**Guidance on changes to recruitment practice – Keeping Children Safe in Education September 2022**

**Guidance for schools**

**Please read the following guidance carefully and implement actions.**

The latest version of the statutory guidance Keeping Children Safe in Education (KCSIE) came into effect in September 2022. There are two main changes to safer recruitment practices:

1. Self-declaration by shortlisted candidates of their criminal record or information that would make them unsuitable to work with children
2. Online searches for shortlisted candidates

A revised ‘Privacy Notice for Candidates’ has been provided making provision for these changes. This will need personalising for your school and issuing as part of the information to prospective applicants.

A revised checklist, ‘Information to applicants – pre-employment checks required for this post’, has also been provided to confirm to applicants which pre-employment checks will apply to the post.

Also provided is an updated Safer Recruitment Policy V3, to reflect the changes

**Action required:**

* **Personalise and use Privacy Notice for Candidates V2**
* **Update ‘Information to applicants – pre-employment checks required for this post’ for each vacancy**
* **Ensure both are used for future vacancy information to applicants**
* **Governing bodies are recommended to adopt the Safer Recruitment Policy V3, personalised for your school**



**1. Self-declaration by shortlisted candidates of their criminal record or information that would make them unsuitable to work with children**

KCSIE para 216 says:

*Shortlisted candidates should be asked to complete a self-declaration of their*

*criminal record or information that would make them unsuitable to work with children.*

*Self-declaration is subject to Ministry of Justice guidance on the disclosure of criminal*

*records, further information can be found on GOV.UK*

*For example:*

* *if they have a criminal history*
* *if they are included on the children’s barred list*
* *if they are prohibited from teaching*
* *if they are prohibited from taking part in the management of an independent*
* *school*
* *information about any criminal offences committed in any country in line with the*
* *law as applicable in England and Wales, not the law in their country of origin or*
* *where they were convicted*
* *if they are known to the police and children’s local authority social care*
* *if they have been disqualified from providing childcare (see paras 263-267), and,*
* *any relevant overseas information.*

A new template declaration form for shortlisted candidates has been provided.



**Action required:**

* **Establish who will be responsible for managing this task to ensure consistency, correct data management and to minimise the number of people with access to personal information**
* **Ensure all applicants receive the Privacy Notice for Candidates V2 Sept 2022**
* **Ensure shortlisted candidates complete self-declaration**
* **Ensure a note of checks being completed is retained for future inspections (presumably Ofsted will random check the files of recent employees for compliance, as they do for gaps in employment history, etc.)**
* **Share guidance with chairs of recruitment panels so that they understand the expectations**
* **Chair to consider information and follow up any concerns with the candidate at interview**
* **Handle all data in line with the school’s data protection protocols**

**2. Online searches for shortlisted candidates**

KCSIE para 221 says:

*….as part of the shortlisting process schools and colleges should consider carrying out an online search as part of their due diligence on the shortlisted candidates. This may help identify any incidents or issues that have happened, and are publicly available online, which the school or college might want to explore with the applicant at interview.*

This means checking the online and social media presence of shortlisted candidates. It may help you to identify views or actions that you would wish to explore further at interview.

A template declaration form for schools to use for checking and recording this information for shortlisted candidates has been provided. This is for school records only and not intended to be shared with candidates.



**Please ensure that you have read the following carefully in order to minimise risk to the school.**

**Caution**

Beware of the potential **inaccuracy of information**, particularly where it is difficult to firmly establish the identity of people on line or the age/accuracy of the information found. Some may not have any on-line presence, which should be noted.

This information **must not be used to influence shortlists prior to interview** as individuals should be given an opportunity to confirm that the information relates to them and, if so, to give a response/explanation.

**Information must only be kept within the parameters of the school’s data protection procedures**. Information used during the recruitment process is discoverable if challenged. Keep records of the information collated during a search and clearly document the reason(s) for not progressing a candidate’s application, where applicable, which you would be prepared to disclose to the candidate if requested.

**Identify a lead person** (likely to be the School Business Manager or Office Manager) who will take responsibility for carrying out the online searches and who should not, ideally, be involved in the decision-making process. The lead person should ensure that **only information which is relevant and of concern** is shared with the chair of the recruitment panel. Panel members should not carry out their own searches.

The **parameters of the search should be defined and consistent** to ensure fairness to all candidates. Those involved in the process must ensure that they do not let any discriminatory views or unconscious bias influence their opinion of candidates and ensure that they act within the legal parameters of the **Equality Act 2010** and the school’s **equal opportunity policy**.

**Further guidance**

KCSIE provides no further advice; however, please read the following guidance carefully, paying particular attention to **2.8 What are the risks?** and **2.10 How to minimise the risks**. (Source: Oliver Daniels, HCR Law blog)

**2.1 Are online searches compulsory?**

The requirement is expressed as a ‘should’ rather than a ‘must’ – i.e. schools “should consider” carrying out an online search. KCSIE is clear that the use of the term ‘should’ in the statutory guidance means that the advice should be followed unless there is good reason not to.

In light of this, unless a school has a good reason not to do so, it ought to carry out online searches on shortlisted candidates for the reasons outlined within the updated guidance, i.e. to identify any incidents or issues, related to suitability to work with children, that may need to be raised or clarified at interview. Where a school decides not to carry out an online search, this decision, and the reasons for it, should be documented internally.

**2.2 Why are they needed?**

This further step forms part of a school’s safeguarding due diligence and aims to prevent and deter individuals who may be unsuitable to work with children from working in a school environment. Online searches will be used to identify “*… any incidents or issues*” that are publicly available online and may cause concern regarding a candidate’s suitability to work with children.

This may include, for example, offensive or inappropriate behaviour or language, drug or alcohol misuse, inappropriate images, discriminatory behaviour, and any other information that may raise concern as to an applicant’s suitability to work with children.

**2.3 When should the online search be conducted?**

The guidance is very clear that online searches should only be carried out as part of the shortlisting process (i.e. on shortlisted applicants); not on all applicants that apply for a position. It is also clear that the searches should be carried out in advance of interview so that any identified issues or incidents can be raised with the applicant during the interview, if felt necessary.

**2.4 Who should carry out the search?**

This is not specified within the guidance. However, to minimise the risk of discrimination and/or unconscious bias (see below), we recommend that, where possible, the search is carried out by a member of staff not directly involved in the decision-making process.

It is important that the individual carrying out the search understands its purpose and the associated parameters. The parameters of searches should be clearly defined so that they do not go beyond the requirements of KCSIE, i.e. only publicly available sources should be searched. Schools will need to review any report provided and decide how to proceed keeping in mind the risks outlined below.

**2.5 Where should schools look and how far back should they go?**

There is currently no clear guidance in this respect, save that schools should look for information that is “*publicly available online”*. This suggests that the information should be freely available to the public as part of a simple online search (for example, using a web browser, website, or social media platform).

The starting point is likely to be a search of the applicant’s name on a recognised search engine, e.g. Google, followed by a review of the most prominent social media and video networking sites – e.g. Facebook, Instagram, LinkedIn, Twitter, Tik Tok and YouTube.

Where a number of individuals appear in a name search, schools will likely need to combine their name with key words such as the name of their current or previous employer and the city or town in which they are residing or have lived.

This may result in multiple searches being carried out, particularly for common names. As a rule of thumb, search criteria and the number of searches carried out should be limited to what is necessary to identity the correct individual if possible and locate the relevant data, if any. Schools should avoid searches which may be considered excessive in terms of time spent and search results and sources reviewed.

It will be important for schools to develop their own approach to these searches, including which sites and how far back in time they will go in terms of using previous employers as part of the search. Clearly defined parameters will be necessary to ensure a consistent approach is taken.

**2.6 How should the information be used?**

The member of staff carrying out the search, if not involved in the decision-making process, can share any relevant information (related to suitability) with the individuals who will be interviewing. In this way, the decision-makers will have only the relevant information that may need to be addressed at interview and will not be exposed to other irrelevant information that may increase the risk of discrimination and/or unconscious bias.

Search results should be used in the same way as any other information collated as part of the recruitment process – it should be reviewed and, if appropriate, explored with the applicant at interview.

**2.7 What information should be kept, how should it be stored and how long should it be retained?**

Where online searches do not reveal any relevant information, a note of this should be made on the candidate’s file along with the search criteria used, the initials of the staff member carrying out the search, and the date of the searches in order to demonstrate compliance with KCSIE.

It is not necessary to retain any search results in these circumstances. Where relevant information is retrieved, this should also be retained on the candidate’s file along with records of discussions and decisions made with respect to it.

Data relating to online search criteria, results of searches and decisions relating to this data should be held securely and confidentially with other data collected during the recruitment process. It should only be accessible to a limited number of staff as necessary and should only be held for as long as it is needed.

The retention period for this data will depend on whether the candidate is ultimately successful and joins the school; it is likely to mirror the retention periods for criminal records data. A school’s data protection policy, recruitment privacy notice and retention schedule, or similar, will likely need to be updated to reflect this.

**2.8 What are the risks?**

Whilst online searches can be a valuable tool; they can also create a degree of risk for employers, particularly from a discrimination and data protection perspective.

2.8.1 Discrimination

Screening candidates online is likely to reveal information that is not strictly relevant to the recruitment process, for example regarding the candidate’s age, gender, ethnicity, sexual orientation or religion – characteristics which are protected under the Equality Act 2010. Having prior knowledge of this information may increase a school’s vulnerability to accusations of discrimination conscious or unconscious in the recruitment process.

Consistency may also be problematic. Generally speaking, recruiters should ensure that all candidates are assessed in the same way.  This may be difficult when not all applicants will have an accessible online profile – and they certainly will not have the same online profile – and so they cannot be assessed in the same way. Again, this may increase the likelihood of a candidate challenging recruitment decisions and alleging, for example, that they have been treated less favourably as a result of a protected characteristic.

2.8.2 Data protection

Data protection law aims to strike a balance between an employer’s need for information, and a candidate’s right to maintain the privacy of their personal data. Under the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR), employers must give job applicants certain information about how their personal data is collected and used. Commonly this is done via a privacy notice.

If online searches are to form part of the recruitment process, a school’s privacy notice will need to make this clear in the section outlining where personal information comes from, and set out the legal basis for processing the data.

In this context, the legal basis might be because it is necessary to enter into a contract, comply with a legal obligation or for the employer’s legitimate interests – e.g. to select suitable employees, workers, or contractors.

If any of the data amounts to ‘special category data’ (e.g. details of race, religion, or sexual orientation) then one of the additional processing conditions needs to be set out too, for example to exercise or perform employment law rights or obligations. This data should not be held for any longer than is necessary.

While online checks can provide an abundance of information about a candidate, schools will need to be cautious about the accuracy of the information. Information may be out of date or incorrect which could result in a school potentially passing over a valuable candidate. Crucially, it may be difficult to confirm a search result as relating to the candidate and not to another individual with, for instance, the same name.

It is also worth remembering that a disappointed applicant can make a subject access request under data protection law to get hold of any documents or records relating to their application which may shed light on why they were unsuccessful.

This is likely to result in schools disclosing to requestors online searches carried out and decisions made with respect to search results. Candidates also have other rights under data protection law relating to, for example, the erasure or correction of their data which schools would need to respond to and action if required under data protection law.

**2.9 Spent convictions**

It is possible that online searches may reveal details of a candidate’s spent convictions, in which case the requirements of the Rehabilitation of Offenders Act 1974 will need to be considered. HR advice may need to be sought in these circumstances.

**2.10 How to minimise the risks?**

* **Transparency** – Inform applicants from the outset that online searches will form part for the recruitment process and outline the reasons for this. The school’s recruitment policy should make this clear.
* **Guidance** – Ensure that staff carrying out checks are clear of the purpose of online searches and their responsibilities from an equality and data protection perspective.
* **Record-keeping** – Keep records of the information collated during a search and clearly document the reason(s) for not progressing a candidate’s application, where applicable, which you would be prepared to disclose to the candidate if requested.
* **Set internal parameters for the searches** – to ensure consistency and avoid unnecessary processing of personal data, set parameters in respect of the location of online searches; the information to be searched for (i.e. by the use of key words) and how far back to search.
* **Due diligence** **for external providers** (only relevant where external agencies are engaged to assist online searches for candidates) – carry out checks as part of the procurement process before engaging an external provider to assist with online searches. These should be recorded. A data processor agreement should be put in place. Schools should be confident the chosen provider is acting in the same way that the school would have acted if it had been kept ‘in-house’.
* **Ensure that, where possible, only relevant information is passed to the decision makers**– as noted above, to minimise the risk of discrimination, the person carrying out the online search should not, ideally, be involved in the decision-making process and should ensure that only information that is relevant and of concern is shared with the decision makers. (It is recommended that relevant/concerning information is only chaired with the chair of the panel in the first instance).

**Action required:**

* **Establish who will be responsible for managing this task to ensure consistency, correct data management and to minimise the number of people with access to personal information**
* **Ensure all applicants receive Privacy Notice for Candidates V2 Sept 2022**
* **Ensure a note of checks being completed is retained for future inspections (presumably Ofsted will random check the files of recent employees for compliance, as they do for gaps in employment history, etc.)**
* **Share guidance with chairs of recruitment panels so that they understand the expectations**
* **Share with the chair of the panel only incidents or issues that are publicly available online and may cause concern regarding a candidate’s suitability to work with children**
* **Chair to consider information and follow up any concerns with the candidate at interview**
* **Handle all data in line with the school’s data protection protocols**
* **Be aware of possible challenge from unsuccessful candidates and ensure the information is suitable for disclosure as part of a subject access request**