nature.

## **6. The Impact Assessment**

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- 6.1 An Impact Assessment will be undertaken to fully assess information received about a criminal conviction and inform decisions on the individual's suitability to undertake the role applied for/ remain in their current role.
- 6.2 All decisions made in respect of an individual's employment will be based on objective and factual consideration, and the rationale will record that serious consideration has been given to the potential risk of employing the individual.
- 6.3 The impact assessment will contain:
- A summary<sup>1</sup> of the information received and how this was received. If information is received via a DBS check it is not appropriate to summarise any of the information received.
  - The outcome of the assessment and any recommended action to be taken.

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<sup>1</sup> In accordance with the both the DBS Code of Practice and the School/College/Academy Policy for the Storage & Management of DBS Disclosure Information copies of a DBS disclosure certificate can only be retained for a maximum period of 6 months, and only where there is a valid reason for doing so, after which it must be destroyed. This being the case, this summary will provide the only audit trail of the information reviewed as photocopies of DBS Disclosure certificates must not be kept.

6.4 **For existing employees:** the outcome of an Impact Assessment may lead to disciplinary action. In such circumstances the Impact Assessment may act as the investigation stage of the Disciplinary Procedure in which case the employee will be advised of their right to representation.

**6.5 Impact Assessment Form – Part 1 (to be completed in all cases):**

In making an initial assessment the following questions will be considered:

- Is the criminal offence(s) related to the type of work to be undertaken?
- Does the post involve unsupervised work with vulnerable groups i.e. children, young people or vulnerable adults?
- What penalty was awarded, if any?
- Was the offence committed when the person was a juvenile or an adult?
- How long ago was the offence?
- Is the offence within [The Safeguarding Vulnerable Groups Act 2006 \(Prescribed Criteria and Miscellaneous Provisions\) Regulations 2009?](#)  
*N.B. The Safeguarding Vulnerable Groups Act 2006 provides for a [list of offences](#) that will result in automatic inclusion in one or more of the Independent Safeguarding Agency (ISA) barred lists .*
- If there was more than one offence, is there a pattern of offences — how frequent, how long since the last offence?
- Does the post involve any direct responsibilities for property, finance or items of value?
- The employers' duties in law.
- Consideration will also be given to the country in which the offence was committed

For those individuals who have lived or worked abroad, has a letter of good conduct been received from that country(ies)

**6.6 Impact Assessment Form – Part 2 (to be completed when further investigation is required):**

School leaders will consider the following when completing Part 2 of the Impact Assessment Form.

***New Job Applicants:***

- The nature of the crime, when it happened, the circumstances surrounding the matter and the sentence was given.
- Any advice from the LADO/HR?
- The nature and seriousness of the offence and whether there is a potential risk to children, young people, vulnerable adults, other service users, the public and/or colleagues?
- The nature of the offence and the potential to risk to property or finance?

***Current employee/volunteers:***

- The nature of the crime, when did it take place etc.
- Was the information previously known? e.g. from a previous DBS check undertaken?

- Did the concern arise/offence take place prior to working for the School, if so was it considered during the recruitment. If yes, was this recorded?
- Did the concern arise/offence take place whilst the individual was working at the School?
- Did the individual declare the offence at the time it happened? If yes, was disciplinary action taken against the individual?
- If disciplinary action was not taken, what alternative action (if any) was taken?
- Have there been any other related concerns about the individual?
- Is the concern sufficient to contact the LADO for advice?

**6.7** The individual undertaking the interview will ensure that as part of the process:

- the applicant/employee agrees that the information recorded on the DBS Disclosure certificate is correct and that it relates to them?
- the applicant/employee provides a detailed explanation of what happened and context around the incident. Be aware that it is normal for people to minimise both what actually happened and justify their actions.
- consideration is given to the individual's circumstances; have these changed since the offence was committed?
- the degree of remorse expressed by the applicant/employee and their motivation to change.

**6.8** Following the Impact Assessment, a decision will be made based on the information gathered, regarding the individual's suitability to work/continue working in the role.

### **6.9 Possible outcomes of the Impact Assessment Process**

The possible outcomes are:

- To appoint to post
- Not to appoint to post

Or for existing employees:

- To continue in current role, with the option of making reasonable adjustments (where possible).
- To continue in a different role; for employees the alternative role wherever practicable should be on the same grade.
- Manage the individual under the school's Disciplinary Process. An outcome of which may be dismissal.

## Appendix 1: Criminal Records Self-Disclosure Form

Congratulations on being shortlisted. Please complete and return this disclosure to the school **at least 3 working days prior to interview**. If we have not received this, we reserve the right to withdraw the offer of interview.

<b>POST APPLIED FOR:</b>		Date:
Surname:		Previous name(s) (if any):
Forename(s):		Preferred title:      Date of birth:
National Insurance No:	Teacher Ref. No. (if applicable):	Date of recognition as qualified teacher, QTS (if applicable):

*New Swannington Primary School is committed to safeguarding and promoting the welfare of children and we expect all staff to share this commitment. This post is exempt from the Rehabilitation of Offenders Act 1974; pre-employment checks will be carried out, references will be sought and successful candidates will be subject to an enhanced DBS and Barred List check and other relevant checks with statutory bodies.*

As you have been shortlisted, you are required to declare any relevant convictions, adult cautions or other matters which may affect your suitability to work with children.

As a result of the amendments to the Rehabilitation of Offenders Act 1974 (exceptions order 1975) in 2013 and 2020, some minor offences are now protected (filtered) and should not be disclosed to potential employers, and employers cannot take these offences into account. If you are unsure whether you need to disclose criminal information, you should seek legal advice or you may wish to contact Nacro or Unlock for impartial advice. There is more information on filtering and protected offences on the Ministry of Justice Website.

**Nacro:** <https://www.nacro.org.uk/criminal-record-support-service/> or email: [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk) or phone 0300 123 1999.

**Unlock:** <http://hub.unlock.org.uk/contact/> phone: 01634 247350 or text: 07824113848

<b>1. Do you have any convictions or adult cautions that are unspent? Yes/No</b>
<b>If yes, please provide details here</b>
<b>2. Do you have any other cautions or convictions that would not be filtered? Yes/No</b>
<b>If yes, please provide details here</b>
<b>3. Are you included on the DBS Children's Barred List? Yes/No</b>

<b>If yes, please provide details here</b>
<b>4. (For Teaching &amp; Classroom Support Staff only) Are you, or have you ever been prohibited from teaching by the TRA or sanctioned by the GTCE? Yes/No/Not applicable</b>
<b>If yes, please provide details here</b>
<b>5. (Management posts in independent schools/academies &amp; Governors in maintained schools). Have you been prohibited from the management of an independent school (s.128)? Yes/No/Not applicable.</b>
<b>If yes, please provide details here</b>
<b>6. Have you lived or worked outside the UK for more than 3 months? Yes/No</b>
<b>If yes, please provide details here</b>
<b>7. Are you subject to any sanctions relating to work with children in any country outside the UK? Yes/No</b>
<b>If yes, please provide details here</b>
<p><b>Please complete the declaration below:</b></p> <p>I declare that all the information I have provided in this disclosure is full and correct at the time of the application and that I have not omitted anything that could be relevant to the appointment of someone who will work with children. I understand that the recruitment panel may be made aware of any relevant information that I have disclosed in order to discuss the matter(s) with me as part of the recruitment process and that, if my application is successful, a risk assessment of the disclosed information will be held securely on my personal file. I understand that the declaration of a criminal record will not necessarily prevent me from being offered this role.</p> <p><b>Signed:</b> _____ <b>Date:</b> _____</p>

Please return this form to [*insert name and address*]

## Appendix 2: Criminal Record Impact Assessment Form Part 1

If it is proposed to interview the individual about the declared criminal record information Part 2 will be completed.

Name of job candidate/ Volunteer/Governor:			
Job applied for:			
Job location:			
<b>Was the information disclosed:</b> <input type="checkbox"/> on a DBS Disclosure Certificate <input type="checkbox"/> by the individual <input type="checkbox"/> by another source		<b>If declared on DBS Disclosure Certificate:</b>	
		<b>Certificate Number</b>	
		<b>Date certificate issued</b>	
<p><b>Please briefly outline the nature of the disclosure:</b> <i>NB. It is not appropriate to record the precise details of any convictions, cautions, reprimands, warnings or additional information on this form. Instead record the nature of the disclosure, the year it happened and the penalty received.</i></p> <p><u>Examples:</u>          Driving Offence            2007   Fine          Shop Lifting                2012   Community Service          Assault                        1994   Custody sentence          Breach of the Peace        2017   Caution</p>			
Does this post require the individual to work with children, young people or vulnerable adults?		Please tick appropriate box Children <input type="checkbox"/> Adults <input type="checkbox"/>	
Following an initial assessment is verification required from the individual as to whether the information received is accurate?		Please tick appropriate box Yes <input type="checkbox"/> No <input type="checkbox"/>	
<p><b>If NO</b> – please state reason why not. <i>NB an initial assessment may easily determine that the information is of limited relevance to the post and a decision can quickly be made and recorded, with the reasoning stated and easily justifiable.</i></p> <p><u>Examples:</u></p> <ul style="list-style-type: none"> <li>• A serious drink driving offence is identified but driving is not required as part of the role, .therefore no action is required.</li> <li>• The age of the offence - deemed as 'spent' under the terms of the <u>Rehabilitation of Offenders (ROA) Act 1974</u>, therefore no action is required.</li> </ul> <p><i>If consideration is being given to investigate further then the individual will be asked to verify the accuracy of the information received</i></p>			

Following an initial assessment is it proposed to interview the individual in respect of the information received?	Please tick appropriate box Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>If Yes</b> – Part 2 of the form <b>will</b> be completed – if an employee the interview <b>will</b> take place in accordance with the School/College/Academy Disciplinary Procedure	
<b>If NO</b> – please state reasons and conclusion	

Please complete section A or B on the next page

<b>Section A (Part 1 only) – Existing Employee/Volunteer</b>	
<b>If only Part 1 has been completed and no further action is required the signature of the Manager/Head Teacher/Principal is required</b>	
Signed:	Date:

<b>Section B (both Part 1 &amp; 2) – New Employee/New Volunteer</b>	<i>Please tick appropriate box</i>
<b>Decision</b>	
• To appoint to post	<input type="checkbox"/>
• Not to appoint to post	<input type="checkbox"/>
<b>Signature of the Recruitment Officer.</b>	
Signed:	Date:

<b>Section B (both Part 1 &amp; 2) – Current Employee/Volunteer</b>	<i>Please tick appropriate box</i>
<b>Decision</b>	

<ul style="list-style-type: none"> <li>• No action required</li> </ul>	<input type="checkbox"/>
<p>Employees - The following outcomes can only be enacted using the School/College/Academy Disciplinary procedure</p>	
<ul style="list-style-type: none"> <li>• Not to continue in current role</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• To continue in current role, with the option of making reasonably practicable adjustments.</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• To continue in a different role; for employees the alternative role wherever practicable should be on the same grade.</li> </ul>	<input type="checkbox"/>
<p><b>Signatures of Head Teacher/Principal:</b></p>	
<p>Signed:</p>	<p>Date:</p>

## Criminal Record Impact Assessment Form Part 2

<p>Has the individual consented to being interviewed?</p>	<p><b>Please tick appropriate box</b></p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>If an employee, have they been informed of their right to have a representative present?</p>	<p><b>Please tick appropriate box</b></p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

**What impact does the offence/information have on the individual's suitability to carry out the role in question or the individual's suitability to continue within their role?**

**Having interviewed the individual include the rationale for decision as to whether or not the individual is suitable to take up/continue in the role. If appropriate, include measure(s) proposed to put in place to enable the individual to take up/continue in post:**

<p><b>If the employee/volunteer is not considered suitable to continue in post are there sufficient grounds to make a referral to the Independent Safeguarding Authority?</b></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/> If No, please state reasons.</p>
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