

21ST MAY 2018

CRIMINAL RECORDS POLICY

1. INTRODUCTION

- 1.1 This policy supplements the Company's DATA PROTECTION POLICY (EMPLOYMENT).
- 1.2 This document sets out the Company's policy on asking questions about a prospective (or existing) employee's criminal record, and carrying out Disclosure and Barring Service (DBS) checks.
- 1.3 This policy sets out our commitment to comply with the DBS Code of Practice and our data protection obligations, to treat prospective employees fairly and not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed. Its purpose is to set out how we comply with our data protection obligations in respect of criminal records information and seek to protect such information, and to ensure that staff understand and comply with the rules governing the collection, use and deletion of criminal records information to which they may have access in the course of their work.
- 1.4 We are committed to complying with our data protection obligations and the DBS Code of Practice in relation to criminal records information, in particular:
- (a) in relation to the circumstances in which we seek criminal records information;
 - (b) by being concise, clear and transparent about how we obtain and use such information, and how (and when) we delete it once it is no longer required; and
 - (c) by ensuring the correct handling, use, storage, retention and disposal of DBS certificates and certificate information.
- 1.5 The HR Department is responsible for data protection compliance within the Company, including in relation to criminal records information. If you have any questions or comments about the content of this policy or if you need further information, you should contact Di Arthur, HR Manager – di@paretofm.com
- 1.6 Having a criminal record will not necessarily bar you from working with us. We will take into account the circumstances and background of any offences and whether they are relevant to the position in question, balancing the rights and interests of the individual, our employees, customers/clients, suppliers and the public.
- 1.7 We will treat all applicants, employees and volunteers fairly but reserve the right to withdraw an offer of employment if you do not disclose relevant information, or if a DBS check reveals information which we reasonably believe would make you unsuitable for the role.

2. SCOPE AND DEFINITIONS

- 2.1 This policy applies to criminal records information relating to job applicants and current and former staff, including employees, temporary and agency workers, interns, volunteers and apprentices.

- 2.2 Staff should refer to the Company's DATA PROTECTION POLICY (EMPLOYMENT) and DATA PROTECTION PRIVACY NOTICE] – PeopleHR/Documents/Policies - <https://paretofm.peoplehr.net/> and, where appropriate, to its other relevant policies.
- 2.3 This policy has been drafted with the assistance of a representative group of employees to ensure that it is clear and easy to understand. We will review and update this policy as required in accordance with our data protection obligations. It does not form part of any employee's contract of employment and we may amend, update or supplement it from time to time. We will circulate any new or modified policy to staff when it is adopted.
- 2.4 The definitions set out in the Company's DATA PROTECTION POLICY (EMPLOYMENT) apply to terms used in this policy.

3. ASKING FOR CRIMINAL RECORDS INFORMATION

- 3.1 Before recruiting for any post, the HR department will, with advice from a Director of the Company assess whether it is justified in seeking criminal records information for that particular post (see paragraph 3.3 below) and, if so:
 - (a) whether it is appropriate to limit the information sought to offences that have a direct bearing on suitability for the job in question; and
 - (b) whether the information should be verified with the DBS.
- 3.2 If an assessment under paragraph 3.1 has been carried out for the same or a similar post within the last [12] months, the HR department may rely on that assessment.
- 3.3 The Company will be justified in obtaining criminal records information for a particular post if it is necessary:
 - (a) for the performance of the employment contract for that post;
 - (b) in order for the Company to comply with a legal obligation to which it is subject;
 - (c) in order to protect the vital interests of clients, suppliers and Pareto FM.
 - (d) for the purposes of the Company's legitimate interests.
- 3.4 The level of criminal records information and DBS check that the Company is entitled to request (ie a criminal records certificate (CRC) or enhanced criminal records certificate (ECRC)) will depend on the post for which the prospective employee's suitability is being assessed. Further details are set out in Appendix A.
- 3.5 We will only ask an individual to provide criminal records information in relation to convictions and cautions that the Company would be legally entitled to see in a DBS check for the relevant post (see paragraph 3.4 above), ie:

- (a) if the Company is justified in seeking criminal records information for the post, [and the post is not exempt from the Rehabilitation of Offenders Act 1974], we will ask applicants to complete the criminal records information form set out on the applicable country-dependent website, which states that applicants are not required to disclose convictions that are spent under the Rehabilitation of Offenders Act 1974; and
- 3.6 If the information sought can be limited to offences that have a direct bearing on suitability for the job in question, the HR department will amend the criminal records information form accordingly.
- 3.7 Where a DBS check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that an application for a DBS certificate will be submitted in the event of the individual being offered the position.
- 3.8 Applicants will only be asked to complete a criminal records information form before an offer of employment is made unconditional; they will not be asked to do so during the earlier short-listing, interview or decision-making stages.
- 3.9 Before an individual is asked to complete a criminal records information form, they will be provided with a copy of this policy.
- 3.10 If the Company is not justified in seeking criminal records information for the post, it will not ask an applicant for criminal records information.
- 3.11 If it is assessed that the Company should use the DBS to verify criminal records information, the Company will:
 - (a) provide the individual concerned with a copy of the Company's data handling policy (set out in Appendix B) before asking them to complete a DBS application form or asking for their consent to use their information to access the DBS update service;
 - (b) make every subject of a DBS check aware of the existence of the DBS Code of Practice and makes a copy available on request. and
 - (c) comply with the DBS Code of Practice.
- 3.12 The Company may not rely on a previously-issued DBS certificate.
- 3.13 Once criminal records information has been verified through a DBS check, the Company will:
 - (a) if inconsistencies emerge between the information provided by the individual and the information in the DBS certificate, give the applicant the opportunity to provide an explanation in accordance with paragraph 4;
 - (b) record that a DBS check was completed and whether it yielded a satisfactory or unsatisfactory result; and
 - (c) delete the DBS certificate and any record of the information contained in it unless, in exceptional circumstances, a Director of the Company, assesses that it is clearly relevant

to the ongoing employment relationship, to allow for consideration and resolution of any disputes of complaints.

- 3.14 If, in accordance with paragraph 3.13 0, the HR Department will assesses that the information in the DBS certificate is relevant to the ongoing employment relationship, it (and any record of the information contained in it) will be kept securely for no longer than is necessary, and no more than six months.
- 3.15 The Company will not seek criminal records information from any source other than the individual concerned or the DBS.
- 3.16 DBS certificate information will be handled and kept in accordance with the Company's policy on handling DBS certificate information set out in Appendix B.

4. WHERE AN UNPROTECTED CONVICTION OR CAUTION IS DISCLOSED

- 4.1 If the Company has concerns about the information that has been disclosed by the DBS, or the information is not as expected, the Company will discuss its concerns with the prospective employee and carry out a risk assessment.
- 4.2 The Company has a legal duty, when recruiting staff to work in regulated activity with children or vulnerable adults, to check whether they are on the relevant children's or adults' barred list. If a prospective employee's name does appear on the relevant barred list, it would be against the law for the Company to employ them to work or volunteer with the relevant group.
- 4.3 [If a prospective employee is not barred from working with the relevant group, but nevertheless has a criminal record, it is up to the Company to decide on their suitability for the role. The Company will not refuse a prospective employee employment simply on the basis that they have a criminal record. Before making a decision, the Company will:
- (a) give the prospective employee the opportunity to address its concerns before making any decisions; and
 - (b) carry out a risk assessment.
- 4.4 In carrying out a risk assessment, the Company will take account of:
- (a) the relevance of the conviction or other matter revealed to the position in question;
 - (b) the seriousness of the offence or other matter revealed;
 - (c) the circumstances of the offence;
 - (d) the age of the offence;
 - (e) whether there is a pattern of offending; and
 - (f) whether circumstances have changed since the offending took place.

5. TRAINING

The Company will ensure that all those within the organisation who are involved in the recruitment process:

- 5.1 have been suitably trained to identify and assess the relevance and circumstances of offences; and
- 5.2 have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, eg the Rehabilitation of Offenders Act 1974.

APPENDIX A - LEVEL OF DBS CHECK AND FILTERING**1 REQUESTING A DBS CERTIFICATE**

1.1 The level of DBS check that the Company is entitled to request will depend on the position for which the prospective employee's suitability is being assessed. The Company may request:

- (a) a criminal record certificate (CRC) if the position is protected by the Rehabilitation of Offenders Act 1974;
- (b) an enhanced criminal record certificate (ECRC) if the position is:
 - (i) excepted from the protections of the Rehabilitation of Offenders Act 1974 (ie included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended); and
 - (ii) prescribed in the Police Act 1997 (Criminal Records) Regulations 2002[. OR ; and]
- (c) [in addition, a search of the [children's OR adults'] barred list if the position is:
 - (i) eligible for an ECRC; and
 - (ii) prescribed in the Police Act 1997 (Criminal Records) Regulations 2009 as one for which the [children's OR adults'] barred list may be checked.]

2 FILTERING OF PROTECTED CONVICTIONS AND CAUTIONS

2.1 Certain old and minor convictions and cautions are 'protected', which means:

- (a) they are filtered out of a DBS check;
- (b) they need not be disclosed by prospective employees to the Company; and
- (c) they will not be taken into account by the Company in making decisions about employing a prospective employee.

2.2 Certain 'listed offences' will never be filtered out. The list includes offences which are particularly serious, relate to sexual or violent offending or are relevant in the context of safeguarding.

2.3 A conviction will be a protected conviction (ie filtered) if:

- (a) the offence was not a listed offence;
- (b) it did not result in a custodial sentence (or sentence of service detention);
- (c) it is the individual's only conviction; and
- (d) where the individual was an adult at the time of conviction, 11 years or more have passed since the date of the conviction (or five years six months or more have passed since the date of conviction if the individual was under 18 at the time of conviction).

2.4 A caution will be a protected caution (ie filtered) if:

- (a) the offence was not a listed offence; and

- (b) where the individual was an adult at the time of the caution, six years or more have passed since the date of the caution (or two years or more have passed since the date of conviction if the individual was under 18 at the time of conviction).

- 2.5 As part of an ECRC, the police may also disclose information that they reasonably believe is relevant and ought to be included.
- 2.6 For further guidance on filtering, see [the DBS filtering guidance](#).

APPENDIX B - DATA HANDLING**1 STORAGE AND ACCESS**

The Company will ensure that DBS certificate information is kept securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

2 HANDLING

- 2.1 In accordance with section 124 of the Police Act 1997, the Company will ensure that certificate information is only passed to those who are authorised to receive it in the course of their duties. The Company maintains a record of all those to whom certificates or certificate information has been revealed. It is a criminal offence to pass this information to anyone who is not entitled to receive it.

3 USAGE

Certificate information must only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

4 RETENTION

- 4.1 Once a recruitment (or other relevant) decision has been made, the Company does not keep certificate information for any longer than is necessary. This is generally for a period of up to twelve months, to allow for the consideration and resolution of any disputes or complaints.
- 4.2 If, in very exceptional circumstances, it is considered necessary to keep certificate information for longer than six months, we will consult the DBS about this and will give full consideration to the data protection and human rights of the individual before doing so.
- 4.3 Throughout this time, the usual conditions regarding the safe storage and strictly controlled access will prevail.

5 DISPOSAL

- 5.1 Once the retention period has elapsed, we will ensure that any DBS certificate information is immediately destroyed by secure means, eg by shredding, pulping or burning. While awaiting destruction, certificate information will not be kept in any insecure receptacle (eg waste bin or confidential waste sack).
- 5.2 We will not keep any photocopy or other image of the certificate or any copy or representation of the contents of a certificate. However, notwithstanding the above, we may keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, the position for
- 5.3 which the certificate was requested, the unique reference number of the certificates and the details of the recruitment decision taken.