



<u>Policy Title</u>	NCG Special Category Data and Criminal Convictions Data Policy	
<u>Policy Category</u>	Compliant	
<u>Owner</u>	Data Protection Officer	
<u>Group Executive Lead</u>	Executive Director of Governance, Assurance and Risk	
<u>Date Written</u>	October 2019	
<u>Considered By</u>	Executive Board	
<u>Approved By</u>	Executive Board	
<u>Date Approved</u>	April 2021	
<u>Equality Impact Assessment</u>	The implementation of this policy is not considered to have a negative impact on protected characteristics	
<u>Freedom of Information</u>	This document will be publicly available through the Groups Publication Scheme.	
<u>Review Date</u>	November 2021	
<u>Policy Summary</u>	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 way NCG processes Special Category Data and Criminal Conviction Data.	
<u>Applicability of Policy</u>	<u>Consultation Undertaken</u>	<u>Applicable To</u>
Newcastle	No	Yes
Newcastle Sixth Form	No	Yes
Carlisle	No	Yes
Kidderminster	No	Yes
Lewisham	No	Yes
Southwark	No	Yes
West Lancashire	No	Yes
Professional Services	No	Yes

<u>Changes to Earlier Versions</u>	
<u>Previous Approval Date</u>	<u>Summarise Changes Made Here</u>
<u>November 2019</u>	<u>Annual review.</u>
<u>November 2020</u>	<u>Annual review inc. Covid-19 data processing & changes for UK GDPR</u>

<u>Linked Documents</u>	
<u>Document Title</u>	<u>Relevance</u>
Data Protection Policy 2019-2020	Directly relates to the operation of this document
DBS & Criminal Disclosure Policy	Directly relates to the operation of this document

NCG Special Category Data and Criminal Convictions Data Policy

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.

The UKGDPR sets out high level conditions for the processing of special categories of personal data and personal data relating to criminal convictions and offences. DPA 2018 sets out specific conditions for such processing in Schedule 1. Part 4 of DPA 2018 Schedule 1 requires that organisations that process these types of personal data have an appropriate policy document in place.

Scope

This policy applies to all NCG colleges, divisions and employees and relates to the processing of all personal data relating to staff, students and any other individual about whom NCG processes information.

1. Special Category Data

Special category data is data that the GDPR says is more sensitive and requires heightened data protection measures. Data that reveals the following about an individual is considered to be Special Category Data:

- Racial or Ethnic Origin.
- Political Opinions.
- Religious or Philosophical beliefs.
- Trade Union Membership.
- Genetic Data.
- Biometric Data.
- Health Data.
- Sex life or Sexual Orientation.

As with all personal data, GDPR requires that organisations identify a lawful basis under Article 6 in order to process it. Further to this, Article 9(1) of GDPR prohibits the processing of special categories of personal data unless one of the following conditions in Article 9(2) is met:

- 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) (as supplemented by section 19 of the 2019 Act) 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.

The DPA 2018 introduces further conditions and safeguards that must be met in order to proceed with processing for points b, g, h, i, j above. These conditions can be found in Schedule 1 of DPA 2018.



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

Students			
Data Type	Lawful Basis	GDPR Article 9 Condition	DPA 2018 Condition
Ethnicity	Public Interest - Public Sector Equality Duty	(2)(b) (2)(g)	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
Health	Public Interest - Public Sector Equality Duty	(2)(b) (2)(g)	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
		(2)(i)	Schedule 1, Part 2, Paragraph 16 – Support for individuals with a particular disability or medical condition Schedule 1, Part 1, Paragraph 3 Public Health
Biometric Data	Consent	(a)	N/A

Staff			
Data Type	Lawful Basis	GDPR Article 9 Condition	DPA 2018 Condition
Ethnicity	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



			<p>Schedule 1, Part 2, Paragraph 8 – Equality of opportunity or treatment</p> <p>Schedule 1, Part 2, Paragraph 9 – Racial or ethnic diversity at senior levels of organisation</p>
Race	<p>Public Interest - Public Sector Equality Duty</p> <p>Legal Obligation- Equality Act 2010</p>	<p>(2)(b)</p> <p>(2)(g)</p>	<p>Schedule 1, Part 1 – Employment, Social Security and Social Protection</p> <p>Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose</p> <p>Schedule 1, Part 2, Paragraph 8 – Equality of Opportunity or treatment</p> <p>Schedule 1, Part 2, Paragraph 9 – Racial or Ethnic Diversity at Senior Levels of Organisation</p>



Staff			
Data Type	Lawful Basis	GDPR Article 9 Condition	DPA 2018 Condition
Health	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	(2)(i)	Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose Schedule 1, Part 1, Paragraph 1 – Employment, social security and social protection Schedule 1, Part 2, Paragraph 8 – Equality of Opportunity or treatment 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 2, Paragraph 6 – Statutory and Government Purpose Schedule 1, Part 1 – Employment, Social Security and Social Protection Schedule 1, Part 1, Paragraph 8 – Equality of Opportunity or treatment

Sexual Orientation	Public Interest - Public Sector Equality Duty Legal Obligation-Equality Act 2010	(2)(b) (2)(g)	Schedule 1, Part 1 – Employment, Social Security and Social Protection Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose Schedule 1, Part 1, Paragraph 8 – Equality of Opportunity or treatment
Biometric	Consent	(2)(a)	N/A

2. 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 GDPR states that the processing 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 table below sets 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. The rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 – Schedule 1, Part 2, Paragraph 10. Safeguarding Vulnerable Groups Act 2006	Schedule 1, Part 1 – Employment, social security and social protection Schedule 1, Part 2, Paragraph 6 – Statutory and Government Purpose Schedule 1, Part 2, Paragraph 18 - Safeguarding of children and of individuals at risk

Students		
Data Type	Lawful Basis	DPA 2018 Condition
	Legal Obligation –	

Unspent Criminal Convictions	Keeping Children Safe in Education, Part 3. The rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 – Schedule 1, Part 2, Paragraph 10. Safeguarding Vulnerable Groups Act 2006	Schedule 1, Part 1 – Employment, social security and social protection Schedule 1, Part 2, Paragraph 18 - Safeguarding of children and of individuals at risk
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Students are asked to declare any unspent criminal convictions upon application to their chosen college and this information shall be processed by the colleges 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 DBS & Criminal Disclosure Policy.

3. Compliance with Data Protection Principles

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 our 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 ensuring we have written contracts in place with our data processors.
- Implementing appropriate security measures in relation to the personal data we process.
- Carrying out data protection impact assessments for our high-risk processing.
- NCG regularly review our accountability measures and update or amend them as required.

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

1. 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 and 2.0 of this policy. Data subjects will be fully informed about



the processing of their personal data via the relevant NCG privacy notice and where applicable, on the relevant consent forms.

2. Data is collected for specific, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

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 originally collected.

3. 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 it is erased.

4. 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.

5. 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 Policy.

6. 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.