



## **John Wheatley College**

### **Board of Management**

# **Management of Criminal Records Information Policy and Procedure**

## **1. Introduction**

The College has a duty to ensure that it operates procedures which will assist in the protection of children and adults who are vulnerable. In particular it will be an offence for the College to employ an individual who is barred from undertaking regulated work with children and protected adults.

The aim of this Policy is to assist the College to make safer recruitment and placement decisions and assess the suitability of applicants, staff, learners and members of the Board of Management, for positions of trust. The College is committed to the promotion of equality of opportunity and will endeavour to treat all staff, applicants for positions (staff and Board) and learners for placements who have a criminal record fairly. It will not discriminate unfairly against an individual on the basis of conviction or other information revealed. John Wheatley College will ensure fair and appropriate use of information disclosed through a Criminal History check.

The College will ensure that its procedure for the management of personal sensitive data which is supplied as part of a criminal records check complies with:

- The Protection of Vulnerable Groups (Scotland) Act 2007;
- The Police Act 1997 (Part V);
- the Code of Practice published by the Scottish Ministers under section 122 of the Police Act 1997 (SG/2011/18) regarding the correct

handling, use, storage, retention and disposal of disclosure information;

- the Equality Act 2010;
- the Data Protection Act 1998;
- the College's Document Retention Policy; and
- any other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of information.

## **2. Legislation**

The Protection of Vulnerable Groups (Scotland) Act 2007 was commenced on 28 February 2011 and places a duty on the College not to employ for regulated work with children or protected adults any person who is listed as barred from that type of work.

The College and the activities undertaken within its normal functions come within the legislation's definition of regulated work with children. Regulated work with children is defined in the legislation and is not solely in terms of working with children. All College staff, volunteers and work placements, members of the Board of Management and regular contractors are included within the terms of the Act. Learners who have a work placement involving regulated work with children will also be included.

The Protection of Vulnerable Groups (Scotland) Act 2007 also covers work with protected adults. The normal functions of the College are not covered within the legislation but a few posts will be undertaking regulated work. The current posts in this category are included in Appendix 1. This list may be updated from time-to-time. Learners who have a work placement involving regulated work with protected adults will also be included.

The Protection of Vulnerable Groups (Scotland) Act 2007 creates the PVG Scheme. Individuals can only be a member of the PVG Scheme if they are not listed as barred from doing regulated work with children or working with protected adults. Being a member of the PVG Scheme related to regulated work with children is sufficient for the College to determine that an individual is not barred from doing this type of work.

In addition to The Protection of Vulnerable Groups (Scotland) Act 2007, Part V of The Police Act 1997 allows the College to seek a relevant

criminal history check for the purposes of employment, placement in a position or learner work placement.

The College is provided with criminal record information from Disclosure Scotland on behalf of Scottish Ministers in one of the prescribed forms listed below:

- Scheme Record – the Scheme Record is designed for use by organisations when asking an individual who does, or is being recruited to do, regulated work for them, to join the PVG Scheme for the first time or where the Scheme Record Update reveals a change to vetting information. It is the individual who makes the application and both the individual and the organisation will be provided with a copy of the Scheme Record;

The Scheme Record provides information of the types of regulated work for which the individual is a Scheme member and thereby not barred from regulated work of that type. It will also contain details of all convictions on record, whether spent or unspent under the Rehabilitation of Offenders Act. This means that even minor convictions no matter when they occurred will be included. It will also include other vetting information related to convictions and cautions as well as non-conviction information and some civil orders. This level of check will apply for positions listed in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003.

Each Scheme member will have a unique number and individuals are required to keep this number and their Scheme Record safe. Scheme members are required to inform Disclosure Scotland of any change of name or gender and should provide information on any change to their employment or personal circumstances. The College will be notified by Disclosure Scotland if the individual ceases to become a Scheme member;

- Scheme Record Update – the Scheme Record Update provides information relating to PVG Scheme membership and notification if additional vetting information has been added since the last Scheme Record was issued. The additional vetting information will not be supplied to the College. The College will use this when asking an individual who is already a Scheme member (and has a copy of their last Scheme Record) to do regulated work or undertake a work placement involving regulated work in the case of a learner; and
- Criminal Records Certificate – the Criminal Records Certificate applies to positions which involve a degree of contact with children under 18 or vulnerable adults 18 or over which is not covered by the PVG Scheme.

It also includes positions listed in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003. It will contain details of all unspent convictions (in terms of the ROA) on record. Depending on the role, as defined in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 it may contain information on spent convictions.

All candidates invited for interview for employment, work placement, volunteers, Board members and learners accepted for specific programmes of study with the College will be advised in advance of the College's requirement for PVG Scheme membership and that a criminal records check will be requested in the event of being offered a position.

Failure to be, or become, a member of the PVG Scheme will result in the College not making a final offer of appointment. In the case of learners advice will be provided as to their potential future in their chosen programme of study.

### **3. Criminal History Check**

The College undertakes criminal record checks on:

- all potential staff, prior to appointment. No one will commence employment with the College unless in exceptional circumstances and it is specifically agreed in writing by the Principal or Senior Vice Principal;
- learners in certain academic areas when they are to be located in a relevant work placement; and
- all potential members of the Board of Management prior to appointment.

The College will require contractors and partner organisations, where the legislative criteria is met, to provide confirmation that individuals' providing a service to the College or who will be supervising or working with College learners within in the terms of regulated work with children are members of the PVG Scheme. The independent Clerk to the Board will be covered by this procedure.

## **4. Procedures**

### **4.1 Recruitment and Selection**

All applicants invited to attend an interview in accordance with the College's Recruitment and Selection Policy and Procedure will be required to complete a Criminal Conviction Self Declaration Form. The Criminal Conviction Self Declaration Form will be submitted, at interview, in a sealed envelope and held in the recruitment file. Only if the College is considering the applicant for the position shall the envelope be opened and reviewed by the Human Resources Section.

The College encourages all applicants called for interview to provide details of their criminal record at an early stage in the application process. The College undertakes to ensure that this information is only viewed by the Human Resources Section and the Senior Vice Principal if required.

The College may invite the candidate to attend a meeting to ask questions about their criminal record prior to a decision being taken about an offer of employment. At the meeting the College will ensure an open and measured discussion on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to a withdrawal of a conditional offer of employment.

When a recruitment decision has been made the contents of all recruitment files are destroyed. These are generally retained for a period of six months, to allow for the consideration and resolution of any disputes or complaints.

The College's Human Resources Section will check the evidence required for an application to become a member of the PVG Scheme but Disclosure Scotland, as part of their check, has the right to seek further confirmation if required.

### **4.2 Offer of Appointment**

Receipt of confirmation of PVG Scheme membership and/or satisfactory criminal records check will be one factor considered by the College in making an employment decision. The information received as part of a PVG Scheme Record or Criminal Record Certificate is classed as sensitive personal information in terms of the Data Protection Act 1998.

The College supports and applies the eight Data Protection Principles contained in the Data Protection Act. The College will treat as confidential all information received as part of Scheme Records and Criminal Records Certificates. It will restrict access to that information and will destroy the

information as soon as it has served its purpose for the College. Copies will be retained only as long as necessary and relevant and relates to the College's needs.

A record of posts holders, PVG Scheme membership number, Scheme Record number or Scheme Record Update number and date of issue will be securely maintained in the College's computerised Human Resources system. A separate PVG Scheme Register will be maintained and held securely for Board members and learners. This data will be held only as long as necessary and will normally be destroyed when the individual leaves the College.

#### **4.3 PVG Scheme Applications for College Staff, Potential Staff and Members of the Board of Management**

An individual who undertakes regulated work with children or protected adults will be invited to join the PVG Scheme by completing an 'Application to Join PVG Scheme'. Individuals who are already members of the PVG Scheme will be invited to complete an 'Existing PVG Scheme Member Application'.

A PVG Scheme application is made by an individual and that application is checked and countersigned by the College. The College's Lead Signatory is the Human Resources Manager. The Senior Vice Principal and the Human Resources Officer are also Counter Signatories.

Information received from Disclosure Scotland will be received and checked by the Human Resources Manager or Human Resources Officer.

#### **4.4 PVG Scheme Record**

A copy of the PVG Scheme Record is issued by Disclosure Scotland to the College and the individual concerned.

Receipt of the Scheme Record indicates that an individual is not barred from doing regulated work with children or protected adults.

The other vetting information contained in the Scheme Record will be checked against the applicants Criminal Conviction Self Declaration Form in the case of a new recruit. Where there is no vetting information the individual's personal record will be endorsed to indicate a check has been undertaken and was satisfactory. The PVG Scheme Record and Criminal Conviction Self Declaration Form will then be destroyed by the Human Resources Manager or Human Resources Officer by shredding. In the case of Board members the PVG Scheme Membership and Scheme Record number and will be recorded in a secure file maintained by the

College's Human Resources Section. The PVG Scheme Record will then be destroyed.

If an individual has a PVG Scheme Record (ie. not barred from regulated work with children) which discloses other vetting information this will be discussed with the Senior Vice Principal.

These actions might include where the Scheme Record:

- indicates minor offences which occurred some time ago or offences which are more recent and the offences do not have an impact on the employee's employment or continued employment, no further action will be taken. The employee will be informed of this decision and their computerised HRS file will be endorsed to indicate a check has been undertaken and the Scheme Record was acceptable. In the case of a potential employee where the information contained in the Scheme Record differs from the Criminal Conviction Self Declaration Form or has an impact on the position for which they are being considered the College will make a decision related to the withdrawal of the conditional offer of employment;
- indicates more serious offences which may have an impact on the candidate's suitability for the post for which they are to be employed. The individual will be required to attend a meeting. The College will make a decision related to the conditional offer of employment or continued employment of the individual concerned in the case of an existing employee.

The College would anticipate in some cases, such as where there are convictions for fraud or theft, it may be necessary to consult the Principal prior to any decision. If the individual is to continue in employment their record on the HRS will be endorsed to indicate that a criminal record check has been undertaken. In the case of a potential employee, where the information contained in the Scheme Record differs from the Criminal Conviction Self Declaration Form the College will make a decision related to the withdrawal of the conditional offer of employment; and

- involves a member of the Board of Management (who is not an employee of the College) or applicant for the Board of Management the information will be discussed with the Senior Vice Principal and a decision will be made in relation to further action, where appropriate.

All disclosure information will be managed by the Human Resources Manager and destroyed as soon as the College has made a decision relating to the Scheme Record.

The College is committed to the fair treatment of its staff, potential staff, Board Members and users of its services regardless of offending background. The College actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records.

The College selects candidates for interview based on their skills, qualifications/experience and competence.

Not being a member of the PVG Scheme will bar an individual from employment at the College or being a member of the Board of Management.

Learners on programmes that require placements which involve doing regulated work with children or protected adults must be or become a member of the PVG Scheme. Not being a member of the PVG Scheme may impact on the learner's choice of study and future employment area.

Having a criminal record (while being a member of the PVG Scheme) will not necessarily bar employees from working with the College or learners being eligible for placements connected with their course of study. This will depend on the nature of the position or course of study and the circumstances and background of the offences. It will be the responsibility of the host organisation to decide whether or not a learner is suitable for placement.

#### **4.5 PVG Scheme Applications for College Learners**

PVG Scheme applications for College learners will relate to learners on particular courses such as Care and Child Care who will require to undertake a placement in a care setting doing regulated work.

If the learner declines or is unable to become a member of the PVG Scheme the College will not progress any placement in a regulated work situation.

The learner will complete a PVG Scheme application. Applications will be checked and the individual's identity confirmed by the Guidance Manager or the Guidance Staff. The Guidance Manager will confirm to the Human Resources Manager or the Human Resources Officer that the application has been completed appropriately. The application will be signed and sent to Disclosure Scotland by the Human Resources Manager or Human

Resources Officer. The learner will be issued with a copy of the Management of Criminal Information Policy and by the Guidance Team.

If other vetting information on a PVG Scheme Record indicates an offence or offences which could influence the individual's employment or placement in the sector of their choice the learner will be advised to seek advice from the Course Tutor for the area in which the learner is studying. Course Tutors will be advised that the learner may approach them to discuss their PVG Scheme Record. No information contained within the Scheme Record will be revealed to the Tutor. In the case of serious offences the content of the Scheme Record will be discussed with the Senior Vice Principal.

The learner and the College will receive a copy of the PVG Scheme Record from Disclosure Scotland. The learner should use their copy to present to the placement organisation and that organisation will decide if the student can be placed.

Scheme Records will be destroyed in accordance with this Policy.

## **5. Contractors and Partner Organisations**

The College will require contractors and partner organisation's staff or volunteers who are likely to come into unsupervised contact with College learners, as part of their normal duties, to be members of the PVG Scheme.

### **5.1 Contractors**

The College will require contractors to provide confirmation that individuals being placed in the College by a contractor, on a permanent or regular basis are members of the PVG Scheme. A letter of confirmation will require to be submitted by the contractor. The letter will be retained on file within the Human Resources Section.

### **5.2 Partner Organisations**

The College will require partner organisations to provide confirmation that individuals being placed in the College by a contractor, on a permanent or regular basis, where relevant, are members of the PVG Scheme. A letter of confirmation will require to be submitted by the partner organisation. This should be sought by the manager organising the partnership arrangement. The letter will be retained on file within the Human Resources Section.

## **6. Storage and Access**

As indicated above, the College applies the Data Protection Principles contained in the Data Protection Act 1998.

The College will only collect the information required to submit the PVG Scheme, PVG Scheme Update or Criminal Record Check application to Disclosure Scotland. This is the information required by the application form.

Explicit consent from the individual to collect this information is given when the individual signs the application form.

The College will retain PVG Scheme Records and other documents received in respect of a PVG Scheme application for as long as is necessary. The Human Resources Manager will be the College's main contact and will be responsible for the security and destruction of disclosed information. All documents are stored in a secured location in the Human Resources Section. Access is strictly controlled and limited to those personnel who are entitled to see it as part of their duties.

PVG Scheme Records will be destroyed once processed if no conviction is stated. HR computerised files will be endorsed to confirm that a check has been undertaken.

Where further action is required the PVG Scheme Record will be retained only as long as required for the action to take place. If the College requires to hold a record of any action this will be retained by the Human Resources Manager in a secure file in the College Human Resources Office.

## **7. Handling**

In accordance with Section 124 of the Police Act 1997 and Sections 66 and 67 The Protection of Vulnerable Groups (Scotland) Act 2007, criminal conviction and disclosure information is only passed to those who are authorised to receive it in the course of their duties. The College maintains a record of all those to whom criminal conviction and disclosure information has been revealed and recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

## **8. Usage**

The College will use PVG Scheme Records and criminal conviction information for the specific purpose for which it was requested.

No image or photocopy of Scheme Records will be made, however the following will be undertaken:

- a new employee will be added to computerised HR system an existing employee will have their record updated;
- the individual's unique PVG Scheme membership number, most current Scheme Record number and date of issue will be recorded in the HR system;
- Board member's PVG Scheme information will be kept in a computerised file by the Human Resources section until that individual no longer holds the Board position;
- learner's PVG Scheme information will be kept in a computerised file by the Human Resources section until that individual has completed their course of study; and
- date application received and sent to Disclosure Scotland,

## **9. Disposal**

When a recruitment decision has been made any PVG Scheme Record or Criminal Conviction Self Declaration Forms will be destroyed.

Recruitment information is generally destroyed after a period of six months, to allow for the consideration and resolution of any disputes or complaints. PVG Scheme Records will not be retained for a period any longer than necessary.

The College's copy of a PVG Scheme Record or Update Scheme Record received for a potential member of staff, existing member of staff, Board member, potential Board members or learner shall generally be destroyed within twenty four hours of being received. Scheme Records where a decision is required on vetting information shall be held in a secure location within the Human Resources Section until a decision has been made regarding what action, if any, should be taken.

PVG Scheme information will only be retained for longer than the periods identified above in exceptional circumstances and there is a need. This will be in relation to vetting information and the individual concerned will be informed in writing that this is the case and why.

## **10. Review of Policy**

This policy will be reviewed by the end of 2014 or sooner if required by legislation or in the interests of good practice.

## **11. Monitoring**

Responsibility for monitoring the application of this policy will rest with senior management.

## **12. Supporting Policies and Procedures**

- Dignity at Work Policy and Procedure
- Grievance Policy and Procedure
- Code of Discipline and Disciplinary Procedure
- Commendations and Complaints Procedure
- Public Interest Disclosure Policy
- Wellbeing Policy
- Recruitment and Selection Policy and Procedure for Recruitment and Selection
- Equal Opportunities Policy

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**Membership of the PVG Scheme - List of Posts**

The College undertakes a risk assessment approach for each individual post to consider whether or not they are involved in regulated work with children or protected adults in accordance with The Protection of Vulnerable Groups (Scotland) Act 2007. The undernoted roles have been identified, as a guide, as requiring PVG Scheme membership for the purpose of this Policy. However each individual post will be considered on its own merit based on the requirements of work undertaken.

**Regulated Work with Children**

Under the Act all Members of the Board of Management are automatically held to be doing regulated work with children.

All College staff (except some evening only staff), volunteers, work placements and regular contractors (except those who work out of College hours) are included within the terms of the Act. Learners who have a work placement involving regulated work with children will also be included.

**Regulated Work with Protected Adults**

The Protection of Vulnerable Groups (Scotland) Act 2007 also covers work with protected adults. The normal functions of the College are not covered within the legislation but a few posts will be undertaking regulated work. The current posts in this category include:

- Guidance Manager, Guidance Advisor and Careers Advisor;
- Depute Finance Manager and Bursary Officer;
- Assistant Principal as line manager to the Guidance Manager and Depute Finance Manager;
- Lecturers and Senior Lecturer who work within the Support for Learning Curriculum area; and
- Head of School – Core, as line manager to Senior Lecturer – Support for Learning.

Board Members are not eligible to join the PVG Scheme for protected adults.

Learners who have a work placement involving regulated work with protected adults will also be included.