



# CRIMINAL CONVICTIONS POLICY AND PROCEDURES FOR JOB APPLICANTS AND STAFF

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## 1. Purpose

- 1.1 To ensure the safety and protection of both students and staff, the following procedures should be followed in relation to applications from any potential staff member declaring a criminal conviction which is not spent under the terms of the Rehabilitation of Offenders Act 1974 or any member of staff who receives a conviction.

## 2. Declaration of Criminal Convictions

- 2.1 The University does not wish to debar individuals with criminal records from taking up or continuing employment in the University. In general a criminal record is not to be regarded as an absolute obstacle to employment at this University. In any event, the University will not take into account, when dealing with candidates for posts and existing staff, a criminal record which is deemed “spent” under the terms of the Rehabilitation of Offenders Act (1974) unless such criminal record is taken as an “exception” under the terms of the Rehabilitation of Offenders Act (1974) (Exception) Order 1975 (“the Exception Order”), as amended 2013.

- 2.2 However all job applicants who apply for a role at the University are required to make a declaration of any relevant criminal convictions by completing the declaration on their application form. Should an applicant make a declaration then the details of a conviction/s should be sent under separate, confidential cover, to the Head of Human Resources. A relevant criminal conviction includes convictions, cautions, admonitions, reprimands, final warnings, bind over orders or similar involving 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
- offences listed in the Sex Offences Act 2003
- the unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking
- offences involving firearms
- offences involving arson
- offences listed in the Terrorism Act 2006.

Under the Rehabilitation of Offenders Act, sentences of 30 months imprisonment or more are never spent, while those of lesser duration do not have to be declared once spent. If the conviction involved an offence similar to those set out above, but was made by a court outside of Great Britain, and that conviction would not be considered as spent under the Rehabilitation of Offenders Act 1974, this should be declared.

Convictions that are **spent** (as defined by the Rehabilitation of Offenders Act 1974) are not considered to be relevant.

- 2.3 If an applicant is convicted of a relevant criminal offence after they have applied for a role, they must inform the University.
- 2.4 For certain roles such as those dealing with FE students, or working in the University’s Progression team there may also be a requirement for a successful applicant to undergo an Enhanced DBS check. As an organisation using the Disclosure and Barring Service (DBS) to assess applicants’ suitability for positions of trust, the University complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly. It undertakes not to

discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.

- 2.5 If a DBS check reveals that the person is on a barred list, the matter will be discussed with the prospective employee. The University will not be able to employ them in regulated activity. In these circumstances where the prospective employee is on a barred list and the post applied for involves work that is regulated activity this information will be reported to the police and the DBS by the Head of Human Resources or their nominee, as the applicant will have committed a criminal offence by attempting to work in regulated activity.

### 3. Action to be taken on receipt of a declaration of a criminal conviction

- 3.1 The recruitment process involves each application being shortlisted against the essential and desirable criteria for the role on its own merits. Only once shortlisting has taken place will checks be carried out to establish whether any shortlisted applicant has declared a criminal conviction. Declaration of a conviction is not in itself grounds for the University to withdraw an offer of an interview unless the nature of the conviction would automatically render the applicant from being unable to undertake the role.
- 3.2 If a declaration is made but no further information is supplied of the declared conviction, a letter will be sent from Human Resources explaining that further information is required. A deadline date will be stated on the letter for receipt of the additional information and should this not be received then the offer of an interview will be withdrawn.
- 3.3 Once the University has all the information it needs regarding the conviction, the continuing suitability of the offer of an interview will be assessed by the Head of Human Resources.
- 3.4 If a declaration is made, but the convictions do not fall within the definition of a *relevant* criminal conviction then no further action will be taken.
- 3.5 However, if the conviction is a *relevant* criminal conviction then the nature of the conviction will be discussed further with the HR member of the panel and the applicant. Should the applicant be the panel's preferred candidate then this information will be shared with the Head of Human Resources along with the panel's recommendation to appoint. The nature of the conviction and the panel recommendation will be considered by the Head of Human Resources, who will make a recommendation to the Vice-Chancellor as to whether the appointment is authorised in line with section 7 of this policy.

### 4. Action to be taken for an undeclared criminal conviction that is identified at interview.

- 4.1 If the declaration is made at interview the information must be taken at interview by the HR representative in as much detail as possible including why the appropriate declaration was not made on the application form.
- 4.2 If the information received states that the applicant had an unspent minor offence (convictions that do not carry a custodial sentence) then the recruitment process will continue in the normal way.
- 4.3 However, if the conviction relates to a *relevant* criminal conviction this information should then be passed on to the Head of Human Resources who will consider it and will make a

recommendation to the Vice-Chancellor if the candidate is the panel's recommendation to appoint in line with 3.5 above.

**5. Action to be taken if the declaration of a conviction takes place after employment commences.**

- 5.1 All convictions acquired during employment are contractually required to be declared immediately to the employee's SMT member and the Head of HR to ensure that appropriate risk assessments can be carried out and to ensure that the University is not being 'brought into disrepute'. A failure to make such a declaration will result in disciplinary action being taken against an employee under the University's disciplinary procedures, or if they are still in their probationary period a Formal Review meeting being convened. Any risk assessment will be conducted by an HR Adviser and a Senior Manager.
- 5.2 The nature of the offence and the risk assessment will determine what, if any, action will be taken against the employee. Such a decision will depend on the employee's role and the nature of the conviction, and could range from no action; additional risk assessments being introduced or the employee's duties being amended; through to disciplinary action being taken against an employee, or if they are still in their probationary period a Formal Review meeting being convened. The process being followed will vary in accordance to the circumstances, but any management decision must be taken in consultation with an HR Adviser. Where the appropriate process is investigation this will be undertaken in accordance with the appropriate procedure.
- 5.3 It should be noted that should an employee have not declared a criminal conviction during the recruitment process and one be brought to the attention of the University (such as through the outcome of a DBS check) this will result in disciplinary action for gross misconduct being taken against an employee, or if they are still in their probationary period a Formal Review meeting being convened.
- 5.4 Any referral for disciplinary action or consideration under the Probationary Procedures will follow the processes outline in the appropriate policy.

**6. Recording Information relating to Criminal Convictions**

- 6.1 Correspondence relating to the declaration of criminal convictions by an applicant or employee will be held confidentially in HR as part of the recruitment on the applicant's or employee's file.
- 6.2 At all stages, access to correspondence relating to an applicant's or employee's criminal record will be confined to a strictly "need to know" basis.
- 6.3 Where DBS checks are sought from appointed candidates, these will be retained in line with Appendix 1 of this policy, the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information guidelines.

**7. Considering Criminal Convictions and suitability to be offered employment**

- 7.1 Where the recruitment panel's preferred candidate has a declared conviction, this information will be reviewed by the Head of HR as part of the University's normal approval of appointment processes outlined in the Recruitment and Selection Procedure. The Head of

Human Resources will assess the applicant's suitability for employment based on that criminal conviction and make a recommendation to the Vice-Chancellor .

7.2 In reaching a decision, the Head of Human Resources and Vice-Chancellor shall take the following into consideration:

- whether the offence constitutes a risk to the safety and/or wellbeing of other members of the University community that is inconsistent with the University's duty of care;
- the nature of the offence and its relevance to employment;
- the circumstances that influenced the offence and which may no longer apply (e.g. personal or social factors);
- when the offence was committed;
- any factors that minimise the impact of the offence;
- any of the applicant's achievements since the offence;
- any evidence submitted by the applicant or student;
- whatsoever advice they consider appropriate.

A decision will be taken on the balance of probabilities, based on all the facts available at the time. In some cases it may be determined that they need further information from the applicant before making a final decision, and will arrange to speak to the applicant.

7.3 One of the following decisions will be made:

- To approve the offer of appointment with no further conditions.
- To approve the offer of appointment but with particular conditions such as risk assessments or control measures.
- To decline the panel's recommendation of appointment. In this case the applicant will be contacted in the normal way to inform them of the decision and the decision will be transmitted as normal.

## Appendix 1: Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure of Information Guidelines

### 1. Policy

As an institution using the Disclosure and Barring Service (DBS) disclosure service to help assess the suitability of applicants for positions of trust and working with young people, the University complies fully with the DPS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure Information. It also complies fully with its obligations under the Data Protection Legislation and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information.

### 2. Procedure

#### 2.1 Storage & Access

Disclosure information is never kept on an applicant's personnel file and is always kept separately and securely, in a lockable, non-portable, filing cabinet with access strictly controlled and limited to those who are entitled to see it as part of their duties.

#### 2.2 Handling

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. These are the Vice-Chancellor, the Head of HR and HR staff involved directly in recruitment. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it. The University Auditors may audit this process but do not have access to individual disclosures.

#### 2.3 Usage

Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given. The only exception to this is where an applicant who is barred from working with young people applies to do so. In such circumstances the University's legal duties override this policy and the Head of Human Resources will notify the DBS that an individual has attempted to gain employment in a barred activity in accordance with the Guidelines on Safeguarding and Employment.

#### 2.4 Retention

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six-months, we will consult with the DBS about this and will give full consideration to the Data Protection and Human Rights of individuals before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

#### 2.5 Disposal

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g.

waste bin or confidential waste sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, notwithstanding the above, we will keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken. These details will be stored on the HR system.