
Appropriate policy document for the processing of special categories of personal data and personal data about criminal convictions and offences.

1. Purpose of the policy

- 1.1. This is the 'appropriate policy document' for De Montfort University that sets out how the University will protect special category and criminal convictions personal data.
- 1.2. It meets the requirement at paragraph 1 (b) of Schedule 1 to the Data Protection Act 2018 that an appropriate policy document be in place where the processing of special category personal data is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection.
- 1.3. It also meets the requirement at paragraph 5 of Schedule 1 to the Data Protection Act 2018 that an appropriate policy document be in place where the processing of special category personal data, or personal data relating to criminal convictions or offences, is necessary for reasons of substantial public interest. The specific conditions under which data may be processed for reasons of substantial public interest are set out at paragraphs 6 to 28 of Schedule 1 to the Data Protection Act 2018.

2. Scope and applicability

2.1 Personal data

- 2.1.1 The UK GDPR defines personal data as information from which a natural (living) person can be identified, either directly or indirectly.
- 2.1.2 This policy covers personal data for which DMU is the data controller. Under data protection law, the data controller is the body that legitimately determines the purpose and means of the processing.
- 2.1.3 This policy covers the University's processing of Criminal conviction and offence Data and Special Category Data in relation to applicants to study and enrolled students on all courses. It also covers conviction and offence Data and Special Category Data in relations to job applicants and employees of DMU.

3. Policy

3.1 Relevant processing conditions from Schedule 1 of the Data Protection Act 2018 requiring a policy document

- 3.1.1. **Condition 1 – Employment, social security and social protection.** This

condition applies to special category personal data collected or used for the purposes of complying with employment, social security or social protection laws. As an employer there are various laws relating to employment and social protection that must be complied with, for instance, laws relating to parental leave, adoption leave, statutory leave, maternity pay, sick pay, unfair dismissal and laws promoting equality and diversity and preventing discrimination and harassment. Special category personal data under this condition shall only be used for the purposes of complying with legal obligations relating to employment or social protection laws.

- 3.1.2. **Condition 6 – Statutory or government purposes.** Special category personal data may be processed where it is in the substantial public interest to do so in order to comply with a legal obligation The University is subject to a variety of legal obligations which may require it to process or disclose sensitive personal data to Government or statutory bodies such as the Department for Education, the Charity Commission, Office for Students, the ICO, etc.
- 3.1.3. **Condition 7 – Administration of Justice.** Special category personal data or criminal conviction data may be processed for the purposes of the administration of justice. The use of special category data may be required for the purposes of complying legal proceedings or pursuing remedies.
- 3.1.4. **Condition 8 – Equality of opportunity or treatment.** Most special category personal data used for equal opportunities monitoring purposes is collected under our legal obligation to comply with Equality and Diversity legislation. 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 that condition, is kept separate from other personal data, and is solely used for this limited purpose. 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.
- 3.1.5. **Condition 10 – Preventing or detecting unlawful acts.** This condition applies to personal data about criminal convictions and offences used:
- During due diligence screening of prospective major donations, to ensure that the University does not unlawfully collect the proceeds of crime (see also Paragraph 14 – Preventing fraud and Paragraph 15 – Suspicion of terrorist financing or money laundering, either or both of which may on occasion become relevant). Any personal data about criminal convictions and offences used for such purposes is gathered from reputable public sources.
 - (ii) During the collection of declarations of relevant unspent criminal convictions/criminal records checks by student/job applicants where answers to those questions are mandatory (see also Paragraph 11 – Protecting the public against dishonesty etc. and Paragraph 12 – Regulatory. requirements relating to unlawful acts 2 and dishonesty etc.).
 - (iii) During the collection of declarations of relevant unspent criminal convictions in the course of recruitment exercises where answers to those questions are

mandatory (see also Condition 18 – Safeguarding of children and of individuals at risk which is also relevant). Criminal conviction information is sought by the University on the ground of a reasonable concern that applicants who are as yet un-rehabilitated may repeat the conduct that gave rise to the unspent conviction. The information is sought to prevent harm occurring to other staff and students.

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. By virtue of Paragraph 36 of Schedule 1 to the DPA Act 2018, it is not necessary to demonstrate a substantial public interest in the above 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 based 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

3.1.6. **Condition 11 – 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. medicine). 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 (e.g. of the General Medical Council) in this professional area.

3.1.7. **Condition 17 – 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). 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.) 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 Paragraph 10 above).

3.1.8. **Condition 18 – Safeguarding of children and of individuals at risk.**

This condition applies to personal data about criminal convictions and offences collected in connection with the delivery of residential events to prospective undergraduate applicants, some of whom are aged under 18, and solely in relation to a mandatory question on the registration forms for such events asking attendees to declare any relevant unspent criminal convictions. These data are used solely for safeguarding purposes and to ensure that these events can be run in a safe manner for all attendees.

This condition applies to the collection of declarations of relevant unspent criminal convictions in the course of recruitment exercises where answers to those questions are mandatory (see also Condition 10 – Preventing or detecting unlawful acts which is also relevant). This data is used to assess the suitability of candidates for the post; including, assessing the existence and magnitude of any risk of harm that may be posed by the applicant to vulnerable students with whom they will inevitably have close contact.

By virtue of Paragraph 36 of Schedule 1 to the Data Protection Act 2018, it is not necessary to demonstrate a substantial public interest in such processing. This condition also applies to the processing of special categories of personal data which may relate to individuals that pose a safeguarding risk to the interests of children or other individuals at risk. This personal data may be processed by the University for safeguarding those at risk at the university or, where it is appropriate to do so, passed to third parties for their own safeguarding purposes. Such personal data shall only be processed to the extent that it is necessary for the purpose of the legitimate interests of the University or, if applicable, the third party concerned.

4. Roles and responsibilities

All staff are responsible for the protection of personal data. Staff should ensure that they follow DMU's policies and procedures that relate to the processing of Special Category and Criminal Conviction and Offence categories of personal data.

The Data Protection Officer (DPO) is responsible for monitoring DMU's compliance with data protection laws, DMU data protection policies and procedures, awareness raising, training and audits.

The Information Governance Manager is responsible reviewing and updating this policy.

The Information Governance team have a responsibility to help with concerns and issues, not just to investigate when things have gone wrong?

5. Other Related laws, regulations, and guidance

- [Human Rights Act 1998 \(Article 8\)](#)
- [Rehabilitation of Offenders Act 1974](#)



6. Related documents

- Data Protection Policy

7. Document control

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V1	N/A	Paul Starkey			