



## Data Retention Policy

In gathering data in circumstances described in the Data Protection Policy the school applies the following guidelines to the retention of data. These provisions apply to the safe storage and disposal of data and records held.

NOTE: The Independent Inquiry into Child Sexual Abuse (the Goddard Inquiry) has issued the following statement: <https://www.iicsa.org.uk/sites/default/files/retention-instructions-and-data-protection-requirements.pdf>

In the light of the Goddard Inquiry and various high-profile safeguarding cases, emphasis is currently being placed on long-term, lifetime or even indefinite keeping of full records related to incident reporting.

The strong recommendation is that in the current climate that historic staff and pupil files, or any material potentially relevant for future cases, even if it has been held for long periods already, should be retained. Data protection issues should never put child safety at risk, nor take precedence over the general prevention and processing of safeguarding claims.

Such information held is accessible only by appropriate persons on a need-to-know basis, including within the school.

Greenfield School seeks to balance the benefits of keeping detailed and complete records - for the purposes of good practice, archives or general reference - with practical considerations of storage, space and accessibility. However, there are still legal considerations in respect of retention of records and documents which must be borne in mind. These include:

- statutory duties and government guidance relating to schools
- the law of confidentiality and privacy
- disclosure requirements in the course of litigation
- contractual obligations; and (last but by no means least relevant)
- the Data Protection Act ("DPA") and any superseding legislation such as GDPR (2018)

These have been considered in forming the minimum and maximum retention periods, but also what to keep and how to keep it.

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## 1. Meaning of "Record"

A "record" means any document or item of data which contains evidence or information relating to the school, its staff or pupils. Some of this material, but not all, will contain personal data of individuals as defined in the DPA.

An obvious example of the latter would be the Single Central Record held in respect of staff: however, a "record" of personal data could arise simply by holding an email on the school's systems.

Many, if not most, new and recent records will be created, received and stored electronically. Others (such as Certificates, Registers, or older records) will be original paper documents. The format of the record is less important than its contents and the purpose for keeping it.

### Digital records

Digital records can be lost or misappropriated in huge quantities very quickly. Access to sensitive data - or any large quantity of data - should as a minimum be password-protected and held on a limited number of devices only, with passwords provided on a need-to-know basis and regularly changed. Where 'cloud storage' is used, consider what data needs to be made available in this way. If personal information kept in this way is sensitive, or held in large quantities, digital encryption is advisable.

Emails (whether they are retained electronically or printed out as part of a paper file) are also "records" and may be particularly important: whether as disclosable documents in any litigation, or as representing personal data of the sender (or subject) for data protection/data privacy purposes. Again, however, the format is secondary to the content and the purpose of keeping the document as a record. The Bursar has agreed with the school's IT team the retention process for email history from staff who are leaving to ensure completeness of records should litigation or disclosable documentation be required.

### Paper records

Paper records security is vital - especially if the materials contain legally or financially sensitive data, as well as data personal to individuals.

Under the DPA, paper records are only classed as personal data if held in a "relevant filing system". This means organised, and/or indexed, such that specific categories of personal information relating to a certain individual are readily accessible, and thus searchable as a digital database might be. By way of example, an alphabetical personnel file split into marked dividers will likely fall under this category: but a merely chronological file of correspondence may well not. Personal Records of this nature at Greenfield School are under the control of the Bursar.

## 2. Personal Data

Some records will contain information about individuals eg. staff, pupils, consultants, parents, contractors - or indeed other individuals, whether they are a part of the school or some other third party (for example, another school). Particular legal requirements will therefore come into play.

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That type of information is likely to amount to "personal data" for the purposes of the DPA and therefore be subject to data protection laws which *may*, in places, conflict with aspects of these 'document retention' guidelines. Neither the statutory time limits by which legal claims must be made, nor the precise stipulations of private contracts or governmental organisations (eg the Disclosure and Barring Service, the 'DBS'), were necessarily drawn up with data protection law in mind.

For example, the DPA requires that personal data is only retained for as long as necessary - that is, necessary for the specific lawful purpose (or purposes) it was acquired. This will of course vary and may be either shorter or longer than the suggested document retention period, according to context. This is a nuanced area which may therefore require tailored, specific advice on a case-by-case basis.

As a general rule, statutory legal duties - or the duty to report to safeguard vital interests - will 'trump' data protection concerns in the event of any contradiction. Certain personal data may legitimately need to be retained or disclosed subject to a private contractual duty (eg under a parent contract).

However, a higher standard would apply to the processing of "*sensitive* personal data". By way of example a contractual duty, or other legitimate interest of the school or third party, would not of itself justify the retention or sharing of sensitive personal data - but 'protection of vital interests' might. Sensitive personal data includes data relating to an individual in respect of their health, race, religion, sexual life, trade union membership, politics or any criminal proceedings, offences or allegations.

### **3. Archiving and the destruction or erasure of Records**

All staff receive basic information on data management (through their Contract of employment and the Staff handbook) - issues such as security, recognising and handling sensitive personal data, safeguarding etc. Staff given specific responsibility for the management of records are provided specific Data Protection training which covers:

- Records - whether electronic or hard copy - are stored securely as above, including if possible with encryption, so that access is available only to authorised persons and the records themselves are available when required and (where necessary) searchable;
- Important records, and large or sensitive personal databases, are not taken home or - in respect of digital data - carried or kept on portable devices (whether CDs or data sticks, or mobiles and handheld electronic tablets) unless absolutely necessary, *in which case* it should be subject to a risk assessment and in line with an up-to-date IT use policy; Encryption will be adopted for SLT and Admin laptops once Windows 10 allows this functionality. In the interim, sensitive documents must be stored on Admin Common or Bursar Drives to minimise risk of data loss from stolen laptops in transit.
- Questions of back-up or migration are likewise approached in line with general school policy (such as professional storage solutions or IT systems) and not individual *ad hoc* action;
- Arrangements with external storage providers - whether physical or electronic (in any form, but most particularly "cloud-based" storage for Outlook and Double First Engage server

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records - are supported by robust contractual arrangements providing for security and access;

- Reviews are conducted on a regular basis, usually August annually, in line with the guidance below, to ensure that all information being kept is still relevant and - in the case of personal data - necessary for the purposes for which it is held (and if so, that it is accurate and up-to-date); and
- All destruction or permanent erasure of records, if delegated to a third party, is carried out securely - with no risk of the re-use or disclosure, or re-construction, of any records or information contained in them.

#### **4. Litigation**

The school will decide in specific circumstances whether it is necessary or desirable to keep records in case of possible future litigation. Generally speaking the School will be better placed to deal with claims if it has a strong corporate memory - including adequate records to support its position, or a decision that was made.

Ideally, therefore, records would not be disposed of until the limitation period for bringing a claim has passed. For most contracts that will mean 6 years from any breach (or 12 years in case of, say, a witnessed deed), but the date to start counting from is the last day of the period under contract. Where there has been early termination, this will be the relevant date to apply (once the appeal process has been concluded): but for pupils, limitation periods will only apply from the age of 18 years.

The period of 6 years also applies to many claims outside contract (such as fraud, mistake or negligence). For discrimination cases it is usually only 3 months. In the case of personal injury, and some other negligence claims, it is 3 years. However, if the harm is only discovered later – e.g. 'latent' damage, or some unseen injury - then the timer only starts from the point of discovery: subject, in the case of latent property damage, to a 15-year backstop.

In some cases the prompt may be the end of a calendar year, so for the purpose of this guidance a contingency is generally built in (e.g. 7 years where the statutory limitation is 6 years).

Finally, limitation periods may be dis-applied altogether by courts in the case of certain crimes or associated breaches of care (e.g. historic abuse), whether a charge is brought by the police or a school is sued under a private claim. It is not always possible to try a case where the evidence is inadequate, including due to a lack of corporate memory (e.g. records and witnesses). However, as recent cases and the Goddard Inquiry into child sexual abuse have shown, the courts and police will expect to see a full and proper record and inferences may be drawn otherwise.

Often these records will comprise personal or sensitive personal data (e.g. health or criminal allegations). In such instances, even justifiable reasons to keep records for many years will need to be weighed against personal rights. Recent 'historic' cases in the field of child protection make a cautious approach to record retention advisable and, from a DPA perspective, make it easier for a school to justify retention for long periods - even the lifetime of a pupil. But the longer potentially

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relevant personal data is retained, and the more sensitive material is kept on file, the greater the administrative burden on schools and the more serious the risk of security breach.

The most important steps a school can take to support such a policy are (a) having adequate notices and consents in both staff and parent contracts; and (b) ensuring any long-term records worth keeping are kept very secure, accessible only by trained staff on a need-to-know basis. Insurance documents will not be personal data and historic policies need to be kept for as long as a claim might arise.

### 5. Recording information

It is important that all staff bear in mind, when creating documents and records of any sort (and particularly email), that at some point in the future those documents and records could be disclosed - whether as a result of litigation or investigation, or because of a subject access request under the DPA. The watchwords of record-keeping are therefore accuracy, clarity, professionalism and objectivity.

### 6. Secure disposal of documents

For confidential, sensitive or personal information to be considered securely disposed of, it must be in a condition where it cannot either be read or reconstructed. Skips and 'regular' waste disposal will not be considered secure.

Paper records must be shredded using a cross-cutting shredder; CDs / DVDs / diskettes should be cut into pieces. Hard-copy images, AV recordings and hard disks should be dismantled and destroyed.

Where third party disposal experts are used they should ideally be supervised but, in any event, under adequate contractual obligations to the school to process and dispose of the information securely.

The following table has three main functions, to identify the key types of document concerned, to identify issues associated with those types of document and to act as an outline guide only.

TABLE OF RETENTION PERIODS

Type of Record/Document	Retention Period
<p>SCHOOL-SPECIFIC RECORDS</p> <ul style="list-style-type: none"> <li>• Registration documents of the School, i.e. Companies House records, DfE Records, Charity Commission Records</li> <li>• Attendance Register i.e. Admissions Register Daily Registers (on engage)</li> </ul>	<p>Permanent (or until closure of the school)</p> <p>6 years from last date of entry, then archive</p>

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<ul style="list-style-type: none"> <li>Minutes of Governors' meetings</li> <li>Annual curriculum, i.e. Mark Books, Assessments on Server, Timetables on server, curriculum planning on server (3 years)</li> </ul>	<p>6 years from date of meeting</p> <p>From end of year: 3 years (or 1 year for other class records: e.g. marks / timetables / assignments)</p>
<p><b><u>INDIVIDUAL PUPIL RECORDS</u></b></p> <ul style="list-style-type: none"> <li>Admissions: application forms, assessments, records of decisions i.e. Registration Form, Enquiry Form, P1, Pupil File, Contract.</li> <li>Examination results (external or internal) i.e. Senior School letters (central file). GL assessment on server (all class results)</li> <li>Pupil file including: <ul style="list-style-type: none"> <li>Pupil reports (engage)</li> <li>Email Communications with parents</li> <li>Pupil medical records part of P1 form, All about Me form, Engage records of P1 forms</li> </ul> </li> <li>Special educational needs records (to be risk assessed individually)</li> </ul>	<p><b>NB - this will generally be personal data</b></p> <p>25 years from date of birth (or, if pupil not admitted, up to 7 years from that decision).</p> <p>7 years from pupil leaving school</p> <p>ALL: 25 years from date of birth (subject where relevant to safeguarding considerations). Any material which may be relevant to potential claims should be kept for the lifetime of the pupil.</p> <p>Date of birth plus up to 35 years (allowing for special extensions to statutory limitation period)</p>
<p><b><u>SAFEGUARDING</u></b></p> <ul style="list-style-type: none"> <li>Policies and procedures - Staff Common Records, now archived on annual basis</li> <li>DBS disclosure certificates (6 monthly process to remove copies of certificates held (Dec/July))</li> </ul>	<p><b>NB - please read notice at the top of this note</b></p> <p>Keep a permanent record of historic policies</p> <p><u>No longer than 6 months</u> from decision on recruitment, unless DBS specifically consulted - but a record of the checks being made must be kept, if not the certificate itself.</p>

<ul style="list-style-type: none"> <li>Incident reporting Email records, Safeguarding Committee Log</li> </ul>	Keep on record for as long as any living victim may bring a claim (NB civil claim limitation periods can be set aside in cases of abuse). Ideally, files to be reviewed from time to time if resources allow and a suitably qualified person is available.
<u>CORPORATE RECORDS</u>	
<ul style="list-style-type: none"> <li>Certificates of Incorporation</li> </ul>	Permanent (or until dissolution of the company)
<ul style="list-style-type: none"> <li>Minutes, Notes and Resolutions of Boards or Management Meetings</li> </ul>	Minimum - 10 years
<ul style="list-style-type: none"> <li>Shareholder resolutions</li> </ul>	Minimum - 10 years
<ul style="list-style-type: none"> <li>Register of Members/Shareholders</li> </ul>	Permanent (minimum 10 years for ex-members/shareholders)
<ul style="list-style-type: none"> <li>Annual reports</li> </ul>	Minimum - 6 years
<u>ACCOUNTING RECORDS</u>	
<ul style="list-style-type: none"> <li>Accounting records</li> </ul>	Minimum - 6 years for UK charities from the end of the financial year in which the transaction took place
<ul style="list-style-type: none"> <li>Tax returns (Currently Not required for Greenfield School)</li> </ul>	Minimum - 6 years
<ul style="list-style-type: none"> <li>VAT returns (Currently Not required for Greenfield School)</li> </ul>	Minimum - 6 years
<ul style="list-style-type: none"> <li>Budget and internal financial reports</li> </ul>	Minimum - 3 years
<u>CONTRACTS AND AGREEMENTS</u>	
<ul style="list-style-type: none"> <li>Signed or final/concluded agreements (<i>plus any signed or final/concluded variations or amendments</i>)</li> </ul>	Minimum - 7 years from completion of contractual obligations or term of agreement, whichever is the later
<ul style="list-style-type: none"> <li>Deeds (or contracts under seal)</li> </ul>	Minimum - 13 years from completion of contractual obligation or term of agreement
<u>INTELLECTUAL PROPERTY RECORDS</u>	
<ul style="list-style-type: none"> <li>Formal documents of title (trade mark or registered design certificates; patent or utility model certificates)</li> </ul>	Permanent (in the case of any right which can be permanently extended, e.g. trade marks); otherwise expiry of right plus minimum of 7 years.

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<ul style="list-style-type: none"> <li>• Assignments of intellectual property to or from the school</li> </ul>	As above in relation to contracts (7 years) or, where applicable, deeds (13 years).
<ul style="list-style-type: none"> <li>• IP / IT agreements (including software licences and ancillary agreements e.g. maintenance; storage; development; co-existence agreements; consents)</li> </ul>	Minimum - 7 years from completion of contractual obligation concerned or term of agreement.
<u>EMPLOYEE / PERSONNEL RECORDS</u>	
<ul style="list-style-type: none"> <li>• Single Central Record of employees</li> </ul>	A permanent record of all mandatory checks that have been undertaken is filed on Bursar Drive
<ul style="list-style-type: none"> <li>• Contracts of employment</li> </ul>	7 years from effective date of end of contract
<ul style="list-style-type: none"> <li>• Employee appraisals or reviews PMRs on server</li> </ul>	Duration of employment plus minimum of 7 years
<ul style="list-style-type: none"> <li>• Staff personnel file</li> </ul>	As above, but <u>do not delete any information which may be relevant to historic safeguarding claims.</u>
<ul style="list-style-type: none"> <li>• Payroll, salary, maternity pay records</li> </ul>	Minimum - 6 years
<ul style="list-style-type: none"> <li>• Pension or other benefit schedule records</li> </ul>	Possibly permanent, depending on nature of scheme
<ul style="list-style-type: none"> <li>• Job application and interview/rejection records (unsuccessful applicants)</li> </ul>	Minimum 3 months but no more than 1 year
<ul style="list-style-type: none"> <li>• Immigration records</li> </ul>	Minimum - 4 years. In reality will be held with Personnel files in line with their retention period
<ul style="list-style-type: none"> <li>• Health records relating to employees</li> </ul>	7 years from end of contract of employment, again filed within Personnel files.
<u>INSURANCE RECORDS</u>	
<ul style="list-style-type: none"> <li>• Insurance policies (will vary - private, public, professional indemnity)</li> </ul>	Duration of policy (or as required by policy) plus a period for any run-off arrangement and coverage of insured risks: ideally, until it is possible to calculate that no living person could make a claim.
<ul style="list-style-type: none"> <li>• Correspondence related to claims/ renewals/ notification re: insurance</li> </ul>	Minimum - 7 years
<u>ENVIRONMENTAL &amp; HEALTH RECORDS</u>	
<ul style="list-style-type: none"> <li>• Maintenance logs</li> </ul>	10 years from date of last entry

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<ul style="list-style-type: none"> <li>Accidents to children recorded electronically in the Daybook on Engage. Any reports on paper to HSE in separate file</li> </ul>	25 years from birth (unless safeguarding incident)
<ul style="list-style-type: none"> <li>Accident at work records (staff) Still paper records at Greenfield</li> </ul>	Minimum - 4 years from date of accident, but review case-by-case where possible
<ul style="list-style-type: none"> <li>Staff use of hazardous substances – Log of substances refreshed annually.</li> <li>Risk assessments (carried out in respect of above)</li> </ul>	Minimum - 7 years from end of date of use  7 years from completion of relevant project, incident, event or activity.

FOOTNOTES:

1. General basis of Guidance:

Some of these periods are mandatory legal requirements (e.g. under the Companies Act 2006 or the Charities Act 2011), but in the majority of cases these decisions are at the discretion of Greenfield School. The guidance will therefore be based on practical considerations for retention such as limitation periods for legal claims, and guidance from Courts, weighed against whether there is a reasonable argument in respect of data protection.

- The High Court has found that a retention period of 35 years was within the bracket of legitimate approaches. It also found that it would be disproportionate for most organisations to conduct regular reviews, but currently the ICO (Information Commissioner's Office) still expects to see a responsible assessment policy (e.g. every 6 years) in place.
- Retention period for tax purposes should always be checked with the school's Accountants.
- Latent injuries can take years to manifest, and the limitation period for claims reflects this: so keep a note of all procedures as they were at the time, and keep a record that they were followed. Also keep the relevant insurance documents.

Policy Reviewed by:



Chair

Date : 7<sup>th</sup> May 2019

Next Review Due: May 2020

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