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University of Chichester

**APPROPRIATE POLICY DOCUMENT (APD)**

**Approved by the Deputy Vice-Chancellor (Student Experience):**

**Approved by the Vice-Chancellor’s Group:**

#### INTRODUCTION

##### The Data Protection Act 2018 (DPA 2018) outlines the requirement for an Appropriate Policy Document (APD) to be in place when processing special category (SC) and criminal offence (CO) data under certain specified conditions.

##### This APD complements the University’s high level Records Retention Schedule, Privacy Standard and Privacy notices (see <https://www.chi.ac.uk/about-us/policies-and-statements/data-protection>) and at a more granular level the University’s data mapping register (maintained centrally by the DP Office) and departmental privacy notices and policies, which cover the University’s processing activities in compliance with Article 30 of the UK General Data Protection Regulation (UK GDPR). This APD provides SC and CO data with further protection and accountability where such data are processed under certain conditions permitted by sections 10-11 of the DPA 2018 and set out in Parts 2-3 of Schedule 1 to the Act, and is required under Part 4 of that Schedule. It outlines the nature of the processing in each case and then summarises why any such processing fulfils the principles in Article 5 of the UK GDPR as well as explaining relevant retention and erasure policies and/or providing links to documents where this is set out.

##### With regard to CO data Section 11(2) of the DPA 2018 sets out that this includes personal data relating to the alleged commission of offences or proceedings for an offence committed or alleged to have been committed, including sentencing.

#### RELEVANT PROCESSING CONDITIONS FROM SCHEDULE 1

##### **Part 1: Employment, Health and Research**

###### **Employment, social security and social protection condition** - this condition applies for the purposes of performing or exercising obligations or rights under employment law, social security law or the law relating to social protection. In order to meet this condition, the controller must have an APD in place.

#### Section 10(2) of the DPA 2018 sets out that for the processing of special categories of personal data to be necessary for the purposes of carrying out the obligations of the University or of the data subject in the field of employment, social security and social protection law under Article 9(2)(b) of the UK GDPR, such processing must meet one of the conditions set out in Part 1 of Schedule 1.

#### Processing special category data under this condition covers administration of employment responsibilities and required reporting to HMRC, pensions providers and similar bodies.

##### **Part 2: Substantial public interest conditions**

###### **Equality of opportunity or treatment**

#### Most special category personal data used for equal opportunities monitoring purposes is collected with the explicit consent of the data subject (in some cases through the provision of options such as ‘Prefer not to say’ on relevant data collection forms). On the rare occasions where the provision of special category personal data about racial/ethnic origin, religious beliefs, health (i.e. disability status) or sexual orientation is mandatory and is in the substantial public interest, it is processed under this condition, is kept separate from other personal data, and is solely used for this limited purpose.

#### However, ethnicity data collected under this condition for attendees at outreach and widening participation events/programmes aimed at prospective undergraduate applicants is not kept separate from other personal data so as to enable the long-term tracking and monitoring of the success of those initiatives.

###### **Preventing or detecting unlawful acts**

#### This condition applies to personal data about criminal convictions and offences as part of the recruitment process of staff and students.

#### We will, however, only collect information about criminal convictions if it is appropriate given the nature of the role/course and where we are legally able to do so. We will either collect information about criminal convictions as part of the recruitment process or we may be notified of such information directly by the data subject in the course of their working/studying at the University. University staff may be required to hold a Disclosure Certificate from the Disclosure and Barring Service. The Certificate is proof that the individual concerned does not have any previous conviction under the Rehabilitation of Offenders Act 1974, which could be relevant to their work/study at the University.

#### During the collection of declarations of relevant unspent criminal convictions/criminal records checks, by student/job applicants where answers to those questions are mandatory (*other related substantial public interest conditions are (11) – Protecting the public against dishonesty etc (see below) and (12) – Regulatory requirements relating to unlawful acts and dishonesty etc.*). Any data is used solely for the purposes of safeguarding and protecting the University community, is kept separate from other personal data, and is handled in accordance with strict DBS and security check standards. It is not necessary to demonstrate a substantial public interest in this processing as set out in Paragraph 36 of Schedule 1 to the DPA Act 2018.

#### *(Note: this condition will also apply to specific disclosures to the police and other law enforcement agencies upon request, but an APD is not required with regard to such processing.)*

#### This condition also applies to special category personal data (e.g. about religious beliefs or political opinions) and/or personal data about criminal convictions and offences used without explicit consent in connection with the University’s obligations under the Prevent duty. Although much data processing surrounding Prevent matters is predicated on the consent of the individual, on occasion (especially during initial conversations about concerns) there may be a need to process such data in order to meet the substantial public interest in preventing people from being drawn into radicalisation or terrorism. Any personal data processed under this condition is handled very carefully on a strict need-to-know basis both within and, on occasion, beyond the University (e.g. disclosures to the OfS Prevent Lead or the police) in accordance with Government and OfS guidance.

###### **Protecting the public against dishonesty etc**

#### This condition applies to special category personal data or personal data about

#### criminal convictions and offences collected or used under fitness to practice

#### procedures for students on professional courses (e.g. Teaching). The processing of

#### such data is in the substantial public interest in ensure the safety of the public with

#### regard to students working towards becoming part of these regulated professions. Any

#### personal data processed under this condition is kept separate from other personal

#### data, and is solely used for this limited purpose in accordance with strict protocols that

#### are aligned to normal standards and industry-level guidance in this professional area.

###### **Counselling, etc.**

#### Most special category personal data or personal data about criminal convictions and offences used during student/staff counselling or other student/staff welfare support services is collected with the explicit consent of the data subject (in some cases through the provision of options such as ‘Prefer not to say’ on relevant data collection forms). On the rare occasions where the collection or use of special category personal data in a counselling/welfare context is not carried out with explicit consent, it would only be because a substantial public interest has been identified and is being acted upon (e.g. to prevent harm arising to the data subject or others by a disclosure to another part of the University.) On the rare occasions where the collection or use of personal data about criminal convictions and offences in a counselling/welfare context is not carried out with explicit consent, it would only be because an urgent need had been identified for the data to be disclosed (e.g. to the police, to prevent or detect crime – see (10) above).

###### **Statutory etc. and government purposes**

#### This condition applies when processing special category or personal data in the substantial public interest e.g. public health, where the University is fulfilling obligations under UK legislation which impact our staff, students and visitors. Any personal data processed under this condition is kept separate from other personal data, and is solely used for the stated purpose.

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#### The condition also applies when complying with other legal requirements, such as the requirement to disclose information in connection with legal proceedings.

##### **Part 3: Processing criminal convictions data**

###### **Legal claims**

#### The University may process criminal convictions data for the purposes of (i) legal proceedings; (ii) obtaining legal advice; or (iii) establishing, exercising or defending legal rights. This might include assessing the application of our policies, e.g. Disciplinary Policy, and/or formal claims before e.g. the Employment Tribunal or the OIAHE.

#### HOW AND WHY THE DATA PROCESSING UNDER THE CONDITIONS ABOVE MEETS THE UK GDPR PRINCIPLES IN ARTICLE 5/PART 4 CHAPTER 2 OF THE DPA 2018:

##### **The Accountability Principle**

##### The University has appropriate data protection policies and notices in place and maintains records of processing activities under Article 30 of the UK GDPR and Section 61 of the DPA 2018. We carry out data privacy impact assessments where appropriate in accordance with Articles 35 and 36 of the UK GDPR and section 64 of the DPA 2018 to ensure data protection by design and default.

##### **Lawfulness, fairness and transparency**

##### In all processing described above:

###### An appropriate lawful basis exists.

###### The processing is fair to the data subjects because it would always fall within their reasonable expectations.

###### A privacy notice(s) is supplied in advance outlining the processing (with the possible exception of urgent and specific disclosures in connection with personal data revealed in counselling or other welfare services where a real risk emerges to the wellbeing or safety of the data subject or others

##### **Purpose limitation**

##### The University does not process personal data for purposes that are incompatible with the purposes for which it is collected. As described under each condition above personal data is only processed for these limited purpose(s) and, where technologically/operationally feasible, is either kept separate from other personal data or access is restricted so as to prevent any additional use.

##### When we share special category data or criminal conviction data beyond the University we will ensure that the data transfers are compliant with relevant laws and regulations and if applicable we will use appropriate data sharing agreements and contracts.

##### **Data minimisation**

##### We collect personal data that is adequate, relevant and limited to the purposes for which it is processed. We ensure that the information we process is necessary for and proportionate to our purposes.

##### **Accuracy**

##### Personal data shall be accurate and, where necessary, kept up to date. Where we become aware that personal data is inaccurate or out of date, having regard to the purpose for which it is being processed, we will take every reasonable step to ensure that data is erased or rectified without delay.

##### **Storage limitation**

##### In every case above the data is stored in an identifiable form only while it remains necessary for the relevant purpose.

###### Data processed as part of exercising obligations or rights under employment law, social security law or the law relating to social protection is retained as described in the Privacy Notice: Employees, Workers and Contractors accessible here: <https://www.chi.ac.uk/about-us/policies-and-statements/data-protection>

###### Equalities monitoring data is removed almost immediately from its association with any individual and is only held in anonymised form.

###### Applicants’ (staff) criminal convictions declarations and DBS/security checks data are retained as described at: <https://www.chi.ac.uk/about-us/policies-and-statements/employment> (*Guidance on the Disclosure and Barring Service/DBS Secure Storage, Handling, Use, Retention and Disposal Policy*).

###### Applicants’ (students) criminal convictions declarations and DBS/security checks data are retained as described at: <https://www.chi.ac.uk/about-us/policies-and-statements/academic-and-student-support> (*Admissions Policy*)

###### Prevent-related information is retained as described at: <https://www.chi.ac.uk/about-us/policies-and-statements/academic-and-student-support> (*Safeguarding and Prevent Duty Policy*).

###### Fitness to Practise files are retained as described in the Professional Suitability and Fitness to Practice Policy accessible here: <https://www.chi.ac.uk/about-us/policies-and-statements/academic-and-student-support>.

###### Counselling files are retained as described at: <https://www.chi.ac.uk/study-us/student-services/student-support-and-wellbeing-privacy-notice>.

###### Data processed for the purposes of (i) legal proceedings; (ii) obtaining legal advice; or (iii) establishing, exercising or defending legal rights are retained as described in the Records Retention Schedule accessible here: <https://www.chi.ac.uk/about-us/policies-and-statements/data-protection>

##### **Integrity and confidentiality**

##### We have put in place appropriate technical, physical and organisational procedures to safeguard and secure the information we process about individuals. We have strict security standards, and all our staff are required to undertake data protection training. We limit access to your personal information to those employees, or third parties who have a business or legal need to access it.

##### **Retention and erasure arrangements**

##### In accordance with the accountability principle (Article 30 of the UK GDPR) the University maintains records of processing activities (Article 30 of the UK GDPR/Section 61 of the DPA 2018. Where applicable we carry out data protection impact assessments in accordance with Articles 35 and 36 of the UK GDPR and section 64 of the DPA 2018 to ensure data protection by design and default.

##### **Policy review statement**

##### This policy will be periodically reviewed and updated.

#### For further information contact the Data Protection Officer by email at DPOfficer@chi.ac.uk.