

Officer Group	Dated:
Establishment Committee	17 September 2020
Subject: Ban the Box	Public
Report of: Chrissie Morgan, Director of HR	For Decision
Report author: Carol Simpson, Strategic HR Projects Manager	

Summary

'Ban the Box' calls on UK employers to give ex-offenders a fair chance to compete for jobs by removing the tick box from application forms and asking about criminal convictions later in the recruitment process. There are currently 148 employers signed up to Ban the Box, including two local authorities.

The City of London Corporation asks applicants about their criminal conviction record on all job application forms. Following the request by Members to seek to sign the City Corporation up to the 'Ban the Box' campaign, this report sets out issues raised about its introduction and the proposed way forward.

Recommendations

Members are asked to consider whether to implement the Ban the Box approach and seek to sign up to the scheme, given the considerations outlined within this report.

Subject to agreement of the proposals, that authority is delegated to the Director of Human Resources to approve the revisions to the relevant policy, procedure and guidance documents cited in this report.

Main Report

Background

1. Further to Ban the Box being tabled as a discussion item at Establishment Committee, reports were also submitted to the People Security Policy Board and the Security Board for any views from a security point of view and to Summit Group. Our intention was for roles classed as 'regulated activity' such as working with children and/or vulnerable adults' and a number of additional roles with higher levels of vetting, that criminal convictions would continue to be disclosed at the application stage as part of safer recruiting practices; when it will not be possible to recruit people with certain criminal records. That the redesign and rebuilding of a new application form would be tabled within work under our wider Attracting Talent Project.

City Corporation's current position

2. All City Corporation applicants are currently required to disclose any 'unspent' convictions at the application stage and are advised that having a criminal record will not necessarily be a bar to obtaining a position, each case is assessed on its own merits. To note, the number applicants with criminal records has been low and adopting the Ban the Box approach is not anticipated to result in any significant delays to the recruitment process.

Feedback

3. The proposed move to adopt 'Ban the Box' principles was as previously tabled, on the basis explained in paragraph 1 above.
4. However, the Ban the Box Campaigns Office upon enquiry to sign up have explained they would need the City Corporation to remove the tick box from all application forms (first stage of application) and where we do need to ask about convictions for regulatory or risk management reasons, to do this at a later stage in the recruitment process. This can be after shortlisting, at interview or upon conditional offer; that they are flexible as to what will work best with our recruitment process.
5. Enquiries were made across all the London boroughs to find out if they would be looking to also sign up to Ban the Box scheme, of which only Haringey Council indicated they were taking steps to do so (becoming a scheme signatory from February 2020). Bristol City Council is the only other local authority signed up (scheme signatory from February 2018). However, neither of these authorities have implemented the removal of the criminal record information from all their application forms, they have excluded schools and social care posts.
6. To achieve removal of the criminal record tick box from all application forms, views from our independent schools were sought; they expressed collectively that they did not want to be trailblazers to be the first schools to sign up, particularly when holding a strong record on safeguarding to date. Upon contacting the Legal, Regulation and Policy Lead for the Independent Schools Inspectorate (ISI) they have confirmed that there is no obligation on schools to check for criminal records at the application stage, that it is at the discretion of the school at which stage they commence the criminal record check process but it should be in good time before the candidate is due to begin work. It is also relevant to note that were proposed changes to Department for Education (DfE) statutory guidance 'Keeping Children Safe in Education' (KCSiE), see below.
7. Furthermore senior management within the Department of Community and Children Services (DCCS), our City Corporation Safeguarding Lead department whilst acknowledging the civil liberties case for not asking about criminal convictions on job application forms they have expressed serious concerns about implementation of Ban the Box principles to posts working

with children and vulnerable adults, therefore these concerns carry over to posts of this nature across the organisation. Concerns include:

- from a safeguarding perspective allowing applicants to enter into the recruitment process with potentially totally inappropriate criminal convictions, or on the DBS barred list
 - the potential elongation or repetition of the recruitment process in the event that a candidate's inappropriate criminal convictions come to light at a later stage in the recruitment process, with the potential impact of service critical posts remaining unfilled.
8. The City Corporation has an Outstanding rating for Safeguarding following a recent Ofsted inspection and DCCS senior management consider that for roles where there are no requirements for DBS checks (subject to relevant internal approval) the City Corporation can implement and inform partners of our plans. However where there are requirements for DBS checks (particularly within, education, adult and children's social care) the City Corporation should further consult other committees and partners before any changes subject to any revised statutory guidance; and referring back to the People Security Policy Board, the Security Board and Summit Group.

Proposed changes to DfE Keeping Children Safe in Education

9. The DfE began a consultation to revise the statutory guidance 'Keeping Children Safe in Education' (KCSiE) on 25 February 2020 in which it is proposed to explicitly state that criminal record information should *only* be requested from applicants who have been shortlisted, and not requesting this information on the application form (Appendix 1: KCSiE 2020 Consultation Extract).
10. The DfE withdrew the consultation early on 31 March 2020 due to Coronavirus, their website currently states the consultation has now been withdrawn permanently to allow schools and colleges to focus their efforts on responding to the Covid-19 pandemic. However, the DfE subsequently decided to make a small number of revisions to the KCSiE effective from 1 September 2020 unrelated to recruitment. If the DfE at some future date reverts to its original proposal that criminal record disclosure during recruitment should be no earlier than at the shortlisting stage, then this practice would become integrated into its statutory guidance for the education sector.

Proposals

11. Upon further discussion with the Ban the Box Campaigns Office they would concede to the City Corporation signing up if 80% of our full-time equivalent workforce were being recruited without the criminal record disclosure declaration on the application form.

12. The Director of DCCS has confirmed they would be happy with only those roles who are DBS checked being exempted from the removal of the criminal conviction on the job application form. Furthermore, if the proposed changes to the DfE's KCSiE are implemented they would be content to move to a position of only requesting the information from shortlisted candidates within educational settings (and other areas of DCCS). However, this is on the proviso of seeing what the guidance was regarding social care recruitment.
13. On the basis that the City Corporation were to exclude the three independent schools, the Guildhall School of Music and Drama, the City of London Police civilians from Ban the Box. Taking into account feedback from the Director of DCCS, if the City Corporation were to exclude from Ban the Box from all DBS checked posts in other departments; then 83% of the full-time equivalent workforce could move to the Ban the Box approach i.e. remove the criminal record question from the application form and seek to sign up to the scheme.
14. It is therefore now proposed where posts are DBS checked (and within this group we will include roles subject to any higher level of security vetting) they would continue to be asked to disclose criminal convictions at the application form stage. Therefore, applicants who know they are barred from a specific kind of work will be very unlikely to apply.
15. Where posts are not DBS checked those candidates will complete a criminal record self-disclosure form, this will be completed at the point they have been shortlisted for interview.
16. Whether a criminal record is disclosed at the application or shortlisting stage or discovered through a DBS disclosure; the Recruiting Manager/Panel with HR support assess the impact of the disclosure through a risk assessment process. This will most likely involve scheduling an appointment to discuss the matter further, following which come to a view as to whether the risk can be mitigated or managed on an individual case specific basis.
17. The approach as outlined above is proposed to be integrated into the launch our new application form as part of the Attracting Talent Project and reflected in the Recruitment and Selection Policy and associated guidance, along with the Disclosure and Barring Service Policy and risk assessment process.

Corporate & Strategic Implications

18. The ethos of Ban the Box is aligned to the City Corporation's Corporate Plan 2018-2023 by contributing to a flourishing society, people having equal opportunities to enrich their lives and fulfil their potential. Where BAME groups are over-represented in the criminal justice system, deferring until later in the recruitment selection process i.e. after the initial application, to ask about criminal convictions helps reduce the potential for discrimination.

Implications

19. Under the Rehabilitation of Offenders Act 1974 an individual who has had a conviction for an offence may, with some exceptions, be rehabilitated and allowed to treat the conviction as if it had never occurred. A conviction will become 'spent' where the person has not after a period of time committed another serious offence. Employers may not, under the Act, ask prospective employees if they have 'spent' convictions during the recruitment process apart from certain professions including those concerned with providing health or social services to children, the elderly, sick or disabled people.
20. In accordance with the Act, where criminal records are disclosable at recruitment, the impact of the disclosure will be subject to a risk assessment process as detailed in paragraph 16 above.

Conclusion

21. The Ban the Box ethos is to allow ex-offenders fair access to employment, giving them the opportunity to put past mistakes behind them and thereby enable improved life chances. In turn this can help reduce re-offending rates and benefit society at large.

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Appendix 1

- KCSiE Consultation 2020 extract, noting presently withdrawn

Background papers

- Ban the Box, Establishment Committee report, 05.09.20
- Ban the Box, Summit Group report, 26.09.19 and 04.09.20

Appendix 1: KCSiE Consultation 25 February 2020 extract, noting presently withdrawn refer to para's 9-10 of the report.

Application forms

174. Where a role involves engaging in regulated activity relevant to children, schools and colleges should include a statement in the application form or elsewhere in the information provided to applicants that it is an offence to apply for the role if the applicant is barred from engaging in regulated activity relevant to children.(Ref: 45 section 7(1)(a) of the SVGA 2006).
175. Schools and colleges should also provide a copy of the school's or college's child protection policy and practices and policy on employment of ex-offenders in the application pack or refer to a link on its website.
176. Schools and colleges should require applicants to provide:
- personal details, current and former names, current address and NI number;
 - 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;
 - details of their present (or last) employment and reason for leaving;
 - full employment history, (since leaving school, including education, employment and voluntary work) including reasons for any gaps in employment;
 - qualifications, the awarding body and date of award;
 - details of referees/references (see below for further information); and
 - a statement of the personal qualities and experience that the applicant believes are relevant to their suitability for the post advertised and how they meet the person specification.
177. Schools and colleges should not accept copies of curriculum vitae in place of an application form.

Shortlisting

178. **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. For example:**
- **criminal history;**
 - being known to the police and children's services;
 - prohibition from teaching or management of an independent school;
 - childcare disqualification; and
 - relevant overseas information.

179. **This information should only be requested from applicants who have been shortlisted. The information should not be requested in the application form to decide who should be shortlisted.**
180. In addition, the applicant should be asked to confirm that they are not on the children's barred list, or prohibited from carrying out teaching work in schools and colleges, and that all information provided is true and that where there is an electronic signature the shortlisted candidate physically signs a hard copy of the application at point of interview.
181. The purpose of a self-declaration is so that candidates will have the opportunity to share relevant information and allow this to be discussed and considered at interview before the DBS certificate is received.
182. Schools and colleges should:
- ensure that at least two people carry out the shortlisting exercise (it is recommended that those who shortlist carry out the interview for a consistent approach);
 - consider any inconsistencies and look for gaps in employment and reasons given for them; and
 - explore all potential concerns.