

# GDPR Criminal Records Information Policy

SMF	Chief Operating Officer	Certificated Individual	Head of HR
Date of last review	October 2018	Date next due for review	
Compliance approval required?	Y	Remuneration Committee approval required?	N
Risk Committee approval required?	N	Audit Committee approval required?	N
Board Approval required?	N	Funder approval required?	N
Summary of changes: Audit box added to policy			

Note: Please note this policy should be read in conjunction with Optimum’s Code of Conduct listed [here](#).

At Optimum, we really do believe that it’s our people who are our main competitive advantage – the ‘thing’ that sets us apart from our competitors. To this end we want to ensure that we recruit and retain the very best people. As part of our commitment to colleagues working at Optimum, we want to ensure that we meet our regulatory and legislative obligations, including how we process the data that you submit to us. At Optimum, in line with our overarching company value of ‘Do Right’, doing the right thing isn’t optional, it’s simply part of our DNA.



## 1.Introduction

1.1 This policy supplements Optimum's **Data Protection Policy (Employment)**.

1.2 This document sets out Optimum'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:

1.4.1 in relation to the circumstances in which we seek criminal records information;

1.4.2 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

1.4.3 by ensuring the correct handling, use, storage, retention and disposal of DBS certificates and certificate information.

1.5 Optimum's data protection officer is responsible for informing and advising Optimum and its staff on its data protection obligations, including in relation to criminal records information, and for monitoring compliance with those obligations and with Optimum's policies. If you have any questions or comments about the content of this policy or if you need further information, you should contact the Data Protection Officer by email at [DPO@optimumcredit.co.uk](mailto:DPO@optimumcredit.co.uk).

## 2. Policy statement

2.1 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.

2.2 We will treat all applicants, employees, fixed term contractors, contractors, consultants, temps, interns, apprentices and work placements 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.

## 3. Scope and definitions

3.1 This policy applies to criminal records information relating to all applicants (successful and unsuccessful) and current and former employees, fixed term contractors, contractors, consultants, temps, interns, apprentices and work placements.

3.2 Individuals should refer to Optimum's **Data Protection Policy (Employment)** and **Data Protection Privacy Notices** and, to our other relevant policies for more information.

3.3 We will review and update this policy regularly 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. New or modified policy information will be made available to

colleagues via the company wiki.

3.4 The definitions set out in Optimum's **Data Protection Policy (Employment)** apply to terms used in this policy.

#### **4. Asking for criminal records information**

4.1 Because of the nature of the work we undertake, and the regulatory environment in which we operate, all roles in Optimum will be subject to a DBS check. (see paragraph 4.3 below for further information) Optimum will maintain a record of what level of check each role should be subject to (basic or standard) – see Appendix 1:

4.2 Optimum will be justified in obtaining criminal records information for all posts:

4.2.1 for the performance of the employment contract for that post;

4.2.2 in order for Optimum to comply with a legal obligation to which it is subject;

4.2.3 to protect the vital interests of customers and/or other colleagues regarding the personal/sensitive data; and/or

4.2.4 for the purposes of Optimum's legitimate interests, including regulatory obligations and best practice initiatives.

4.3 The level of criminal records information and DBS check that Optimum will request will depend on the post for which the recruit's suitability is being assessed. Further details are set out in Appendix 1.

4.4 We will only ask an individual to provide criminal records information in relation to convictions and cautions that Optimum would be legally entitled to see in a DBS check for the relevant post (see paragraph 4.2 above), i.e.:

4.4.1 if Optimum is justified in seeking criminal records information, 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 in the Optimum Credit application form, which states that applicants are not required to disclose convictions that are spent under the Rehabilitation of Offenders Act 1974 ; and

4.5 Application forms and job adverts will contain a statement that an application for a DBS certificate will be submitted as part of the recruitment process.

4.6 In order to help ensure we meet our regulatory best practice obligations, applicants will be asked to complete a criminal records information form at the time they apply for a role with Optimum Credit.

4.7 Before an individual is asked to complete a criminal records information form, they will be provided with:

4.7.1 a copy of this policy , via a link to which will be automatically emailed in response to applications submitted to [jobs@optimumcredit.co.uk](mailto:jobs@optimumcredit.co.uk)

4.7.2 a copy of Optimum's data handling policy (set out in Appendix 2) usually via an emailed link, before asking them to complete a DBS application form or asking for their consent to use their information to access the DBS update service; and

4.7.3 make every subject of a DBS check aware of the existence of the DBS Code of Practice and makes a copy available on request. A copy is available [here](https://wiki.optimumcredit.net/); and

4.7.4 comply with the DBS Code of Practice.

4.8 Optimum will not rely on a previously-issued DBS certificate.

4.9 Once criminal records information has been verified through a DBS check, Optimum will:

4.9.1 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 5;

4.9.2 maintain a record that a DBS check was completed and whether it yielded a satisfactory or unsatisfactory result; and

4.9.3 delete the DBS certificate and any record of the information contained in it unless, it is clearly relevant to the ongoing employment relationship (e.g. to allow for consideration and resolution of any disputes or complaints or for audit purposes).

4.10 If, 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 required - the certificate will usually be deleted when the employment relationship ceases.

4.11 Optimum will not seek criminal records information from any source other than the individual concerned or the DBS.

4.12 DBS certificate information will be handled and kept in accordance with Optimum's policy on handling DBS certificate information set out in Appendix 2.

## **5. Where an unprotected conviction or caution is disclosed**

5.1 If Optimum has concerns about the information that has been disclosed by the DBS, or the information is not as expected, Optimum will discuss its concerns with the prospective employee and carry out a risk assessment.

5.2 In carrying out a risk assessment, Optimum will take account of:

5.2.1 the relevance of the conviction or other matter revealed to the position in question;

5.2.2 the seriousness of the offence or other matter revealed;

5.2.3 the circumstances of the offence;

5.2.4 the age of the offence;

5.2.5 whether there is a pattern of offending; and

5.2.6 whether circumstances have changed since the offending took place.

At the same time Optimum will take consideration of our responsibilities to comply with legislation and regulation requirements. These include, but are not limited to:

- The EU General Data Protection Regulation (GDPR)/Data Protection Act 2018
- FCA Financial crime guides
- FCA Handbook and SYSC Guidelines

## 6. Training

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

6.1 have been suitably trained on the relevant process to follow, should the DBS check show as anything but clear.

## Appendix 1

### Level of DBS check and filtering

#### 1. Requesting a DBS certificate

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

1.1.1 A criminal record certificate (CRC) if the position is protected by the Rehabilitation of Offenders Act 1974, or in line with FCA best practice guidance;

1.1.2 Standard checks – ExCo members, SMFs and Certificated colleagues will have a standard DBS check for one of more of the following reasons relating to their role: • A Senior Manager carrying out a significant management certification function under SYSC rules • A Certification function relating to Significant Management responsibilities • A Certification function requiring qualifications • A Certification function relating to the management of certification employees

1.1.3 Basic checks – all other applicants, employees, temporary, casual or agency staff, contractors, student and/or work placements will be subject to basic check (unless, in exceptional circumstances, the need is waived by the Risk Director or his designated substitute), due to them having access to customer and/or employee data.

#### 2. Filtering of protected convictions and cautions

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

2.1.1 they are filtered out of a DBS check;

2.1.2 they need not be disclosed by prospective employees to Optimum; and

2.1.3. they will not be taken into account by Optimum 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 (i.e. filtered) if:

2.3.1 the offence was not a listed offence;

2.3.2 it did not result in a custodial sentence (or sentence of service detention);

2.3.3 it is the individual's only conviction; and

2.3.4. 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 (i.e.filtered) if:

2.4.1 the offence was not a listed offence; and

2.4.2 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 Enhanced Criminal Record Certificate (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 2 Data handling**

### **1. Storage and access**

Optimum 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, Optimum will ensure that certificate information is only passed to those who are authorised to receive it in the course of their duties. Optimum 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.

2.2 Once the DBS certificate has been inspected, it will be destroyed in accordance with the code of practice.

### **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, Optimum does not keep certificate information for any longer than is necessary. This is generally for a period of up to six 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 e.g. by shredding, pulping or burning. While awaiting destruction, certificate information will not be kept in any insecure receptacle (e.g. 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 which the certificate was requested, the unique reference number of the certificates and the details of the recruitment decision taken.

## 6. Acting as an umbrella body

6.1 Before acting as an umbrella body (an umbrella body being a registered body which countersigns applications and receives certificate information on behalf of other employers or recruiting organisations), we will take all reasonable steps to satisfy ourselves that they will handle, use, store, retain and dispose of certificate information in full compliance with the code of practice and in full accordance with this policy.

6.2 We will also ensure that any body or individual, at whose request applications for DBS certificates are countersigned, has such a written policy and, if necessary, will provide a model policy for that body or individual to use or adapt for this purpose.

## 7. DBS logo

Optimum will not copy or use the DBS logo without prior approval of the DBS.

From:  
<https://wiki.optimumcredit.net/> -

Permanent link:  
[https://wiki.optimumcredit.net/doku.php/whole\\_company/sign\\_off/criminal\\_records\\_information\\_policy](https://wiki.optimumcredit.net/doku.php/whole_company/sign_off/criminal_records_information_policy)

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