

Unlock response to Department for Education's Call for Evidence on Safeguarding Children in Schools and Colleges, May 2024

Unlock is a national independent advocacy charity that supports, speaks up and campaigns for people facing stigma, prejudice and discrimination because of their criminal record. A core mission for Unlock is to provide advice for people in respect of their criminal record, including help overcoming the barriers they're facing. Our website provides vital information and guidance for people with criminal records. We also have a helpline provided by dedicated staff and volunteers, which deals with specific queries. People can contact the helpline in various ways, including via email, WhatsApp or our free phone line.

This document sets out our response to the Department for Education [call for evidence](#) on Safeguarding Children in Schools and Colleges.¹ Our comments here relate mainly to the Keeping Children Safe in Education document (KCSIE), specifically sections of **Part Three: Safer Recruitment**. Whilst much of this part provides useful guidance, there are some sections that would benefit from expansion, clarification or restructuring to most effectively support best practice. Our suggestions can be read widely as steps toward providing fair, equal treatment in recruitment across the sector.

Q60 - Thinking about KCSIE and the relevant NMS as currently drafted are there any areas that are helpful, but could be expanded?

Firstly, KCSIE has several sections referring to criminal records that need to be clarified. Legislation surrounding the disclosure of criminal records is complex, so it is essential that schools and colleges understand it, particularly to prevent over disclosure from potential applicants. **Section 211 (KCSIE)** does a good job of outlining what a protected caution/conviction is, and the fact that they do not need to be disclosed to employers. This directly follows guidance stating that job adverts should include "whether the post is exempt from the [Rehabilitation of Offenders Act \(ROA\) 1974](#)".² A small amendment to this section specifying that the protection of convictions/cautions apply *when* a post is exempt from the ROA 1974 should be added. This will

¹ <https://consult.education.gov.uk/safeguarding-strategy-systemic-improvement-team/safeguarding-children-in-schools-and-colleges/>

² <https://www.legislation.gov.uk/ukpga/1974/53>

provide clarity in what is expected to be disclosed by applicants, because in the current layout the first sentence seems disconnected from the rest of the point. It provides a margin of error which could cause some schools and colleges to misinterpret what is within their remit to know in terms of applicant's criminal records.

A small clarification is also needed in **Section 213 (KCSIE)**, where the guidance says that schools and colleges should provide “a copy of the school or college’s policy ... on employment of ex-offenders”. Here there should be emphasis that if a conviction or caution is protected, it does not legally need to be disclosed and cannot be taken into consideration for employment. Whilst this is touched on in **Section 211 (KCSIE)**, it should be reinforced here that no matter what the school/college’s policy on employing ‘ex-offenders’, the school/college should make it clear that protected cautions and convictions cannot (and therefore will not) be considered in relation to the provisions of such policies.

Section 216 (KCSIE) states that all shortlisted candidates should go through a self-declaration process, including the declaration of their criminal history. The phrasing of “criminal history” is too broad in its scope and could easily result in shortlisted candidates over-disclosing their criminal record, thereby potentially damaging their chances of gaining employment. Whilst the link to GOV.UK’s guidance around the ROA 1974 is welcome, KCSIE should still make efforts to clarify that criminal history only needs to be disclosed if it is not protected, or unspent. The complexity of the criminal records system also makes it a possibility that people will over-disclose in instances of self-disclosure, especially because individuals cannot carry out higher level checks on themselves to check what will show up. Unlock therefore warns against using self-disclosure as a proxy for honesty. Additionally, General Data Protection Regulation (GDPR) and the [Data Protection Act 2018](#) place criminal records data in a special category, making it vital that educational institutions understand they can collect this data only when necessary, lest they find themselves in breach of data protection law.³ The Information Commissioner’s Office (ICO) says that criminal record data collection should only take place after a candidate is selected, so asking candidates to disclose at an earlier stage seems premature. The guidance in **Section 232 (KCSIE)** that enhanced checks must be obtained upon selection of an applicant is necessary, but for best practice schools and colleges should restrict themselves to collecting such data *only* at this stage, and not before.

Although asking too many applicants to self-disclose is not best practice, **Section 219 (KCSIE)** does give relatively good guidance on the purpose of self-disclosure (though this guidance should still only be applied to a single chosen candidate for the role). Whilst this aligns with Unlock’s advice around self-declaration, we always convey the caveat that this should only be done when convictions and cautions are unspent or not protected. This is why the above suggestion for expansion in **Section 216 (KCSIE)** is a necessary addition.

Unlock appreciates the guidance laid out in **Sections 244/5 (KCSIE)** regarding the fair assessment by schools/colleges of applicants: considering any information disclosed on DBS checks alongside any explanation from the applicant. The inclusion of various factors that would be useful to consider whilst reaching a decision is also helpful. However, this guidance is under the part titled “**Considering which type of check is required**”. What information may

³ <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

potentially be revealed, or any other information about a candidate, does not relate the determining the correct level of check. This guidance would be better suited elsewhere, such as in the “**Shortlisting**” or “**Pre-appointment vetting checks, regulated activity and recording information**” sections. Given that **Section 219 (KCSIE)** gives guidance on discussion and consideration of a self-disclosed criminal record, this appears to be a more appropriate place for **Sections 244/5 (KCSIE)** to be grouped with.

In addition to using specific language to avoid over-disclosure, those asking about or offering advice about criminal records should ensure they use language that does not alienate applicants. **Section 213 (KCSIE)** uses the term “ex-offenders”, which should be replaced with a term that does not stigmatise people with criminal records. Terms such as ‘ex-offender’ can perpetuate societal stereotypes and reinforce negative feelings that people with criminal records can hold about themselves.⁴ We know that use of language like this this often leads to people with criminal records recusing themselves from opportunities through what we refer to as the “chilling effect”. Unlock uses the term ‘people with criminal records’ (PWCR) and recommends that the same language is adopted.

Finally, **Section 250 (KCSIE)** states it to be good practice to require new staff to join the DBS Update Service. The Update Service can provide a useful system for managing DBS checks over periods of time. However, there are known issues with the service, which prevent certain individuals from joining it. For example, those who have had convictions overturned cannot join, due to faults in the DBS’s online system. If joining the update service is a compulsory element of pre-employment checks, someone may be denied employment due to a purely administrative failing. Others may wish to explain why they can’t join the update service, which can mean disclosing information that can be embarrassing or stigmatising, or that an employer is not permitted to collect. As a result, some individuals would rather turn down a job offer than go into unwarranted details or disclose information they are not legally required to. So, forcing people into using the Update Service runs the risk of being exclusionary. Schools and colleges should be mindful of these issues in determining their policy around the Update Service.

Conclusion

The changes and amendments to KCSIE that we have proposed are important changes that build on an already good foundation of guidance. They would be, however, essential to support schools and colleges in best practice whilst supporting individuals’ fair access to employment. Unlock would welcome the chance to discuss our recommendations further with the Department for Education if they wish to know more about best practice in providing guidance around employing people with criminal records.

Please contact policy@unlock.org.uk for further information.

⁴ <https://onlinelibrary.wiley.com/doi/full/10.1111/hojo.12515>