

# Section 128 Checks for Leadership Roles

THE LEADER GROUP



## SECTION 128 CHECKS

### WHAT IS A SECTION 128 CHECK

A Section 128 check, checks the name of individuals who are barred from taking part in the management of any independent or maintained school. This list is maintained by the National College for Teaching and Leadership (NCTL) under the terms of direction from the Secretary of State for Education. On 1<sup>st</sup> April 2018 NCTL was repurposed, with regulation of the teaching profession passed to the Teaching Regulation Agency (TRA), and other functions moved to the Department for Education (DfE).

### HOW TO REQUEST A SECTION 128 CHECK

There are two ways to request a Section 128 check and it will depend on the work being done:

- As part of a DBS check – To be included in the DBS process the application must be for an enhanced level check with a check of the child barring list (i.e in a Regulated Activity with children). The job role entered on to the form must include ‘Independent School’ and be in the child workforce category to trigger this check.
- Directly using the DfE website (<https://teacherservices.education.gov.uk>). Access to this service is available to all educational establishments with an approver status and allows a direct request to the DfE to check an individual

### WHO CAN APPLY FOR A SECTION 128 CHECK?

This type of check is only available for those involved in the management of a school and can not be applied to all roles within a school setting. Section 128 checks complement DBS checks by also looking at the parts of someone’s history that may not necessarily be criminal, but would still be worrying. There are different criteria and requirements between the DBS barring decision and terms of direction. The DBS may decide not to bar an individual from working with children however DfE may refer a case to the relevant decision panel to prevent that individual from managing a school. Common examples include:

- Someone who undermines mutual respect for those of different faiths may not be charged with a hate crime, but the DfE may not want them associated with the management of a school
- An accountant who has breached the code of ethics set out by their professional body by using confidential client information for personal gain hasn’t necessarily committed a crime, but DfE may not want them overseeing a school’s accounts

### WHEN IS A SECTION 128 DIRECTION ISSUED?

A section 128 direction can be issued on specific grounds where the type of conviction, caution or conduct suggests that the person is unsuitable for the management of a school. These grounds include:

- Conviction of an offence under military disciplinary proceedings
- Being found not guilty of an offence by reason of insanity
- Conduct found to be in breach of professional standards by a professional body

Section 128 directions may also be issued if a person has engaged in conduct that is aimed at undermining:

- British values
- Rule of law
- Individual liberty
- Mutual respect and tolerance of those with different faiths and beliefs

### **WHAT DOES IT STOP SOMEONE FROM DOING?**

People with a Section 128 direction can not:

- Hold management positions in an academy, free school or independent school (as an employee)
- Be an academy or free school trustee or member
- Be a governor on any academy or free school board that has delegated responsibilities
- Be a governor or member of the proprietor body of an independent school
- Sit on the governing board of a maintained school

### **WHOSE RESPONSIBILITY IS IT TO CARRY OUT A SECTION 128 CHECK?**

At The Leader Group, Section 128 checks will be carried out by the compliance team as part of the recruitment and onboarding process, where a candidate has been identified for a prospect Senior / Management role.

Confirmation of this check being completed will be recorded on Access Screening. In the event that the check reveals a Section 128 direction, the Compliance team will advise the candidate's Consultant and the proposed Client, where appropriate.