



**MAGDALEN COLLEGE SCHOOL**

**CRIMINAL RECORDS POLICY**

## **1 What is the purpose of this document?**

- 1.1 This policy supplements Magdalen College School's ("we", "our", "us") data protection policy, staff privacy policy and candidate privacy policy.
- 1.2 This document sets out our 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; and
  - 1.4.3 by ensuring the correct handling, use, storage, retention and disposal of DBS certificates and certificate information.

- 2 Our data protection lead is responsible for informing and advising us and our staff on our data protection obligations, including in relation to criminal records information, and for monitoring compliance with those obligations and with our 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 lead who is the Bursar.

## **3 Policy statement**

- 3.1 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, taking into account our duties in relation to the safeguarding of our pupils and while balancing the rights and interests of the individual, our employees, customers/clients, suppliers and the public.
- 3.2 We will treat all applicants, employees and volunteers fairly but reserve the right to withdraw an offer 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.

## **4 Scope and definitions**

- 4.1 This policy applies to criminal records information relating to job applicants and current and former staff, including employees, temporary and agency workers, interns, volunteers, governors and apprentices.
- 4.2 Staff should refer to the Magdalen College School's data protection policy, staff privacy policy and, where appropriate, to its other relevant policies. Potential candidates should refer to our candidate privacy policy.
- 4.3 We will review and update this policy 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 or candidates when it is adopted.

## **5 Asking for criminal records information**

- 5.1 Due to our requirements to safeguard our pupils and the nature of our business, all prospective members of staff including employees, contractors and governors will be asked about criminal records information and will be subject to an enhanced DBS check
- 5.2 Other than for volunteers who are not in regulated activity, we will also carry out a search of the barred list.
- 5.3 We are justified in obtaining criminal records information for the following reasons:
  - 5.3.1 it necessary for the performance of the employment contract;
  - 5.3.2 required in order for us to comply with a legal obligation;
  - 5.3.3 required in order to protect the vital interests of vulnerable service users; and/or
  - 5.3.4 necessary for the purposes of our legitimate interests in safeguarding our pupils.
- 5.4 We will only ask an individual to provide criminal records information in relation to convictions and cautions that we would be legally entitled to see in a DBS check for the relevant post (see paragraph 4.2 above), i.e.:
  - 5.4.1 if the post is not exempt from the Rehabilitation of Offenders Act 1974, we will ask applicants to complete the criminal records information section of our application form, which states that applicants are not required to disclose convictions that are spent under the Rehabilitation of Offenders Act 1974; and
  - 5.4.2 if the post is exempt from the Rehabilitation of Offenders Act 1974, we will ask applicants to complete the criminal records information section of our application form, which asks applicants if they have any convictions, cautions, reprimands or final warnings which are not filtered (or 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)). For further information on filtering, see Appendix 1.
- 5.5 All application forms, job adverts and recruitment briefs contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.
- 5.6 Before an individual is asked to complete the criminal records information section of our application form, they will be provided with a copy of this policy.
- 5.7 We will:
  - 5.7.1 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 [here](#); and
  - 5.7.2 comply with the DBS Code of Practice.
- 5.8 We will not rely on a previously issued DBS certificate.
- 5.9 Once criminal records information has been verified through a DBS check, we will:
  - 5.9.1 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 5;

- 5.9.2 record that a DBS check was completed, the date and number of the check, and whether it contained information or not.
- 5.10 We will not seek criminal records information from any source other than the individual concerned, Babcock International Limited (providers of our DBS checks) or the DBS.
- 5.11 DBS certificate information will be handled and kept in accordance with our policy on handling DBS certificate information set out in Appendix 2.

## **6 Where an unprotected conviction or caution is disclosed**

- 6.1 If we have concerns about the information that has been disclosed by the DBS, or the information is not as expected, we will discuss our concerns with the prospective employee and carry out a risk assessment.
- 6.2 We have 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 employee's name does appear on the relevant barred list, it would be against the law for us to employ them to work or volunteer with the relevant group.
- 6.3 If a prospective employee is not barred from working with the relevant group, but nevertheless has a criminal record, it is up to us to decide on their suitability for the role. We will not refuse a prospective employee employment simply on the basis that they have a criminal record. Before making a decision, we will:
  - 6.3.1 give the prospective employee the opportunity to address our concerns before making any decisions; and
  - 6.3.2 carry out a risk assessment.
- 6.4 In carrying out a risk assessment, Magdalen College School will take account of:
  - 6.4.1 the relevance of the conviction or other matter revealed to the position in question;
  - 6.4.2 the seriousness of the offence or other matter revealed;
  - 6.4.3 the circumstances of the offence;
  - 6.4.4 the age of the offence;
  - 6.4.5 whether there is a pattern of offending; and
  - 6.4.6 whether circumstances have changed since the offending took place.

## **7 Training**

- We will ensure that all those within the organisation who are involved in the recruitment process:
- 7.1 have been suitably trained to identify and assess the relevance and circumstances of offences; and
  - 7.2 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.

APPENDIX 1  
LEVEL OF DBS CHECK AND FILTERING

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**1 Requesting a DBS certificate**

- 1.1 For all prospective members of staff, we will request :
- 1.1.1 an enhanced criminal record check with barred list check 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); and
  - (b) prescribed in the Police Act 1997 (Criminal Records) Regulations 2002.
- 1.1.2 in addition, a search of the children's or adults' barred list if the position is:
- (a) eligible for an ECRC; and
  - (b) prescribed in the Police Act 1997 (Criminal Records) Regulations 2009 as one for which the children's or adults' 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:
- 2.1.1 they are filtered out of a DBS check;
- 2.1.2 they need not be disclosed by prospective employees; and
- 2.1.3 they will not be taken into account in making decisions about employing a prospective employee.
- 2.2 Certain 'listed offences' will never be filtered out (see [here](#)). 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; and
- 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 (i.e. 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

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**1 Storage and access**

Magdalen College 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.

**2 Handling**

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

2.2 Once the DBS certificate has been inspected, it will be returned to the applicant in accordance with the code of practice.

**3 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.

**4 Retention**

4.1 We retain the number and date of DBS certificates, and any risk assessments relating to convictions, for the duration of the employment for the purposes of HR compliance with DfE and ISI regulations.

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

**5 Disposal**

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

5.2 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 unique reference number of the certificate and the details of the recruitment decision taken.

**6 DBS logo**

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

Reviewed by: Royds Withy King  
Date: May 2018  
Reviewed by: HR Director  
Date: May 2019  
Next Review: May 2020