

DUMPTON SCHOOL



Criminal Records Information (GDPR)

1 Introduction

- 1.1 This policy supplements the School's data protection Privacy Policy (employment).
- 1.2 This document sets out the School's policy on asking questions about a prospective (or existing) employee's criminal record, and carrying out Disclosure and Barring Service (DBS) checks.
- 1.3 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 on the basis of 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.
- 1.4 We are committed to complying with our data protection obligations and the DBS Code of Practice in relation to criminal records information, in particular:
 - 1.4.1 in relation to the circumstances in which we seek criminal records information
 - 1.4.2 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
 - 1.4.3 by ensuring the correct handling, use, storage, retention and disposal of DBS certificates and certificate information

1.5 The Bursar is responsible for data protection compliance within the School, including in relation to criminal records information. If you have any questions or comments about the content of this policy or if you need further information, you should contact the Bursar by letter to the school or email bursar@dumpton.com or telephoning 01202 843942.

2 **Scope and definitions**

2.1 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.

2.2 Staff should refer to the School's data protection Privacy Policy (employment) and data protection Privacy Notice and, where appropriate, to its other relevant policies.

2.3 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. We will circulate any new or modified policy to staff when it is adopted.

2.4 The definitions set out in the School's data protection Privacy Policy (employment) apply to terms used in this policy.

3 **Asking for criminal records information**

3.1 Before recruiting for any post the School will be justified in obtaining criminal records information for the following reasons:

3.1.1 for the performance of the employment contract for that post

3.1.2 in order for the School to comply with a legal obligation to which it is subject

3.1.3 in order to protect the vital interests of its pupils

3.1.4 and/or for the purposes of the School's legitimate interests

3.2 The School is entitled to request an enhanced criminal records certificate (ECRC).

3.3 All job application forms, job adverts and recruitment briefs will contain a statement that an application for an ECRC will be submitted in the event of the individual being offered the position.

3.4 The School will:

- 3.4.1 provide the individual concerned with a copy of the School's data handling policy (set out in Appendix 2) before asking them to complete a DBS application form or asking for their consent to use their information to access the DBS update service.
- 3.4.2 make every subject of a DBS check aware of the existence of the DBS Code of Practice and makes a copy available on request. A copy is available <https://www.gov.uk/government/publications/dbs-code-of-practice>.
- 3.4.3 comply with the DBS Code of Practice.
- 3.5 The School will not rely on a previously-issued DBS certificate.
- 3.6 Once criminal records information has been verified through a DBS check, the School will:
 - 3.6.1 if inconsistencies emerge between the information provided by the individual and the information in the DBS certificate, give the applicant the opportunity to provide an explanation in accordance with paragraph 4
 - 3.6.2 record that a DBS check was completed and whether it yielded a satisfactory or unsatisfactory result
 - 3.6.3 delete the DBS certificate and any record of the information contained in it unless, in exceptional circumstances, the Bursar assesses that it is clearly relevant to the ongoing employment relationship eg to allow for consideration and resolution of any disputes or complaints
- 3.7 If, in accordance with paragraph 3.6.3, the Bursar 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, and no more than six months.
- 3.8 The School will not seek criminal records information from any source other than the individual concerned or the DBS.
- 3.9 DBS certificate information will be handled and kept in accordance with the School's policy on handling DBS certificate information set out in Appendix 2.

4 **Where an unprotected conviction or caution is disclosed**

- 4.1 If the School has concerns about the information that has been disclosed by the DBS, or the information is not as expected, the School will discuss its concerns with the prospective employee and carry out a risk assessment.
- 4.2 The School has a legal duty, when recruiting staff to work in regulated activity with children to check whether they are on the relevant children's barred list. If a prospective employee's name does appear on the relevant barred list, it would be against the law for the School to employ them to work or volunteer with the relevant group.

5 **Training**

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

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

Appendix 1 - Level of DBS check and filtering

1 Requesting a DBS certificate

1.1 The level of DBS check that the School is entitled to request will depend on the position for which the prospective employee's suitability is being assessed. The School may request:

1.1.1 a criminal record certificate (CRC) if the position is protected by the Rehabilitation of Offenders Act 1974

1.1.2 an enhanced criminal record certificate (ECRC) if the position is:

(a) excepted from the protections of the Rehabilitation of Offenders Act 1974 (ie included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended).

(b) prescribed in the Police Act 1997 (Criminal Records) Regulations 2002

(c) in addition, a search of the children's barred list if the position is:

(d) eligible for an ECRC

(e) prescribed in the Police Act 1997 (Criminal Records) Regulations 2009 as one for which the children's barred list may be checked

2 Filtering of protected convictions and cautions

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

1.1.3 they are filtered out of a DBS check

1.1.4 they need not be disclosed by prospective employees to the School

1.1.5 they will not be taken into account by the School in making decisions about employing a prospective employee

2.2 Certain 'listed offences' will never be filtered out

(<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.

2.3 A conviction will be a protected conviction (ie filtered) if:

2.3.1 the offence was not a listed offence

2.3.2 it did not result in a custodial sentence (or sentence of service detention)

2.3.3 it is the individual's only conviction

- 2.3.4 where the individual was an adult 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)
- 2.4 A caution will be a protected caution (ie filtered) if:
 - 2.4.1 the offence was not a listed offence; and
 - 2.4.2 where the individual was an adult at the time of the caution, six years or more have passed since the date of the caution (or two years or more have passed since the date of conviction if the individual was under 18 at the time of conviction).
- 2.5 As part of an ECRC, the police may also disclose information that they reasonably believe is relevant and ought to be included.
- 2.6 For further guidance on filtering, see [the DBS filtering guidance](#).

Appendix 2 - Data handling

3 Storage and access

The School 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.

4 Handling

4.1 In accordance with section 124 of the Police Act 1997, the School will ensure that certificate information is only passed to those who are authorised to receive it in the course of their duties. The School 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.

4.2 Once the DBS certificate has been inspected, it will be destroyed in accordance with the code of practice.

5 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.

6 Retention

6.1 Once a recruitment (or other relevant) decision has been made, the School 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.

6.2 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.

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

7 Disposal

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

7.2 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.

8 DBS logo

The School will not copy or use the DBS logo without prior approval of the DBS.