

Criminal Record Information and DBS Checks Policy

This policy supplements the Company's Fair Processing Notice (Employee Data) and GDPR Privacy Notice.

This policy sets out our commitment to comply with the DBS Code of Practice and our data protection obligations, to treat prospective employees fairly and not to discriminate unfairly against any subject of a criminal record check based on a conviction or other information revealed. Its purpose is to set out how we comply with our data protection obligations in respect of criminal records information and seek to protect such information, and to ensure that staff understand and comply with the rules governing the collection, use and deletion of criminal records information to which they may have access in the course of their work.

This document sets out the Company's policy on asking questions about a prospective (or existing) employee's criminal record and carrying out Disclosure and Barring Service (DBS) checks.

We are committed to complying with our data protection obligations and the DBS Code of Practice in relation to criminal records information, in particular:

- in relation to the circumstances in which we seek criminal records information;
- by being concise, clear and transparent about how we obtain and use such information, and how (and when) we delete it once it is no longer required; and
- by ensuring the correct handling, use, storage, retention and disposal of DBS certificates and certificate information.

The Company's Data Protection Officer, is responsible for informing and advising the Company and its staff on its data protection obligations, including in relation to criminal records information, and for monitoring compliance with those obligations and with the Company's policies. If you have any questions or comments about the content of this policy or if you need further information, you should contact the Data Protection Officer.

Policy statement

Having a criminal record will not necessarily bar you from working with us. We will take into account the circumstances and background of any offences and whether they are relevant to the position in question, balancing the rights and interests of the individual, our employees, customers/clients, suppliers and the public.

We will treat all applicants, employees and volunteers fairly but reserve the right to withdraw an offer or contract of employment if you do not disclose relevant information, or if a DBS check reveals information which we reasonably believe would make you unsuitable for the role.

Scope and definitions

This policy applies to criminal records information relating to job applicants and current and former staff, including employees, temporary and agency workers, interns, volunteers and apprentices.

Staff should refer to the Company's Fair Processing Notice (Employee Data), GDPR Privacy Notice and, where appropriate, to its other relevant policies.

We will review and update this policy regularly in accordance with our data protection obligations. It does not form part of any employee's contract of employment, and we may amend, update or supplement it from time to time.

Asking for criminal records information

Before recruiting for any post, Gary Robinson will, with advice from the data protection officer, assess whether it is justified in seeking criminal records information for that particular post (see bullet points below) and, if so:

- whether it is appropriate to limit the information sought to offences that have a direct bearing on suitability for the job in question; and
- whether the information should be obtained from the individual or the DBS.

The Company will be justified in obtaining criminal records information for a particular post if it is necessary:

- for the performance of the employment contract for that post;
- in order for the Company to comply with a legal obligation to which it is subject;
- in order to protect the vital interests of vulnerable service users; and/or
- for the purposes of the Company's legitimate interests.

The level of criminal records information and DBS check that the Company is entitled to request (i.e. a criminal conviction certificate (CCC), criminal records certificate (CRC) or enhanced criminal records certificate (ECRC)) will depend on the post for which the prospective or current employee's suitability is being assessed. Further details are set out in "Level of DBS check" below.

We will only ask for criminal records information or carry out a DBS check once the employee has a conditional offer of employment and in the case of existing employees every three years.

We will only ask an individual to provide criminal records information that the Company would be legally entitled to see in a DBS check for the relevant post (see "Level of DBS check" below), if the Company is justified in seeking criminal records information for the post, and the post is not exempt from the Rehabilitation of Offenders Act 1974, individuals are not required to disclose convictions or conditional cautions that are spent under the Rehabilitation of Offenders Act 1974.

If the information sought can be limited to offences that have a direct bearing on suitability for the job in question, Gary Robinson will amend accordingly any questions asked of prospective or current employees or the checks conducted for these individuals

Where a DBS check is identified as necessary, all application forms, job adverts, and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.

Applicants will only be asked to complete a criminal records information form or DBS check before an offer of employment is made unconditional; they will not be asked to do so during the earlier short-listing, interview or decision-making stages.

Before an individual is asked to complete a criminal records information form or DBS check, they will be provided with a copy of this policy.

If the Company is not justified in seeking criminal records information for the post, it will not ask an applicant for criminal records information.

If it is assessed that the Company should use the DBS to verify criminal records information, the company will:

- provide the individual concerned with a copy of this policy before asking them to complete a DBS application form or asking for their consent to use their information to access the DBS update service;
- make every subject of a DBS check aware of the existence of the DBS Code of Practice and make a copy available on request. A copy is available on the Government's website at <https://www.gov.uk/government/publications/dbs-code-of-practice>; and
- comply with the DBS Code of Practice.

Once criminal records information has been verified through a DBS check, the company will:

- if inconsistencies emerge between the information provided by the individual and the information in the DBS certificate, give the individual the opportunity to provide an explanation in accordance with section below titled "Where an unprotected conviction or caution is disclosed";
- record that a DBS check was completed and whether it yielded a satisfactory or unsatisfactory result; and
- delete the DBS certificate and any record of the information contained in it unless, in exceptional circumstances, the data protection officer or Gary Robinson assesses that it is clearly relevant to the ongoing employment relationship (e.g. to allow for consideration and resolution of any disputes or complaints).

If, in accordance with the above paragraph, the data protection officer or Gary Robinson assesses that the information in the DBS certificate is relevant to the ongoing employment relationship, it (and any record of the information contained in it) will be kept securely for no longer than is necessary (usually no more than six months) and then destroyed.

The Company will not seek criminal records information from any source other than the individual concerned or the DBS.

DBS certificate information will be handled and kept in accordance with the Company's policy on handling DBS certificate information set out in "Data storage and access".

Where an unprotected conviction or caution is disclosed

If the Company has concerns about the information that has been disclosed by the individual or by the DBS, or the information is not as expected, the Company will discuss its concerns with the prospective or current employee and carry out a risk assessment.

The Company has a legal duty, when recruiting staff to work in regulated activity with children or vulnerable adults, to check whether they are on the relevant children's or adults' barred list. If a prospective or current employee's name does appear on the relevant barred list, it would be against the law for the Company to employ or continue to employ them to work or volunteer with the relevant group.

If a prospective or existing employee is not barred from working with the relevant group, but nevertheless has a criminal record, it is up to the Company to decide on their suitability for the role. The Company will not refuse a prospective employee or terminate an existing employee's employment simply on the basis that they have a criminal record. Before making a decision, the Company will:

- give the prospective or existing employee the opportunity to address its concerns before making any decisions; and
- carry out a risk assessment.

In carrying out a risk assessment, the Company will take account of:

- the relevance of the conviction or other matter revealed to the position in question;
- the seriousness of the offence or other matter revealed;
- the circumstances of the offence;
- the age of the offence;
- whether there is a pattern of offending; and
- whether circumstances have changed since the offending took place.

Training

The Company will ensure that all those within the organisation who are involved in the recruitment process:

- have been suitably trained to identify and assess the relevance and circumstances of offences; and
- have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

Level of DBS check

The level of DBS check that the company is entitled to request will depend on the position for which the prospective or existing employee's suitability is being assessed. The company may request a criminal conviction certificate (CCC) (also referred to as a basic disclosure) if the position is covered by the Rehabilitation of Offenders Act 1974.

Further details about what criminal records information is included on a particular type of certificate can be found on the Government's website at <https://www.gov.uk/government/collections/dbs-checking-service-guidance--2>

Filtering of protected convictions and cautions

Certain old and minor convictions and cautions are 'protected', which means:

- they are filtered out of a DBS check;
- they need not be disclosed by prospective employees to the Company; and
- they will not be taken into account by the Company in making decisions about employing a prospective employee.

Certain 'listed offences' will never be filtered out (for more information see the Government guidance at <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>). The list includes offences which are particularly serious, relate to sexual or violent offending or are relevant in the context of safeguarding.

A conviction will be a protected conviction (i.e. filtered out) if:

- the offence was not a listed offence;
- it did not result in a custodial sentence (or sentence of service detention); and
- where the individual was an adult (18 or over) at the time of conviction, 11 years or more have passed since the date of the conviction (or five years six months or more have passed since the date of conviction if the individual was under 18 at the time of conviction).

A caution will be a protected caution (i.e. filtered out) if:

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- the person was under 18 years of age at the time the caution was given; or
- the person was 18 years old or over at the time the caution was given;
 - the offence was not a listed offence; and
 - six years or more have passed since the date of the caution.

As part of an ECRC, the police may also disclose information that they reasonably believe is relevant and ought to be included.

For further guidance on filtering, see the DBS filtering guidance on the Government's website at <https://www.gov.uk/government/publications/dbs-filtering-guidance/dbs-filtering-guide>.

Data Storage and access

The Company will ensure that DBS certificate information is kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

Handling

In accordance with section 124 of the Police Act 1997, the Company will ensure that certificate information is only passed to those who are authorised to receive it in the course of their duties. The Company maintains a record of all those to whom certificates or certificate information has been revealed. It is a criminal offence to pass this information to anyone who is not entitled to receive it.

Once the DBS certificate has been inspected, it will be destroyed in accordance with the Code of Practice.

Usage

Certificate information must only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

Retention

Once a recruitment (or other relevant) decision has been made, the Company does not keep certificate information for any longer than is necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints.

If, in very exceptional circumstances, it is considered necessary to keep certificate information for longer than six months, we will consult the DBS about this and will give full consideration to the data protection and human rights of the individual before doing so.

Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

Disposal

Once the retention period has elapsed, we will ensure that any DBS certificate information is immediately destroyed by secure means, e.g. by shredding, pulping or burning. While awaiting destruction, certificate information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack).

We will not keep any photocopy or other image of the certificate or any copy or representation of the contents of a certificate. However, notwithstanding the above, we may keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, the position for which the certificate was requested, the unique reference number of the certificates and the details of the recruitment decision taken.

Acting as an umbrella body

Before instructing an umbrella body (an umbrella body being a registered body which countersigns applications and receives certificate information on behalf of other employers or recruiting organisations), we will take all reasonable steps to satisfy ourselves that they will handle, use, store, retain and dispose of certificate information in full compliance with the Code of Practice and in full accordance with this policy.

We will also ensure that any body or individual, at whose request applications for DBS certificates are countersigned, has such a written policy and, if necessary, will provide a model policy for that body or individual to use or adapt for this purpose.