

UCAS providers

---

# **Criminal convictions – considerations for HE providers**

---

September 2018

# Helping you shape your position on criminal convictions

For the 2019 entry cycle, UCAS has made changes to the questions it asks applicants about criminal convictions. These changes require universities and colleges to assess their position and review their policies and procedures in this area.

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

The good practice work produced is underpinned by a range of principles. These include:

**i. purpose and necessity**

- + 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 only undertaken when absolutely necessary.
- + Higher education providers should have an understanding of and trust in the criminal justice system, what it means to go through this and the requirements of individuals that are subject to certain orders.
- + 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.

**ii. context for disclosure**

- + Context is key. Higher education providers will need to consider the specific course, module composition, location and teaching practices to determine if there is a proportionate and specific need to ask applicants about their 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.

**iii. clear and transparent policies and procedures**

- + Policies and processes relating to criminal convictions provide clarity and transparency to all stakeholders.

**iv. fair admissions**

- + Asking applicants for information regarding criminal convictions should follow the principles of fair admissions, and be through the lens of student support.

This flowchart is intended to help you formulate your position on asking applicants for information about their criminal convictions, and provides you with a list of considerations to make when establishing this.

**This flowchart should be read in conjunction with the range of other resources produced to support you with the changes to criminal convictions questions in UCAS Apply for the 2019 entry cycle.**

**[View additional resources.](#)**

**Is it essential that you assess applicants' criminal convictions?**

**No**, we do not need to assess criminal convictions as part of our consideration for entry.

UCAS has removed the declaration for these courses ('Question 1'), so this sensitive personal data will no longer be included when considering an application.

You should ensure your policies and information for applicants are updated to ensure you do not collect, store or use information about criminal records.

**Maybe** – we need to decide whether or not to internally assess convictions for different courses or situations.

UCAS will no longer be collecting this data, so you would have to ask for it after application.

You will need to determine if there is a clear, valid rationale for why and how you collect sensitive data on individuals' criminal records, regarding the Data Protection Act 2018, ICO guidance, and applicant feedback.

Use the following as a starting point in your considerations and implementation.

**Yes**, but only for courses that require an authorised external disclosure check.

(e.g. DBS – Disclosure Scotland, Access NI).

UCAS is keeping the declaration for these courses ('Question 2'). The UCAS collection tool will allow you to select the courses where you require applicants to be presented with this question.

However, this may be an appropriate opportunity to review your internal procedures for handling the information.

**Considerations**

**1. Need**

You will need to demonstrate a specific need for the information, and why it must be asked of all applicants for a particular programme, location, or pathway. Any approach undertaken will need to be proportionate to this need, and delivered in a targeted way (see item 4).

You will also need to ensure you do not collect any convictions or cautions that applicants are not legally required to disclose.

Requiring applicants to submit information about any criminal convictions may breach the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), or the Rehabilitation of Offenders Act 1974.

We recommend you confer with other institutional representatives involved in applicant, student, and compliance areas, to consider all aspects of the changes, determine exactly what the need is, and identify any specific circumstances when a conviction would pose a barrier to entry.

**If you cannot identify a valid specific need, or if asking all applicants about criminal convictions is not proportionate to that need, then you may conclude it would be inappropriate to collect the information as part of your consideration for entry.**

## 2. Courses and modules

Context is important when deciding whether to ask applicants about their criminal convictions. You will need to assess individual courses and pathways, and it is unlikely a uniform approach to all will be appropriate.

It is likely that some courses will have specific modules that could require an applicant to provide information about their criminal convictions. If you have identified a valid specific need, but it is not relevant to all aspects of the course (e.g. if it is only required for optional modules, or placements where students have regular, unsupervised access to children or vulnerable adults), then you should only ask for and collect a declaration from those applicants it is relevant to. Providers should only require this information from applicants following that route, making this clear in their pre-offer information.

**If it is possible for a student to successfully obtain an award without undertaking the aspects where certain convictions may prove a barrier, these options should be made clear before requiring a conviction declaration.**

## 3. Targeting risk

If there are specific convictions that would impact on a student's ability to complete their course, any information requested from an applicant linked to this should be targeted in its nature. Providers should start by identifying and targeting only the specific convictions that indicate an individual may be a greater risk, or the specific convictions that may inhibit the student's ability to complete the course in a satisfactory or reasonable manner. It is important course information is clear and explicit, and highlights any potential barriers to learning and student success.

Anyone still deemed a significant risk by the Criminal Justice System will be on licence, and probation services would normally investigate any restrictions to study with you, so you may not need to duplicate their assessment.

**Targeting the specific risks will help you be clear and unambiguous in your definition of relevant convictions, and these are likely to vary for some courses or activities.**

## 4. Timing

The timing of any request for disclosure should be aligned to a specific need within a specific transaction at a particular time. Information should be gathered at the point it is immediately required, e.g. if it relates to a placement, ask when they choose that placement, although the requirement for this information should be clear in your course information pre-offer and any terms and conditions.

**The later you can safely leave asking for a conviction declaration, the better it will be at targeting only those it is relevant for. This will reduce the amount of personal data you collect unnecessarily and minimise a declaration being perceived as a barrier by some applicants.**

## 5. Widening participation and student success

Those with criminal convictions are more likely to be part of other underrepresented groups in higher education (e.g. care leavers). Cross-reference your considerations with your widening participation initiatives to ensure you do not disproportionately create barriers, or perceived barriers, to those groups you are trying to improve access for.

Requesting information about criminal convictions should be more focused on student support. In some instances, individuals with criminal convictions may require additional support as part of their studies and their transition into HE. You may wish to consider what optional processes could be implemented to allow students to disclose if they wish, and benefit from the support available.

**Consider ways of asking, or not asking, about criminal convictions that are as inclusive as possible, so it does not inadvertently exclude or add barriers for those aspiring to access higher education.**

## 6. Wider safeguarding

If you have identified a valid specific need relating to an aspect of student life outside of the study requirements, 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 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.

**If it is possible to study without accessing the services or facilities identified, then it may not be appropriate to ask for a conviction declaration as part of your consideration for entry.**

## Implementation



## 7. Policy

Once you have determined what, when, and why you need to assess, you will need to develop a clear, robust policy to cover the changes and your handling of any new information you request. This should include detailed information about what constitutes a 'relevant' conviction, the secure management and destruction of information collected, and how the information will be used to assess suitability for entry.

If you decide you do not need to ask about convictions for some or all your courses, highlight this in your policy.

Your policy should be easily accessible on your website.

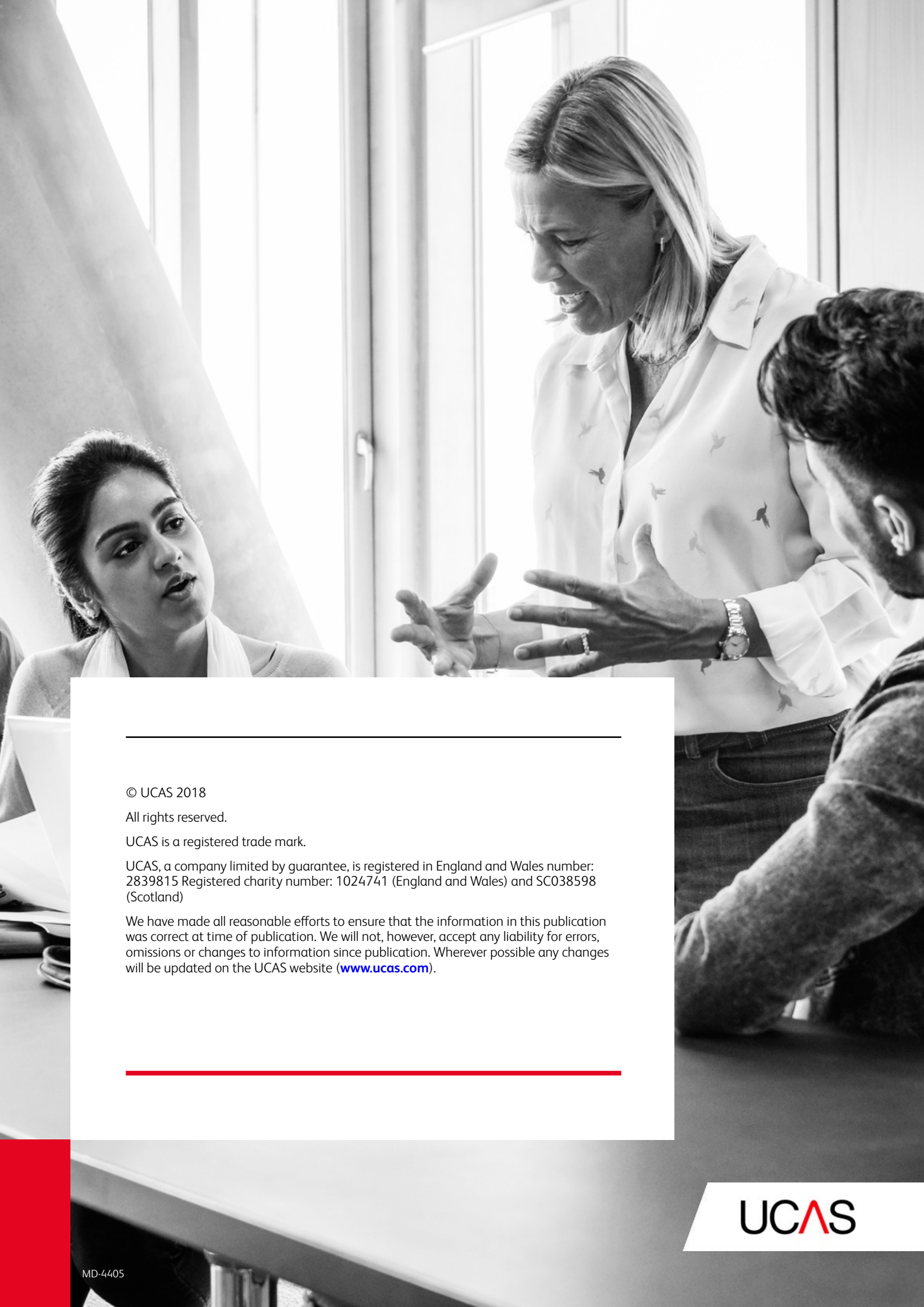
**We recommend your policy adopts a risk assessment approach to any consideration for entry. This should include a review method for determining if a risk level is so low it may no longer be proportionate to require conviction declarations.**

## 8. Wording

You can only require applicants to provide information about any criminal records that you are legally allowed to consider. This will depend on the type of course and whether it is covered by or exempt from the Rehabilitation of Offenders Act 1974. It is therefore important any request to disclose is unambiguous, to ensure you do not inadvertently elicit personal information you are not entitled to collect. You should not ask applicants to declare that they do not have convictions.

**Any request to declare convictions should be supported with easily accessible information, advice, and guidance. It would be helpful to signpost to third parties (e.g. Unlock), should applicants wish to check what to declare before approaching your provider.**





---

© UCAS 2018

All rights reserved.

UCAS is a registered trade mark.

UCAS, a company limited by guarantee, is registered in England and Wales number: 2839815 Registered charity number: 1024741 (England and Wales) and SC038598 (Scotland)

We have made all reasonable efforts to ensure that the information in this publication was correct at time of publication. We will not, however, accept any liability for errors, omissions or changes to information since publication. Wherever possible any changes will be updated on the UCAS website ([www.ucas.com](http://www.ucas.com)).

---