



Criminal convictions good practice

Provider scenarios

Background

For the 2019 entry cycle, UCAS is making changes to the questions it asks applicants about criminal convictions. This change will require universities and colleges to assess their position, and review their policies and procedures in this area.

To support the sector with this change, UCAS has commissioned the production of good practice resources in collaboration with the charity Unlock. In May 2018, UCAS invited universities and colleges to submit expressions of interest in participating in this work. We received a range of bids, including a joint bid between the University of Cardiff, University of Exeter, University of Southampton and University of York, which proved successful.

As part of this good practice work, UCAS invited higher education providers to submit scenarios for consideration by the appointed universities and Unlock. Those scenarios, along with other commonly cited examples, are found enclosed.

Principles of good practice work

The good practice work is underpinned by the following principles, and these should be applied to each scenario in turn:

- The focus of these considerations is around the use of criminal convictions information as part of the admissions process.
- Generically asking an applicant to provide information about criminal convictions should not be a common part of the admissions process, and should only be undertaken when absolutely necessary.
- Higher education providers should have a trust and understanding of the criminal justice system, what it means to go through this, and the requirements of individuals that are subject to certain orders.
- Context is key. Higher education providers will need to consider the specific course, module composition, location, and teaching practices before deciding to ask an applicant to provide information about criminal convictions.
- Any question posed to an applicant needs to be targeted, focusing on the specific convictions that may impact on a student's ability to complete that particular course in a satisfactory and reasonable manner.
- Asking applicants for information regarding criminal convictions should be through the lens of student support.
- ICO guidance suggests that the justification threshold around asking for information about criminal convictions is very high, therefore, any request for disclosure must be necessary and proportionate.

Scenario one

University A is a recruiting provider, offering a wide range of provision, with business-related courses being the most popular. All delivery is through lectures, workshops, and one-to-one teaching with academic staff.

Accommodation is in university owned halls. With the exception of a handful of 17 year olds, the vast majority of students are over the age of 18. Some of the halls have an on-site student bar.

Response: In this scenario, as a specific need cannot be identified from the course delivery circumstances outlined, there is no obvious need to generically ask applicants to disclose information about their criminal record at the point of application.

If you have identified a valid specific need relating to an aspect of student life outside of the study requirements, then you should only ask for, and collect a declaration from those students at the point this information is required for that transaction. For example, if the need relates to accommodation, you should only ask for this information once a student has accepted your offer, and as part of the accommodation application process. Optional services and facilities should have additional terms in their contract to cover wider safeguarding for those choosing to engage with them and we would encourage admissions practitioners to work with providers of other student services to determine an approach.

Any student still taking part in the criminal justice system in some form (e.g. on probation or on licence) will be required to inform you of this either directly or through their probation officer. Probation officers have responsibility to manage those on licence, and to undertake any required risk assessments. The make-up of your student body may be information that is taken into account as part of their risk assessment.

Scenario two

University B is a recruiting provider. It offers a sports coaching course, with students able to select modules for second and third year. Two of the optional modules (out of 30) involve direct contact with under-16's. There is also an optional placement in year three. In the past, applicants have taken up placements in a school or leisure centre.

Response: Since there are no modules in Year 1 that will involve direct contact with minors, it would not be deemed necessary in this scenario to request an applicant to disclose a criminal record at the point of application.

Given the optional modules in Years 2 and 3 make up a very small percentage of the total modules that may require an enhanced DBS check, applicants on this course should be informed that they might be asked to disclose specific types of criminal record, should they wish to take certain modules later in their degree course.

Consideration will need to be given to:

- the specific types of criminal conviction that are relevant
- when to inform applicants they may be asked to disclose
- why they might be asked this information
- how the information will be used

Since the placement in Year 3 is optional, there would be other means for students to fulfil the learning outcomes and complete the course without being required to disclose. It would therefore not be proportionate to ask all applicants to disclose at the point of application, but may be necessary if an applicant chooses to undertake a placement involving regular contact with children and/or vulnerable adults. As per the optional modules, this should be made clear in course information materials.

Scenario three

University C has a medicine course (A100). This course requires an enhanced DBS check for all applicants. University C also has a popular biomedical sciences course.

Response: Where an applicant applies to a course leading to certain professions or occupations exempt from the Rehabilitation of Offenders Act (1974), they will still be asked to declare if they have any spent or unspent convictions or other punishments that would show up on a criminal records check, by providers using 'question 2'. The General Medical Council will require HE providers to ascertain whether any applicant has any relevant criminal convictions, and therefore, it would be appropriate to request disclosure at the point of application.

In supporting information and course materials, the university or college should however make it very clear to applicants:

- the specific types of criminal conviction that are relevant
- the type of DBS check that will be required
- why they require this information
- how the information will be used

It should also be considered if an applicant can complete a course under an alternative pathway (e.g. without a specific placement or activity), may require additional support, or whether they may wish to consider a more suitable alternative course offer.

Scenario four

College D is a mixed age FE college that also offers HE courses. The college offers a range of provision on a single site. This includes FE students aged 16 undertaking Level 2 and 3 qualifications, along with older students studying Level 4 and above.

Response: In this scenario, it may be appropriate for a HE provider to ask an applicant to declare if they are involved in the criminal justice system (e.g. on probation or licence) post-offer, as part of wider safeguarding.

For serious offenders, there is an existing criminal justice process that determines whether someone poses a risk. Probation officers have responsibility to manage those on licence, and to undertake any required risk assessments.

Providers should work in partnership with probation officers, supplying information on the course, site/s of study (including make-up of the student body and shared facilities), and detailing any reasonable adjustments that could be made for the course of study. The probation officer will be able to provide the relevant details about an individual, and their current potential to undertake study.

Scenario five

College E offers HE and FE courses, but also provides accommodation for students aged 16 and above. Both FE and HE students share the accommodation and facilities.

Response: Providers are able to treat accommodation contracts separately from terms of study (i.e. an offer on a place on a course). Optional services and facilities could have additional terms in their contract to cover wider safeguarding for those choosing to engage with them.

Separate considerations can be made to offering a place on a course of study versus offering a place in accommodation. The ability to offer accommodation, unless an integral part of the course of study, is not a limiting factor to being able to offer a place on a course. A place on a course may be offered, with separate guidance on requirements for being able to reside in accommodation.

Scenario six

University F specialises in computing and data science courses. They are concerned that some students with convictions may be prohibited from accessing the internet unsupervised. All of their courses require online access for completion.

Response: Where a course has key requirements that will impact on a student's ability to successfully complete the programme if they are prohibited from undertaking them, these requirements should be clearly stated in course information. Applicants can then make informed decisions as to their suitability to undertake a programme, and whether their conviction will have any impact on their future plans. Where a provider is alerted to such a restriction, either by a probation officer or the student, they can work in partnership to understand the restrictions, and consider any reasonable adjustments that could be made for the course of study without impacting on the restrictions.

Providers may also look to the terms of offer or enrolment for a specific course of study, outlining the requirements to be able to undertake the programme, to encourage disclosure of relevant convictions at the earliest stage. In this scenario, terms may focus on convictions which may restrict or prevent unsupervised access to the internet.

Scenario seven

University G is a campus-based university that has an on-site nursery for staff and students. This is based on the main campus, close to teaching facilities.

Response: As an optional service, the university nursery will have a set of processes in place to safeguard children, for both those employed there, and for those who wish to use the service. This would be separate to the application process.

As with other scenarios, there is an existing criminal justice process for serious offenders that determines whether someone poses a risk. Probation officers have responsibility to manage those on licence, and to undertake any required risk assessments. The location of the nursery may need to be shared with probation officers in individual circumstances, to allow them to make an informed judgment about the suitability of the HE provider for the individual on licence.

Scenario eight

University H is concerned that not asking international applicants may lead to an increase in the percentage of applicants that are refused a Tier 4 visa.

Response: The requirement to declare criminal convictions for the purposes of UK immigration law is a separate process to the suitability to study a programme. Providers may consider at the point of issuing a CAS the need they have for criminal convictions declarations, and those concerned about an increase in visa refusals should seek appropriate legal advice.

Scenario nine

University I has a small, centralised admissions team. An applicant has applied to them for both medicine and human biology. Through the requirements for medicine, the provider has become aware of a previous criminal conviction for actual bodily harm.

Response: In this scenario, there are two separate admissions decision-making processes. For the medicine course, please see scenario three.

If there is no specific separate need for the collection of convictions data for the human biology course, this information should not be taken into account as part of the admissions decision-making process, even if it has already been obtained for another programme.

Scenario ten

University J has received an application from a student wishing to study law. The provider is subsequently contacted by a probation officer, informing them that the individual is on licence from prison, and is serving the rest of their sentence in the community.

Response: If the course does not have a specific need to collect information on criminal convictions, and the applicant has not had an obligation to declare these, contact from a probation officer may be the first notification of a criminal conviction.

HE providers should work in partnership with probation officers when presented with information about a prospective student on licence. The probation officer can provide relevant details about an applicant, including whether they have any concerns or objections to an individual undertaking the chosen course, and HE providers should take the opportunity to ask questions, ensuring questions are proportionate and appropriate to the individual and their suitability to study, and not focused solely on the offence. Reasonable adjustments may need to be explored to ensure a student could still undertake the course without impacting on their licence terms.