

POLICY / PROCEDURE TITLE		DATE OF APPROVAL
NCG Special Category Data and Criminal Convictions Data Policy		June 2024
APPROVED BY	VERSION NO.	VALID UNTIL
Executive Board	5	June 2025

OWNER	Director Risk & Assurance		
GROUP EXECUTIVE LEAD	Chief Finance Officer		
DOCUMENT TYPE	Policy <input checked="" type="checkbox"/> Group Procedure <input type="checkbox"/> Local Procedure <input type="checkbox"/>		
PURPOSE	This document has been produced in accordance with NCG's obligations under the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA 2018) to produce an appropriate policy explaining procedures relating to the processing of special category data and criminal conviction data.		
APPLICABLE TO	This policy applies to any person including but not limited to, employees, consultants, vendors, agency workers, contractors, service users, governors, trainees/students, volunteers and/or any other parties who have a business relationship with NCG.		
EQUALITY ANALYSIS COMPLETED [POLICIES ONLY]	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
	(If EA not applicable, please explain)		
KEY THINGS TO KNOW ABOUT THIS POLICY	<ol style="list-style-type: none"> <li>The UK GDPR defines special category data as personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.</li> <li>This policy is designed to comply with the relevant legislation including the Data Protection Act 2018 (DPA 2018) and the UK General Data Protection Regulation (GDPR).</li> </ol>		
EXPECTED OUTCOME	Readers are expected to understand the organisational position on data protection, know their responsibilities in relation to the policy and comply with the terms of the policy.		

MISCELLANEOUS	
LINKED DOCUMENTS	<ul style="list-style-type: none"> <li>NCG Data Protection Policy</li> </ul>

	<ul style="list-style-type: none"><li>• NCG Learner Privacy Notice</li><li>• NCG Staff Privacy Notice</li><li>• NCG Business to Business Privacy Notice</li><li>• NCG Criminal Records Disclosure Policy</li></ul>
<b>KEYWORDS</b>	<ul style="list-style-type: none"><li>• Data Protection Act 2018</li><li>• UK GDPR</li><li>• Special category data</li><li>• Criminal conviction data</li></ul>

## Equality Impact Assessment

EQUALITY IMPACT ASSESSMENT			
	Yes	No	Explanatory Note if required
EIA 1 - Does the proposed policy/procedure align with the intention of the NCG Mission and EDIB Intent Statement in Section 2?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The answer to this must be YES
EIA 2 - Does the proposed policy/procedure in any way impact unfairly on any protected characteristics below?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Disability / Difficulty	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Gender Reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Marriage and Civil Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Religion or Belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Sexual Orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA3 - Does the proposed policy/processes contain any language/terms/references/ phrasing that could cause offence to any specific groups of people or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA4 - Does the policy/process discriminate or victimise any groups or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA 5 - Does this policy/process positively discriminate against any group of people, or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA 5 - Does this policy/process include any positive action to support underrepresented groups of people, or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this could be yes or no as positive action is lawful. However, an explanation must be provided for clarity.
EIA 6 - How do you know that the above is correct?	This policy has been reviewed by the NCG Executive Board.		

## **1. PURPOSE**

This document has been produced in accordance with NCG's obligations under the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA 2018) to produce an appropriate policy explaining procedures relating to the processing of:

1. Special category data.
2. Criminal conviction data.

The UK GDPR sets out high level conditions for the processing of special category data and personal data relating to criminal convictions and offences. The DPA 2018 sets out additional specific conditions for such processing in Schedule 1.

Part 4 of Schedule 1 requires that organisations that process these types of personal data have an appropriate policy document in place. This document explains our legal bases for processing and satisfies this requirement.

## **2. SCOPE**

This policy applies and relates to the processing of all personal data relating to:

- Current and former NCG employees, contractors, and candidates for new positions.
- Prospective, current, and former NCG learners.
- Representatives from organisations (such as businesses, charities and local authorities) and sole traders who have an intended, established or previous relationship with NCG.
- Representatives from organisations NCG have engaged with as part of market research.
- Any other individual about whom NCG processes information.

## **3. SPECIAL CATEGORY DATA**

The UK GDPR defines special category data as:

- personal data revealing racial or ethnic origin;
- personal data revealing political opinions;
- personal data revealing religious or philosophical beliefs;

- personal data revealing trade union membership;
- processing of genetic data;
- processing of biometric data (used for the purpose of uniquely identifying a natural person);
- data concerning health;
- data concerning a natural person's sex life; and
- data concerning a natural person's sexual orientation.

As with all personal data, the UK GDPR requires that organisations identify a lawful basis under Article 6 in order to process special category data. Further to this, Article 9(1) of the UK GDPR prohibits the processing of special category data unless one of the conditions in Article 9(2) is met. Please see **Appendix 1** for details of Article 9(2). Schedule 1 of the DPA 2018 introduces further conditions and safeguards that must be met in order to proceed with processing for some points in Article 9.

The tables below explain NCG's lawful basis and the conditions for processing special category data:

Students			
Data Type	Lawful Basis	UK GDPR Article 9 Condition	DPA 2018 Condition
Ethnicity	Public Interest - Public Sector Equality Duty	(2)(b)	Schedule 1, Part 2, Paragraph 8 – Equality of Opportunity or treatment.
	Legal Obligation – Equality Act 2010	(2)(g)	Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose.
Health	Public Interest - Public Sector Equality Duty	(2)(b)	Schedule 1, Part 2, Paragraph 8 – Equality of Opportunity or treatment.
	Legal Obligation – Equality Act 2010		Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose. Schedule 1, Part 2, Paragraph 16 – Support for individuals with a particular disability or medical condition.

			Schedule 1, Part 1, Paragraph 3 Public Health.
Religion	Public Interest - Public Sector Equality Duty	(2)(b) (2)(g)	Schedule 1, Part 1 – Employment, Social Security and Social Protection.
	Legal Obligation – Equality Act 2010		Schedule 1, Part 1 – Employment, Social Security and Social Protection. Schedule 1, Part 1, Paragraph 8 – Equality of Opportunity or treatment.
Biometric Data	Explicit Consent	(2)(a)	N/A

Staff			
Data Type	Lawful Basis	UK GDPR Article 9 Condition	DPA 2018 Condition
Ethnicity and Race	Public Interest - Public Sector Equality Duty	(2)(b) (2)(g)	Schedule 1, Part 1 – Employment, Social Security and Social Protection.
	Legal Obligation – Equality Act 2010		Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose. Schedule 1, Part 2, Paragraph 8 – Equality of opportunity or treatment. Schedule 1, Part 2, Paragraph 9 – Racial or ethnic diversity at senior levels of organisation.
Health	Public Interest - Public Sector Equality Duty	(2)(b) (2)(g) (2)(i)	Schedule 1, Part 1 – Employment, Social Security and Social Protection.
	Legal Obligation – Equality Act 2010		Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose. Schedule 1, Part 1, Paragraph 1 – Employment, social security and social protection.

			<p>Schedule 1, Part 2, Paragraph 8 – Equality of Opportunity or treatment.</p> <p>Schedule 1, Part 2, Paragraph 16 – Support for individuals with a particular disability or medical condition.</p> <p>Schedule 1, Part 1, Paragraph 3 Public Health.</p>
Religion	Public Interest - Public Sector Equality Duty	(2)(b) (2)(g)	Schedule 1, Part 1 – Employment, Social Security and Social Protection.
	Legal Obligation – Equality Act 2010		<p>Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose.</p> <p>Schedule 1, Part 1 – Employment, Social Security and Social Protection.</p> <p>Schedule 1, Part 1, Paragraph 8 – Equality of Opportunity or treatment.</p>
Sexual Orientation	Public Interest - Public Sector Equality Duty	(2)(b) (2)(g)	Schedule 1, Part 1 – Employment, Social Security and Social Protection.
	Legal Obligation – Equality Act 2010		<p>Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose.</p> <p>Schedule 1, Part 1, Paragraph 8 – Equality of Opportunity or treatment.</p>
Biometric	Explicit Consent	(2)(a)	N/A

#### 4. CRIMINAL CONVICTIONS AND OFFENCE DATA

Criminal Conviction and Offence Data is data relating to an individual that reveals information about any offences committed, or other related security measures. Article 10 of the UK GDPR states that the processing of this type of data shall be carried out only under the control of official authority or when the processing is authorised by domestic law.

The tables below set out NCG's conditions for processing data relating to criminal convictions.

Staff		
Data Type	Lawful Basis	DPA 2018 Condition
Unspent & Spent Criminal Convictions	Legal Obligation – Keeping Children Safe in Education, Part 3.	Schedule 1, Part 1 – Employment, Social Security and Social Protection.
	The rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 – Schedule 1, Part 2, Paragraph 10.	Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose.
	Safeguarding Vulnerable Groups Act 2006	Schedule 1, Part 2, Paragraph 18 - Safeguarding of children and of individuals at risk.

Student		
Data Type	Lawful Basis	DPA 2018 Condition
Unspent Criminal Convictions	Legal Obligation – Keeping Children Safe in Education, Part 3.	Schedule 1, Part 1 – Employment, Social Security and Social Protection.
	The rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 – Schedule 1, Part 2, Paragraph 10.	Schedule 1, Part 2, Paragraph 18 - Safeguarding of children and of individuals at risk.
	Safeguarding Vulnerable Groups Act 2006	

Students are asked to declare any unspent criminal convictions upon application to their chosen college and this information shall be processed by the college's safeguarding team in line with their local procedure.

Staff are asked to declare any criminal convictions upon application to NCG and this information shall be processed in line with the NCG Criminal Records Disclosure Policy.



## 5. COMPLIANCE WITH DATA PROTECTION PRINCIPLES

To ensure that NCG adhere to the UK GDPR Accountability Principle, NCG have put in place appropriate technical and organisational measures to meet the requirements of accountability.

These include:

- The appointment of a Data Protection Officer who reports directly to the highest management level.
- Taking a data protection by design and default approach to our activities.
- Maintaining records of our processing activities.
- Adopting and implementing data protection policies and procedures.
- Ensuring that personal data is safeguarded from a contractual perspective by putting written contracts in place with our data processors which clearly establish the roles, responsibilities and instructions involved in the processing of NCG's personal data.
- Implementing appropriate security measures in relation to the personal data we process.
- Carrying out Data Protection Impact Assessments (DPIA) for any high-risk processing activities.
- NCG regularly review our accountability measures and update or amend them as required.

The following table describes the measures that NCG takes to comply with the Data Protection Principles in relation to special categories of personal data:

Data Protection Principles	How NCG Complies
Data is processed lawfully, fairly and in a transparent manner.	NCG shall ensure that personal data is only processed where there is a clear lawful basis, and the processing meets the requirements set out in section 1.0,2.0,3.0 and 4.0 of this policy. We provide clear information about our processing in our Privacy Notices.
Data is collected for specific, explicit and legitimate purposes and not further processed in a manner that is	NCG shall ensure that personal data is only collected for specific, explicit and legitimate purposes and shall not further process for purposes that are incompatible with the purposes for which it was

incompatible with those purposes.	originally collected. Where we share data with another party, we will document their legal bases for processing.
Data is adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed.	NCG shall ensure that personal data collected is adequate, relevant and not excessive. The information processed shall be necessary for and proportionate to the purposes for which it was collected. Where personal data is provided to or obtained by NCG, but it is not relevant to our stated purposes, staff shall ensure that the data is erased.
Data is accurate and where necessary, kept up to date.	Where NCG staff become aware that personal data is inaccurate or out of date, having regard to the purpose for which it is being processed, they shall take every reasonable step to ensure that the data is erased or rectified without delay. If staff decide to not erase or rectify it, they shall consult with the DPO, and the decision shall be documented.
Data is kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which it is processed.	NCG shall retain information processed for the periods set out in NCG Privacy Notices and the NCG Document Retention Schedule.
Data is processed in a manner that ensures appropriate security including protection against unauthorised or unlawful processing.	NCG shall process electronic information within our secure network. The systems we use to process personal data allow us to erase, update or pseudonymise or anonymise personal data. Hard copy information shall be processed within our secure premises. Our electronic and physical storage areas have appropriate access controls and security measures applied.

## 6. STATEMENT ON IMPLEMENTATION

Upon approval, this policy will be uploaded to the policy portal and communicated to staff via The Business Round-Up and via the NCG intranet and website.

## 7. STATEMENT ON EQUALITY AND DIVERSITY

NCG is committed to providing equality of opportunity. Further details of our aims and objectives are outlined in our [Equality Diversity Inclusion and Belonging Strategy](#).

This policy has been assessed to identify any potential for adverse or positive impact on specific groups of people protected by the Equality Act 2010 and does not discriminate either directly or indirectly. In applying this policy, we have considered eliminating unlawful discrimination, promoting equality of opportunity and promoting good relations between people from diverse groups.

## 8. STATEMENT ON CONSULTATION

This policy has been reviewed by the Policy Review Council prior to approval at Executive Board.

VERSION CONTROL				
Version No.	Documentation Section/Page No.	Description of Change and Rationale	Author/Reviewer	Date Revised
1	New Policy	N/A	Director of Assurance & Risk	Nov 2019
2	Full Review	Annual review inc. Covid-19 data processing & changes for UK GDPR	Director of Assurance & Risk	Nov 2020
3	Full Review	Annual review inc. updated to simplify language & reflecting change to UK law	Director of Assurance & Risk	Jan 2022
4	Full Review	Minor wording updates for consistency with ICO terminology (Section 2)	Director of Assurance & Risk	June 2023
5	Full Review	The policy has been reviewed to ensure it complies with the ICO guidelines. Minor amendments. Transferred to new template.	Director of Assurance & Risk	June 2024

## **APPENDIX 1**

UK GDPR Article 9(2) Conditions for processing special category and criminal offence data:

- a) The data subject has given explicit consent to the processing of their personal data for one or more specified purposes, except where domestic law provides that the prohibition referred to in paragraph 1 may not be lifted by the data subject.
- b) Processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by domestic law or a collective agreement pursuant to domestic law providing for appropriate safeguards for the fundamental rights and the interests of the data subject.
- c) Processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent.
- d) Processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects.
- e) Processing relates to personal data which are manifestly made public by the data subject.
- f) Processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.
- g) Processing is necessary for reasons of substantial public interest, on the basis of domestic law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and

specific measures to safeguard the fundamental rights and the interests of the data subject.

- h) Processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of domestic law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in Article 9 paragraph 3.
- i) Processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of domestic law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy.
- j) Processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on domestic law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.