



Supporting Professionalism  
in Admissions

# SPA good practice guide

## Considerations for applicants with criminal convictions



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## Introduction

This good practice guide is intended to support staff involved with institutional policies and procedures covering applicants with criminal convictions, and for admissions staff considering those applicants. It is applicable to all admissions, both direct applications and admission to courses through UCAS, and all parts of the cycle. This document sets out the context for why many higher education providers consider criminal convictions as part of the admissions process. It should be noted that although we refer to 'convictions' throughout this document, there may be instances where disclosures include cautions and other records held by the police and other relevant agencies. The guide provides overarching good practice considerations in terms of policy and compliance, and is then split into good practice considerations for the four phases of the [applicant experience](#):

- **Pre-application** – individual consideration of higher education study and all activities prior to any commitment to commence an application for the given admissions entry cycle.
- **Application** – all activities from the point a learner has committed to start an application for the given admissions entry cycle, up to the point that application is considered by the institution(s) applied to.
- **Post-application** – all activities concerning a higher education (HE) provider's consideration of a submitted application, from the point of initial institutional assessment, through to when the applicant has been confirmed or guaranteed a place. **The bulk of the HE provider's consideration of a criminal conviction occurs in this stage, and we provide a detailed process flow which outlines a suggested good practice approach.**
- **Transition** – all post-confirmation activities, from the point of confirmation of an applicant's place, to the commencement of study and continuation through the student experience.

The [annexes](#) contain important additional information and template documents, and we strongly recommend you read them in conjunction with the main document.

### Supporting Professionalism in Admissions (SPA)

SPA is the independent and objective voice on UK higher education admissions. SPA promotes professionalism, fair admissions and access to higher education by developing and leading on evidence-based good practice in the recruitment and selection of students. For more information about SPA and our good practice, visit [www.spa.ac.uk](http://www.spa.ac.uk).

### Disclaimer

This good practice document is for general guidance only, and should not be taken as a list of obligations or a legal document. SPA does not offer legal advice and cannot take any responsibility for actions taken based on this information. Universities and colleges must always take their own legal advice as they see appropriate.

### Feedback

If you wish to discuss these good practice considerations in greater detail, or provide any feedback on this document, we would be happy to talk to you. Please get in touch via [enquiries@spa.ac.uk](mailto:enquiries@spa.ac.uk) or 01242 544891.

## Context

### The principles of fair admissions and applicants with criminal convictions

The high level principles of fair admissions that SPA promotes are those originally identified in the report 'Fair admissions to Higher Education: Recommendations for good practice'<sup>1</sup> that was published in 2004, known as the 'Schwartz Report'. These have since been widely accepted across the sector. A fair admissions system should:

- be transparent
- enable institutions to select students who are able to complete the course, as judged by their achievements and their potential
- strive to use assessment methods that are reliable and valid
- seek to minimise barriers for applicants
- be professional in every aspect and underpinned by appropriate institutional structures and processes

HE providers should take these principles into account when they develop and review their policies and procedures for considering applicants with criminal convictions. HE providers should ensure the information they provide to applicants is transparent, enabling them to make informed decisions about their applications, and that no unnecessary barriers are in place preventing or deterring well-qualified applicants with previous convictions from applying<sup>2</sup>. Given the complexity of the rules surrounding the consideration of applicants with criminal convictions, it is very important that HE providers have appropriate institutional structures and processes in place.

### Why do many higher education providers consider criminal convictions as part of the admissions process?

HE providers seek to admit the widest range of students who may benefit from their courses, seeing value in a broad range of talents, background, and opportunities – and this will include students with criminal convictions<sup>3</sup>. Staff also need to balance fairly their obligations towards their applicants, including those with criminal convictions, with their obligations to the entire student and staff community.

Most HE providers consider that they have a 'duty of care' to students, staff, and visitors. HE providers often consider that this duty is both 'moral' – their general responsibility to promote the welfare of their students and staff – and 'legal', in the form of a duty to take appropriate steps to protect students, staff, and visitors. In the area of criminal convictions, many HE providers take the view that they should consider the available information about whether an applicant has a 'relevant'

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<sup>1</sup> See: [www.spa.ac.uk/resources/what-fair-admissions](http://www.spa.ac.uk/resources/what-fair-admissions) for more information.

<sup>2</sup> Research from the USA suggests that the application attrition rates for those declaring a criminal conviction are significantly higher than application attrition rates for the general population. See for example: [communityalternatives.org/pdf/publications/BoxedOut\\_ExecSum.pdf](http://communityalternatives.org/pdf/publications/BoxedOut_ExecSum.pdf).

<sup>3</sup> It is worth noting that over 10.5 million people in the UK have a criminal record: [www.unlock.org.uk/policy-issues/key-facts/](http://www.unlock.org.uk/policy-issues/key-facts/) and certain groups, including ethnic minorities and those from poorer backgrounds, are [more likely to be affected by convictions](#).

(see below) criminal conviction as part of a holistic assessment of an individual and their suitability to study.

However, some HE providers take the view that even if an applicant declares they have a 'relevant' criminal conviction, it is not appropriate to investigate further (except where courses require disclosure), judging that this is outside their competence and unnecessary in connection with their duty of care.

Some courses which are closely linked to particular professions have their own strict requirements, governed by professional, statutory, and regulatory bodies (PSRBs) with regard to the background of the students admitted, and in these cases, the HE provider is **required** to ascertain whether any applicant has 'relevant' criminal convictions (see below).

HE providers will have considered a wide range of ethical, professional, and legal factors when deciding whether or not to investigate criminal convictions further. SPA recommends that whichever viewpoint is adopted, it should be made clear in relevant policies, and reviewed regularly in light of analysis and evidence, in the context of their own institution.

### **What is a 'relevant' criminal conviction?**

A 'relevant' criminal conviction is one which may have implications for the HE provider's duty of care towards the safety of their students, staff, and visitors. This includes convictions concerning violence, sexual offences, supply of drugs, as well as offences involving firearms, arson, and terrorism. UCAS provides a detailed list, which can be found in [Annex A](#).

### **What information does UCAS collect on behalf of HE providers and why?**

When an applicant completes the UCAS application, they are presented with two questions relating to criminal convictions.

1. The first is for all applicants and asks them to declare if they have a relevant unspent conviction. Applicants who have such a relevant unspent conviction simply tick a box to indicate its existence. No further information about the conviction is required.
2. The second question is **only** for applicants applying to courses leading to certain professions or occupations exempt from the *Rehabilitation of Offenders Act (1974)*. It is the responsibility of the institution to indicate when this question should be presented to the applicant. Applicants applying to these limited courses are asked to declare spent and unspent convictions that would appear on an enhanced criminal record check. As with the first question, the applicant simply ticks a box to declare the existence of a conviction within the definition set out in the help text. No further information on the conviction is requested by UCAS.

Both questions are accompanied by extensive supporting information and advice. The purpose of this help text is to assist applicants in responding to the questions correctly. For the first question, this includes explanations on what is meant by 'spent' and 'relevant'. For both questions, the help text includes information on how the higher education provider will handle applications where criminal convictions are declared, and why the question is being asked. References are also made

to other relevant bodies that may assist applicants further on these matters. The full help text is available in [Annex A](#).

### **Why do some courses require a criminal record disclosure, whereas others don't?**

Some courses require a criminal record disclosure from the relevant agency at the point of admission to the course. This is almost always because the course is closely linked to a particular profession. Such courses, like the professions to which they lead, are exempt from the *Rehabilitation of Offenders Act* because they involve close working with either children or vulnerable adults. As such, not only may disclosure be required at the point of admission to the course, it is also legitimate for the HE provider to ask applicants questions about any criminal convictions that would display on that disclosure, including convictions which are spent. There are some other professions that are exempt from the *Rehabilitation of Offenders Act*, so will require a disclosure to practise, but not all of these will require a disclosure to study.

### **What is the scope of the HE provider's role in assessing criminal convictions?**

HE providers should be mindful of the boundaries of their role in assessing applicants with criminal convictions. It is not the HE providers' role to make moral judgements concerning the past actions of an applicant, nor to establish an alternative judicial system. The point of having a process for assessing an applicant's criminal convictions is to seek to determine whether:

- a) based on evidence, it is judged that an applicant poses an unacceptable risk to the university or college community
- b) the applicant is able to meet the particular professional or statutory requirements that exist for some courses

# Good practice considerations

## 1. Policy and compliance considerations

### Legal obligations

- Staff in HE providers involved in assessing applications should understand the need to balance their duty to protect and care for members of their community, with the legal rights of all their applicants.
  - The law governs what can and cannot be asked of applicants with criminal convictions, for example with regard to convictions that are **filtered** out (see **Annex C**). It is important relevant staff are aware of their legal obligations in this area, including not taking into account information that an applicant has disclosed in error.
  - Information about criminal convictions is sensitive personal data. It is important that staff are aware it can be an offence to disclose information contained within a criminal record check to others<sup>4 & 5</sup>.
- Relevant staff should keep abreast of any relevant legal developments, and ensure all who need to be involved in decisions relating to applicants with criminal convictions are aware of the appropriate legal obligations and any changes in the law.
- HE providers should take advice from their own legal advisers so they can satisfy themselves independently that they are meeting their obligations.

### Consistent policies and procedures

- Policies should be known, understood, and observed by all relevant staff, at all times of the year, including during Clearing.
  - HE providers should have policies covering applicants with criminal convictions. It may be helpful to have a general policy for all applicants with criminal convictions, and a further one for courses requiring enhanced disclosure. These could be in one document, or in separate documents.
  - Each HE provider's overarching safeguarding policy and policy about fraudulent applications should cover applicants with criminal convictions.
  - It is possible that HE providers could receive anonymous information about criminal convictions and applicants. Such information should be treated with caution, and HE providers should define how they will treat information received anonymously in a relevant policy.
  - The disclosure bodies for the UK – the [Disclosure and Barring Service \(DBS\)](#), [Disclosure Scotland](#), and [Access NI](#) – all require HE providers registered with them to have written policies on the secure handling of certificate information, which must be made available on request.

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<sup>4</sup> [www.legislation.gov.uk/ukpga/1997/50/section/124](http://www.legislation.gov.uk/ukpga/1997/50/section/124)

<sup>5</sup> [www.legislation.gov.uk/ukpga/1998/29/section/56](http://www.legislation.gov.uk/ukpga/1998/29/section/56)

- A specific policy and/or procedure on Clearing/Adjustment/late applicants to courses requiring a criminal record disclosure may be helpful, especially at HE providers which routinely admit a lot of students in this way.
  - The policy and associated procedures for late applicants should take into account that the timescale between accepting the applicant and the start of term may be very tight, admissions staff are under pressure at the busiest time of the year, and the full range of academic and administrative staff who are normally involved in the assessment of a criminal convictions issue may not be available at this time of year.
  - In addition, the UCAS system does not allow conditional offers to be made in Clearing, meaning that any requirements for a criminal record disclosure, assessment of any criminal conviction, and any other terms would need to be clearly explained separately to the UCAS process.
- HE providers should ensure that applicants applying to courses requiring disclosure are dealt with in the same way as far as possible, regardless of when in the cycle they apply. While it may be appropriate to vary some administrative procedures, the same opportunities, level of consideration, and rights of appeal must be available to Clearing/Adjustment/late applicants.
- Policies and procedures should be subject to regular review, and HE providers should note that while review may happen in their organisation at a particular point in the year, legislative changes may come into force at any time.
  - HE providers may wish to consider monitoring admissions data to ascertain whether their criminal convictions policy or procedures disproportionately disadvantage protected characteristic groups, or other groups underrepresented in higher education, who may be more likely to have a criminal record.
- Policies should be published in an appropriate section of the provider's website and be easy for applicants to find. Policies should be written in clear, simple language as far as possible, and should provide applicants with contact details for making further enquiries.

### Senior-level accountability and cross-institutional staff awareness

- Consideration should be given as to where ultimate responsibility and accountability regarding applicants with criminal convictions should lie. In many institutions, this may be with the Vice Chancellor, Principal, Registrar, or another senior officer. This responsibility should be clearly set out in the institution's relevant policies and procedures.
- Staff involved in assessing applications should be aware that they should **not** be making 'moral' judgements about applicants' past actions, nor is it their role to establish an alternative judicial system. The point of having a process for assessing criminal convictions is purely to determine whether:
  - a) based on evidence, an applicant poses an unacceptable risk to the university or college community
  - b) the applicant is unable to meet the particular professional or statutory requirements that exist for some courses.
- Some HE providers hold regular briefing sessions or workshops with all staff involved in the admission of applicants with criminal convictions, to ensure policies, procedures, and the legislative context are known and adhered to. This may be particularly important when legislative change occurs (such as filtering, introduced in 2013, see **Annex C**), or when there is a changeover of key HE personnel, but some providers will hold such training annually.

- There are likely to be other areas of the institution that also handle criminal convictions issues or applications for disclosure, such as human resources, the students' union or other groups that organise voluntary activity, and offices dealing with student disciplinary issues. Some HE providers find it helpful to offer joint training or online resources for staff in such different areas of the university who deal with these related issues.
  - Some charities, such as [Nacro](#) and [Unlock](#), deliver training for HE providers.
- HE providers may wish to consider whether, along with admissions staff, related staff involved with assessing criminal convictions during the admissions process should undertake unconscious bias training. Further information on unconscious bias can be found on the [SPA website](#).

## Relationships with professional statutory and regulatory bodies (PSRBs)

Many higher education courses are closely linked to particular careers. PSRBs often have their own strict requirements concerning the background of students expecting to proceed to these careers and, similarly, placement providers often have strict conditions as to the background of students they will accept.

- Staff in departments are expert practitioners in their fields and are likely to be closely involved with, and influential in, their PSRBs. In the same way, staff in departments are likely to be in close contact with placement providers. Staff should be encouraged to maintain these close links, and keep requirements under review.

## Records management and data protection

- It is very important staff are aware that in certain circumstances (see above), it is an offence to disclose information contained in a criminal record check to others.
- All records and correspondence concerning an applicant who has a relevant criminal conviction should be securely stored in a central point in the HE provider, separate from other applications, to ensure only those permitted to access the information can see it.
- Information relating to convictions is considered to be '[sensitive personal data](#)' under the terms of data protection legislation, and staff should ensure that all such information is stored and protected in accordance with their institution's data protection policies and procedures.
- In any situation where a criminal conviction question is included in the application, it is important that HE providers have procedures in place to clearly identify when it has been ticked, and what action should follow.
- It is essential to maintain a careful record and audit trail so that the reasons for any decisions may be established at a later time, and so that it can be proved that procedures were correctly followed. It also permits feedback to be given later, if requested.
- Where an applicant who has ticked the criminal convictions box advises that it has been ticked in error, it may be helpful for the audit trail to ask them to put this in writing and to store this with their record and/or make appropriate notes on their record.
- All records and correspondence concerning an applicant who may have a relevant criminal conviction, or requires disclosure, should be securely stored according to the HE provider's data protection policy. The requirements of the policy, including when records should be destroyed, should be closely followed. For example, if an applicant whose criminal conviction was investigated later declines an offer, it is appropriate to destroy all records relating to the matter within the timescales set out in the institution's policy.

## 2. Pre-application considerations

### Enquiries

- HE providers should be mindful that it can be difficult for prospective applicants with criminal convictions to come forward to make enquiries. As much information as possible should be made available on websites and in other materials, and enquiries should be dealt with sensitively, with care taken not to deter potential applicants from applying.
- If staff in HE providers are approached by prospective applicants seeking advice on declaring convictions, they should provide them with all relevant policies and procedures. Staff should be considerate to the fact that disclosure rules are different across the UK: applicants may not be aware of this, or may be using a common application e.g. UCAS to apply across those countries ([see below for more details](#)).
  - Staff may also wish to direct them to [Unlock](#), a charity for people with convictions. Unlock provides specific advice in relation to HE applications and supports applicants to know what they need to disclose (either at UCAS or a later stage).
  - For applicants enquiring about courses that do not involve a standard or enhanced disclosure, HE providers may wish to direct applicants to an online tool on [www.disclosurecalculator.org.uk](http://www.disclosurecalculator.org.uk) to help them work out whether their conviction is spent. Note that this only covers convictions made in England and Wales, and is maintained by the charity, Unlock.
- Staff may wish to direct applicants to the charity [Nacro](#), which can also support applicants to know what they need to disclose (either at UCAS or a later stage), and can support with making a disclosure. Nacro has a confidential helpline for applicants and HE providers.
- HE providers may wish to direct applicants to [UCAS' applicant declaration](#), which includes information for applicants with criminal convictions.
- Some PSRBs and organisations have codes of practice and guidance for potential practitioners on their websites which HE providers may wish to link to from their course-level web pages.
- HE providers should be prepared to have open, honest, and sensitive conversations with potential applicants with criminal convictions about the possible issues with their application, and for professional courses, any barriers in progressing into their chosen profession. It is important that applicants are made aware that declaring a criminal conviction will not mean their application is 'automatically excluded', but if it will not be possible for them to join a particular course, alternatives will be considered.

### Publicity and recruitment materials

- There are various ways in which an HE provider may seek information about an applicant's convictions, for example by completing a form ahead of an interview for a course which requires enhanced disclosure. These additional processes and the information required should be made explicit to applicants in course profiles, online, in the prospectus, in specific course information, and in any other materials.
- As above, HE providers should also be clear in their materials that declaring a criminal conviction does not mean they will be 'automatically excluded'.
- HE providers should make PSRB requirements clear to applicants in all relevant materials. This can also assist HE providers in making it clear to enquirers, applicants, and their advisers that these matters are not entirely at the HE provider's discretion. PSRB codes of practice may be useful to link to, particularly for course-level information.

## 3. Application considerations

### Questions in UCAS Apply

- Staff in HE providers should be aware of the scope and purpose of the two questions regarding criminal convictions in UCAS Apply ([see above](#)).
  - Staff should also be aware of the content of the related UCAS ‘help text’, in case they are required to field any enquiries from applicants or advisers. **See annex A.**
  - Staff should also be aware of [UCAS’ applicant declaration](#), which includes information for applicants with criminal convictions.

### Direct applications

- Higher education providers should consider what information, if any, they will require about criminal convictions, and if necessary, consult their legal advisers.
  - Some HE providers may choose to replicate wording used by UCAS, especially as it was developed in consultation with the Information Commissioner, although this is not obligatory.
  - Whatever wording they decide to use, HE providers should bear in mind that it is **not** acceptable to ask applicants to declare spent criminal convictions, except to courses exempt from the *Rehabilitation of Offenders Act*. Even in these instances, it is still **not** acceptable to ask applicants to declare any convictions that would be filtered.

### Support for applicants in making effective disclosures

- HE providers should be mindful that people with convictions often demonstrate anxiety<sup>6</sup> about disclosing their convictions. Coupled with this, and the complexities of the rules, it is often the case that applicants disclose convictions in error. HE providers should be mindful of this during the application stage, and provide what support they can.
  - As above, if staff in HE providers are approached by prospective applicants seeking advice on whether their convictions are spent or relevant, and whether or not they should be declared during the application stage, they may wish to direct them towards [Unlock](#) or [Nacro](#).

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<sup>6</sup> See for example the 2016 report ‘Exploring tertiary education for people with convictions’ available here: [recruitwithconviction.org.uk/research-publications/](https://recruitwithconviction.org.uk/research-publications/).

## 4. Post-application considerations

The post-application stage relates to all activities concerning a HE provider's consideration of a submitted application, from the point of initial assessment through to when the applicant has been confirmed or guaranteed a place. On top of the usual process for considering applications, higher education providers will have detailed procedures for considering applications from those declaring a criminal conviction. These procedures must be robust, understood by the individuals involved, including by temporary staff supporting during Clearing, and adhere to the relevant rules and regulations, some of which are different across the devolved administrations of the UK. Well understood and codified procedures should also help HE providers fairly balance their obligations towards their applicants, **including those with criminal convictions**, with their obligations to the entire student body.

### Good practice approach for considering applications

The following detailed process flow sets out a suggested good practice approach for considering **all** applicants with criminal convictions.

#### Step 1: Initial consideration of the application

The application is considered by the relevant individual, according to the normal stated entry requirements and normal decision-making process.

#### Step 2: Identifying whether a conviction has been disclosed

A response to a criminal convictions question will first be identified when the application is received by the institution. In the case of a UCAS application, a positive declaration of a conviction will be identified in the UCAS application (or web-link), or in the HE provider's own admissions record system.

**N.B:** Even if an applicant declares in the UCAS application that they have a 'relevant' criminal conviction, some HE providers consider that it is not appropriate to investigate further (except in the case of those courses where disclosure of criminal convictions is required), feeling that this is outside their competence and unnecessary in connection to their duty of care.

#### Step 3: For successful applications, involve the designated officer

If you wish to make an offer, or where appropriate, to invite to interview, and the applicant has declared a criminal conviction, pass the application to the designated officer for any follow-up.

#### Step 3: Treat unsuccessful applicants' records securely

If the application is unsuccessful, no action is taken in connection with the criminal convictions, and the decision is processed in the usual way. Records relating to convictions should be destroyed in accordance with the data protection policy.

#### Step 4: Only seek appropriate further information on the offence

This officer may wish to contact the applicant to seek further information on the offence.

Bear in mind that if an applicant has also applied for courses which require an enhanced disclosure, there may be convictions declared that are not relevant for all other courses. These should therefore **not** be taken into account in decision-making, and should not be revealed to other staff.

In some cases, the criminal convictions question will have been ticked **in error**. The UCAS application requires applicants to declare only 'relevant' criminal convictions, which are limited to those that are both unspent and part of a specific group of types of offences. If this is the case, seek the applicant's assurance of this in writing/by email, for audit trail purposes, and make an appropriate note or amendment on the student record system for this application. If the conviction was declared in error, process the offer in the usual way. If there was no error, continue consideration of the application.

Many HE providers use a template letter and form (see [annexes C and D](#)), and include a deadline for receipt of the information.

#### Enhanced disclosure courses

Providers in England and Wales must bear in mind the requirements of filtering ([see Annex C](#)), and that they should not ask for disclosure of convictions that would not appear on the enhanced disclosure. For courses requiring enhanced disclosure, it is also important to make clear to applicants:

- they are being asked for this information because of the professional requirements of the course, because enhanced disclosure or scheme membership will be required prior to the actual course start, and that this is the case for all applicants and not just those declaring a conviction
- what criminal convictions/cautions should be disclosed, which may include spent convictions
- the possible barriers to them taking up a place on this course, and the implications of withholding information



#### Step 5: Pass details to designated group

If the case is too serious, ambiguous or complex for the officer to be able to make a decision, based on that officer's remit, details of the offence could be passed to a designated group – via secure email or a meeting. Composition of the designated group varies, but will often include:

- one or more senior academic or administrative officers, e.g. a Pro-Vice Chancellor, Academic Registrar
- the Head of Admissions
- an experienced member of academic staff who has knowledge of the course and any professional requirements –some providers will



#### Step 5: Use discretion to make the offer

If the further information from the applicant reveals that s/he has a relevant criminal conviction, but the offence is considered minor according to the institution's codified list, the designated officer may use discretion to permit the offer to be made.

#### Enhanced disclosure courses

For these courses, if the offence is not likely to bar the individual from professional practice or from taking up any placement, the institution may consider it 'minor'.

Process the offer in the usual way.

Staff in the relevant academic unit or course to which the applicant had applied should be informed whether or not an offer has been made, on a 'need to know' basis only.

choose to involve an academic from a different department to ensure impartiality

- senior colleagues responsible for security and wellbeing on the premises, e.g. the heads of security, student services, accommodation etc
- an external representative (e.g. of the relevant professional body) if the course requires enhanced disclosure

Consideration may need to be given to which members of the group should have the greatest degree of influence on the outcome – those internal to the university/college or the external professional – especially should there be a difference of opinion.

Staff in the relevant academic unit or course to which the applicant had applied should be informed whether or not an offer has been made, on a 'need to know' basis only.



### **Step 6: Keep the applicant informed**

It is good practice to contact the applicant to explain how their application will be handled, and provide them with relevant documentation, e.g. a copy of the criminal convictions policy, information about timescales, and any rights of appeal.

Depending on the nature of the course, and of the conviction, the applicant may also be contacted for further information, including for the name of their probation officer and permission to contact them. No third party, including a probation officer, should ever be contacted without the written permission of the applicant. In some situations, a panel may decide it is necessary to meet the applicant in order to fully understand the specifics that cannot be ascertained from the documentation. Any such invitation to the applicant should be clear about the purpose of the meeting so as to avoid any undue anxiety or confusion.



### **Step 7: Designated group considers any risks**

The panel may wish to consider whether there are unacceptable risks associated with admitting the applicant. It is important that this consideration is evidence-based, and that panel members are sufficiently trained in the complexities of making risk-based judgements on individuals. It is important to take a holistic view, and the following are risk factors that the designated group may wish to consider as part of a matrix, ensuring that no one factor dominates the final decision:

- The nature of the offence, and whether it is relevant to the course applied to.
- Any pattern of offending.
- The recommendations of any referees.
- Mitigating circumstances.
- Aggravating circumstances.
- Any comments about the risk of re-offending noted in the pre-sentencing report or other official documentation.

A risk assessment matrix including these factors can be found at [Annex F](#). Note that the charity [Nacro](#) can provide support to HE providers in determining risk.

The reason for evaluating these risk factors is to assess whether an applicant poses an unacceptable risk to the university or college community, or whether the applicant is able to meet the particular professional or statutory requirements that exist for some courses. Again, it is not the role of the panel to make a moral judgement, or act as an alternative judiciary.

The panel may decide to require further information from either the applicant or other sources (e.g. the probation officer, if they have permission to do so). As above, the panel may wish to meet with the applicant. Depending on the nature of the situation, the group may then reconvene to discuss the additional information.



### **Step 8: Decide on what terms to admit the applicant**

The panel may decide:

- it is possible and suitable to admit the applicant to the course, either without reservation or with certain, proportionate provisos, e.g. concerning accommodation or support for the applicant, or checks in place

#### **Enhanced disclosure courses**

- The applicant's conviction would not bar them from joining the institution and undertaking the course, but would bar them from the profession to which their chosen course leads, and still make the applicant an offer. It is important to make it explicitly clear to the applicant that they are unlikely ever to be able to practise that profession, and to consider whether they could undertake placements. Providers may wish to seek legal advice, and consider whether this option is in the best interest of the applicant.
- The applicant would not be able to follow the profession to which their chosen course leads, or take up placements that form integral or compulsory parts of the course. Where the conviction would not bar them from joining the institution but they cannot be admitted for the chosen course, the group may wish a relevant officer to contact the applicant to discuss admitting them to an alternative course, e.g. one that does not require disclosure.

Staff in the relevant academic unit or course to which the applicant had applied should be informed whether



### **Step 8: Inform the applicant they have been unsuccessful**

The panel may decide:

- to reject the applicant because the conviction is such that entry to the institution would be unsuitable, or because no alternative course is available

Contact the applicant to explain the outcome, and any opportunity to appeal the decision, then process the application in the normal way.

Staff in the relevant academic unit or course to which the applicant had applied should be informed whether or not an offer has been made, on a 'need to know' basis only.

Records should be dealt with in accordance to the data protection policy.

or not an offer has been made on a 'need to know' basis only.

### Step 9: Make the offer, and if necessary make clear the need for disclosure

If there are no provisos and the course does not require enhanced disclosure, make the offer in the usual way.

#### Enhanced disclosure courses

There is a wide variety of practice for how to communicate the necessity for criminal convictions disclosure in the offer:

- 1) The requirement for disclosure is part of the offer of admission, e.g. 'You must achieve BBC at A level and a satisfactory enhanced disclosure'. Bear in mind that disclosure may not be received by 31 August or even by the UCAS reject by default (RBD) date in September, necessitating a large number of 'stops'. In practice, some HE providers will waive this and make the applicant unconditional where disclosure has not been received by the RBD date. It is up to HE providers to decide whether it is helpful or not to make the requirement for disclosure part of the offer.
- 2) A two-part offer, where the requirement for disclosure is set out in a separate letter. It is important to make the distinction between the two parts of the offer clear to applicants, and that the letter to applicants is very clear on what is expected of the applicant. Some HE providers use the terms and conditions of offer to make such matters clear.
- 3) A distinction is made between admission and registration. A 'normal' academic offer is made but the applicant is also informed – either in the UCAS offer or in a separate letter– that s/he will not be able to register unless disclosure is received and it is considered acceptable for admission. For example 'You must achieve BBC at A level. Satisfactory enhanced disclosure is also required and you will not be permitted to register unless this is obtained'. HE providers will need to consider what the value of the offer is if it does not entitle an applicant to register on the course, and if the contract being entered into is not a 'contract to admit', what exactly it is.
- 4) A 'normal' academic offer is made. If the applicant accepts it, s/he can register, but will then be required to withdraw if a criminal convictions disclosure is not subsequently received. HE providers will need to make it clear that their offer may not actually entitle them to follow the course.

Higher education providers may wish to obtain legal advice to ensure their procedure, including any terms and conditions of offer and registration, are consistent and legally enforceable.

At the same time as the offer is made (for applicants whose criminal conviction has been deemed not to prevent entry to the course, **and** for those who have not declared a criminal conviction), HE providers should provide information about how to go about gaining disclosure/scheme membership, the process for allowing the HE provider to verify their identity, any costs or fees involved, and the timescales and deadlines. It is also good practice to provide a point of contact for any questions the applicant might have.

### Step 10: Treat accepted applicants' records securely

If the offer is accepted, providers must ensure information regarding the past offence(s) remains confidential.

However, in limited cases, after careful consideration (e.g. by the designated group and via a risk

### Step 10: Treat decliners' records securely

If the offer is declined by the applicant, the records relating to convictions should be destroyed in accordance with the provider's data protection policy

assessment), the provider may decide there are departments, services, or individuals who have an important interest in this information – to support the applicant or protect members of the institution. Providers may wish to seek legal advice before sharing any personal information.

Those receiving the information (e.g. personal tutor, accommodation staff, security staff, or student services staff) should receive guidance, briefing, and training on what action they should take. The applicant should be informed that information about them has been passed on, and to whom.



### **Step 11: The criminal record check**

- HE providers should conduct the disclosure assessment in good time before registration/enrolment, while mindful of the time-limited nature of the check. It is neither in the applicant's nor HE provider's interest to request a check too early, e.g. before other requirements have been satisfied. Just as employers in England and Wales are only permitted to arrange a DBS check on successful applicants, HE providers may decide that enhanced disclosure should not be requested until the applicant has accepted and met their offer.
- Some HE providers undertake disclosure checks themselves, whereas others use umbrella bodies which undertake some of the administration for a fee. Providers in England and Wales with a large number of disclosures a year, may find it efficient to use the DBS e-bulk scheme for submitting disclosure requests.
- HE providers need to decide whether they pass any, some, or all of the costs of the criminal record check onto applicants. SPA recommends that HE providers carefully consider:
  - some applicants, e.g. those in financial hardship, may find the cost a barrier to applying
  - whether it is appropriate to pass on any associated administrative costs to applicants, and if so, clearly justify why this is distinct from any other administrative costs of admissions. This may be particularly relevant for any outsourced activity, and SPA would caution against passing on any costs to applicants for external administration designed to improve efficiency for the HE provider

#### **N.B: International applicants**

- HE providers will be aware of the difficulty of obtaining information on applicants from outside the UK, where there may be different legal assumptions and arrangements.
- HE providers should seek to make DBS/Disclosure Scotland/AccessNI checks in respect of any time spent in the UK. Where the applicant has not yet spent time in the UK, some providers run the formal check soon after their commencement on the course.
- Where possible, providers should obtain (before the course begins) police or criminal record checks from the other country (or countries) in which they have lived. The DBS now provides [helpful guides](#) on how to seek comparable information on a country-by-country basis. If formal police or criminal record checks cannot be obtained, HE providers should take reasonable steps to seek information from applicants, including taking up references, and should make their policy on this issue clear. They should also be aware of any requirements of professional bodies in these circumstances.

## Applicants who apply for both courses which require enhanced disclosure and those which do not

- Some applicants will apply for a mixture of courses which do and do not require enhanced disclosure. Staff involved should bear in mind that applicants may declare convictions for one course, e.g. medicine, that are not relevant for the other courses, e.g. biomedical sciences and biology. These convictions should **not** be taken into account when considering applications to courses which do not require enhanced disclosure.

## Understanding the relevant disclosure rules

- HE providers should ensure that staff involved in the policy and procedures for considering applications for courses requiring enhanced disclosure are aware of why some courses are exempt from the *Rehabilitation of Offenders Act*.
  - Only particular courses/professions as defined in legislation as eligible to require disclosures from DBS, Disclosure Scotland, or AccessNI. Therefore, staff must be aware that they cannot simply decide to ask for a criminal convictions check for courses that are not eligible.
- As there are different types of criminal record check, HE providers should be confident about which level of check it is necessary to request, in relation to the course and/or placements the applicant would undertake.
- Relevant staff in HE providers in **Northern Ireland** should ensure they are aware of the list of offences that are filtered by AccessNI.
  - Applicants should not be asked to declare **all** convictions. All the HE provider's published materials, policies, guidance, procedures, and forms on this matter should make this explicit.
- HE providers in **Scotland** should keep abreast of legislative reform.
- Relevant staff in HE providers in Scotland should ensure they are aware of which offences are 'protected'.
  - Applicants should not be asked to declare **all** convictions. All the HE provider's published materials, policies, guidance, procedures, and forms on this matter should make this explicit.
- HE providers should ensure that relevant staff are aware of the filtering rules that apply in **England and Wales**.
  - Applicants should not be asked to declare **all** spent and unspent criminal convictions, cautions, reprimands, warnings, etc., but **only** those which would be displayed on a disclosure. All the HE provider's published materials, policies, guidance, procedures, and forms on this matter should make this explicit. Similarly, call centre staff during Clearing should not ask applicants to declare inappropriate convictions during phone calls.
  - An appropriate form of words, as advocated by the [Ministry of Justice](#), for an HE provider to use when asking applicants to self-disclose their convictions is:  
  
'Do you have any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the *Rehabilitation of Offenders Act 1974* (Exceptions) Order 1975 (as amended in 2013)'
  - It is up to the individual HE provider as to what level of detail they go into in their published materials and forms about what convictions/cautions will or will not be filtered out of the DBS disclosure. However, most applicants are likely to need some

guidance on what will and will not appear on an enhanced DBS disclosure. Relevant staff should therefore understand and be able to explain this to applicants.

- Admissions offices will need to consider provision of training in this relatively complex area for all staff involved in the process, including those who answer queries from applicants, and may also find it useful to refer applicants to a body that specialises in providing guidance in this area such as the charities Unlock and Nacro.<sup>7</sup>

## PSRBs and placements

- HE providers should consider that although they might consider that a particular offence does not bar someone from admission, a placement provider might decide not to accept the student for a placement. If the placement is an integral part of the course, and alternatives are not available, it may not then be possible for the student to complete the course.
  - Where this is likely to be the case, HE providers should consider whether it is appropriate to offer a place on that course, in consultation with the applicant.
  - HE providers may wish to consider if there are alternative courses that may be more suited to the applicant.
  - At the very least, the applicant should be clearly informed in writing as early as possible of the expected limitations on the outcome should they enter the course, so they are not under any misapprehensions.

## Portability

- HE providers may be approached by applicants who wish to use a disclosure or scheme membership obtained for a position in another organisation – possibly employment or voluntary work – for the purposes of admission to an HE course. Relevant staff should be clear on whether this is permissible.
  - In England and Wales, if applicants have signed up to the DBS Update Service, HE providers may carry out status checks on the DBS certificate in some circumstances.<sup>8</sup>
  - Note that the Update Service is not a way for the HE provider to view a DBS disclosure online – no details on the certificate, including convictions, can be viewed. Therefore, the Update Service should be used in conjunction with viewing the existing DBS certificate. Appropriate ID verification should also be carried out.
  - HE providers may find the [DBS guidance on the Update Service](#) useful in helping to understanding the rules and in interpreting status checks.
  - In Scotland, if someone is already registered under the PVG scheme and has a Scheme Record, HE providers will be able to request a Scheme Record Update to see if there are any changes, and will only need to seek a full record if the Update indicates there has been a change.
  - There are different rules in Northern Ireland. According to Access NI<sup>9</sup>:

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<sup>7</sup>See [www.unlock.org.uk](http://www.unlock.org.uk) and [www.nacro.org.uk](http://www.nacro.org.uk).

<sup>8</sup>See: [www.gov.uk/db-update-service](http://www.gov.uk/db-update-service) for further information on which circumstances it would be permissible to do this.

<sup>9</sup>See [www.nidirect.gov.uk/articles/checking-job-applicants-employees-and-volunteers](http://www.nidirect.gov.uk/articles/checking-job-applicants-employees-and-volunteers).

‘Standard or enhanced certificates should not be re-used because every application to see spent convictions or approved information should be counter-signed by a registered person on the basis of a specific role or position.’

### **Non-disclosure of relevant unspent criminal convictions**

- If it is discovered that the applicant has a relevant unspent conviction which was not declared HE providers will wish to carefully consider the circumstances.
  - It may be that this was due to an error and can be easily rectified, e.g. where the applicant proactively contacts the HE provider to explain the mistake.
  - It may be that the applicant has knowingly withheld the information, in which case the HE provider may consider the application fraudulent. Before proceeding with formal anti-fraud procedures, applicants should be given the opportunity to explain their situation, and staff should be sensitive to there being many complex reasons why applicants may be anxious about disclosing convictions.
  - If however, the situation does appear fraudulent, the relevant member of staff will wish to take the matter forward under its normal anti-fraud procedures (including reporting it to the UCAS Verification Unit), and possibly treating the application as ‘cancelled’.
  - HE providers may receive information on criminal convictions which an applicant has not declared from members of the public, family, a school or college, other applicants or students, or even anonymously. Such information must be treated with great caution, and in accordance with the provider’s policy on the receipt of anonymous information.<sup>10</sup>

### **Applicant complaints and appeals**

- For both courses which require enhanced disclosure and those which do not, it is important to clearly set out your complaints and appeals process. Note that SPA has separate and detailed guidance on [dealing with applicant complaints and appeals](#).

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<sup>10</sup> Note that [Nacro](#) provides confidential advice about dealing with such scenarios.

## 5. Transition considerations

### Registration

- SPA advises that disclosure should be obtained to the satisfaction of the HE provider before an applicant is permitted to register and join their course. Permitting an applicant to join before this stage may leave the HE provider vulnerable if an applicant is admitted who is subsequently asked to withdraw.
  - Some HE providers allow provisional or temporary enrolment, pending the outcome of the disclosure check, with Clearing applicants and international applicants particularly liable to be in this situation. SPA does not advocate this approach, but if HE providers choose to do this, they should bear the following in mind:
    - Legal advice should be sought to ensure that registration may be terminated should the disclosure prove unsatisfactory, and special terms and conditions may need to be put in place to facilitate this.
    - If a self-declaration from the applicant has already been sought, systems must be in place to ensure that the actual disclosure is robustly checked against the self-declaration, and that there are no discrepancies. There must then be appropriate procedures (and legal advice) in place to handle any discrepancy, e.g. if the HE provider wishes to terminate registration on the grounds of fraud.
    - If there has been no earlier process to ask applicants to self-declare any criminal convictions, provisional enrolment may pose a risk because the applicant(s) concerned may in fact have serious or violent criminal convictions that have not yet come to light.
    - Any form of 'temporary registration' is viewed by the Office of the Independent Adjudicator (OIA) as bringing the student within their jurisdiction as a student.
    - No placement involving regulated activity can take place before the official disclosure is received, and there should be no exceptions to this under any circumstances.
    - HE providers may wish to impose a strict final deadline on the receipt of the official disclosure.

### Accommodation

Residential accommodation for students with certain criminal convictions may pose a challenge for HE providers in some limited cases. This may particularly be the case in the student's first year.

- HE providers may wish to consider whether they would make a distinction between admitting the student to the course and allowing them to enter their own accommodation. Any decision should be proportionate and based on evidence, and mindful of the applicant and student experience. Possible courses of action might include:
  - the HE provider considers that the applicant's criminal convictions are not relevant when considering accommodation, so they may enter the university or college and apply for accommodation
  - the student is admitted to HE provider but is not permitted to live in the residential accommodation
  - the student is admitted to the HE provider and is permitted to live in the residential accommodation only under special arrangements, or with particular requirements

- Whatever course of action the provider decides to take, HE providers should share information on applicants with criminal convictions *only* with those appropriate accommodation staff, mindful that information about criminal convictions is sensitive personal data. It is important that staff are aware that it can be an offence to disclose information contained in a criminal record check to others.

### **Annual re-registering**

- At many HE providers, all students (not just those who have been admitted following consideration of a criminal conviction) are expected to advise the university or college if they commit certain types of offence. HE providers will need to determine the process and make students aware of how they declare any new relevant convictions.
  - Applicants who have already declared a conviction and had that taken into account for entry, should not be expected to re-declare their convictions, unless they transfer onto a different course or undertake a placement where different safeguarding requirements are in place.

### **Student support and careers advice**

- HE providers may wish to consider whether students with criminal convictions require any additional support during their studies to aid retention and success. It may be, for example, that additional careers advice is helpful.



# Annexes

## Annex A: UCAS declarations and help text

### Criminal convictions declaration and help text for UCAS Undergraduate Apply 2017

#### Criminal convictions

**If you have a relevant criminal conviction that is unspent, please tick the box; otherwise leave it blank.**

**If you tick the box you will not be automatically excluded from the application process.**

This question requires you to disclose whether you have a criminal conviction which is deemed both relevant **and** unspent. Universities and colleges need this information to help them reduce the risk of harm or injury to their students and staff. Please read the following carefully to help you in answering this question.

#### Do I need to tick the box?

There are two elements to the question we ask; if you answer **Yes** to both these elements, you will need to tick the box.

1. Is the conviction for a 'relevant' offence?
2. Is the conviction unspent?

No decision will be made on the basis of a ticked box at this stage. This information will be held securely and shared only with those institutions that you apply to.

#### Is the conviction for a 'relevant' offence?

This is the first element to the question we ask. Relevant offences include one or more of the following:

- Any kind of violence including (but not limited to) threatening behaviour, offences concerning the intention to harm or offences which resulted in actual bodily harm.
- Sexual offences, including those listed in the Sexual Offences Act 2003.
- The unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking (drug offences only involving possession are not relevant offences).
- Offences involving firearms.
- Offences involving arson.
- Offences involving terrorism.

If you were convicted outside the United Kingdom for an offence listed above, this is also considered a relevant offence.

For the purposes of this question, cautions, reprimands and final warnings are considered as convictions. Penalty notices for disorder (PNDs), anti-social behaviour orders (ASBOs) or other orders are not convictions, unless you have contested a PND or breached the terms of an ASBO or other order and this has resulted in a criminal conviction.

**If your answer is 'No' to this question**, because you don't have a relevant conviction, then you should not tick the box. You don't need to consider whether your conviction is unspent because it is not relevant and should not be disclosed in answer to this question.

**If your answer is 'Yes' to this question**, because you have a relevant conviction, you must then go on to consider whether the conviction is unspent (see below).

### **Is the conviction 'unspent'?**

You should only consider this question if you have a relevant conviction (see above), i.e. answered 'Yes' to the previous question.

A criminal conviction can become 'spent' after a period of time. The length of time it takes to become spent is defined by the Rehabilitation of Offenders Act 1974 and depends on the sentence or disposal made by the court following the conviction. Until that period has passed, the conviction is considered 'unspent' and you must tick the box.

Further convictions can impact when other convictions become spent. Sentences of over four years in prison cannot become spent.

Most cautions, reprimands and final warnings become spent immediately, so will not normally be 'unspent'.

For more information on offences and rehabilitation periods, visit [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/286421/rehabilitation-of-offenders-guidance.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286421/rehabilitation-of-offenders-guidance.pdf)

You can work out whether your conviction is spent by using an online tool – visit [www.disclosurecalculator.org.uk](http://www.disclosurecalculator.org.uk). This only covers convictions made in England and Wales and is maintained by the charity, Unlock. UCAS and Unlock cannot guarantee the tool's accuracy or completeness. Neither charity assumes responsibility or accepts liability for any damage or loss which may arise as a result of your reliance on it.

If you were convicted outside the United Kingdom, you will need to follow the same process above. If your conviction would be considered unspent under the Rehabilitation of Offenders Act 1974, you must tick the box.

Convictions that are spent do not need to be disclosed, it's only when you have one or more unspent convictions that you must tick the box.

### **How will the university or college handle my application if I tick the box?**

If you tick the box you will not be automatically excluded from the application process.

The information concerning criminal convictions will be passed to appointed persons at the university or college. In line with good admissions practice (such as that created by Supporting Professionalism in Admissions (SPA)), they will consider your criminal conviction separately from the rest of your application. During this consideration, they may ask you to provide further information about your conviction. If they are satisfied, your application will proceed in the normal way although they may add certain conditions to any offer they may make. Otherwise they will notify you of their decision.

It is important to note that a failure to declare a relevant unspent criminal conviction is taken very seriously, and could result in expulsion from your university or college. You should therefore seek advice before answering this question if you are unsure how to answer it.

All information concerning criminal convictions will be treated sensitively, confidentially and managed in accordance with the Data Protection Act 1998. You may find further details about how a criminal conviction declaration is handled (including the right to appeal a decision) at the university or college website.

**What if I receive a relevant criminal conviction after I have applied?**

If you are convicted of a relevant criminal offence after you have applied, you must tell us and any university or college that you have applied to, or may apply to, during the application cycle. Do not send details of the offence; simply tell us and the universities and colleges that you now have a relevant criminal conviction. The universities and colleges may then ask you for more details.

**When might I need to disclose a spent conviction or caution?**

If you apply for certain courses, you will be required to disclose whether you have any spent convictions, in addition to this question about relevant unspent convictions. If this applies, you will be asked an additional question each time you choose a relevant course. Please see the entry requirements for your course choices to see if this requirement applies to you.

Please note that, in this situation, you should not declare convictions, cautions, warnings or reprimands which are deemed 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). A conviction or caution can become 'protected' as a result of a filtering process. Guidance and criteria on the filtering of convictions and cautions can be found on the DBS website.

Further information on filtering can be found at: [www.gov.uk/government/collections/dbs-filtering-guidance](http://www.gov.uk/government/collections/dbs-filtering-guidance).

## **Criminal convictions declaration and help text for courses requiring disclosure for UCAS Undergraduate Apply 2017**

### **Criminal conviction declaration**

This course has entry requirements which may require you to disclose further information regarding any spent or unspent convictions or any past criminal activities, and may also require a criminal records check.

Further checks may also be required under the Disclosure and Barring Service.

If you have spent or unspent convictions from a court outside Great Britain, additional checks may be carried out depending on the records available in respect of the applicable country.

A criminal records check may show all spent and unspent criminal convictions including (but not limited to) cautions, reprimands, final warnings, bind over orders or similar and, to the extent relevant to this course, may also show details of any minor offences, fixed penalty notices, penalty notices for disorder, ASBOs or VOOs.

Please tick if you have any spent or unspent convictions or other punishments that would show up on a criminal records check.

**If you tick the box you will not be automatically excluded from the application process.**

Finally, it is recommended that you read the [help text](#) accompanying this question and if these issues are in any way relevant to you, you should obtain further advice from appropriate bodies. UCAS will not be able to assist you in this respect.

You will be asked this question each time you add a course that requires a criminal conviction declaration.

### **Help text**

#### **Criminal conviction declaration**

Certain professions or occupations such as (but not limited to) teaching, medicine, dentistry, law, accountancy, actuarial, insolvency, healthcare, social work, veterinary medicine, veterinary science, pharmacy, osteopathy, chiropractic, optometry and professions or occupations involving work with children or vulnerable adults, including the elderly or sick people, are exempt from the Rehabilitation of Offenders Act (1974).

Different rules apply to such professions or occupations with regard to disclosure of information about criminal convictions. You may be required to disclose information regarding any convictions even if they are spent.

Some courses in respect of such professions or occupations involve an integral work placement and you may not be able to undertake such placement and complete your studies if you have criminal convictions.

Further, while you may be permitted to study for one of the above professions or occupations, you may not be able to register and practice upon completion of your course.

You should be aware that in respect of these courses:

1. The university or college may ask you to provide further information regarding any convictions (including spent convictions), and/or may ask you to agree to a Disclosure and Barring Service (DBS) check.
2. Where required, the university or college will send you instructions regarding how to provide the information they require. They may send you documents to fill in. Where such documents come from will depend on the location of the college or university that you are applying to.
3. Depending on the type of check, different levels of information will be revealed. The information revealed may include unspent convictions and spent convictions (including cautions, reprimands and final warnings or similar). Information about minor offences, penalty notices for disorder (PNDs), anti-social behaviour orders (ASBOs) or violent offender orders (VOOs) and other locally held police information may be revealed where it is appropriate to the course for a particular occupation or profession. The information may be disclosed irrespective of when it occurred.
4. This means that if you have a criminal conviction (spent or unspent) or, in certain circumstances, any minor offence, this information may be made known to the university or college (but not UCAS) as part of the check.
5. If the check reveals that you have had a conviction, (including any caution, reprimand, final warning, bind over order or similar) or any other relevant information including (in certain circumstances) any minor offence, PND, ASBO or VOO, the university or college will need to assess your fitness to practise in the profession or occupation to which your course relates. Applicants to medicine, for instance, should be aware that the General Medical Council will not permit students deemed unfit to practice to be entered on the medical register and so they will not be able to practice as doctors. Similar restrictions may be imposed by other professional bodies including (but not limited to) those connected with law, teaching, accountancy, social work, healthcare, veterinary services, pharmacy, financial and insurance services and the armed forces.
6. You may also be subject to further checks (before and/or after you complete your course) by prospective employers who will make their own assessments regarding your fitness to practise in the relevant profession or undertake the relevant occupation.
7. If these issues are in any way relevant to you, you should obtain further advice from appropriate bodies.
8. In England and Wales you may also be required to complete documentation and maintain a registration with the Disclosure and Barring Service (DBS). The DBS scheme is designed to allow universities and colleges to identify any individual that is barred from working with children and vulnerable adults, including elderly or sick people.

### **How will the university or college handle my application if I declare a criminal conviction?**

If you tick the box you will not be automatically excluded from the application process.

The information concerning criminal convictions will be passed to appointed persons at the university or college. In line with best admissions practice, they will consider your application separately from your academic and achievement merits. During this consideration, they may ask you to provide further information about your conviction. If they are satisfied, your application will proceed in the normal way although they may add certain conditions to any offer they may make. Otherwise they will notify you of their decision.

It is important to note that a failure to declare a criminal conviction is taken very seriously, and could result in expulsion from your university or college. You should therefore seek advice before answering this question if you are unsure how to answer it.

All information concerning criminal convictions must be treated sensitively, confidentially and managed in accordance with the Data Protection Act 1998.

You may find further details about how a criminal conviction declaration is handled (including the right to appeal a decision) at the university or college website.

In addition, you may also find the details below useful.

<b>Region</b>	<b>Agency</b>	<b>Website address</b>
England and Wales	Disclosure and Barring Service (DBS)	<a href="http://www.gov.uk/disclosure-barring-service-check/contact-disclosure-and-barring-service">www.gov.uk/disclosure-barring-service-check/contact-disclosure-and-barring-service</a>
Scotland	Disclosure Scotland	<a href="http://www.disclosurescotland.co.uk">www.disclosurescotland.co.uk</a>
Northern Ireland	Access Northern Ireland	<a href="http://www.nidirect.gov.uk/accessni">www.nidirect.gov.uk/accessni</a>

You will be asked this question each time you add a course that requires an enhanced criminal conviction declaration.

## Annex B: further information about criminal record checks

There are four types of criminal record check available in **England and Wales**: basic, standard, enhanced, and enhanced with a barred list check. In **Northern Ireland**, the enhanced disclosure also contains barred list information. Enhanced disclosure including a barred list check is the highest level of disclosure, and will reveal whether the individual has been barred from regulated activity as well as criminal convictions information. **To be eligible for this level of check, the individual must be engaging in ‘regulated activity’ with children or adults as defined in the legislation.** In practice, this is likely to include many courses in the fields of health, social care and education, but each HE provider must be absolutely confident that the course (or its placements) involve the individual in the appropriate type of regulated activity before requiring enhanced disclosure with barred list check. Further information can be found on the [DBS website](#) and the [Access NI website](#). In addition, guidance about regulated activity with children has been published by the [Department for Education](#), and information about regulated activity with adults is available from the [Department of Health](#).

Those activities and positions for which convictions (other than those that will be filtered out – see more below about filtering) must always be declared, even if they would otherwise be ‘spent’, include:

- those whose duties involve training, caring for, or supervising children and vulnerable adults
- certain professions in areas such as medicine, dentistry, health, pharmacy, social care, education, law and some positions in banking and finance

These requirements can affect admission to courses in areas such as early childhood studies, teaching, social work, medicine, nursing, pharmacy and *some* law courses, because the course may be so closely allied with a particular profession that passing the course may, in effect, be a licence to practise in that profession, and/or the course may require placements which means that the student is, in effect, working in these areas very soon after the course has commenced (for example, clinical experience in medicine or classroom experience in teaching). The majority of courses do not involve working with vulnerable groups or have other professional restrictions on those with criminal records.

Note that in **Scotland** there are four types of criminal record check: Basic, Standard, Enhanced and the Protecting Vulnerable Groups (PVG) Scheme. PVG scheme membership, along with enhanced disclosure, will supply information on whether the individual is barred from a particular activity. This is suitable for courses where the individual is involved in regulated work, and a [self-assessment tool](#) to help determine what counts as regulated work is provided on the Disclosure Scotland website.

## Annex C: Definitions of spent, unspent and filtered (England and Wales)

### Spent and Unspent Convictions under the *Rehabilitation of Offenders Act*

Under the *Rehabilitation of Offenders Act*, most criminal convictions (depending on the sentence, and any other convictions) eventually become 'spent'. Cautions, warnings and reprimands become spent as soon as they are issued, apart from conditional cautions, which become spent once the conditions end. When a conviction becomes spent, it means it no longer has to be disclosed when applying for most jobs, and when applying to most higher education courses.

Unlock produces a [useful table](#) outlining the time it takes for a criminal record to become 'spent'. They also have an [online information section](#) dedicated to the *Rehabilitation of Offenders Act*.

### Filtered convictions

Since May 2013 in **England and Wales**, a sub-category of spent convictions/cautions that are minor and more than a certain number of years old, are **filtered out** of all standard and enhanced DBS disclosures, and may **not** therefore be asked about. These spent convictions/cautions no longer display on an enhanced criminal record check.

Under 2013 legislation, it is **illegal for employers (in this context this includes HE providers) to request information on convictions that would be filtered out** of all standard and enhanced criminal record disclosure, **nor can they legitimately take these into account in their decision-making**.

A caution will be filtered where both of the following apply:

- it was received more than 6 years ago (when received at aged 18+) or more than 2 years ago (when received aged under 18)
- it is not on the [official list](#) of offences that will never be filtered

A conviction will be filtered where all of the following apply:

- it was received more than 11 years ago (when received at aged 18+) or more than 5.5 years ago (when received aged under 18)
- it is not on the [official list](#) of offences that will never be filtered
- it did not result in a custodial sentence (of any length, and including suspended sentences)
- it is the only conviction that the individual has received

Where more than one conviction has been received, **no convictions** will be filtered out of the DBS disclosure. However, multiple cautions may be filtered out if they fit the criteria above.<sup>11</sup>

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<sup>11</sup> For full details on filtering, see the Home Office guidance at [www.gov.uk/government/publications/dbs-filtering-guidance](http://www.gov.uk/government/publications/dbs-filtering-guidance); the list of offences that will never be filtered is at [www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check](http://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check).

Unlock has an online information section dedicated to the filtering process, including a [flow-chart](#).

The rules in **Northern Ireland** are very similar, but HE providers should note there is a [separate list of offences](#) that they should refer to.

Changes to **Scotland's** disclosure and rehabilitation regime in 2015 mean that certain spent convictions can become 'protected' and are no longer disclosed.

A 'protected' conviction is a spent conviction for an offence:

- which you received more than 15 years ago (if you were over 18 on the date of the conviction)
- which you received more than 7 years and 6 months ago (if you were under 18 on the date of the conviction)
- for which you received the disposal of an admonition, absolute discharge or a discharge following a referral to a children's hearing

More information on the [changes](#) can be found on the Disclosure Scotland website.

### **The difference between spent and filtered**

The criteria for when a conviction becomes spent are not the same as those for whether it would be filtered out; all filtered convictions and cautions are spent, but *not* all spent convictions and cautions are filtered.

Some convictions and cautions will never be filtered, even once they become spent. The DBS list of offences that will never be filtered from a criminal record check is available [here](#).

Broadly, the differences between whether a conviction is spent and whether it is also filtered fall into three categories:

1. **Length of time** – The time that elapses before a conviction will be filtered out of a DBS enhanced disclosure is usually significantly longer than the rehabilitation period after which a conviction is spent.
2. **Custodial sentence** – any conviction that resulted in a custodial sentence of any length (including suspended sentences) will never be filtered out of a DBS enhanced disclosure, whereas all convictions resulting in custodial sentences of four years or less will eventually become spent (with the exception of public protection sentences).
3. **Multiple offences** – if more than one conviction has been received, whatever the type or length of sentence, no convictions for that individual will ever be filtered out of a DBS enhanced disclosure; whereas the total number of convictions does not affect whether and when they become spent. (Note however that cautions can still be filtered where there are more than one or where there are also convictions).



## Examples

**Mr A** received a caution for a minor theft offence at the age of 16.

- This will become spent immediately.
- This will be filtered out of an enhanced DBS disclosure two years after it was received.

**Miss B** received a one-year sentence for possession of drugs at the age of 23, and was released on licence after 8 months.

- This will become spent after four years following the end of the sentence.
- This will never be filtered out of an enhanced DBS disclosure because it resulted in a custodial sentence.

**Mrs C** was convicted, and received a fine and endorsement for drink driving at the age of 31.

- This will become spent after 5 years.
- This will be filtered out of an enhanced DBS disclosure after 11 years, provided that Mrs C does not go on to receive any further convictions.

If Mrs C were convicted of a further offence at the age of 45, her earlier drink driving conviction would remain spent, but would now appear on an enhanced DBS disclosure because she now has committed two offences in total, even though one of them is spent.

**Mr D** was convicted of attempted rape at the age of 24. He was given a custodial sentence of 10 years, of which he served 6 years.

- This offence will never become spent because it resulted in a custodial sentence of more than 4 years.
- This offence will never be filtered out of an enhanced disclosure, because it resulted in a custodial sentence and also because it is on the list of crimes which will never be filtered.

**Ms E** was cautioned for possession of class C drugs at the age of 15. She went on to receive a further conviction for possession of class C drugs when she was 23 for which she was fined £2,000.

- The caution will become spent immediately.
- The conviction will become spent after one year.
- If Ms E applies for an enhanced DBS check at the age of 25, the caution will be filtered out of it, because it was received more than 2 years ago and when aged under 18. The conviction will be shown on her DBS check because it was received less than 11 years ago.
- If Ms E applies for an enhanced DBS check at the age of 35, neither offence will be disclosed because they will both be more than the relevant number of years old.

## Annex D: Sample letter to applicants declaring a criminal conviction

Dear

Thank you for your application to *[Institution Name]*. In processing your application we have noticed that you have made a positive declaration to the question regarding relevant criminal convictions. We would like to establish some further details, so please complete the enclosed form and return it to me as quickly as possible, noting the deadline date stated below.

We are committed to fair admissions for all our applicants. The information you provide will be confidential to those involved in *[Institution name]*'s risk assessment process – which seeks to exercise a duty of care towards you as an individual, as well as to students, staff and visitors. If, after our consideration of the information you provide, it is deemed necessary to investigate further, we will seek your approval to do so.

If you wish to provide the details of a third party, such as a probation officer, with whom you authorise the University to communicate about the background of your convictions and current situation please give their full name, position and contact details when returning the form.

At this stage, the risk assessment process considers only those convictions that are relevant, and are not deemed to be 'spent'. If you have made a positive declaration in error, and in fact do not have any relevant criminal convictions, or if all of your convictions are spent, please indicate that on the enclosed form and return it with no further details – any declaration made in error for convictions will not be taken into account in any admissions decisions. If you would like help in understanding whether your convictions are spent or relevant, you may find the charity Unlock helpful, see: [www.unlock.org.uk](http://www.unlock.org.uk). The charity Nacro may also be of assistance, see: [www.nacro.org.uk](http://www.nacro.org.uk).

As your application cannot be considered further until a reply is received please ensure that your response reaches me no later than DD Month Year. If we do not receive any reply by this date we shall assume that you no longer wish to proceed with your application and it will be withdrawn.

Please contact me if you wish to discuss any aspect of this letter.

Yours sincerely,

## Annex E: Sample form — further details about a conviction

**Sample form to be completed by an applicant who has indicated a relevant criminal conviction in an application. This should accompany an explanatory letter. See Annex D above.**

APPLICANT'S NAME:

UCAS PID NUMBER:

Please give full details below of any **relevant** convictions for criminal offences that are **not spent** under the *Rehabilitation of Offenders Act 1974*.

### Previous Convictions

State below in respect of each offence for which you have been convicted:

*The nature and date of the offence*

*Name of court, date of conviction & sentence/fine imposed*

In many cases, it is helpful for *[Institution Name]* to have an understanding of the circumstances of an offence. If you would like to offer information of that nature at this stage, please provide a separate letter or statement on the reverse of this form.

It may help *[Institution Name]* to obtain further information from another source such as a probation officer or social worker. If you are happy for us to contact such an individual, please give their name, contact details and your agreement that we may contact them, if relevant, to seek information on your offences, in relation to studying here.

**I confirm that the information given on this form is true, complete and accurate and that no information requested or other material information has been omitted.**

**Applicant's signature** \_\_\_\_\_

**Date** \_\_\_\_\_

## Annex F: Sample form for assessing risk in relation to applicants who have relevant criminal convictions

<b>Name of Applicant:</b>	
<b>UCAS PID Number:</b>	
<b>Course Applied for:</b>	<b>Proposed Year of Entry:</b>

			Additional Notes		Risk Assessment		
Did the applicant disclose past convictions/cautions in the application form?	Yes	No			If no, question applicant about why <ul style="list-style-type: none"> <li>▪ If mitigating circumstances then complete assessment.</li> <li>▪ If no mitigating circumstances, end application process if appropriate.</li> </ul> If yes, complete this assessment.		
Date and description of the offence(s)							
Sentence(s)					<b>High</b> Custodial	<b>Medium</b> Suspended, community, conditional discharge	<b>Low</b> Warning, caution, reprimand, fine, absolute discharge
			Additional Notes		Risk Assessment		
Is the type/nature of the offence(s) directly relevant to the programme applied for? If yes, in what way?	Yes	No			<b>High</b>  Yes	<b>Medium</b>  Some link between offence and aspects of course of study	<b>Low</b>  No
Is there a pattern of specific offences? If yes, state nature of pattern:	Yes	No			<b>High</b>  Yes	<b>Medium</b>  Some instances	<b>Low</b>  No pattern

Has the applicant supplied additional references?	Yes	No			<b>High</b>	<b>Medium</b>	<b>Low</b>
How do the referees rate the applicant's suitability for attendance at the HE provider and participation in the HE community?	Yes	No			Referees declare applicant unsuitable	Referees share some reservations	Referees declare applicant suitable
Does the applicant/referee offer any mitigating circumstances concerning past offence(s)?	Yes	No			<b>High</b> No	<b>Medium</b> Some mitigating circumstances	<b>Low</b> Yes
Any aggravating factors to take into account (e.g. intent/harm/exploitation/breach of trust)				What has changed since offence occurred? (e.g. treatment etc) Applicant's attitude towards offence/s?			
Who else has been consulted about this disclosure (partner agencies/probation officer etc)				Name: Position: Date consulted: Reply:	Name: Position: Date consulted: Reply:	Name: Position: Date consulted: Reply:	
Is there evidence of a risk of reoffending? <ul style="list-style-type: none"> <li>Does the pre-sentencing report or any other official documentation provided indicate a risk of reoffending?</li> <li>Is there any other evidence of behaviour of reoffending?</li> <li>To what extent is time since the offence a factor in the risk of reoffending?</li> </ul>				<b>High</b> Significant evidence, consistently held across reports	<b>Medium</b> Some evidence, may be inconsistent or not sustained across all reports	<b>Low</b> Little or no evidence	
<b>Overall risk evaluation</b>					<b>HIGH</b>	<b>MEDIUM</b>	<b>LOW</b>

Criminal Convictions Group – Declaration and Decision

The Group understands the University's policy on the recruitment of applicants with criminal convictions and has recognised this in its deliberations.

On consideration of the risk assessment form and other materials submitted by the applicant and others the Group believes that the applicant **should/should not be invited to proceed with the admissions process** for the following reasons:

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Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Date applicant informed:

Copy of letter appended? Y/N

Details of additional attachments/appendices/reports/letter from applicant or referee or probation officer or similar

Form completed by: \_\_\_\_\_ (name) \_\_\_\_\_ (signed) \_\_\_\_\_ (date)

## Annex G: guidance for a criminal convictions group/panel

### Criminal Convictions Group Meeting

To consider the application of xxxx

*This note may either refer to a specific applicant – xxxx – or may be a general and standard guidance note not referring to a specific individual*

Invited:

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### Guidance Notes

#### Background

xxxx has applied to study on the xxxx programme.

xxxx has provided:

- A brief, personal statement about his offence
- A Pre-sentence report
- A Probation report
- Other (details given)

Please see the attached information.

#### Risk Assessment

It falls to this Group to undertake a risk assessment of xxxx's admission to the University/College and/or whether it is possible to admit them to the particular course applied for.

The Group may find reference to the University/College's Risk Assessment Policy useful. This can be found at: <http://www.xxxx.ac.uk>

Further, the Group may find it useful to use the attached Risk Evaluation Form as a way to quantify the risk involved in xxxx's admission.

#### A. Questions and Discussion

During the Group's deliberations, the questions that should be asked and discussed are:

1. Based on the information we have, does xxxx's admission to the University/College pose an unacceptable risk to:
  - other students

- staff
  - other members of the community
  - the programme
  - the property of the HE provider
2. Based on the evidence seen, is there an unacceptable risk of re-offending?
  3. Is there anything the University/College can do to mitigate and manage any risk? (this may include a behavioural/conduct agreement – which Security/ Support Services/Accommodation can comment on further).
  4. Is it possible to admit them to the course/programme they wish to follow bearing in mind the requirements of the relevant professional organisation/statutory body/placement provider.
  5. Does the Group need to ask for further information to be able to make a decision on the risks involved?

## **B. Conclusions**

The Group may decide:

1. To reject xxxx's application to study at the University/College
2. To accept xxxx to study at the University/College, but not to stay in its accommodation
3. To accept xxxx to study at the University/College, and to stay in its accommodation
4. To accept xxxx to study at the University/College, but subject to certain other requirements and support arrangements
5. To reject xxxx's application to study on the particular course/programme requested, but to indicate that it would be acceptable for them to apply for alternative courses.
6. To request further information before it makes a decision.

## **C. Further action**

The Group may also wish to discuss what action should be taken in relation to xxxx should her/his behaviour at the University/College not be of an acceptable level. The action may include:

1. Disciplinary action
2. Exclusion from the University/College
3. Requirement to adhere to a support programme
4. Other

The Group should also discuss and decide:

- who is responsible for monitoring xxxx's behaviour.
- who in the University/College needs to be advised of the circumstances of xxxx's admission