

POLICY FOR THE ADMISSIONS OF APPLICATIONS AND STUDENTS WITH A CRIMINAL RECORD

November 2013

Contents

Summary.....	4
Background.....	5
Section A. Regulations on the admission of applicants with a criminal record	5
Section B. Filtering rules for criminal record check certificates.....	6
Section C. Procedures for the consideration of students/applicants who have declared a previous criminal conviction	7
Section D. Professional courses and criminal record check certificates	11
Section E. Work schemes and voluntary placements	12
Section F. Registration.....	12
Section G. Sensitive personal information and the Data Protection Act	13
Appendix A. University guidance on criminal convictions	14

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Summary

What is this document about?

This Policy sets out the process which will be followed by the University of Portsmouth when considering applicants and students who have a criminal record. It explains the types of offence which need to be declared and how this declaration should be made, and the process the University will follow if this information is not disclosed in a timely manner.

Who is this for?

This document will be of most interest to applicants and students who have a previous criminal conviction. It will also be of interest to staff in academic departments who work with such applicants/students, to staff working in the University Admissions Centre (UAC), and to organisations which offer placements to University of Portsmouth students.

How does the University check this is followed?

Records of applicants who have declared a previous criminal conviction are maintained by UAC and are regularly updated in liaison with the Designated Officer (the Secretary to the Criminal Convictions Panel) to ensure that cases are proceeding in accordance with this Policy. Due to the highly confidential nature of the information gathered under this Policy, detailed records are held only in the Quality Management Division of the Department of Student and Academic Administration, by the Designated Officer, and disseminated only to members of staff directly involved in considering such cases.

Who can you contact if you have any queries about this document?

If you have any questions about this Policy please contact the University's Quality Management Division (QMD) at qmd@port.ac.uk, marking your enquiry for the attention of the Designated Officer for the Criminal Convictions Panel.

Background

- 1) The University of Portsmouth introduced a Policy for the Admission of Applicants with a Criminal Record in 2001. This version of the Policy was updated to reflect changes in UK legislation in July 2013 and was approved by Academic Council on 12 November 2013.
- 2) The Policy aims to be equitable to all applicants and to meet the legal obligations of the Rehabilitation of Offenders Act 1974 together with those of the Data Protection Act 2018 (GDPR) and the Human Rights Act, and of the filtering rules for criminal record check certificates introduced by the Disclosure and Barring Service (DBS) in June 2013, as set out in The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013. Equally, the Policy seeks to give effect to the University's duty of care to all members of its community and to recognise obligations placed on the University by the Protection of Children Act 1999 and the Safeguarding Vulnerable Groups Act 2006.

Section A. Regulations on the admission of applicants with a criminal record

- 3) All applicants for admission to a course offered by the University must complete an approved application form.
- 4) The University of Portsmouth shall reserve the right to decline to admit an applicant to a programme unless they have fully completed an approved application form.
- 5) The University shall consider taking disciplinary action in accordance with the code of misconduct and disciplinary procedures relating to misconduct defined in the Code of Student Behaviour against any student if it discovers the application to have been based on or to have included false or incomplete information.
- 6) All approved application forms shall include a question (hereafter referred to as 'the question') to the effect of 'Do you have any relevant criminal convictions?' This shall require an answer of 'yes' or 'no' by means of ticking a box. This form of question is as per the UCAS (Universities and Colleges Admissions Service) application form.
- 7) By relevant criminal convictions, the University means any convictions, cautions, admonitions, reprimands, final warnings, bind over orders or similar involving one or more of the following:
 - a) 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;
 - b) offences listed in the Sex Offences Act 2003;
 - c) the unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking;
 - d) offences involving firearms;
 - e) offences involving arson;

f) offences listed in the Terrorism Act 2006.

If you have a conviction for an offence similar to the above for which you were convicted outside Great Britain, this counts as a relevant criminal conviction. Warnings, penalty notices for disorder (PNDs), anti-social behaviour orders (ASBOs), criminal behaviour orders (CBO) or violent offender orders (VOOs) are not classed as convictions, unless you have contested a PND or breached the terms of an ASBO, CBO or VOO and this has resulted in a criminal conviction.

- 8) Convictions that are spent (as defined by the Rehabilitation of Offenders Act 1974) are not considered to be relevant unless the application is to a course in teaching, health, social work, or involving work with children or vulnerable adults. Throughout this Policy, courses in teaching, health, social work and courses involving work with children or vulnerable adults are referred to as professional courses.
- 9) In cases of application to professional courses, applicants must disclose any criminal conviction, cautions (including verbal cautions), bind over orders and absolute or conditional discharges, including spent sentences. Applications to such courses through UCAS, GTTR (Graduate Teacher Training Registry) or the University's online application form will require an answer to a separate question about these types of convictions; for hard copy applications, the applicant will be contacted in writing by the University Admissions Centre (UAC) for an answer to this question.
- 10) Under the national rules for filtering criminal record check certificates introduced in June 2013, certain convictions will be removed from criminal record check certificates after a period of time. These rules, and their impact on students and applicants of the University of Portsmouth, are explained in detail in Section B of this Policy. If there is any doubt regarding the applicability of these rules to a particular conviction, applicants should declare their conviction as stated above. Failure to declare any conviction which later appears on a criminal record check certificate will be treated as misconduct, as detailed in paragraph 5.
- 11) Where the University is made aware before the date on which the course commences that an applicant has a relevant criminal conviction that should have been disclosed on application, or where a relevant conviction has occurred since the date of application but before the date on which the course commences, the case must be referred to the designated officer who shall follow the procedure from paragraph 31 onwards.
- 12) For the purposes of operating the Policy on admission of applicants with a criminal record, the designated officer is the Secretary to the Criminal Convictions Panel, who is based in the Department of Student & Academic Administration.

Section B. Filtering rules for criminal record check certificates

- 13) In June 2013, revised national procedures were introduced that would see certain old and minor convictions and cautions 'filtered' (removed) from criminal record check certificates after a fixed length of time.
- 14) For convictions received when a person was 18 or over (referred to as 'adult convictions'), a conviction will be filtered only if:
 - a) 11 years have elapsed since the date of conviction;

- b) it is the person's only conviction; and
- c) it did not result in a custodial sentence.

Certain offences will not be filtered and will remain on a criminal record check certificate permanently. The list of offences that will never be filtered from a criminal record check is available from the Disclosure and Barring Service website at www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check.

- 15) A caution received when the person was 18 or over will not be disclosed if six years have elapsed since the date of issue and it does not appear on the list of specified offences which must always be disclosed.
- 16) For convictions received when a person was under 18 (referred to as 'juvenile convictions'), a conviction will be filtered only if:
 - a) 5.5 years have elapsed since the date of conviction;
 - b) it is the person's only conviction; and
 - c) it did not result in a custodial sentence.

Certain offences will not be filtered and will remain on a criminal record check certificate permanently. The list of offences that will never be filtered from a criminal record check is available from the Disclosure and Barring Service website at www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check.

- 17) A caution received when the person was under 18 will not be disclosed if two years have elapsed since the date of issue, but only if it does not appear on the list of specified offences which must always be disclosed.
- 18) Convictions and cautions which are filtered under the above rules will not appear on an applicant's criminal record check certificate and thus will not be considered by the University when making a decision on an application. Where an applicant has declared a conviction or caution which is later found to be filtered under these rules, the application shall be considered as if no conviction had been declared.

Section C. Procedures for the consideration of students/applicants who have declared a previous criminal conviction

- 19) All applicants will receive guidance, either through UCAS/GTTR where the application is made via these routes, or from the University in all other cases. The University guidance is presented at Appendix A. This University guidance is closely based on the UCAS guidance.

- 20) All communications with applicants will be conducted in writing, either by letter or by email to the address provided by the applicant. All communications with current students will be conducted in line with the University's Student Communications Policy
- 21) Where the University receives an application from a home student on which the question about relevant criminal convictions has not been answered (and, for applications to professional courses, where the question about spent convictions and warnings has not been answered), the University Admissions Centre (UAC) will contact the applicant to request an answer to the question(s).
- 22) If the applicant fails to respond after seven days, UAC will write to the applicant to inform them that their application will be withdrawn unless a response is received within a further seven days. If a response has not been received after the full 14 days, the University will not consider the application further and the applicant will be informed that their application is considered to be withdrawn.
- 23) If a home applicant has answered the question 'yes', UAC will write to the applicant in the first instance to ask the applicant to confirm that they have answered the question correctly.
- 24) For international applicants, the steps in paragraphs 22 to 24 will be carried out by the designated officer.
- 25) During Clearing, the constraints of time will not permit the above procedure. Any applicant in this situation will, as part of their Offer email, be required to provide details of their criminal conviction directly to the designated officer within 48 hours. The Policy will then be followed as from paragraph 32 above.
- 26) Whoever is authorised to make Offers shall consider the application on academic grounds and should make a decision, which may include inviting the applicant to interview.
- 27) If an applicant declares any previous criminal record during an interview, particularly in relation to an application for a professional course, no details of the conviction should be taken by the interviewer and the Policy should be followed from paragraph 30 below.
- 28) If the applicant has declared a spent or non-relevant conviction and the decision is made to offer an alternative course, UAC will inform the designated officer that a declaration is no longer required and the criminal conviction check can be cancelled (unless an unspent or relevant conviction has also been declared).
- 29) If the decision is made to reject the application, the applicant shall be informed that this decision has not been influenced by the declaration of a criminal conviction. This information should be sent either by the designated officer or by the Department/Faculty in consultation with the designated officer.
- 30) If the decision is to admit the applicant, this decision should not be communicated to the applicant until the Criminal Convictions Panel has made its decision.

- 31) When an applicant declares a previous criminal conviction, by any route, the application form and any related documentation shall be straightaway sent to the designated officer. The designated officer shall write to the applicant requesting further details of the declared criminal conviction, and any other related information deemed necessary by the Criminal Convictions Panel, and provide a date by which this information should be provided.
- 32) If the applicant fails to respond by the date stated, the designated officer will write to the applicant to inform them that their application will be withdrawn unless a response is received, and will give a further date by which the information must be supplied. If no response is received by this date, the University will not consider the application further and the designated officer will write to the applicant to confirm that their application is considered to be withdrawn.
- 33) On receipt of the applicant's details, the designated officer shall refer all the information (including the application form, any accompanying documentation and details of the nature of the offence(s) and conviction(s)) to the Criminal Convictions Panel (CCP), a standing panel of senior staff.
- 34) The CCP shall consist of at least three senior members of staff, including at least one male and one female member of staff, together with a student representative. In the case of an application to a professional course, a member drawn from the relevant profession and normally external to the University will supplement the panel membership.
- 35) The CCP forms a judgement as to whether the admission of the student, in the light of all the known information, will:
 - a) constitute, or not constitute, on the balance of probabilities, an undue degree of risk to the safety and/or well-being of the student and/or any other members of the University community that is inconsistent with the University's duty of care;
 - b) lead, or not lead, to the applicant qualifying for a profession where the nature of the offence(s) may prevent a person from being registered with the relevant professional body;
 - c) result, or not result, in the student undertaking a placement on a course in teaching, health, social work or on a course involving work with children or vulnerable adults, where the nature of the offence(s) is likely to mean the student would not be offered employment in that profession and that therefore the placement may not be offered without causing undue risk to the placement provider's duty of care and to the University's future relationship with placement providers.
- 36) In reaching a judgement the CCP shall take into account the following:
 - a) whether the criminal record, on the balance of probabilities, is likely to constitute an undue degree of risk to the safety and/or wellbeing of the student and/or any other members of the University community;
 - b) the length of time since the offence(s) was committed;
 - c) a statement of case from the student;
 - d) the degree of self-awareness and contrition exhibited by the applicant;
 - e) whether the applicant has reoffended, and, if so, whether there is a pattern to the re-offences;

- f) whether the applicant's circumstances have changed since the time of the offence(s);
- g) as appropriate to the circumstances of the case, statements from a probation officer or other suitable referee with regard to the student's suitability for a programme of study in Higher Education and any likely degree of risk to the student and to any other members of the University community. For applicants to a professional course, the potential risk to any vulnerable people with whom the applicant will come into contact during their proposed course of study will also be considered.

37) In reaching a decision, the CCP shall take whatever advice it considers appropriate.

38) The CCP shall communicate its decision, with reasons, to the designated officer.

39) If the decision is that admission of the applicant would on the balance of probabilities constitute an undue degree of risk to the wellbeing and/or safety of the student and/or any other members of the University community then the designated officer shall write to inform the applicant that their application is being rejected on these grounds.

40) If the decision is that admission would not constitute an undue degree of risk to the well-being and/or safety of the student and/or any other members of the University community, and the course does not involve a placement on a professional course, but may lead to the applicant qualifying for a profession where the nature of the offence(s) may prevent a person from being offered employment in that profession, or from being registered with the relevant professional body, the designated officer shall write to inform the applicant that the University is not prepared to admit them to their chosen course on these grounds. (Please see also Section D of this Policy regarding criminal records check certificates for professional courses.)

41) Where the decision of the Panel is that the University should not admit the applicant, for any of the reasons detailed above, the applicant has a right of appeal to the Vice-Chancellor. On receipt of an appeal, the Vice-Chancellor shall take what steps (s)he considers reasonable to deal with the appeal and shall take what advice (s)he considers appropriate.

If the decision is that admission would not constitute an undue degree of risk to the well-being and/or safety of the student and/or any other members of the University community, does not lead to the possibility of qualifying for a profession where the nature of the offence(s) may prevent a person from being registered with the relevant professional body, and will not result in the student undertaking a placement on a course in teaching, health, social work or on a course involving work with children or vulnerable adults, where the nature of the offence(s) is likely to mean the student would not be offered employment in that profession, then:

- a) the designated officer shall write to inform the applicant of the decision of the CCP;
- b) the designated officer shall communicate the decision of the panel to UAC, who will proceed to make an offer in accordance with the normal procedures.

Section D. Professional courses and criminal record check certificates

- 42) Students on professional courses are required to secure a criminal record check certificate (also referred to as a DBS (Disclosure and Barring Service) disclosure) before being allowed to go out on placements or practice. Ideally, the disclosure should be a condition of enrolment but in practice many applications are too late to allow sufficient time for such a disclosure to be requested and received from the DBS before the start of the course.
- 43) DBS counter signatories keep a list of enrolled students and ensure that disclosures are recorded when presented to show that they have been seen.
- 44) In consultation with the designated officer, each criminal record check certificate will be checked against the information previously provided by the applicant.
- 45) If the information on the certificate matches that previously made known to the University and considered by the CCP then the matter shall not be taken any further.
- 46) If the applicant has not yet enrolled and there is any mismatch between the certificate and the information provided by the applicant, the matter shall be referred to the designated officer. The designated officer shall normally refer the matter to the CCP but may, if the applicant is in receipt of a conditional offer where the condition relates to satisfactory disclosure, determine that the admissions officer may withdraw the conditional offer.
- 47) If the applicant has enrolled, and is therefore a student of the University, and there is any mismatch between the disclosure and the information previously made known to the University and considered by the CCP, then the matter and all supporting evidence shall be referred to the CCP, via the designated officer. The designated officer will contact the student to request the completion of a pro- forma with details of their offence(s), conviction(s), and reasons for the mismatch between the certificate and the information provided at application.
- 48) The CCP will consider this pro- forma, along with any other relevant documentation, with a view to reaching one of two possible outcomes:
 - a) that the conviction(s) and reasons for the mismatch are such that they should not prevent the student from continuing their course of study;
 - b) that the conviction(s) and reasons for non-disclosure are such that they raise reasonable doubt over the student's fitness to practice in the relevant profession, or may otherwise prevent the student from being offered employment in that profession, or from being registered with the relevant professional body.
- 49) In the case of the first decision being reached, the CCP shall inform the designated officer of this decision, with reasons. The designated officer shall then:

- a) write to inform the student of the decision of the CCP;
 - b) communicate the decision of the CCP to the relevant academic department.
- 50) In the case of the second decision being reached, the CCP will refer the case to the relevant academic department for consideration under misconduct and/or Fitness to Practice regulations.
- 51) If appropriate, the Head of Department shall prevent the student from attending on placement or practice whilst the CCP is considering the case.
- 52) Failure to present a copy of the DBS certificate when requested by the authorised parties will be considered a serious matter, and will result in a Withdrawal of Services being applied until this is received. In the case of continued failure to provide the DBS certificate, the University reserves the right to exclude a student from their course of study under the Withdrawal of Services procedure.

Section E. Work schemes and voluntary placements

- 53) The University may offer students the opportunity to take part in various schemes which may involve working with children or vulnerable people. These opportunities include formal schemes such as the Student Associate Scheme and Undergraduate Ambassador Scheme, as well as voluntary work placements organised by the University. Students taking part in these schemes may be required to secure a DBS disclosure in order to participate in these schemes.
- 54) The above procedure will be followed as closely as possible for students declaring a previous criminal conviction during their application for a place on one of these schemes.

Section F. Registration

- 55) As part of the annual online registration process, students will be required to answer a question to the effect of 'Have you had any criminal convictions since your last registration?'. Only new convictions need to be declared at registration; pre-existing convictions which were declared at application do not need to be declared again.
- 56) The designated officer shall contact all students who have provided a positive answer to this question, to ask for more details of the conviction which has been declared.

- 57) If a positive answer was given in error, or the conviction declared is not considered relevant (as laid out in paragraph 7), the student's record shall be amended accordingly by the designated officer and no further action will be taken.
- 58) If the information provided by the student relates to a relevant conviction, the designated officer shall follow the Policy from paragraph 33.
- 59) Failure to provide details of the declared conviction when requested by the designated officer will be considered a serious matter, and will result in a Withdrawal of Services being applied until a response is received. In the case of continued failure to respond, the University reserves the right to exclude a student from their course of study under the Withdrawal of Services procedure.

Section G. Sensitive personal information and the Data Protection Act

- 60) The designated officer shall keep a file of all correspondence and documentation relating to the admission decision. In the case of a decision not to admit the applicant, the designated officer shall destroy the file six months after the date of the decision. In the case of a decision to admit the applicant, the designated officer shall destroy the file forthwith. In all cases, the designated officer shall keep, for seven years, a confidential file-note. This shall record brief details of the conviction(s) declared and the decision made by the CCP relating to the admission of the applicant.

Appendix A. University guidance on criminal convictions

To help us ensure that the interests and safety of all members of the University community are safeguarded, we must know about any relevant criminal convictions that an applicant may have. If you have a relevant criminal conviction, please tick the box. The information that you provide will not affect the academic assessment of your application. However, the University may want to consider the application further or ask for more information before making a decision.

If you have a relevant criminal conviction that is not spent, please tick the box; otherwise leave it blank.

What is a relevant criminal conviction?

Relevant criminal offences include convictions, cautions, admonitions, reprimands, final warnings, bind overorders or similar involving one or more of the following:

- a) 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.
- b) Offences listed in the Sex Offences Act 2003.
- c) The unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking.
- d) Offences involving firearms.
- e) Offences involving arson.
- f) Offences listed in the Terrorism Act 2006.

If your 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, you should tick the box.

Warnings, penalty notices for disorder (PNDs), anti-social behaviour orders (ASBOs) or violent offender orders (VOOs) are not classed as convictions for the purpose of this section, unless you have contested a PND or breached the terms of an ASBO or VOO and this has resulted in a criminal conviction.

What does 'spent' mean?

If a person does not re-offend during their rehabilitation period, their conviction becomes 'spent' (as defined by The Rehabilitation of Offenders Act 1974). Convictions that are spent are not considered to be relevant and you should not reveal them. You should note that certain offences are never spent.

If you are convicted of a relevant criminal offence after you have applied, you must tell us. Do not send details of the offence; simply tell us that you have a relevant criminal conviction. The University will then ask you for more details

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