**Update on Safer Recruitment advice re disclosing convictions from The Key**

Many of you will have received a notification from The Key last week with advice from their legal advisers, Forbes. The advice was that under GDPR, schools are no longer permitted to gather criminal information from candidates via a self-disclosure section of the application form or by means of a separate disclosure form.

**This information is incorrect**; the GDPR and Data Protection Act 2018 permit employers to gather personal data for the purposes of recruitment and this includes criminal history where relevant or where there is a regulatory requirement to do so. What schools MUST take into account when dealing with people’s criminal history is the Rehabilitation of Offenders Act 1974 and the DBS code of practice, both of which place a responsibility on employers not to discriminate against applicants because they have previously committed offences.

Schools:-

* Should not ask applicants to disclose criminal history in the body of the application form;
* Should try to avoid having a “have you ever committed an offence” tick box on the application form;
* May have a self-disclosure section on the application form which is removed before short-listers have access; or
* May have a separate self-disclosure form which is submitted with the application but is not shared with short-listers (this may be what you already do with the diversity monitoring form?); or
* May send the self-disclosure form to shortlisted candidates with their invitation to interview, with a requirement that it is submitted prior to interview day;
* Must not ask candidates to disclose *all spent and unspent convictions* – the law changed in 2013!
* Must instead give candidates clear information regarding their right to withhold ‘protected’ or filtered offences, and that these will not be taken into consideration by recruiters;
* Should avoid asking a general question in interviews (e.g. “*Do you have any criminal history that you have not yet disclosed?*”) unless the panel is very confident on the application of filtering and understand which offences they can and cannot discuss with the applicant;
* Should ensure that all staff who handle self-disclosed information are aware of their responsibilities under the DBS code of practice and ROA 1974 to treat candidates fairly and to keep criminal information strictly confidential;
* Should ensure that all involved in recruitment have a comprehensive understanding of the 2013 amendments to ROA 1974 which allowed for certain offences to be protected and not taken into account by employers.

Any relevant criminal information disclosed by candidates should be shared with the recruitment panel in advance of the interview, to ensure that the candidate is asked about their criminal history and given an opportunity to explain context, etc. If the candidate is offered a post, the information shared on the self-disclosure and at interview should be compared with the information on the DBS certificate when this is received.

More information on filtering / protected offences can be found here <http://hub.unlock.org.uk/wp-content/uploads/What-will-be-filtered-by-the-DBS.pdf> It would be sensible to include this hyperlink on your self-disclosure form / the self-disclosure section of the application form, perhaps with a comment such as “*please click* [*here*](http://hub.unlock.org.uk/wp-content/uploads/What-will-be-filtered-by-the-DBS.pdf) *before completing the following section*.”