

UNIVERSITY OF ST MARK & ST JOHN

COMPLIANCE POLICY (UNDER REVIEW)

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Disclosure and Barring Service Certificates

1.1 Introduction

1.1.1 The University of St Mark & St John will comply with current and future legislation and aims to promote good practice in all aspects of the University. All applications are considered initially on academic and motivational merit irrespective of any criminal record. However, there may be occasions where the nature of an applicant's criminal conviction provides a potential threat to the University community or is deemed unsuitable for their chosen programme/profession in line with the requirements of the Department for Education (DfE) or other governing bodies and on these grounds may not be suitable for entry.

1.1.2 The University complies with the Disclosure and Barring Service (DBS) Code of Practice

(November 2012).

1.2 Procedural

1.2.1 Relevant programmes of study: Programmes of study will be risk-assessed by the Compliance Officer to identify whether DBS clearance is required. All offers of places by the University to programmes which have been identified as involving contact with children and/or vulnerable adults in a 'Regulated Activity' (Appendix A) will be made conditional to receipt of a satisfactory DBS certificate.

1.2.1.1 For these relevant programmes, applicants must inform the University of any relevant, criminal convictions, including spent sentences, cautions (including verbal cautions), warnings and bind-over orders. Applicants should enter X in the 'Yes' box of the application form if they have any of the following:

- a criminal conviction, excluding those that have been convicted of a single motoring offence for which the only penalty was a fine or not more than 3 penalty points
- a spent criminal conviction
- a caution (including a verbal caution)
- a warning or reprimand
- a bind-over order; or

1.2.1.2 if they are currently serving a prison sentence, and have the support of a senior prison officer A DBS certificate application pack will be sent to applicants by the Admissions office once the offer of a place has been firmly accepted. Applicants who choose the University as their second choice will be advised of the need to provide a valid certificate before they commence their studies with us. Clearing applicants will also be offered places conditional upon a satisfactory DBS check. For some programmes, packs will be sent after registration.

1.2.1.3 Existing DBS certificates processed by other institutions will not be accepted unless the certificate has been registered with the DBS Update Service. The applicant must provide the

Admissions office with a copy of the DBS certificate and give authorisation for the update check to be made. If the check is not satisfactory, the University withholds the right to request a new DBS check.

1.2.1.4 The University requires that all students apply for one DBS certificate for the duration of their programme but, if after suspension or they are absent for a period of at least 12 months, the student will be required to apply for a new DBS check to provide clearance for the full duration of the programme of study.

1.2.2 Non-relevant programmes of study: All applicants are asked to declare 'relevant' conviction(s) as part of the application. Relevant convictions are only those convictions for offences against the person, whether of a violent or sexual nature, and convictions for offences involving unlawfully supplying controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking. Therefore, applicants should enter X in the 'Yes' box of the application form if:

- they have a relevant criminal conviction, that is not spent, **or**
- are currently serving a prison sentence for a relevant criminal conviction (and the applicant must have the support of a senior prison officer).

1.2.2.1 Convictions that are spent (as defined by the Rehabilitation of Offenders Act 1974) are not considered to be relevant and should not be revealed for non-relevant programmes of study.

1.2.2.2 The University's policy on the recruitment of ex-offenders is published on the University website.

1.2.3 Non-UK applicants: The University will require non-UK students (including exchange students) to apply for a DBS check and to provide a 'Certificate of Good Conduct' from all countries where they have resided during the 5 years prior to the commencement of the programme.

1.2.4 Employment-based Training: The University will ask applicants to sign a form authorising their employer to provide their DBS certificate information and confirm or otherwise the presence

of additional information.

1.2.4.1 The University will record these details in the same manner as those DBS certificates processed by the University and the information retained for the same time period. Where their acceptance onto the programme represents a significant change in responsibilities or job role with their employer, the University would expect to see that a new DBS certificate had been obtained.

1.2.5 School Direct Accredited Programmes: The University will request School Direct partners to provide DBS information for their students and confirm each Fit2Teach status.

1.2.5.1 The University will record these details in the same manner as those DBS certificates processed by the University and the information retained for the same time period.

1.2.6 Applicants who are holding deferred places or wish to defer their year of entry: A DBS certificate carries no formal period of validity and older certificates will contain less reliable information as the information it contains may not reflect recent incidents. Therefore, the University is obliged to ensure that applicants undertake a DBS certificate in the admissions cycle immediately prior to the commencement of their programme of study and not before.

1.2.6.1 Where an applicant has indicated on their application form that they intend to defer entry until the following year, they should apply for a DBS check during the 12 months prior to their date of entry. However, if an applicant defers late in the application cycle and has already applied for a DBS check, they could be liable to undergo another DBS check in the following year of the UCAS cycle and be liable to pay the due amount unless the original check was registered with the DBS Update Service.

1.2.7 Applications indicating relevant, unspent convictions:

In all cases where the applicant has indicated on an application that they have an unspent conviction or the information has been revealed on a criminal record check, the University reserves the right to request additional information from the applicant in order to establish the details of their situation and to assess their suitability to study on their chosen programme.

1.2.7.1 All applicants who are current serving prisoners should be supported by either a probation

or prison officer's report regarding their conviction, which will include a risk assessment. Applicants will be sent a standard letter by the University asking for further details. Such applicants may be subject to providing details of the police records. It should be noted that having a criminal record will not necessarily bar an applicant from being accepted on their chosen programme. This will depend on the nature and circumstances of the offence and if appropriate the decision of the Criminal Conviction Group.

1.2.7.2 The University's policy on the recruitment of ex-offenders is published on the University website.

1.2.7.3 Applicants who have declared convictions or criminal records for relevant courses will be asked to provide details of the conviction(s) depending on the nature of the conviction(s). For all programmes, all isolated offences which meet the following criteria will be risk-assessed by the University's Compliance Officer and the application authorised.

- Road Traffic Offences* (including speeding, driving without insurance, failing to report an accident, driving a motor vehicle with excess alcohol, failing to provide a specimen for analysis, driving without due care and attention and being in charge of a mechanically propelled vehicle whilst unfit through drink)
- Drunk and disorderly behaviour
- Being drunk at a sporting event
- Possession of a class C drug
- Shoplifting
- Travelling without a ticket/fare
- Trespassing

*Parking tickets and fixed penalty road traffic offences are ignored. Road traffic offences involving fatalities are not included in this.

1.2.7.4 Where the Compliance Officer is unable to satisfactorily recommend an outcome, the case will be discussed with the Programme Leader. If the Compliance Officer and the Programme Leader are unable to satisfactorily recommend an outcome the case will be referred to the

Criminal Convictions Panel (CCP), (Appendix B).

1.2.7.5 Under the Protection of Children Act 1999 and the Criminal Justice and Court Services Act 2000, a number of people are automatically banned from working with children and these include those on the ISA's Children's Barred list and the Adult's Barred list. Other offences are specifically named including:

- murder or manslaughter
- kidnapping, false imprisonment or abduction
- wounding and grievous bodily harm
- assault occasioning actual bodily harm
- rape or burglary with intent to commit rape
- administering drugs
- indecent assault
- incest and related offences
- buggery with a child under 16
- supplying or offering to supply a Class A drug to a child

1.2.7.6 The DfE also indicates clearly that the sorts of offences or behaviour that would most likely lead to someone being barred from teaching include:

- violent behaviour towards children
- a sexual or otherwise inappropriate relationship with a pupil
- a sexual offence against someone over the age of 16
- any offence involving serious violence
- drug trafficking and other drug related offences
- stealing school property or monies
- deception in relation to employment as a teacher
- a criminal conviction which has resulted in a sentence of more than 12 months
- repeated misconduct or multiple convictions, unless of a very minor nature

1.2.8 DBS certificates including offences:

The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account.

All cautions and convictions for specified serious violent and sexual offences, and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults, will remain subject to disclosure. All convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.

DBS certificates received by the University for will be compared with the previously completed and assessed application declaration for consistency. Any discrepancy will be investigated and could result in the withdrawal of the offer of a place if there is evidence of an attempt to conceal convictions.

1.2.8.1 For all programmes, all isolated offences which meet the following criteria will be risk-assessed by the Compliance Officer and the application authorised.

Road Traffic Offences* (including speeding, driving without insurance, failing to report an accident, driving a motor vehicle with excess alcohol, failing to provide a specimen for analysis, driving without due care and attention and being in charge of a mechanically propelled vehicle whilst unfit through drink)

Drunk and disorderly behaviour

Being drunk at a sporting event

Possession of a class C drug

Shoplifting

Travelling without a ticket/fare

Trespassing

*Parking tickets and fixed penalty road traffic offences are ignored. Road traffic offences involving

fatalities are not included in this.

1.2.8.2 Where the Compliance Officer is unable to satisfactorily recommend an outcome, the case will be discussed with the Programme Leader (PL) OR Programme Area Leader (PAL). If the Compliance Officer and the PL/PAL are unable to satisfactorily recommend an outcome, the case will be referred to the Criminal Convictions Panel (CCP), (Appendix B).

1.2.9 Criminal Convictions Panel:

The CCP consists of the Compliance Officer (Chair), either of the Academic Information and Guidance Co-ordinator or the Head of Student Services, the Admissions Applications Co-ordinator and a nominated representative of the programme. They will consider all evidence, taking into consideration the date(s) of the conviction(s) and the seriousness of the offence(s) before making a recommendation to the Head of Registry Services.

1.2.9.1 The Head of Registry Services will decide whether to withdraw the offer of a place or to impose restrictions upon the offer. If the applicant decides to appeal, the Head of Registry Services will instigate the Admissions Appeals procedure if it is found to be appropriate. There will be no further consideration.

1.2.10 Retention of Confidential Information:

All information provided or revealed to the University will be treated as strictly confidential and disclosed only to authorised personnel involved in the risk assessment process.

1.2.10.1 In the case of a decision not to admit an applicant to a programme, all correspondence will be destroyed 7 years after the date of the decision. In all cases, the Compliance Officer will keep a confidential file note for seven years. This will record the decision made about the admission and that it was made in accordance with the University's Compliance Policy.

1.2.11 Placements:

No registered student will be permitted to attend a placement, to work with children and/or

vulnerable adults, organised by the University without satisfactory clearance issued by the Compliance Officer.

1.2.11.1 The placement co-ordinator for the programme will contact the placement, in advance, in writing, to advise them of the student's DBS certificate number and date and to confirm that they are clear to work with children (and/or vulnerable adults).

1.2.11.2 The University complies with OFSTED and DfE guidance and regulations.

2. Referrals to the DBS

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have merged into the Disclosure and Barring Service (DBS).

2.1 Statutory Duties of the DBS:

To maintain a list of individuals barred from engaging in regulated activity with children;

To maintain a list of individuals barred from engaging in regulated activity with vulnerable adults;

- To make well-informed and considered decisions about whether an individual should be included in one or both barred lists; and
- To reach decisions as to whether to remove an individual from a barred list

2.2 DBS Referrals: From October 12th 2009, a new duty to share information was introduced.

From that date employers, social services and professional regulators have to notify the DBS of relevant information so that individuals who pose a threat to vulnerable groups can be identified and barred from working with these groups.

2.3.1 The University will abide by its legal requirement to make referrals to the DBS about students or staff where there is harm or risk of harm to children or vulnerable adults, relevant conduct has occurred or an individual has received a caution or conviction for a relevant offence.

2.3.2 The University will refer to the DBS information which does or could indicate that an individual has engaged in an activity that caused concern for the safeguarding of children or vulnerable adults.

2.3.3 The Compliance Officer will make referrals by completing and signing the DBS Referral Form and submitting to the DBS together with any supporting information and evidence which may be held, on behalf of the University.

2.3.4 The DBS can only consider referrals that are related to safeguarding children or vulnerable adults in the workplace (including volunteers) during a regulated activity. Where there are other forms of misconduct not related to safeguarding children or vulnerable adults in the workplace, the University will refer these cases, as appropriate, to the police, local authority or relevant regulatory body e.g. General Medical Council (GMC), Northern Ireland Social Care Council etc.

2.3.5 The University will follow the guidance issued by the DBS (Appendix C).

3. On-line Health Assessment (OHA)

3.1 Introduction:

Teachers, and those training to become teachers, need a sufficient standard of health and physical fitness to enter or remain in the teaching profession. Teaching is a demanding yet rewarding career and teachers have a duty of care for pupils in their charge. The health, education, safety and welfare of pupils are important in deciding on an individual's health and physical capacity to train and subsequently to teach. A local authority or governing body must not appoint anyone to, or continue to employ them in, a relevant activity unless he or she has the health and physical capacity for such employment. This includes trainee teachers. Fitness to teach is one of the checks required as part of Safer Recruitment for teaching staff.

Trainee Speech and Language Therapists must, prior to commencement on a programme, undertake Occupational Health Checks.

3.2 Procedural

3.2.1 Fitness to Teach:

Provisions concerning fitness to teach can be found in The Education (Health Standards) (England) Regulations 2003 (SI 2003 No. 3139). Employers have a duty also to have regard to the provisions of the Disability Discrimination Act 1995 www.legislation.gov.uk/browse

3.2.2 JobScreen:

The University shall ensure that all relevant checks on that trainee are commissioned as are required under Department of Health guidance in force at the time of the check.

3.2.3 Assessment:

For both Trainee Teachers and Speech and Language Therapists, upon receipt of a firm acceptance of the offer of a place, the University will send the applicant log-in details to complete a confidential on-line health questionnaire. This is managed by an external contractor, IMASS, as the Occupational Consultants.

3.2.3.1 IMASS will forward a decision to the University as follows:

- Pending
- Fit
- Fit with restrictions
- Unfit for the role

3.2.3.2 Where the status is Fit or Fit with restrictions, the applicant will be deemed as suitable for the role. Where the status is Unfit for the role, the Compliance Officer will withdraw the offer of a place. This information is for facilitating an admissions decision only and is totally confidential.

3.2.3.3 If the applicant appeals against the decision and can provide further evidence to support their appeal, the Compliance Officer will request that IMASS re-assesses the fitness of the applicant. The final decision on acceptance on the programme is made by the University.

3.2.4 Placements:

The University will not allow any trainee to commence a placement organised by the University until the student has been assessed as Fit or Fit with Restrictions.

4. Fee/Residency Assessment

4.1 Introduction

In England, there are two sets of fees regulations, namely The Education (Fees and Awards) (England) Regulations 2007 and The Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 as amended by The Student Fees (Qualifying Courses and Persons) (England) (Amendment) Regulations 2008. Both contain the same categories of eligible students. However, the regulations have separate but related functions.

The fees and awards regulations allow publicly funded institutions to discriminate against students who do not meet the eligibility requirements, by charging them a higher fee. The purpose of the regulations is to allow discrimination that would otherwise be unlawful and to protect institutions from prosecution under the Race Relations Act 1976.

The qualifying courses and persons regulations require that the governing body of an institution which receives financial support from the Higher Education Funding Council for England (HEFCE) has to ensure that any student who is a 'qualifying person' and who is on a 'qualifying course' is not charged fees which exceed the basic or higher amount for that course.

Under the qualifying courses and persons regulations, an institution must not charge more than the basic or higher amount fee to a 'qualifying person' who is on a 'qualifying course', and can be fined by HEFCE if it does.

4.2 Procedural

4.2.1 The University adheres to the above regulations.

4.2.1.1 Any applicants who are identified as meeting the following criteria are sent the Fee/Residency questionnaire to complete:

- Entry into the UK after their date of birth
- Non-UK nationality
- Non-UK permanent residence

4.2.1.2 The Compliance Officer will assess the fee/residency status of the applicant on behalf of the University and advise the applicant of the decision in writing.

4.2.1.3 The University will accept further evidence which could alter the status decision. In these cases, the Compliance Officer will re-assess the status of the application based on the supplementary information.

4.2.1.4 The Compliance Officer will also use the Fee/Residency Status form to assess the immigration status of the applicant on behalf of the University for Tier 4 purposes.

5. Sponsoring adult students under Tier 4 (General)

5.1 Introduction

5.1.1 To qualify as a student under Tier 4 (General) of the points-based system, a migrant must score 40 points. To be able to apply for permission to enter or stay in the UK under Tier 4, the migrant will need a confirmation of acceptance for studies (CAS) from their Tier 4 sponsor. The student's application must be made no more than three months before the start date of their course.

5.1.2 The University has Highly Trusted Sponsor status with the United Kingdom Border Agency (UKBA).

5.2 Procedural

5.2.1 The process of sponsoring a general student is made up of four stages.

5.2.2 The University must make sure that the course the migrant wants to do is acceptable for a Tier 4 (General) student, and that any work placements meet the Tier 4 requirements.

5.2.3 If the migrant is going to undertake a pre-sessional course to prepare them for their main course of study, the University must make sure that the pre-sessional course meets the Tier 4 requirements.

5.2.4 The University does not need to check that the migrant has enough money (maintenance) to cover their course fees and monthly living costs.

5.2.5 The University may need to assess the level of the migrant's English language ability.

5.2.6 The University will issue a CAS offering the migrant an unconditional place at this institution. This will enable the migrant to apply for permission to enter or stay in the UK as a student under Tier 4 (General).

5.2.7 When the University issues the unique CAS reference number to the migrant, it will treat it as a secure and confidential document.

5.2.8 A CAS is valid for six months from the date when it is assigned. If the migrant does not use it within this period to apply for permission to stay under Tier 4, it will automatically become invalid.

5.2.9 If the migrant accepts the University's offer of place and they are granted permission to study in the UK based on the CAS, the University will become the student's sponsor. The University will undertake reporting duties for the student in line with immigration legislation.

5.2.10 Migrants can study **only** with the sponsor named on their CAS. This includes studies at any partner institution named on the CAS.

5.2.11 The University will adhere to current immigration regulations.

6. Policy for the Recruitment of Ex-offenders

6.1 Introduction

6.1.2 As an organisation assessing applicants' suitability for positions which are included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order using criminal record checks processed through the Disclosure and Barring Service (DBS), the University of St Mark & St John complies fully with the Code of Practice and undertakes to treat all applicants for positions fairly. The University of St Mark & St John undertakes not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed.

6.2 Procedural

6.2.1 The University of St Mark & St John can only ask an individual to provide details of convictions and cautions that the University of St Mark & St John is legally entitled to know about. Where a DBS certificate at either standard or enhanced level can legally be requested (where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

as amended) and where appropriate Police Act Regulations (as amended), the University of St Mark & St John can only ask an individual about convictions and cautions that are not protected.

6.2.2 The University of St Mark & St John is committed to the fair treatment of its staff, potential students or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.

6.2.3 This policy on the recruitment of ex-offenders is made available to all DBS applicants at the outset of the recruitment process.

6.2.4 The University of St Mark & St John actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. The University of St Mark & St John will select all applicants based on their skills, qualifications and experience.

6.3 Criminal Record Check

6.3.1 An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, marketing and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered a place on a programme.

6.3.2 The University of St Mark & St John ensures that all those in the institution who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. The University of St Mark & St John also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

6.3.3 The University of St Mark & St John makes every subject of a criminal record check submitted to DBS aware of the existence of the Code of Practice and makes a copy available on request.

6.3.4 The University of St Mark & St John undertakes to discuss any matter revealed on a DBS

certificate with the individual seeking the position before withdrawing a conditional offer of a place on a programme.

Having a criminal record will not necessarily bar you from working or studying with us. This will depend on the nature of the position and the circumstances and background of your offences.

6.4 Conviction Information

6.4.1 On the 29 May 2013, legislation¹ came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure:

In addition, employers and training providers will no longer be able to take an individual's old and minor cautions and convictions into account when making decisions.

- All cautions and convictions for specified serious violent and sexual offences, and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults, will remain subject to disclosure. In addition, all convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.

Useful Links

Disclosure & Barring Service

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

UKBA

www.ukba.homeoffice.gov.uk

¹ See Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013; and Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013.

<https://www.gov.uk/government/organisations/department-for-education>

Appendix A

Regulated Activity in relation to Children

Regulated activity is work that a barred person must not do. This note provides information on the scope of Regulated Activity in relation to children, defined in the Safeguarding Vulnerable Groups (SVG) Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007; both as amended (in particular by, respectively, section 64 and Schedule 7, Protection of Freedoms Act 2012). This note is about the law in England and Wales, and in Northern Ireland.

This note comprises (I) a short summary, and (II) a full description.

Regulated activity still excludes family arrangements; and personal, non-commercial arrangements.

(I) Summary

The new definition of regulated activity (i.e. work that a barred person must not do) in relation to children comprises, in summary:

- (i) unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children;
- (ii) work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly. HM Government is publishing statutory guidance on supervision of activity that would be regulated activity if unsupervised.

- (iii) relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;
- (iv) registered child-minding; and foster-carers.

Statutory guidance: Regulated Activity (children) - supervision of activity with children which is regulated activity when unsupervised

- 1 This document fulfils the duty in legislation^{i ii} that the Secretary of State must publish statutory guidance on supervision of activity by workers with children, which when unsupervised is regulated activity. This guidance applies in England, Wales and Northern Ireland. It covers settings including but not limited to schools, childcare establishments, FE colleges, youth groups and sports clubs.
- 2 For too long child protection policy has been developed in haste and in response to individual tragedies, with the well-intentioned though misguided belief that every risk could be mitigated and every loophole closed. The pressure has been to prescribe and legislate more. This has led to public confusion, a fearful workforce and a dysfunctional culture of mistrust between children and adults. This Government is taking a different approach.
- 3 We start with a presumption of trust and confidence in those who work with children, and the good sense and judgment of their managers. This guidance applies when an organisation decides to supervise with the aim that the supervised work will not be regulated activity (when it would be, if not so supervised). In such a case, the law makes three main points:

- there must be supervision by a person who is in regulated activityⁱⁱⁱ;
- the supervision must be regular and day to day; and
- the supervision must be “reasonable in all the circumstances to ensure the protection of children”.

The organisation must have regard to this guidance. That gives local managers the

flexibility to determine what is reasonable for their circumstances. While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is as follows.

- 4 Supervision by a person in regulated activity / regular and day to day: supervisors must be in regulated activity themselves iv. The duty that supervision must take place “on a regular basis” means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.

- 5 Reasonable in the circumstances: within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:
 - ages of the children, including whether their ages differ widely;
number of children that the individual is working with;
 - whether or not other workers are helping to look after the children;
 - the nature of the individual’s work (or, in a specified place such as a school, the individual’s opportunity for contact with children);
 - how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in regulated activity);
 - how many workers would be supervised by each supervising worker.

- 6 In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.

EXAMPLES

Volunteer, in a specified place

Mr Jones, a new volunteer, helps children with reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where Mr Jones is supervised by a paid classroom assistant, who is in that room most of the time. The teacher and classroom assistant are in regulated activity. The head teacher decides whether their supervision is such that Mr Jones is not in regulated activity.

Volunteer, not in a specified place

Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. The head coach is in regulated activity. The club managers decide whether the coach's supervision is such that Mr Wood is not in regulated activity.

Employee, not in a specified place

Mrs Shah starts as a paid activity assistant at a youth club. She helps to instruct a group of children, and is supervised by the youth club leader who is in regulated activity. The youth club managers decide whether the leader's supervision is such that Mrs Shah is not in regulated activity.

In each example, the organisation uses the following steps when deciding whether a new worker will be supervised to such a level that the new worker is not in regulated activity:

- consider whether the worker is doing work that, if unsupervised, would be regulated activity. If the worker is not, the remaining steps are unnecessary; consider whether the worker will be supervised by a person in regulated activity, and whether the supervision will be regular and day to day, bearing in mind paragraph 4 of this guidance;
- consider whether the supervision will be reasonable in all the circumstances to ensure the protection of children, bearing in mind the factors set out in paragraph 5 of this guidance; and if it is a specified place such as a school:
- consider whether the supervised worker is a volunteer ^v.

Department for Education / Department of Health, Social Services and Public Safety (Northern Ireland), September 2012

- i Safeguarding Vulnerable Groups Act 2006, amended by Protection of Freedoms Act 2012: Schedule 4, paragraph 5A: guidance must be *“for the purpose of assisting”* organisations *“in deciding whether supervision is of such a kind that”* the supervisee is not in regulated activity.
- ii Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, Schedule 2, paragraph 5A, is as above on guidance on *“supervision”* for Northern Ireland.
- iii If the work is in a specified place such as a school, paid workers remain in regulated activity even if supervised.
- iv From 2013-14, the Government plans to commence a statutory duty on an organisation arranging regulated activity (under the 2006 Act or 2007 Order, both as amended) to check that a person entering regulated activity is not barred from regulated activity; and plans to commence a stand-alone barring check service by the new Disclosure and Barring Service.
- v. A volunteer is: in England and Wales, a person who performs an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives; in Northern Ireland, a person engaged, or to be engaged, in an activity for a non-profit organisation or person which involves spending time unpaid (except for travel and other approved out-of-pocket expenses) doing something which amounts to a benefit to some third party other than, or in addition to, a close relative.

Information on regulated activities for adults:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216900/Regulated-Activity-Adults-Dec-2012.pdf

Appendix B

Criminal Convictions Panel

<i>Serviced by:</i>	<i>Registry</i>
<i>Reports to:</i>	<i>Head of Registry Services</i>

1. Terms of Reference

- 1.1 To assess convictions, cautions, reprimands and warnings as detailed on a Disclosure and Barring Service certificate or where an applicant has indicated relevant unspent convictions on their application and provided additional information.
- 1.2 To complete a formal risk assessment as to whether an applicant or registered student poses an unacceptable risk; to take a 'reasonable' view as to the risk which the applicant would or the registered student does pose to the institution, its members, visitors and the community, including placements.
- 1.3 To seek expert knowledge where appropriate.
- 1.4 To make recommendations to the Head of Registry Services based on the risk assessment.

2. Membership

- Compliance Officer (Chair)
- The Academic Information and Guidance Co-ordinator or Head of Student Support (to alternate)
- Admissions Applications Co-ordinator
- One or two representative(s) from the Faculty responsible for the programme applied for or registered on

3. Frequency of Meetings and Conduct of Business

3.1 The Group will normally meet as required, reporting to the Head of Registry Services via its minutes.

Appendix C

DBS Referral Guidance

A referral is information regarding a person working in regulated activity with children or vulnerable adults which notifies us of concerns that harm or risk of harm has occurred to a child or vulnerable adult. A referral is made on the DBS Referral Form and is usually provided to the DBS by an employer or volunteer manager.

The following have a duty to refer:

- regulated activity suppliers (employers and volunteer managers)
- personnel suppliers

The barring side of the DBS provides expert caseworkers who process referrals about individuals who have harmed or pose a risk of harm to children and/or vulnerable groups. They make decisions about who should be placed on the child barred list and/or adults barred list and are prevented by law from working with children or vulnerable groups.

Referrals should be made to DBS when an employer or organisation believes a person has caused harm or poses a future risk of harm to vulnerable groups, including children.

For some groups there is a legal duty to refer.

An employer or volunteer manager is breaking the law if they knowingly employ someone in a regulated activity with a group from which they are barred from working.

A barred person is breaking the law if they seek, offer or engage in regulated activity with a group from which they are barred from working, be it paid or voluntary.

When to refer

The Safeguarding Vulnerable Groups Act (SVGA) 2006 and Safeguarding Vulnerable Groups (Northern Ireland) Order (SGVO) 2007, place a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

1. Been cautioned or convicted for a relevant offence; or
2. Engaged in relevant conduct in relation to children and/or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm]; or
3. Satisfied the Harm Test in relation to children and/or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists].

1. Caution or conviction for a relevant offence

If an employee who works with children or vulnerable adults in regulated activity has been cautioned or convicted for a relevant offence the employer must make a referral to the DBS. This should be done as soon as the employer is aware of the caution or conviction.

A relevant offence is a serious offence that will, subject to consideration of representations where permitted, automatically bar a person from working with children or vulnerable adults. Relevant offences are defined in secondary legislation. The DBS has a plain English version of relevant offences in DBS Factsheet: relevant offences on its website.

2 or 3. Relevant conduct or harm test is satisfied

An employer or volunteer manager must make a referral to the DBS if the following criteria have been met:

- They have dismissed or removed the person from working with children or vulnerable adults (or would or may have done so if they had not left or resigned etc.); because
- The person has engaged in relevant conduct; or the Harm Test is satisfied.

A referral should not be made when an allegation is first made. The employer must first undertake an investigation and evidence gathering in order to establish if the allegation has foundation. Without evidence or information for the DBS to consider, many allegations will be quickly closed down as there will be no basis on which the DBS can proceed.

A referral should be made when the employer has gathered information and evidence to support the allegation and decided that the criteria for making a referral to the DBS has been met.

Points to note

- If you suspect that a crime has been committed you should contact the Police.
- The DBS has no investigatory powers and relies upon the evidence provided with referrals and any other evidence that it may gather.
- It is crucial that employers do not make a referral to the DBS without providing supporting evidence. The DBS Referral Form details the information you should provide if you have it.
- Employers should, as far as possible, complete their investigations (even if the person has left their employment). This will ensure that the DBS has all available information and evidence on which to base its decision.

- If additional relevant information becomes available to an employer after making a referral, this should also be provided to the DBS.
- In all cases, the referral should be made on the DBS Referral Form and posted to the DBS enclosing all relevant information that the employer holds.

Referring a teacher in England to the National College for Teaching and Leadership

If the person you are referring to the DBS is a teacher in England you should also consider referring the case to the The National College for Teaching and Leadership. This is an Executive Agency of the Department for Education, responsible for the regulation of teachers in respect of serious misconduct.

Find out more at the [Department for Education website](#) or contact it using the details below.

The National College for Teaching and Leadership: Teaching regulation division

53-55 Butts Road

Earlsdon Road

Earlsdon Park

Coventry

CV1 3BH

Telephone: 0370 496 8324

Email: regulation.division@education.gsi.gov.uk

DBS contacts

Helpline: 01325 953 795

Website: www.gov.uk/dbs

Email: dbsdispatch@dbs.gsi.gov.uk

Post: Disclosure and Barring Service

Post Office Box 181

Darlington

DL1 9FA

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