

Understanding applicants with criminal records

Briefing for universities and colleges

Background

This briefing has been produced by Unlock, a charity covering England & Wales which provides a voice and support for people with convictions. In May 2018, UCAS announced¹ that they would no longer require all applicants to declare unspent criminal convictions as part of the application from the 2019 entry cycle onwards. Instead, UCAS will only request a criminal record declaration from applicants to courses that require an enhanced criminal record check to study or where completion of the course includes rights of entry to a profession that involves such a check. UCAS is committed to “ensuring that anyone who wants to study at university or college has the opportunity to apply and isn’t put off by questions on the application”.² Unlock has been supporting UCAS in implementing the changes.

The aim of this briefing is to provide information and guidance to universities and colleges considering whether and/or how to ask applicants about their criminal record. This includes the distinctions between spent and unspent convictions, the role of the criminal justice system for the small number of people who have recent convictions for serious offences, courses that involve enhanced criminal record checks, and how to support students with criminal records to be successful in higher education.

Asking about criminal records means processing a special category of personal data and therefore comes with obligations under the General Data Protection Regulation and the Data Protection Act 2018. If you plan to ask about criminal records, being clear about your purpose will help you to assess whether your process achieves it. Given the stringent requirement for data processors to provide a lawful basis for collection of criminal offence data, it is expected that universities and colleges will be implementing changes to their policies and procedures so that they are not asking all applicants about criminal records as a routine part of the admissions process.

Understanding people with criminal records

People with criminal records are a broad and varied group. To reflect that, this briefing uses the phrase “people with a criminal record” rather than “ex-offender” or “former prisoner”. There are over 11 million people in the UK with a criminal record.³ Research⁴ 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.

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.⁵

How many people with criminal records apply to university?

The short answer is that nobody really knows. Each year less than 1% of applicants ticked the box, and a proportion of those have ticked in error. A study in 2014-15 showed there were 2,502 applicants across thirteen universities that ticked the box on the UCAS form that they had a criminal record.⁶ However, these figures are incredibly low when compared with the 11 million people in England and Wales who have a criminal record. This could indicate that people have been put off from applying in the past, or could highlight how many people chose not to disclose. Both underline why the changes by UCAS are important.

What is meant by spent and unspent?

There is no general legal obligation for a person to tell a university or college about their criminal record. Generally, people only need to disclose their criminal record if they are asked about it. Similarly, for most courses, there is no legal obligation on universities to ask about criminal records.

The vast majority of people with a criminal record will not need to disclose it when applying to most university courses. This is because their criminal record will have become 'spent' (under the Rehabilitation of Offenders Act 1974⁷) at some point in the past. Indeed, only 6% (about three-quarters of a million) of the people with a criminal record in England and Wales have an *unspent* criminal record. If someone discloses a spent criminal record, universities are legally obliged to disregard it for most courses. This is a requirement of section 4 of the Rehabilitation of Offenders Act 1974. The time it takes for a criminal record to become spent depends on the sentence received and the age of the individual at the point of conviction. For example:

Jennifer was sentenced in January 2016 to a 12-month youth rehabilitation order for shoplifting a few months earlier. She was 16 years old at the point of conviction. This is her only conviction. Her sentence will become spent 6 months after the end of the order. Therefore, after July 2017, Jennifer will no longer need to declare her conviction when applying for most university courses.

The vast majority of applicants with a criminal record will have only spent convictions or cautions. These do not need to be disclosed for most courses. Most will not have been to prison, are not – and never have been – subject to any kind of supervision requirement. They will not have a probation officer or anyone who can provide further information about their criminal record.

Courses where spent criminal records can be considered mostly involve work with children or vulnerable adults – these are exempt from the Rehabilitation of Offenders Act 1974. These courses will often require applicants to undergo an enhanced criminal records check, which will continue to show most spent (as well as all unspent) convictions. Guidance on how to manage applicants to courses that require enhanced criminal records checks is covered below.

Key points

- Spent convictions do not need to be disclosed for most courses
- The time it takes for a criminal record to become spent depends on the sentence received and the age of the individual at the point of conviction
- Asking about criminal records means universities have legal responsibilities, both under the Rehabilitation of Offenders Act (such as ignoring spent convictions) and data protection legislation
- Spent and unspent convictions show up on an enhanced criminal records check

The role of the criminal justice system

Those recently released from prison (as well as those still in prison), or those serving sentences in the community, will invariably represent the minority of potential applicants that have a criminal record. Where those individuals do look to apply to higher education, the criminal justice system (prisons and probation) has a statutory responsibility to both the individual and the wider public, and universities and colleges should be clear that it is not necessary or proportionate for them to try to duplicate this responsibility.

Prison and probation staff are trained in risk assessments and use tools and techniques that are regularly evaluated and updated.⁸ Those applying to study on day release from prison (known as 'released on temporary licence', or ROTL) will have been subject to stringent risk assessment by prison and probation staff before being allowed to apply. Everyone who has been in prison, even for a single day, is supervised in the community for at least 12 months after they are released. 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. For example:

1. People serving a community sentence (or those released from prison on licence) are expected to meet their supervisor regularly and required to notify them of any work that they're applying for or undertaking, in part so the supervisor can manage their attendance. Depending on their particular circumstances, there may be other specific restrictions in place - although this will not apply in the majority of cases. Probation would then take a view as to what, if any, contact they need to make with other organisations. Failure to comply with supervisory conditions can result in a return to court or recall to prison.
2. People convicted of sexual offences may be on the sex offenders register. There are certain requirements imposed on individuals in this situation - known as 'reporting requirements' - including keeping the police informed about their address. Failure to comply with these reporting requirements can result in a fine or a prison sentence.

It is worth remembering that less than 10% of people with a criminal record have been sentenced to prison, and the concern that everyone with a criminal record will go on to commit further crime is unfounded. Of men with a criminal record, just over half have been convicted on only one occasion. In general, risk of reconviction decreases over time for most offences⁹ and eventually becomes statistically lower than for people who have never been convicted of a crime before.¹⁰ Also, 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.¹¹ There is no evidence that students with criminal records are more likely to commit crime on campus than any other student.

Key points

- Most applicants with a criminal record will never have had any supervision requirements
- Applicants under supervision will be regularly risk assessed by their supervisor
- There is no evidence that applicants with a criminal record are more likely to commit crime on campus

Understanding risk assessment

Universities that have, in the past, asked students to self-disclose for all courses have often had admissions panels that rely on self-disclosed information about the offence and on subjective judgements about the likelihood of recurrence.

Subjective assessments of risk have been shown to be highly fallible – even among criminal justice practitioners, who are routinely assessing risk. For example, Menzies et al. (1994) examined risk assessments over six years, finding practitioners had no consistent ability to predict risk.¹² As a result of studies like this, the criminal justice system relies on actuarial risk prediction tools based on ‘big data’. These tools are regularly evaluated and updated and criminal justice practitioners who use them are required to undergo specialist training. Whilst far from perfect, the predictions which they make are far more accurate than unstructured judgements made by practitioners. Crucially though, these predictions are based on whole cohorts of people convicted of certain types of offending and do not necessarily reflect accurately the risk of any one individual

Where probation risk assessments are shared, universities should make sure they have a process for interpreting these. The way that probation officers assess the risk posed by *individuals* is usually focused on the harm caused by the event that happened – high, medium or low – and the dynamic risk assessment about future risk of harm is more complex. No-one can accurately predict how likely an individual is to commit a further crime. In any case, no individual has a zero risk of committing crime – that means we are all low risk, at the very least. Universities and colleges should therefore be cautious of carrying out their own risk assessments without appropriate tools or training, or when interpreting and making assumptions about risk assessment information shared with them by criminal justice practitioners. They should also be transparent about any risk assessments which are carried out.

Applicants with serious criminal convictions who are applying to university will have had to turn their lives around significantly to be at the stage where higher education is a credible next step. Like all applicants, they will have worked hard to gain the relevant qualifications and qualities needed to make a successful application. People who have served a prison sentence may have also faced multiple and severe disadvantage – 24% of prisoners were taken into care as a child, 41% witnessed violence in their childhood home, 42% were permanently excluded from school and 47% had no qualifications on entry to prison.¹³ When looking at people with more serious offences, broadly it will be the case that the more serious the offence, the longer ago it was committed, and ultimately it is very difficult to achieve release from an indeterminate sentence. For these applicants in particular, being in a position to make an application at all is a significant achievement and indicative of a commitment to changing their life for the better. Universities should therefore consider how they can best support them to succeed.

Key points

- Applicants serving a sentence in the community will be risk assessed by professionals
- Universities should consider if they have appropriate resources and expertise to carry out quality risk assessments.
- Risk assessment procedures, including training of the assessors, should be transparent and documented.
- Applicants with serious criminal convictions will have had to make significant changes to their life to be in a position to apply to university

Asking targeted questions to support students

Universities and colleges need not ask every applicant about whether they have a criminal record to ensure they offer support to those that want and need it. This is separate to the admissions process, so any questions to help support students should be asked after the offer stage, to ensure that the academic decision has already been made. For example, institutions could:

1. Put student support arrangements in place and encourage applicants with a criminal record to seek support if they feel it would be helpful to them. This could be so as to help them advise on future career options. There are examples of good practice where universities support applicants with a criminal record - *Open Book based at Goldsmiths, University of London, and Project Rebound in San Francisco*. Institutions may already have similar arrangements for care leaver or students with learning disabilities.
2. Ask at post-offer stage, after a decision has been made *'Are you currently in prison, on licence from prison or on a community order? If so, please provide details, including whether you are happy for us to contact your probation officer?* Universities and colleges could subsequently signpost applicants who declare to a specific named point of contact at the university to discuss any potential additional support needs.

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. People applying from prison have limited internet access, and UCAS have sought to support this by providing offline resources. Institutions may need to make reasonable adjustments and be flexible with their admissions processes to support applicants in this situation.

Courses that involve enhanced criminal record checks

Where an applicant applies to a course leading to certain professions or occupations exempt from the Rehabilitation of Offenders Act (1974), they will continue to be asked to self-disclose at the point of application whether they have any criminal convictions, including spent convictions and cautions, that are not 'filtered'.¹⁴ These courses require an enhanced criminal record check. HE providers will be able to choose the courses that this question applies to when they are setting them up in the UCAS system. These typically account for 7% of all courses that an applicant can view on the UCAS search tool. Ensuring that this question is only asked for the right courses is important though. Medicine courses are an example where active places in the profession as required as a core part of the course, so it is appropriate to ask specific, targeted questions about criminal records as part of an assessment as to whether there will be any issues in the person completing the course or being registered by the General Medical Council. The assessment of any information provided in answer to the question through UCAS should be dealt with entirely separately to the academic decision.

Unlock's recent report on youth criminal records¹⁵ shows the significant numbers of people that have convictions or cautions appear on enhanced checks because of things they did decades ago – in the last 5 years alone, nearly 1 million youth criminal records (i.e. offences obtained between the age of 10 and 25) that are over 30 years old have been disclosed on standard/enhanced checks. This means that universities should be careful not to assume the relevance or importance of an applicant in this situation, not least because simply having a criminal record may not in itself be a bar from entry to a profession and applicants may not all have the same career motivations for completing a course. HE providers should make sure that they understand the specific professional or regulatory requirements for certain courses. If there are specific convictions that would bar an individual from entry to the profession, this should be communicated to applicants to make them aware.

Cautions and convictions that are from many years ago, or certain minor offences, could be ruled out as irrelevant for most courses. It may be prudent for universities and colleges to establish offences and/or timeframes for criminal records that can be disregarded upon declaration. This will ensure that providers do not spend inordinate amounts of time considering old and/or minor criminal records in assessment panels that are no longer considered relevant due to the time that has passed or the minor nature of the conviction. Risk assessment procedures, including tools and training relied on by assessors, should be documented and transparent.

For the more recent and serious offences, it may still be the case that the criminal record could be irrelevant for the particular course. Providers may wish to use assessment panels to consider these convictions in line with requirements from PSRBs and with appropriately documented procedures and decisions. If rejection is on balance is quite possible, a face to face meeting with the individual to find out more information is crucial to ensure a fully informed assessment can be made. At the end of this process, if an individual is refused a place, institutions should have clear appeals processes that enable assessments to be independently reviewed, as well as exploring alternative options for the individual concerned.

Key points

- A criminal record is not an automatic bar to entry onto course requiring DBS checks – universities should ensure applicants and assessors understand what can be ruled out and what is relevant. Advice should be sought from PSRBs when seeking to understand what could bar entry to particular career routes and accreditations.
- Risk assessment procedures – including the training and tools relied upon by assessors - for applicants to DBS courses should be documented and transparent.

End notes

- ¹ More details available at <http://www.unlock.org.uk/unlock-comment-ucas/>
- ² See <https://www.theguardian.com/education/2018/may/29/ucas-drops-need-for-university-applicants-to-declare-convictions>
- ³ Available at <https://www.whatdotheyknow.com/request/423289/response/1060100/attach/3/44921%20Stacey%20Internal%20Review.pdf>
- ⁴ Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217474/criminal-histories-bulletin.pdf
- ⁵ PRT (2018) Bromley Briefings: Summer 2018 <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Summer%202018%20factfile.pdf>
- ⁶ Custer, B. (2018), Applying to university with criminal convictions: a comparative study of admissions policies in the United States and United Kingdom, available at <https://www.tandfonline.com/eprint/QfzdTv6EZVDhZusH9U55/full>
- ⁷ Available at <http://www.legislation.gov.uk/ukpga/1974/53/contents>
- ⁸ See Moore, R. (2009) *A compendium of research and analysis on the Offender Assessment System (OASys) 2009-2013*, London: National Offender Management Service Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/449357/research-analysis-offender-assessment-system.pdf Accessed July 2018
- ⁹ Lloyd, C., Mair, G. and Hough, M. (1994) Explaining reconviction rates: A critical analysis. Home Office Research Study 136. London: Home Office.
- ¹⁰ Weaver, B. (2018) *Time For Policy Redemption? A Review Of The Evidence On Disclosure Of Criminal Records*. Glasgow: Scottish Centre for Crime and Justice Research.
- ¹¹ Copas J, Marshall, P and Tarling R. (1996) Predicting Reoffending for Discretionary Conditional Release, *Home Office Research Study 150*, London: Her Majesty's Stationery Office
- ¹² Menzies, R.W. (1994) Construction and validation of risk assessments in a six-year follow-up of forensic patients: A tridimensional analysis, *Journal of Consulting and Clinical Psychology*, 63(5), 766-778.
- ¹³ PRT (2018) Bromley Briefings: Summer 2018
- ¹⁴ This refers to a process, managed by the Disclosure and Barring Service, that removes certain convictions and cautions from standard/enhanced checks. It is separate and different to when convictions become 'spent'. More information can be found at <http://hub.unlock.org.uk/filtering>
- ¹⁵ Available at <http://www.unlock.org.uk/youth-criminal-records-report/>

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Written by Christopher Stacey.

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Registered office: Maidstone Community Support Centre, 39-48 Marsham Street, Maidstone, Kent, ME14 1HH
 Telephone: 01622 230705
 Email: admin@unlock.org.uk
 Twitter: [@unlockcharity](https://twitter.com/@unlockcharity)
 Website: www.unlock.org.uk