



# Developing a fair approach to applicants with criminal records

A toolkit for higher education providers

# Introduction

In 2018, UCAS announced that they would remove the requirement for 'all applicants' to declare whether they have any 'relevant, unspent criminal convictions'. From the 2019 entry cycle, only applicants to certain, regulated courses – for example medicine, teaching, or social work – are asked about criminal convictions. The question now only appears on the online UCAS application if an applicant selects one of these courses. Higher education (HE) providers<sup>1</sup> will then continue to collect further information and make decisions.

HE providers had to decide whether to continue collecting this information for applicants to all other courses. Those HE providers that decided to collect this information need to comply with the General Data Protection Regulation (GDPR) and Data Protection Act 2018. This means identifying a lawful basis and condition of processing the data and developing a policy and process for upholding applicants' rights over their data. The GDPR applies to collection of personal data from undergraduate and postgraduate applicants, and to UCAS and direct entry routes.

[Unlock](#) is an independent national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence. Having provided advice and training to HE providers, and advocated for applicants and students, we wanted to work closely with HE providers following this significant change.

[The UPP Foundation](#) offers grants to universities, charities and other higher education bodies in order to increase access and retention to higher education, improve student employability, enhance civic universities and develop global citizens.

In 2018 Unlock, supported by the UPP Foundation, launched a 12-month project in partnership with Cardiff University, Goldsmiths, University of London and the University of Southampton. The [Unlocking Students with Conviction](#) project has three aims: to support partners' development of fair admissions policies; produce a toolkit for other HE providers and to establish a pledge to offer a fair chance to students with convictions.

This toolkit is designed to help HE providers understand applicants with criminal convictions and the role of the criminal justice system for those who are under supervision. It includes examples of supporting success for this group and case studies from two of our project partners. Finally, the toolkit sets out Unlock's principles of fair admissions and the law on processing criminal records data.

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<sup>1</sup> HESA use the term higher education provider to refer to all universities and other higher education institutions (HEIs) in the UK, including those that do not receive annual public funding, and further education colleges (FECs) in Wales which provide some HE level courses.

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# 1. Applicants with a criminal record

People with criminal records are a broad and varied group - there are over 11 million people in the UK with a criminal record.<sup>2</sup> Research shows that 1 in 3 men have a criminal record. Of those men with a criminal record, just over half of these had been convicted on only one occasion, and 85% were convicted before they were 30 years old.<sup>3</sup>

Less than 10% of people that receive a criminal record go to prison – nearly 70% of all sentences handed down are fines. In the 12 months to June 2018, 71% of people serving a prison sentence had committed a non-violent crime. 47% were serving a sentence of six months or less.<sup>4</sup> Most sentences – including prison sentences – will become spent and no longer disclosable. However, this takes time. A fine remains unspent for a year. A community order is unspent for a year after completion. A prison sentence of less than 12 months will be unspent until 4 years after it is completed.

The concern that everyone with a criminal record will go on to commit further crime is unfounded. Half of men and three-quarters of women with a conviction will never be convicted again.<sup>5</sup> In general, risk of reconviction decreases over time for most offences<sup>9</sup> and in most cases will eventually become statistically lower than for people who have never been convicted of a crime before.<sup>6</sup> Those who have developed some stake in society since their crime – for example, by preparing for a degree programme - are less likely to commit further crime.<sup>11</sup> There is no evidence that students with criminal records are more likely to commit crime on campus than any other student<sup>7,8</sup>, or that background checks reduce crime on campus.<sup>9</sup>

Further, evidence consistently shows that some groups are disproportionately subject to law enforcement, and therefore more likely to acquire a criminal record. For example, black boys and men are more likely to be stopped and searched than other ethnic groups, and more likely to be prosecuted.<sup>10</sup> Approximately half of young men and two thirds of young women in custody aged between 16 and 21 have recently been in statutory care.<sup>11</sup> Blanket questions about criminal records could put off applicants from these already under-represented groups.

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<sup>2</sup> [FOI request](#)

<sup>3</sup> [Rehabilitation of Offenders Act 1974](#)

<sup>4</sup> Moore, R. (2009) [A compendium of research and analysis on the Offender Assessment System](#)

<sup>5</sup> Ministry of Justice (2010) Conviction histories of Offenders between the ages of 10 and 52

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217474/criminal-histories-bulletin.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217474/criminal-histories-bulletin.pdf)

<sup>6</sup> Weaver, B. (2018) [Time For Policy Redemption? A Review Of The Evidence On Disclosure Of Criminal Records](#)

<sup>7</sup> Barbaret, R., Fisher, B. and Taylor, S. (2004) [University student safety in the East Midlands](#), Home Office Online Report 61/04

<sup>8</sup> Phipps, Alison and Smith, Geraldine (2012) ['Violence against women students in the UK: time to take action'](#), *Gender and Education*, 24 (4), pp. 357-373.

<sup>9</sup> Custer, B.D. (2012) [Students with Felony Convictions in Higher Education: An Examination of the Effects of Special Admissions Policies on Applicants and on Campus Communities](#), PhD these, Wright State University, Ohio

<sup>10</sup> Shiner et al (2019) [The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales](#)

<sup>11</sup> House of Commons Justice Committee [The treatment of young adults in the criminal justice system Seventh Report of Session 2016-17](#)

## Applicants subject to criminal justice supervision

In most cases, applicants with criminal records won't have ever been subject to monitoring by the criminal justice system. Some applicants may have been subject to supervision in the past, but are no longer. Where an applicant is not currently subject to supervision, they will be unable to provide references or information from a prison or probation officer.

Applicants who are in, or have recently left, prison and those or who are serving sentences in the community, will be subject to some form of supervision by either prison or probation. The nature and extent of supervision will vary, but where those individuals apply to higher education, Her Majesty's Prison and Probation Service (HMPPS) has a statutory duty to carry out suitability assessments.

### Applicants in prison

People approaching the end of a prison sentence who have proved themselves to be suitable can apply to their supervisors to work or study on day release (known as 'release on temporary licence', or ROTL). Prison-university partnerships are raising the aspirations of prison learners. This can mean that people are looking to apply to university while they are still in prison. Approval depends on stringent risk assessment by prison and probation staff. They will be allowed to attend only under strict conditions and will be subject to monitoring that could include drug and alcohol testing, GPS monitoring and spot checks by prison officials. Applicants will usually be expected to disclose their situation to the university and it is likely that there would be contact from the prison or probation service.

### Applicants under supervision

Prison leavers are supervised in the community for at least 12 months after they are released. They are also subject to similar conditions and monitoring as people in prison on ROTL, but will have more freedom. They are expected to meet their supervisor regularly and are required to notify them of any work or study that they're applying for, in part so the supervisor can manage their appointments and contact with other services. Depending on their circumstances, there may be other specific restrictions in place, although this will not apply to most.

By the time someone applies to university, risk assessments will have already been carried out by professionals who have access to a range of information about the applicant. If an individual is subject to specific restrictions, there is a requirement on them to follow them and consequences for not doing so. Failure to comply with supervisory conditions can result in a return to court or recall to prison.

Applicants on the sex offences register will have to comply with stringent reporting requirements including unannounced home visits, regular checking of internet history, restrictions on possessing electrical devices. Their application will have been discussed with their supervising officers who will intervene if they consider the applicant to pose a risk to others on campus.

### Applicants with spent and/or protected criminal records

The Rehabilitation of Offenders Act 1974 provides for most criminal records to become 'spent' – that is, no longer disclosable in most circumstances. Whether a criminal record becomes spent, and when,

depends on the type and length of sentence. The period of time that must elapse before it become spent is set out in law – a full list can be seen on our [website](#).<sup>12</sup>

Where applicants disclose spent criminal records, these should be ignored. If an applicant declares an unspent conviction that would become spent during their registration, HE providers should ensure they have a mechanism for deleting information once the conviction becomes spent.

Certain professions and job roles are exempt from the Rehabilitation of Offenders Act, meaning spent criminal records remain disclosable. For courses leading to exempt professions, applicants will continue to declare whether they have cautions and/ spent or unspent convictions on their UCAS application. However, some spent criminal records are eligible to become 'protected' after a period of time. This process is referred to as 'filtering' and the rules on filtering can be seen on our [website](#).<sup>13</sup>

### *Room for improvement*

Many people with unspent convictions will never have had, or will no longer have contact with a probation officer or prison worker. The example below shows a university admissions policy that requests a character reference that many applicants will not be able to provide.

The Admissions Operations Manager will request further information about the nature of the offence, which will include an opportunity for the applicant to confirm if an offence was declared in error on their application. This information may include asking the applicant to provide references from his/her Probation Officer and/or prison authorities which should include formal notification of the offence(s) for which the applicant was convicted, the sentence passed, and any other factors relevant, including any probation arrangements that may have been put in place and some assessment of the risk of further offending. If they were not subject to a probation order then they may be asked to submit a recent character reference from a person who is unrelated to them but is able to comment on the circumstances of the offence(s) and/or their conduct since. The applicant will also be able to comment on any mitigating circumstances relating to the offence, their reflections on their offence and what they have been doing since their conviction.

## Applicants to courses that require DBS checks

Applicants to courses leading to professions or occupations that are exempt from the Rehabilitation of Offenders Act 1974 will be required to undergo enhanced DBS checks at some stage. Undergraduate applicants to these courses will continue to indicate on their the UCAS application whether they have convictions and cautions, that are not 'filtered'. HE providers who use UCAS will be able to choose the courses that this question applies to when they are setting them up in the system.

Ensuring further information is collected for the right courses, and at the right time, is important. Medical students require DBS checks before registration so it is appropriate to ask specific, targeted

<sup>12</sup> <https://hub.unlock.org.uk/knowledgebase/spentposter/>

<sup>13</sup> <https://hub.unlock.org.uk/knowledgebase/filtering-simple-guide/>

questions at an early stage so that fitness to practice processes and DBS checks can take place. For courses where DBS checks are required ahead of placements, but not at registration, HE providers should consider when and how to collect this information. Providers should make applicants aware of courses where placements will always require DBS checks and where there will be a choice of placements.

## Assessing criminal records

### Courses that require DBS checks

Applicants to regulated courses will be obliged to disclose unspent and spent criminal records that are not filtered, which can mean disclosing old and minor cautions and convictions. Unlock's report on youth criminal records showed that significant numbers of people have convictions or cautions from decades ago.<sup>14</sup> HE providers should consider the relevance of old and minor criminal records when making decisions.

HE providers should make clear the specific professional or regulatory requirements for these courses. Simply having a criminal record should not usually be a bar to entry and applicants may not all have the same career motivations for completing a course. HE providers could consider developing a framework of offences and/or timeframes after which convictions can be disregarded. Conversely, if there are specific convictions that would bar an individual from entry to the profession, this should be communicated to applicants in a timely way taking into account the applicant's position in the admissions cycle.

### Other courses

HE providers cannot ask applicants to non-DBS courses to disclose cautions or spent convictions. The fact that a conviction is unspent does not necessarily indicate relevance. Most criminal records will eventually become spent. Where someone is under supervision, it may still be the case that the criminal record could be irrelevant for the particular course. Remember that only necessary personal data should be processed. If it's not relevant, is it necessary? The focus should be on whether there are restrictions in place that might prevent an applicant from successfully completing their course. Where that is a possibility, admissions advisers should consider how to advise on adjustments or alternatives.

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<sup>14</sup> Unlock (2018) [A life sentence for young people: A report into the impact of criminal records acquired in childhood and early adulthood](#)

If there are no alternatives and an applicant is to be rejected, they should be provided with clear reasons and advice on the appeals process.

### Good practice

The policy below distinguishes between courses that require DBS checks and others, which helps applicants understand what they need to disclose and why.

## **Criminal Convictions Policy and Procedure for Undergraduate and Postgraduate Admissions**

### Scope

1. This policy applies to applicants applying to courses leading to certain professions or occupations which are exempt from the Rehabilitation of Offenders Act (1974). These courses involve working with children or vulnerable adults. These courses have particular requirements relating to the disclosure of warnings, reprimands, cautions and criminal convictions which are dealt with on a course by course basis and require applicants to agree to submit to criminal record checks by the Disclosure and Barring Service<sup>1</sup>. Applicants to these courses may be required to complete a self-disclosure in advance of a DBS check. Self-disclosure information will be considered in accordance with this policy and procedure.

## 2. Supporting success

Asking targeted questions about restrictions can help HE providers to direct students to appropriate support, but if you collect the information on the basis that you want to support the student, do make sure support is available and staff are trained in the issues this group of students may face.

Students with criminal records may have been out of education for some time, may be older than the average undergraduate at your university, they may be isolated from their family or may have caring responsibilities. They may find it difficult to make friends because they fear rejection, or they may be unwilling to hide their past and disclose their criminal record to friends or fellow students. Occasionally other students may find out via news or social media. In those circumstances, the student may need support and other students may also find the information difficult to deal with.

Whatever approach HE providers choose, aim for consistency across undergraduate and postgraduate programmes, and between UCAS and direct entry applicants. Offering support to those students who want and need it should be a priority – as it is for any group.

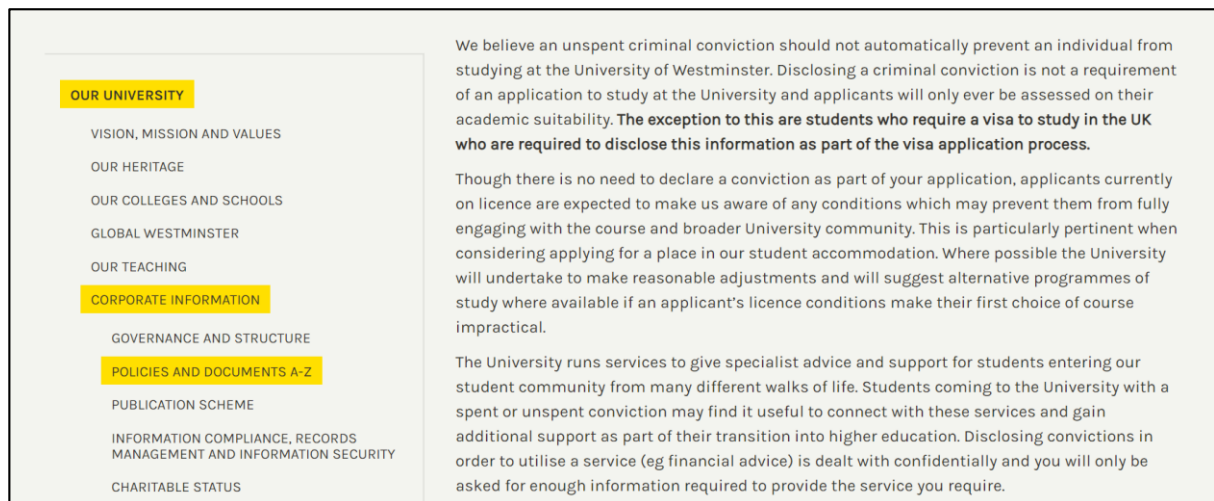


Questions to help support students should be voluntary and removed from the admissions process.

1. Consider what support services are in place and whether these could be enhanced.
2. Consider a named point of contact to support students who declare convictions.
3. Ensure careers staff are trained in advising applicants with criminal records.
4. Student support services should include in-house support for students with convictions, but also signpost students to specialist organisations like Unlock or the Longford Trust.
5. Consider providing advice on housing if university accommodation is going to be a challenge.

### Good practice

Asking applicants to declare conditions that may affect their ability to study is a proportionate way to collect relevant information. You can target support to where it is needed most and suggest adjustments or alternatives if necessary.



**OUR UNIVERSITY**

- VISION, MISSION AND VALUES
- OUR HERITAGE
- OUR COLLEGES AND SCHOOLS
- GLOBAL WESTMINSTER
- OUR TEACHING
- CORPORATE INFORMATION**
- GOVERNANCE AND STRUCTURE
- POLICIES AND DOCUMENTS A-Z**
- PUBLICATION SCHEME
- INFORMATION COMPLIANCE, RECORDS MANAGEMENT AND INFORMATION SECURITY
- CHARITABLE STATUS

We believe an unspent criminal conviction should not automatically prevent an individual from studying at the University of Westminster. Disclosing a criminal conviction is not a requirement of an application to study at the University and applicants will only ever be assessed on their academic suitability. **The exception to this are students who require a visa to study in the UK who are required to disclose this information as part of the visa application process.**

Though there is no need to declare a conviction as part of your application, applicants currently on licence are expected to make us aware of any conditions which may prevent them from fully engaging with the course and broader University community. This is particularly pertinent when considering applying for a place in our student accommodation. Where possible the University will undertake to make reasonable adjustments and will suggest alternative programmes of study where available if an applicant's licence conditions make their first choice of course impractical.

The University runs services to give specialist advice and support for students entering our student community from many different walks of life. Students coming to the University with a spent or unspent conviction may find it useful to connect with these services and gain additional support as part of their transition into higher education. Disclosing convictions in order to utilise a service (eg financial advice) is dealt with confidentially and you will only be asked for enough information required to provide the service you require.

## 3. The law on collecting criminal records

As previous sections have made clear, blanket collection of data is almost always unnecessary. Targeted questions – to applicants for DBS courses, or about conditions that may impede success – are proportionate. The General Data Protection Regulation (GDPR) applies to all processing, including collecting, recording, storing, using, analysing, disclosing or deleting information.

Information about criminal records is, naturally, sensitive and the GDPR requires any organisation that processes this data to have both a lawful basis under Article 6 and a condition under Article 10. These should be determined *before* processing and documented in a privacy policy.<sup>15</sup>

### Identifying an Article 6 basis

The purpose of collecting criminal records underpins the suitable lawful basis. Each basis requires that processing is necessary and there should be a clear and rational link between the purpose and the processing. There are six lawful bases for processing personal data.

#### a) Consent

Can applicants still be considered if they refuse to consent to processing of criminal records?<sup>16</sup>

#### b) Contract

Is there a reason why your contract with an applicant requires processing criminal records data?

#### c) Legal obligation

Are you legally obliged to process criminal records data for this course?

#### d) Vital interests

Are you collecting criminal records data to save or protect someone's life?<sup>17</sup>

#### e) Public task

Are you processing criminal records data as part of official tasks/functions in the public interest?<sup>18</sup>

#### f) Legitimate interests

Have you a legitimate interest in processing criminal records data AND can protect the rights of the individual?

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<sup>15</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/criminal-offence-data/>

<sup>16</sup> Article 7 explains: The data subject shall have the right to withdraw...consent at any time. When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1528874672298&uri=CELEX:02016R0679-20160504>

<sup>17</sup> This lawful basis is very limited in its scope, and generally only applies to matters of life and death.

<sup>18</sup> Section 8 of the Data Protection Act 2018 (DPA 2018) says that the public task basis will cover processing necessary for:

the administration of justice; parliamentary, statutory or governmental functions; or activities that support or promote democratic engagement. It applies to statistical and archival functions but is unlikely to apply to processing for admissions.

Most of these do not apply for admissions to most courses and relying on them could mean your policy is non-compliant. Applicants could be asked to voluntarily disclose information that could be used to support them. This would be compliant with the consent basis.

## Identifying an Article 10 condition

HE providers will also need to identify an 'official authority' or a separate condition for processing, under Article 10. A full list can be found in Schedule 1 of the [Data Protection Act 2018](#). The Schedule is split into four parts.

- Part 1 – Conditions relating to employment, health and research
- Part 2 – Substantial public interest conditions
- Part 3 – Additional conditions relating to criminal offence data
- Part 4 – Appropriate policy document and additional safeguards

Compliance depends on necessity so HE providers will need a clear purpose of processing before identifying an appropriate condition.

- a) the processing is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection, **and**
- b) the controller has an appropriate policy document in place (see paragraph 39 in Part 4 of this Schedule).

Meeting the condition depends on both demonstrating that processing is necessary, and having an appropriate policy in place.

### *Room for improvement*

When identifying a lawful basis and condition for processing criminal convictions data, have the purpose of processing in mind. It is unlikely that collecting data about unspent convictions can be shown to prevent or detect crime.

#### **Paragraph 10 – Preventing or detecting unlawful acts**

We rely on this condition to process data about applicants' and students' criminal convictions, in certain circumstances, to enable us to manage any potential risks to the University community. Any information about criminal convictions obtained as part of a Disclosure and Barring Service (DBS) check is stored and retained in line with DBS requirements. We may also rely on this condition to process information about employees' criminal convictions, if appropriate.

Where disclosure is mandatory, consent is not an appropriate lawful basis

We will rely on the lawful basis of Consent (Art 6(1)(a)) GDPR, in conjunction with 'Consent' as set out in Condition 29, Part 3 of Schedule 1 of the Data Protection Act 2018 for data processing operations in this area.'

## 4. Case studies

### Cardiff University



The poster features the Cardiff University logo (CARDIFF UNIVERSITY and PRIFYSGOL CAERDYDD) in the top left. A dark grey banner at the top right contains the text 'Our new approach' in white. Below this, a bulleted list of six points is presented. To the right of the list is a photograph of a modern interior space with a white wall, a potted plant, and a sign that reads 'WELCOME CROESO' and 'Student Support Centre Canolfan Cymorth Myfyrwyr'. At the bottom left of the poster are social media icons for Twitter (@cardiffuniug) and Facebook (Facebook.com/cardiffuniug).

- Support based – encouraging applicants to share
- Focus on restrictions rather than convictions
- Dedicated team
- Clear pre-applicant information
- Alternative options – where can we provide opportunity
- Panel based risk assessment

@cardiffuniug Facebook.com/cardiffuniug

Cardiff University, like most others, used to use the UCAS self-declaration on criminal convictions as a starting point. If an applicant met the academic entry requirements, they were referred to the Admissions Support Team who requested further information & undertook an initial assessment. In some cases, an applicant would be referred to a Panel, chaired by the Pro Vice Chancellor of Student Experience and Academic Standards. The panel would then consider whether to admit the student and whether they could live in university accommodation.

When UCAS announced they would no longer ask all applicants, Cardiff began reviewing their process. This included looking at information and advice from the ICO, Unlock and UCAS, considering legal advice and listening to student feedback. They found that their approach had some unintended consequences, and had perhaps been discouraging talented applicants who feared rejection.

Following their review, the university decided that they could not identify a lawful basis for asking all applicants and that it was no longer proportionate or necessary to ask applicants about convictions. Applicants to regulated courses, Tier 4 applicants and students who take part in some extra-curricular activities will be asked to disclose at some stage. Otherwise applicants are asked to make contact at an early stage to discuss any restrictions or needs in confidence. Disclosure requirements are listed on their [course information pages](#) and they invite applicants to discuss any matters confidentially during the admissions process which means there is sufficient time to discuss any potential support needs and put arrangements in place.<sup>19</sup>

<sup>19</sup> <https://www.cardiff.ac.uk/public-information/students-applicants/admissions-policies>

# University of Southampton

## OUR NEW APPROACH

More open, transparent and accessible?

- No applicant asked about convictions for “non-DBS” courses
- Online “self help” advising on:
  - Module choice
  - Research projects
  - Careers/professional bodies
  - Extracurricular activities
  - Halls of residence
  - Student disciplinary regulations
- Option for confidential guidance
- Considering potential WP impacts



University of Southampton had some experience of making adjustments for students with convictions, but they wanted to streamline their policy. They took a ‘whole institution’ approach, gathering together admissions, accommodation, careers and support staff to consider their new approach. Having determined that there was no lawful basis to ask all applicants about unspent convictions, the University devised a decision tree to work out when disclosure was – and was not – required.

The decision tree was then turned into a series of questions that applicants can view online to determine whether they will need to make a declaration - in most cases they will not. Applicants subject to supervision are advised to discuss their application with their supervising officer and take their advice on whether to inform the University of any licence conditions. Their policy is clear and accessible online.<sup>20</sup> By providing information up front, applicants are able to make an informed choice about whether to apply.

Courses that require a DBS check, whether on registration or to take up a placement, are highlighted and applicants can request confidential advice on whether their conviction history would prevent them from being able to complete a course. Where possible, the university will make adjustments. Where it would be a barrier, alternative courses will be suggested.

University of Southampton are able to offer applicants the choice of single sex and self-contained accommodation, which means they are able to be inclusive of applicants with licence conditions in place.

<sup>20</sup> <https://www.southampton.ac.uk/studentadmin/admissions/admissions-policies/criminal-records.page>

## 5. Principles of fair admissions and criminal records

These principles have been developed in collaboration with HE providers and applicants, and are designed to help providers establish fair and inclusive policies for applicants with criminal records.

### 1. Understand applicants with a criminal record

Most applicants with a criminal record will not be subject to ongoing monitoring by the criminal justice system. They will not be subject to any restrictions that will affect their ability to complete most courses. Where applicants are subject to monitoring – for example on licence or on a community sentence - HE providers should trust the system to do its job rather than try to replicate it.

### 2. Focus on admissions

Admissions is about access to education – ‘would a criminal record prevent an applicant completing this course?’ Other aspects of university life – visa approval, accommodation, extra-curricular activities, careers advice – may require different considerations and a distinct policy. Separating these will help identify if, and when, it is necessary to ask about criminal records in relation to admissions decisions.

### 3. Distinguish between DBS and non-DBS courses

There are broadly four categories:

- I. DBS check is legally required prior to enrolment
- II. DBS check required for a placement and completion dependent on placement
- III. DBS check for some placements but alternative placements available
- IV. No DBS component

### 4. Ask only if - and when - necessary

ICO guidance is clear that the collection of criminal records information must be necessary and proportionate. Asking an applicant about their criminal record should only be part of the admissions process if, and when, it is necessary. For most courses, it is not necessary to ask at any stage. HE providers should provide enough information to applicants, so they can assess for themselves whether their criminal record might prevent them from successfully completing a course.

Any admissions policy that collects criminal records data must be compliant with General Data Protection Regulation (GDPR) and the Data Protection Act 2018. Distinguishing between DBS and non-DBS courses makes clear if, when and what needs to be asked. For DBS courses this may be pre-enrolment, or at a later stage. For non-DBS courses, HE providers should consider if and when to ask targeted questions or encourage voluntary disclosure. In all cases, a policy should set out why this information is collected and how it is handled.

### 5. For DBS courses, be clear about suitability assessments

Your policy should inform your decision making; avoid blanket bans, treat any information disclosed to you as confidential and only share it with specific colleagues if necessary. Written information, whether official or provided by an individual, is difficult to put into context. Where you have concerns about an applicants' criminal record, arrange a face-to-face discussion. For DBS courses, HE providers should be

transparent about the suitability assessment: who is involved, who has authority, what evidence, tools and training are applied and the appeal process. As far as possible the process should involve the applicant, in person.

For mandatory DBS courses, the 'fitness to practice' process should be closely linked to the profession and recognise discrepancies between risk threshold at the university and in the profession. This should include review processes to ensure consistency of decision making and to incorporate changes – for example, greater recognition of the value of lived experience in social and youth work.

## 6. Have a clear, consistent and accessible policy

If you are collecting criminal records data - even for mandatory DBS courses - you must have an appropriate policy in place under the GDPR, to meet the principles of lawfulness, transparency and fairness. Your approach should be consistent across undergraduate and postgraduate admissions and apply equally to UCAS and direct entry routes. Encouraging language, data showing numbers taken on and anonymised case studies all provide reassurance that the policy is more than lip service to widening participation.

## 7. Support applicants and students with criminal records

Applicants with criminal records are most often drawn from other under-represented groups. Staff providing financial, pastoral, healthcare, careers and other advice to students should be aware of any specific advice or support that could benefit students with criminal records. Access to support should not be contingent on disclosure, but students should be made aware that they can confidentially disclose (and who to) and relevant staff should be trained in managing disclosure.

## 8. Talk positively and reach out

Applicants with criminal records should be seen as a resource rather than a burden – diversity of experience provides learning opportunities for all, and applicants with convictions are disproportionately drawn from more commonly identified WP groups – care leavers, some ethnic groups and first in family. HE providers are understandably concerned about negative press. A positive, evidence-based response can help manage these concerns.

## 6. Checklist

There is no template for a perfect policy, but this checklist provides a handy reminder of things to consider.

### We only ask only if - and when - necessary

- We have defined the purpose of collecting criminal records
- There is a clear and rational link between the purpose and asking
- We have identified an Article 6 basis and Article 10 condition

### The questions we ask are targeted and proportionate

- We recognise that asking about 'unspent convictions' is unlikely to be proportionate

### Our policy is clearly written and accessible to applicants

- We distinguish between DBS and non-DBS courses
- Explains why we ask about criminal records (including how we comply with the GDPR)
- Applicants know what they are expected to disclose and when
- Provides links to information on whether a criminal record has become spent
- Explains applicants' data subject rights, and lets them know how to make a complaint

### Our suitability assessments for DBS courses are transparent

- Applicants have the opportunity to have a discussion in person before a decision is taken
- Decision makers are suitably trained to make decisions about applicants with criminal records
- We consider adjustments/alternatives before rejecting applicants because of a criminal record
- Where an applicant is rejected, they are provided with reasons in writing

### We understand applicants with a criminal record, and the role of the justice system

- We don't ask all applicants to provide references from a probation or prison official
- We don't ask for additional references from all applicants who declare a criminal record
- We understand the difference between conditions that affect participation on the course, and those that may affect access to other services at university – e.g. accommodation or careers

### We support applicants and students with criminal records

- We provide applicants with the opportunity to disclose voluntarily so they can receive support
- Our student support staff are trained to advise on disclosure
- Our careers staff are aware of barriers to employment or further training

### We talk positively and reach out

- We recognise students with criminal records as assets and we value and support their success
- We understand students with convictions are commonly drawn from other WP groups
- We have a public relations strategy that supports students, staff and the university



## 7. Further information

This toolkit has been designed to help you develop a fair and inclusive policy on applicants with a criminal record. It is based on research and practice with HE providers and UCAS over several years. Read more about our work with [HE providers](#).<sup>21</sup>

More detailed information on the criminal justice system, including distinctions between spent and unspent convictions, the management of people with recent convictions for serious offences, and how to support students with criminal records to be successful in higher education can be found in UCAS' resources for [HE providers](#).<sup>22</sup> Also included are scenarios submitted to the UCAS good practice working group, along with the suggested response to each situation, and a flowchart to help you formulate your position on asking applicants for information about their criminal convictions. UCAS has also produced [a guide for applicants](#).<sup>23</sup>

## About Unlock

[Unlock](#) is an independent award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.

We have significant expertise and experience of criminal records and disclosure issues. We work with government, UCAS and others to improve good practice in higher education admissions, and provide bespoke advice and support to providers. Our aims are to:

1. Encourage fair and open admissions processes
2. Advise on criminal record disclosure and relevant data protection legislation
3. Offer advice and training to admissions staff on assessing criminal records disclosure
4. Encourage providers on the right support so students with criminal records can succeed

**For more information, see <https://recruit.unlock.org.uk/guidance/university-admissions> or contact [university@unlock.org.uk](mailto:university@unlock.org.uk)**

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<sup>21</sup> <https://www.unlock.org.uk/projects/unlocking-students-with-conviction-2/>

<sup>22</sup> <https://www.ucas.com/criminal-convictions-good-practice-he-providers>

<sup>23</sup> <https://www.ucas.com/undergraduate/applying-university/criminal-convictions-what-you-need-know>