

Data Protection Policy: Processing Special Category and Criminal Convictions Data

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Introduction

The University processes the personal data of a broad range of individuals including, students and alumni, prospective, current and former staff. We use this information for a variety of purposes to enable the University to operate appropriately.

In some cases, the University is required to process special category (sensitive) data and data about actual or alleged criminal convictions and any associated proceedings. This type of personal data is afforded additional protection under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA). We must only process special category data if certain conditions can be met. We must also have appropriate policy documentation in place to enable this processing to be carried out. This policy fulfils our obligation to describe how special category and criminal conviction data will be used.

Scope

This policy sets out how the University will comply with the data protection principles when processing special category data and data about criminal convictions when it does so in reliance on a condition from Part 1, 2 or 3 of Schedule 1 of the DPA.

It also explains our policies in relation to retaining and erasing this type of personal data. It serves as an 'appropriate policy document' for the purposes of Part 4 of Schedule 1 of the DPA. This policy should be read alongside the University's Data Protection Policy.

This policy applies to all employees, including temporary, casual, contract and agency staff, as well as any contractors or service providers acting on behalf of the University. It also applies to any students that process personal data of others as part of their degree program whether internally or while on placement.

Conditions for processing

The University processes special category data and data about criminal convictions in reliance on the following conditions from Schedule 1 Part 2 of the Data Protection Act 2018 which apply either concurrently with or in lieu of a lawful basis under Article 9 of the GDPR. These are not the only legal bases/conditions on which we process special category data, but they are the only ones to which this policy applies:

Employment, social security and social protection

The University processes a variety of information about prospective, current and previous employees for employment purposes, including data about health and criminal convictions and associated proceedings. It is not appropriate to obtain consent for such processing due to the nature of the employer-employee relationship and because consent cannot be freely given or withdrawn; therefore the University relies on this condition for much of this processing in combination with processing necessary for the performance of a contract, as per Article 6 of the GDPR. Personal data processed for employment purposes is treated

confidentially and maintained by HR, or the local service as part of applicant and employee personal files. It is only shared within the University on a strict need-to-know basis, or where we are under a legal obligation to share the personal data. Where employees are seconded under contract to another organisation, or a secondee carries out work for the University, the University and the other organisation may share personal data in reliance on this condition, as set out in the applicable contract which is held locally by the relevant School or Service. Any information about criminal convictions obtained as part of a Disclosure and Barring Service (DBS) check is stored and retained in line with DBS requirements.

Health or Social Care Purposes

Under Health and Safety legislation, the University provides occupational health services to assess the working conditions to all staff and students. Such data is collected and processed under Article 9 of the GDPR and is used to ensure that the University is meeting its obligations around reasonable adjustment and safe working conditions. The data is collected and stored by the Estates and Facilities service and may be shared internally to ensure appropriate measures can be implemented.

Statutory and government purposes

The University is legally required to provide some special category data about staff and students to external organisations for statutory returns and reporting, such as the data we provide to the Higher Education Statistics Agency (HESA) or the Office for Students (OFS). Only the minimum amount of data necessary to fulfil this requirement is provided and all data is shared securely. We also rely on this condition to process data about students' criminal convictions. This applies if a student is offered a place on a course which can result in employment in a regulated profession and the course involves an integral work placement which could not be undertaken if the student has a criminal conviction. We must process this data to ensure we do not admit a student onto a course which they cannot possibly complete. Any information about criminal convictions obtained as part of a Disclosure and Barring Service (DBS) check is stored and retained in line with DBS requirements.

Equality of opportunity or treatment

The University recognises the importance of equality of opportunity or treatment and monitors and reviews the existence or absence of this across all areas so that equality can be promoted and/or maintained. Any processing of the specified categories of personal data used for these purposes is carried out confidentially and securely. When it is collected as part of an application form, the data is stored separately from the rest of the application data.

Preventing or detecting unlawful acts

We rely on this condition to process data about applicants' and students' criminal convictions, in certain circumstances, to enable us to manage any potential risks to the

University community. Any information about criminal convictions obtained as part of a Disclosure and Barring Service (DBS) check is stored and retained in line with DBS requirements. We may also rely on this condition to process information about employees' criminal convictions, if appropriate. We also rely on this condition to disclose certain items of personal data to the police, DWP, or other similar bodies for the prevention and detection of unlawful acts. Any personal data disclosed under these circumstances is shared securely and only the minimum amount of information necessary is shared in any case. The University has a duty to prevent individuals from being drawn into terrorism (known as the Prevent duty). Where we process special category data such as personal data about religious beliefs or political opinions, or data about criminal convictions, for the purposes of fulfilling our Prevent duty, we may rely on this condition where it is not appropriate to obtain an individual's consent. This may be the case where we are carrying out initial investigations into concerns that one or more individuals are being drawn into terrorism, or making initial reports or requests for advice to the police or the Office for Students Prevent Lead. Any personal data processed for these purposes is processed sensitively and confidentially on a strict need-to-know basis, in line with national Prevent procedures and guidance.

Protecting the public against dishonesty etc.

The University runs many courses which lead to entry into a regulated profession or occupation. We may disclose special category data or data about criminal convictions to those who regulate such professions so that those regulators can exercise their functions appropriately by ensuring practitioners are fit and proper. There is a substantial public interest in enabling regulators to ensure that only those who are fit to practise a particular profession or occupation are able to do so.

Regulatory requirements relating to unlawful acts and dishonesty etc.

Where it is not appropriate to rely on consent, the University relies on this condition when it processes special category data and criminal convictions data about its Board Members/Governing Body Members (as well as some employees) to ensure they are fit and proper persons to fulfil the role. To enable us to register as a higher education provider with the Office for Students, we must be able to demonstrate that the University has appropriate management arrangements in place which do not present a risk to students or to public funds.

Support for individuals with a particular disability or medical condition

We will rely on this condition where we need to collect, store, use or disclose personal data for the purposes of reasonable adjustment or support under Health and Safety or Equality legislation or providing additional support to disabled students who are eligible for Disabled Students Allowance or equivalent. Where appropriate, we will rely on explicit consent for the processing of this personal data, however in some circumstances including submission of data for auditing or regulatory purposes it will be reasonable to process this personal data without such consent.

Counselling etc.

The University provides staff and student counselling services and a number of other student wellbeing services delivered by Student Services. The majority of special category data or data about criminal convictions is processed with the explicit consent of the individual using one of the counselling services; however if a circumstance arose which required us to process personal data without consent in order to provide confidential counselling, advice or support e.g. from Student Services, and such processing was in the substantial public interest, we would do so in reliance on this condition. All information held in counselling records is treated confidentially and stored securely and all counsellors comply with professional guidelines.

Safeguarding of children and of individuals at risk

The University admits students who are under 18, as well as those over 18, to our courses and to our accommodation. We rely on this condition to process data about applicants' and students' criminal convictions, in certain circumstances, to enable us to identify and manage any potential risks to the University community. Any information about criminal convictions obtained as part of a Disclosure and Barring Service (DBS) check is stored and retained in line with DBS requirements. We may also rely on this condition to process information about employees' criminal convictions, if appropriate. We also rely on this condition to process special category data for the purposes of safeguarding children who are under 18, or individuals who are over 18 and at risk, where there is a substantial public interest and we are unable to obtain consent for the processing. This condition is most likely to be relied upon where we act in students' best interests to provide support via our Student Services teams.

Data protection principles

When processing personal data, anyone to whom this policy applies is required to ensure that all processing complies with the Data Protection Principles set out in Article 5 of the GDPR and outlined below along with an explanation of how the University will comply with them whenever we process special category data or data about criminal convictions in reliance on a condition from Part 1, 2 or 3 of Schedule 1 DPA, as set out in this policy:

1. Processed lawfully, fairly and in a transparent manner

The data protection legislation is not intended to prevent the processing of personal data, but to ensure that it is done fairly and in a transparent manner and without adversely affecting the rights of the data subject. In every case set out in the Conditions for Processing, the data subject will be told who the controller is, the purposes for which the data are to be processed and the identities of any other parties to whom the data may be disclosed or transferred. This information will be provided to the data subject in a Fair Processing Notice at the point of data is collection, unless an exemption from the right to be informed applies in a particular case. UEL will always process personal data lawfully by ensuring there is a legal basis for all the processing we undertake.

When special category data or data about criminal convictions is being processed, we will ensure that an additional legal basis applies.

2. Processed for limited purposes

In every case set out in the Conditions for Processing, personal data will only be processed for the specific purposes notified to the data subject via the Fair Processing Notice when the data is first collected or for any other purposes specifically permitted under the data protection legislation. Personal data will not be further processed in a manner which is incompatible with these purposes. It may be the case that we cannot use the personal data for another purpose unless the data subject consents.

3. Adequate, relevant and not excessive

In every case set out in the Conditions for Processing, personal data held about data subjects will be sufficient for the purposes for which it is held. Information which is not needed or is not relevant for a specified purpose will not be collected or otherwise processed. The minimum amount of personal data needed to properly achieve the purpose in question will be identified and collected; additional, excessive personal data will not be held.

4. Accurate and up-to-date

In every case set out in the Conditions for Processing, personal data will be accurate and, where necessary, kept up-to date. Information which is incorrect or misleading is not accurate; steps will be taken to check the accuracy of any personal data at the point of collection and at regular intervals afterwards. Personal data identified as being factually inaccurate may be amended or erased dependent on the circumstance, however it may not be appropriate to delete this information altogether if historic decisions have been based on it. In these cases, the personal data will be rectified for future use with an explanatory note placed on file as required to explain the situation. Where a data subject disagrees with a professional opinion about him or herself which does not –by definition – constitute verifiable fact, the data subject's difference of opinion will be noted on the file in the relevant places.

5. Not kept for longer than is necessary

In every case set out in the Conditions for Processing, personal data will not be kept longer than is necessary for the purposes for which it is being processed. This means that data will be securely destroyed or erased from our systems when it is no longer required i.e. there is no legal requirement to retain it and there is no business or operational need for the information, taking account of the purposes for which it was originally requested. Personal Data managed in line with the University's Records Management Policy and Retention Schedule, which provide guidance on how long certain types of information should be retained and when and how they should be destroyed. Staff can consult the Data Protection pages of the UEL intranet for the current guidance.

6. Security of Personal Data

In every case set out in the Conditions for Processing UEL will ensure that appropriate technical and organisational measures are taken to protect against unlawful or unauthorised processing of personal data and against the accidental loss of, or damage to,

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personal data. All personal data processed or stored by UEL is managed in line with University Information Security, Acceptable Use and Records Management policies and Retention Schedule, which provide guidance on how long certain types of information should be retained and when and how they should be destroyed.

Breach of the policy

This policy is based on the legal requirements of the Data Protection Act. A breach of the policy may therefore mean a breach of a legal requirement. Any concerns about a breach of this policy should be notified to the Data Protection Officer via dpo@uel.ac.uk.