

# **INVESTIGATION INTO THE LOCAL AUTHORITY'S ROLE IN RELATION TO THE APPOINTMENT OF AN EMPLOYEE WITH A MANSLAUGHTER CONVICTION BY IAN MIKARDO SCHOOL**

**AUTHOR: MARK KEEBLE, SENIOR HR BUSINESS PARTNER**

## **1. Introduction**

- 1.1 I was requested by Debbie Jones (Corporate Director Children's Services) to conduct an investigation on behalf of the Mayor into the involvement of the Council in relation to the employment of an individual at Ian Mikardo school who has a conviction for manslaughter.
- 1.2 The purpose of the investigation is to establish what contact took place between the Council and school on this matter and identify any improvements can be made to the Council's procedures as a result of reviewing advice given and actions that were taken.

## **2. Background**

---

- 2.1 Employee A is an employee of Ian Mikardo School who has a conviction for manslaughter in relation to the murder to Shibli Rahman. The offence was committed close to the location of the school in Bow during 2001.
- 2.2 The content of this report does not seek to lessen the seriousness of the devastating and lasting consequences the murder had on the victim's family, friends and the wider community. The circumstances of Employee A at the time of the offence and since his release from prison has already been made available to those who will receive this report and therefore will not be repeated.
- 2.3 The purpose of the report is to identify the role of the Local Authority (LA) in the employment of Employee A and whether improvements are required to ensure any future decisions within the LA (both schools and centrally) to employ an offender with a serious conviction take into account all appropriate factors with authority to give consent set at an appropriate level.

## **3. Evidence considered**

---

- 3.1 I was provided with a copy of the file the Council's Schools HR Team have regarding the employee which contains documents consisting largely of emails, notes of meetings and a risk assessment. Discussions with members of the Team and representatives of the school provided context to these documents and also helped identify further relevant minutes of meetings and

correspondence. This was later followed by a comprehensive file containing all documents in the school's possession relating to the decision to offer the individual employment at the school.

#### **4. Appointment of Employee A**

---

- 4.1 Employee A was appointed as a Technician on a fixed term contract by the School with effect from 13 June 2011 until 31 December 2011. Immediately prior to this, Employee A had been working for a sub-contractor on the new school building since September 2010 (this is set out in detail below). It was through this work that Employee A became known to the school. The post wasn't advertised as it was a temporary role to fill an urgent need at the school as they started to occupy the newly built site. This approach to recruitment on a time limited basis in response to an urgent need is common practice in many schools.
- 4.2 Prior to starting work, pending the outcome of a CRB check (note, since 2012, CRB checks were renamed DBS – Disclosure and Barring Service - for ease of reference this report will use the term CRB), the school checked List 99 (the official list of individuals who are barred from working with children. A person is placed on the list if they committed a specified criminal offence or dismissed by an employer in relation to activities involving a child). Employee A was not on this list and therefore was not automatically barred from working with children. He had informed the Headteacher (HT) of his conviction for manslaughter and the circumstances surrounding it when interviewed for the position. Two “exemplary” references from previous employers were also received. Measures were also put in place to ensure Employee A did not have unsupervised access to children pending receipt of the CRB check.
- 4.3 The School's external HR provider informed HT on 20 September 2011 of the outcome of the CRB check which contained details of Employee A's conviction. The previous day, the HR provider emailed the LA's Schools HR team to inform them of the conviction. Based on evidence presented to date (both through discussions with those involved and documents available), this was the first involvement of the LA in the appointment of Employee A.
- 4.4 On the 21 September 2011, a member of the Schools HR team met with HT and an adviser from the school's own external HR provider. HT was directed to follow procedure and refer the matter to the Chair of Governors (CoG) to consider the outcome of the CRB. The matter was not escalated up the management chain in HR as those dealing with it considered it to be a matter for the school to decide upon. Neither did they inform any of the senior managers at the time in the Children's, Schools and Families Directorate, all of whom have since left the Council.

- 4.5 In accordance with the advice given by the LA, HT completed a 'Positive CRB – Record of Recruitment Decision' form and sent this with a letter to the CoG on 29 September 2011 as the category of offence required the CoG to approve the employment. The guidance notes attached to the form classify as high risk anyone convicted of: murder; manslaughter; rape; other serious sexual offences; grievous bodily harm; and/or other serious acts of violence; and serious class A drug related offences.
- 4.6 A detailed report on Employee A was completed by the Deputy Head at the time in September 2011 to inform HT's recommendation to the CoG to confirm Employee A's appointment. The Deputy interviewed three other members of staff at the School, in addition to interviewing Employee A and HT. This included information provided by Employee A which stated that the victim's family no longer lived in the area. One of the reasons included on the risk assessment for offering employment to Employee A was his age at the time of the conviction. This was an aspect of his successful appeal for a reduction in his custodial sentence from 9 years to 7 years following conviction for manslaughter in November 2001. Also noted in the judgement was the removal from the conviction that it was racially motivated due to doubts over the testimony of the only one out of eight eye witnesses who thought he heard a racist comment.
- 4.7 The CoG objected to Employee A's employment on the basis that "some crimes should discount individuals from working in schools". As a result of this, Employee A's fixed term contract was not extended beyond 31 December 2011. In an email to HT dated 20 December 2011, after setting out his objections, the CoG states that he has "consulted on this widely" but does not state with whom. The HT has stated that she informed a former senior manager in Children's Services at the LA when she experienced difficulties with the CoG as a result of the matter. There is no further record of the senior manager's involvement at that time or who else was informed within the Council, if anyone.
- 4.8 Employee A was informed of the Chair's objection to his appointment following consideration of the CRB check and as a consequence that his employment on a fixed term contract would end on 31 December 2011. In accordance with the provisions of The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, which consider the expiry or non-renewal of a fixed term contract to be a dismissal, Employee A was notified of his right to appeal the decision.
- 4.9 An appeal hearing before three governors, which included the new CoG, was heard on 19 April 2012. The panel concluded that it could not order his

reinstatement because the post was time limited and there was no position for him to return to. The panel also stated there was no reason why Employee A should not be considered for future employment opportunities at the school pursuant to a process in accordance with the Safer Recruitment Policy. The confidential minutes of the appeal hearing record a thorough assessment of Employee A's personal circumstances at the time of committing the offence and since being released from prison in 2005, the risk he posed to the children at the School based on his work during his fixed term contract and evidence from witnesses who worked at the School and spoke positively about his contribution.

- 4.10 Due to volume of work in the LA's Schools HR Team and the prior involvement of some team members in advising on the assessment of the CRB check in September 2011, an HR Business Partner from the LA's Corporate HR Team, who supported one of the Council's central directorates, attended the appeal hearing as the HR adviser to the panel. This individual emailed members of the Schools HR Team on 20 April 2012 to inform them of the outcome.
- 4.11 The school have stated they subsequently advertised the post of Technician which Employee A successfully applied for and was appointed as a permanent member of staff with effect from 1 June 2012. There is no record of the post being included on the Council's weekly vacancy list for schools although not every school use this to advertise jobs or places every vacancy they have on it as they can choose to advertise through whatever media they decide is appropriate. As part of the process, HT has advised that a member of the Schools HR Team (who resigned and left the Council in 2015) was asked to advise the recruitment panel and directed them to consider the wider community issues. No record of the advice given to the panel has been located to date.
- 4.12 The issue of Employee A's employment resurfaced again in February 2016 when a member of staff and young people attending the school became aware of his conviction. The HT was made aware that information about the conviction had become known to these individuals. Following this, a member of the LA's Schools HR Team attended a meeting of the Ian Mikardo Xtra Project, at which Employee A's involvement in the project was discussed. Minutes of this meeting which took place on 19 April 2016 have been provided.
- 4.13 The LA's Schools HR Adviser is recorded as stating that he was confident that the employee in question had been recruited in a totally appropriate manner and that the safer recruitment requirements had been met completely. He advised that he had reviewed all the paperwork in respect of this case as

these were still on file and he was confident that the employee was most suitable for employment at both the school and project.

- 4.14 The HR adviser to the appeal panel (April 2012) left the Council due to voluntary redundancy in April 2016. When she was asked for her recollections prior to her departure, she recalled the panel felt that Employee A had been an excellent employee for the duration of his contract. He had worked hard to turn his life around and was living in a stable relationship with his partner in a flat and had a young baby. He was no longer in contact with the gang that he was involved with at the time he was convicted. He had been open and honest about his conviction and never sought to hide it.

## **5. Recommendations**

### **5.1 *Ensure decisions are referred to an appropriate level before an applicant takes up employment***

The approach taken to sign off the outcome of Employee A's CRB check is similar to the Council's own approach to risk assessment when considering convictions during recruitment. The suitability of applicants with minor offences can be considered by Service Heads. However serious offences, defined as violent or sexual offences, must be referred to a Corporate Director. However, in instances where an applicant has declared a serious conviction and it is proposed to commence employment before a CRB check is received, the matter should be referred to the Corporate Director before the individual starts work. A decision must not be delayed until the CRB check is finally received, which can be some months later. This should also apply to applicants being considered for posts within the Council that do not require a CRB. These applicants are still required to declare details of any unspent conviction. Should any be of a serious nature, they must be referred to the Corporate Director. Lesser offences should be referred to the Service Head for a decision. This should be clearly documented in recruitment procedures with reference to further guidance if needed.

The process in schools should be reinforced to ensure the Council is informed of and given an opportunity to provide an opinion on the appointment of anyone with a serious conviction. The arrangements under Local Management of Schools delegate appointment decisions to schools themselves. However, the Safer Recruitment Guidance issued to schools should be amended to advise schools they should consult the Corporate Director of Children's Services prior to confirming the appointment of any applicant with a serious conviction. This will apply to a very small number of cases and will not be an administrative burden on schools or the LA.

**5.2 *Reflect the need to consider the wider community impact and reputational impact when making employment decisions related to serious offences***

There is no record that the impact of appointing someone with Employee A's background on community or the potential for damaging the Schools' reputation was taken into account. This is not an aspect of the decision that is required under Safer Recruitment Guidance, or under the Council's own guidance on making appointment decisions when a conviction has been disclosed. This is a clear area for improvement to ensure the lessons of this situation are learnt so that any consideration of serious (or high risk) convictions takes into account the wider community and service/school issues as well as the individual's.

**5.3 *Liaise with statutory partners to confirm information as part of the decision making process***

Beyond the Headteacher referring the matter to the a former senior manager in Children's Services, there is no record of the matter being drawn to the Corporate Director, Mayor or Elected Members at the time of Employee A's appointment in 2011. The Council's updated guidance on CRB checks needs to include advice on action that should be taken when an employee with a high risk or serious conviction is being considered for an appointment. This includes liaising with the Probation Service, Police and other appropriate agencies to inform the risk assessment and confirm information on the circumstances of the offence provided by the individual.

**5.4 *Where appropriate, inform and consult with the Mayor, elected members and community leaders***

In cases where an appointment is considered to be potentially high contentious and/or a risk to community cohesion, the Corporate Director should also obtain the views, as appropriate, of the Mayor, elected members and community leaders. The information shared will need to recognise the rights to confidentiality of the individual concerned. Appointment decisions below Deputy Chief Officer are not matters delegated to the Mayor or elected members. However, their views on sensitive matters should be sought to help inform the Corporate Director's decision.

**5.5 *Review and update the Council's Safer Recruitment Guidance to include guidance on making fixed term appointments that have not been advertised and allowing employment to commence prior to receiving a CRB check***

The Council's current Safer Recruitment Guidance does not provide advice on the appointment of employees on a fixed term contract that has not been advertised. This needs to be addressed so schools are aware of the additional risks involved and how to manage them. The guidance also needs to be expanded to recommend that if an employee starts work before receipt of their CRB check, any convictions declared as part of the recruitment process must be fully considered at that time and appropriate authorisation given for the appointment to proceed. This authorisation should not be delayed until the CRB check is received after employment has commenced.

## **6. Work Undertaken for BSF Contractor**

---

- 6.1 Immediately prior to working for the School, Employee A worked on the site of the school during the construction of the new building. Information received from the contractor has confirmed Employee A commenced work with a sub-contractor on 25 October 2010 as a qualified CPCS forklift driver. Employee A finished working with them at the end of their works in early February 2011 and continued to work with the contractor on the site as a forklift driver through an agency. Information received states that Employee A continued working via this agency until completion of the project in July 2011. The school had decanted to Poplar Town Hall. This conflicts with Employee A's start date for employment at the School working 35 hours per week from 13 June 2011 although a precise date for the end of the agency work has not been received to date but is not material to the purpose of this review.
- 6.2 The contractual clauses that applied at the time included a provision for CRB checks to be undertaken if required and notified to the Council, if they contained any convictions. However, as the site was not occupied by children during the construction process, the contractor was not required to request a CRB check for those working on the site. If they had been, the contractor would have been required to inform the Council of any workers whose checks contained convictions before they started work. The contractor would also be required to apply this provision to any subcontractors working on the site. However, it is also important to note that the contract, which follows the law, stated that the Council could not unreasonably object to the person being appointed. It is important to note that the arrangements under the contract incorporates working in "sensitive areas" which would be in an actual operational school. In these circumstances notification would be required and if the person was on the barred list then the Council could and would say no.
- 6.3 Due to the length of his sentence, Employee A's conviction will never be considered spent. Therefore, he would have been required to declare it to any employer when applying for work, including agencies. No information has

been made available to confirm whether or not Employee A declared this to his employer at the time. In any event, if it had been, the contract did not require the conviction to be disclosed because the work undertaken did not meet the criteria for a CRB check.

- 6.4 Employee A worked again for the agency on another of the contractor's projects at a school during the summer holidays of 2011 and 2012. One reason for undertaking this work was that it enabled him to maintain his hours on his CPCS forklift qualification. The work was carried out over the summer holidays so no CRB check was required. It is permissible for employees of the LA and schools to undertake additional employment, provided it does not conflict with the duties and responsibilities of their job.

## **7 Recommendation**

### **7.1 *Amend standard clauses for all contracts to require all contractors to declare serious unspent convictions, regardless of whether the work undertaken requires a CRB check***

The contractual clauses regarding CRB checks are appropriate and in line with the Council's own policies. However, it is recommended that all of the Council's standard contracts are reviewed to include a requirement for all contractors and their subcontractors to inform the Council of any workers engaged in work that does not require a DBS check of any serious unspent convictions declared during the recruitment process before the worker commences work. The relevant Corporate Director can then consider the matter as set out above.

Mark Keeble  
19 August 2016