

Students with Criminal Convictions Policy and Procedure

1.0 Introduction

- 1.1 This policy aims to ensure that Birmingham City University (“the University”) balances its legal obligations (as specified in the Rehabilitation of Offenders Act 1974 (as amended)) with its duty to its students, staff and visitors to minimise risks to their safety.
- 1.2 It provides a framework to assess all individuals who declare criminal convictions, their suitability for their chosen course of study and whether they pose an unacceptable risk to the University community.
- 1.3 This policy also outlines the University’s approach where students acquire criminal convictions after application and during the course of their studies.

2.0 Purpose and scope

- 2.1 This policy is applicable to all individuals who:
 - 2.1.1 apply to study any course at the University, whether through UCAS or via direct entry, referred to in this policy as “applicants”;
 - 2.1.2 are studying any course at the University, referred to in this policy as “students”; and
 - 2.1.3 are applying for and studying on University courses delivered by partner institutions within the United Kingdom, referred to in this policy as “applicants”.
- 2.2 The policy seeks to ensure that the University operates a fair, reasonable and transparent process to dealing with criminal convictions and that having a conviction is not an automatic bar to admission.
- 2.3 Applicants or continuing students who are under licence or serving custodial sentences are also assessed under this policy.
- 2.4 Separate processes for dealing with criminal convictions are in place. The process to be followed by the University depends upon the nature of the course in question:
 - 2.4.1 for individuals applying for and studying courses at the University which are not subject to professional, statutory and regulatory body requirements, “general applicants”, **see the procedure at sections 6.0 and 8.0 below.**
 - 2.4.2 For individuals applying for and studying courses at the University which are subject to professional, statutory and regulatory body requirements, referred to in this Policy as “Regulated Courses”, **see the procedure at sections 7.0 and 8.0 below.**

- 2.5 The point at which applicants are required to declare details of their criminal convictions and which convictions must be disclosed is different under each procedure.
- 2.6 The Rehabilitation of Offenders Act 1974 (referred to as “the Act” in this policy) is relevant to all applicants and students, regardless of nationality and/or place of residence. This means that spent convictions cannot be taken into account for courses other than those that require an enhanced criminal record check by the Disclosure and Barring Service. Convictions acquired outside of the UK will be assessed according to the corresponding offence in English law. Applicants who require a visa to allow them to study in the UK are expected to offer the same level of disclosure as UK or UK-resident applicants but they are requested to declare all convictions on their visa application only.

3.0 Definitions

3.1 A list of terminology used in this Policy and their meanings are set out below:

3.1.1 Criminal “Conviction”

For general applicants cautions, reprimands and final warnings are not considered as convictions. However applicants for Regulated Courses will be required to declare all convictions and cautions, reprimands and final warnings.

Penalty notices for disorder (PNDs), anti-social behaviour orders (ASBOs) or other orders are not considered convictions, unless you have contested a PND or breached the terms of an ASBO or other order and this has resulted in a criminal conviction.

3.1.2 “Relevant” criminal conviction

The following are considered to be “relevant” criminal convictions for the purposes of this Policy and the University’s related regulations, policies and procedures:

- Offences involving 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
- Sexual offences including those listed in the Sexual Offences Act 2003 (as amended or replaced)
- The possession and/or the creation or distribution of indecent images of a child
- The unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking
- Offences involving firearms or arson
- Offences involving terrorism including those listed in the Terrorism Act 2006 (as amended or replaced)

Convictions obtained outside of the UK for any of the offences listed above are also considered to be relevant offences.

3.1.3 “Spent” and “Unspent” Convictions

After a specified period of time most criminal convictions become “spent”. The amount of time that must pass before a conviction is considered spent is set out in the Act and depends on the sentence passed by the court upon conviction. Further convictions obtained can impact when other convictions become spent. Subject to certain exceptions, once the conviction is spent the individual is treated as if the offence was never committed and they are not required to disclose spent convictions. Most cautions, reprimands and final warnings become spent immediately, so will not normally be 'unspent'

If the relevant period of time has not passed then the conviction will be “unspent”.

Further guidance on the distinction between spent and unspent convictions can be found [here](#).

3.1.4 Regulated Courses

Are those courses which are subject to professional, statutory and regulatory body requirements. Such courses may also involve undertaking placements with children and/or vulnerable adults. Examples include Nursing, Midwifery, Diagnostic Radiography and Paramedic Science.

Applicants for Regulated Courses will be required to obtain a satisfactory enhanced Disclosure & Barring Service check (referred to as “a DBS check”) in order to be able to enrol on the course. Further information on DBS checks can be found [here](#).

4.0 Key principles

4.1 The following key principles apply to the University’s processing of information about criminal convictions:

4.1.1 Assessment of Applications

The University does not make moral judgements in its assessment of applications. It assesses all applications objectively, based on available evidence, regarding whether a person poses an unacceptable risk and (for Regulated Courses) can meet the statutory or particular professional requirements.

All applications to the University are initially assessed for their academic suitability regardless of criminal convictions. If the applicant fails to meet the required academic criteria or professional course criteria, the application will be rejected through the standard Admissions process.

If the University decides to offer a place to the applicant against the academic criteria, the application will be passed onto the Head of Admissions, or nominated representative and the process outlined in sections 6 or 7 below will be followed.

The process to be followed is dependent upon whether the application is for a Regulated course or not.

4.1.2 How We Use the Information

Information related to the criminal convictions of an applicant or continuing student is only released to University staff who are directly involved in processing the information under this Policy.

If an applicant does not accept their place or commence their studies at the University or a University partner, copies of any information pertaining to a criminal conviction will be destroyed after the last permitted date of enrolment.

Personal data relating to criminal convictions will be retained confidentially and securely and access to that data will be strictly controlled.

If a general applicant does begin a course, information relating to a criminal conviction will be destroyed six months after their course has commenced. For students on Regulated Courses, information relating any criminal conviction will be destroyed by the University six months after the student's graduation. This is to enable the University to assist with the student's application for professional registration upon completion of their course with the relevant regulatory body (such as the Nursing and Midwifery Council or the Health and Care Professions Council).

4.1.3 Obligation to Disclose

The University expects all applicants and enrolled students to declare all unspent relevant criminal convictions.

Applicants who are convicted of any criminal offence between applying for a place and enrolling on their course must inform the Admissions Office at criminal.convictions@bcu.ac.uk immediately (and in any event no later than 48 hours following receipt of the conviction). The conviction will then be considered following the processes outlined in sections 6.0 and 7.0 below as appropriate.

If an applicant is expected to be under licence or custodial sentence at the intended start date of their chosen course, the University reserves the right to defer any decision on an application until the terms of the licence or custodial sentence are completed.

Continuing students who are convicted of an offence whilst enrolled at the University must immediately inform the University of the offending, regardless of its nature at criminal.convictions@bcu.ac.uk. The conviction will then be considered following the process outlined in section 8 below.

Note that if you are studying a Regulated Course, you may be required by the Codes of Conduct or guidance issued by the relevant professional, statutory or regulatory body to notify the University in the event of your arrest or upon being charged with an offence (not just when you are convicted). Students on Regulated Courses should seek advice from their school at the earliest available opportunity.

If at any stage an applicant or enrolled student fails to accurately disclose information required, then this non-disclosure may result in the offer of a place being withdrawn/withdrawal of the student from their course.

5.0 Anonymous Disclosures

5.1 The University recognises that information regarding an applicant's or student's alleged offending which is received anonymously, or from a third party, might be inaccurate or of a vexatious nature. The University will seek to verify the information given and revert to the procedure outlined in this Policy. If it is deemed that a student withheld information intentionally, the student may be withdrawn from their course. Any claim made anonymously or by a third party which cannot be verified, will not be considered further.

6.0 Procedure for General Applicants

6.1 The University's procedure for dealing with criminal convictions of applicants (other than those applying for Regulated Courses) is set out below. A flow chart of the procedure can also be found at Appendix 1. The procedure can be summarised as follows:

- Successful applicants receive offer letters from the University which set out the need to complete the criminal convictions declaration.
- Applicants make the criminal convictions declaration via the University's online "mySRS" portal.
- If applicants confirm they have relevant, unspent convictions then the Criminal Convictions Declaration Form must be completed within 7 days.
- An initial assessment of the Criminal Convictions Declaration Form is carried out by the Deputy Vice Chancellor (Academic).
- If required, a full assessment is carried out by the University's Criminal Convictions Panel
- If applicants are dissatisfied with the outcome of the Criminal Convictions Panel process then they may appeal.

6.1.1 Making the Initial Declaration

You will only be required to declare certain criminal convictions **if you are successful in receiving an offer** of a place to study at the University. The offer letter will explain that you need to declare whether you have any relevant, unspent convictions via the University's online portal, "mySRS".

You should be aware that the University's offer is conditional upon the information you provide about any convictions you may hold. Failure to answer this question may result in you being unable to fully enrol on the course. Further information can be found in the terms and conditions of the student contract can be found [here](#).

If you do disclose criminal convictions this does not mean that you will automatically be prevented from enrolling, all disclosures will be considered by the University on a case by case basis.

Once you log in to mySRS you will be asked to complete the criminal convictions declaration. Further guidance is available on the portal about making the declaration. At this stage, you will only be confirming whether you have any relevant, unspent convictions. If you indicate “yes”, you will then be asked to provide further details.

If your response is “no” then no further action will be taken. However, you should be aware of the ongoing obligation to disclose any criminal convictions throughout the duration of your studies at the University (see section 4.1.3 above).

6.1.2 Providing More Information

If you have relevant criminal convictions and become part of the University community, this may have implications for the University’s duty of care to its students, staff and visitors. We therefore need you to provide accurate and complete information about your offending to enable us to assess any risk you may pose to the University community.

If you have indicated “yes” to the criminal convictions declaration then you will be sent an email and asked to complete the Criminal Convictions Declaration Form **within 7 days** (see Appendix 3). This will give you the opportunity to provide the University with further information such as the nature of the offence, the sentence you received and the circumstances around your offending. The completed declaration form will initially only be accessible by the University’s Criminal Convictions Officer, Head of Admissions and the Deputy Vice-Chancellor (Academic) or their nominated representative.

6.1.3 Initial Assessment of the Information

The information provided on the Criminal Convictions Declaration Form is considered in the first instance by the Deputy Vice-Chancellor (Academic) who determine that one of the following actions should be taken:

- (i) The conviction is considered neither relevant and/or unspent and no further action should be taken or
- (ii) The Criminal Convictions Panel Process should be instigated.

6.1.4 Consideration by the Criminal Convictions Panel

A Criminal Convictions Panel will be convened to assess any risk you that may pose to the University community. Further information on the Criminal Convictions Panel can be found in the University’s Panel Guidance which can be

accessed [here](#) [note that this Panel Guidance is currently being updated and will be available from 11 May 2020].

The Panel will conduct a risk assessment to determine whether the applicant can be admitted to the University and whether any conditions will be attached to enrolment. The possible outcomes are follows:

- (i) Permit the applicant to enrol with no conditions related to the criminal conviction;
- (ii) Permit the applicant to enrol but subject to conditions related to the offending, for example in relation to University accommodation or the use of IT;
- (iii) Permit the applicant to enrol but on an alternative course; or
- (iv) Withdraw the offer and prevent enrolment by the applicant

The applicant will be notified of the outcome of the Panel's decision within 7 days. Reasons for the Panel's decision will be provided.

6.1.5 Appeal

If the applicant is dissatisfied with the outcome of the Panel's decision they are able to request an appeal on any of the following grounds:

- There is new evidence which you were unable, for valid reasons, to provide earlier in the process that would have had a significant effect on the outcome of the formal complaint stage;
- The correct procedure was not followed during the formal complaint stage and this has had a significant effect on the outcome;
- The outcome was unreasonable given all the circumstances and the evidence considered.

Appeals should be made in writing and sent to the Assistant Director Student Governance, Mental Health & Wellbeing along with any evidence you wish to be taken into account.

In the first instance, appeals made on the basis of new evidence will be presented to the Criminal Convictions Panel and they will be asked to reconsider their original decision. If the Panel agree to amend their decision, the Assistant Director will confirm to you the new decision reached. You will have a fresh right of appeal against any new decision reached.

In respect of appeals made on the basis of new evidence, in the event that the Panel decline to amend their earlier decision or you submit an appeal against an amended decision, the appeal will be considered by a member of the Vice-

Chancellor's Office ('VCO') with no prior involvement in the case. All other types of appeal will also be considered by a VCO member. The VCO member can make any of the following decisions:

- To uphold the appeal and make a new decision in respect of your application; or
- To decline the appeal.

Where the VCO member declines an appeal, the Panel's decision will stand and no further internal appeal is available to applicants. The decision of the VCO member will be communicated to you by the Assistant Director.

We aim to issue all criminal conviction appeal decisions within 15 working days of receipt.

7.0 Procedure for Applicants for Regulated Courses

7.1 The University's procedure for dealing with the criminal convictions of applicants for Regulated Courses is set out below. A flow chart of the procedure can also be found at Appendix 2.

7.2 Many of these courses operate within professional, statutory and regulatory frameworks and the University, in conjunction with our practice partners, have a responsibility to assess the risk posed by applicants/newly enrolled students who have a criminal record. An integral part of some Regulated Courses are placements which often involve regular contact with children, young people or other vulnerable groups. On this basis, the University requires applicants for Regulated Courses to declare a wider range of offences and to obtain an enhanced DBS check. The Course Handbook will confirm whether or not your chosen course is a Regulated Course.

7.3 The procedure can be summarised as follows:

- Applicants make the criminal convictions declaration upon application to the University (whether via UCAS or direct application)
- An enhanced DBS check is obtained by the applicant
- Applicants receive a certificate with the outcome of the DBS check. The University receives an indication of whether the DBS check was clear.
- If the DBS check revealed details of criminal convictions or other relevant information, i.e. there was a "positive disclosure" then the University requests a copy of the full certificate.
- The positive disclosure is assessed by a DBS panel, who will conduct a risk assessment to determine whether the applicant can be admitted to the University.

- If applicants are dissatisfied with the outcome of the DBS Panel process then they may appeal.

7.3.1 Making the initial declaration

If you are applying for a Regulated Course then you will be required to make a declaration about the criminal convictions you hold **when you apply** to the University. As part of your application (whether via UCAS or directly to the University) you will be asked to declare whether you have certain convictions.

Applicants for Regulated Courses are required to disclose convictions (whether relevant or not and whether spent or unspent) unless they are "protected". The meaning of "protected" convictions is set out in legislation (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(as amended)) and are essentially those convictions which would not show up on a criminal records check (more information on protected convictions can be found [here](#)). Further guidance on making the declaration is provided on the application form.

7.3.2 Applying for an enhanced DBS Check

Where you have declared a criminal conviction you will then be required to obtain an enhanced DBS check before you are able to enrol on your course. The University uses a third party provider to carry out DBS checks for its applicants/students. You will be sent a link to the service provider's website and you will need to register and apply for an enhanced DBS check. The University covers the cost of the check for applicants to Health and Education courses.

You should be aware that obtaining a satisfactory DBS check is a condition of the student contract with the University and you may be prevented from enrolling until the outcome of the check has been received and considered. You will not be able to proceed with any placement until a satisfactory DBS check has been received or (in cases of positive disclosure) you have been permitted to enrol by a DBS Panel.

The University reserves the right to withdraw a student in the event that a DBS check is completed after enrolment and subsequent assessment under this procedure deems a student unsuitable for their chosen course.

7.3.3 The Outcome of the DBS Check

Once the DBS check has been completed you will receive a certificate with the outcome of the check. At this stage the University will receive only confirmation of whether or not there was a positive disclosure (not the full certificate).

If there are no entries on the certificate then no further action will need to be taken in relation to criminal convictions at this stage. However, you should be aware of the ongoing obligation to disclose any criminal convictions throughout the duration of your studies at the University (see 4.1.3 above).

If there is a positive disclosure (convictions or other information is recorded on the DBS certificate) then the University will request a copy of the full certificate

and this will be referred to the Student Governance team and will be considered by a University DBS Panel.

7.3.4 Consideration by the University's DBS Panel

A DBS Panel will be convened to assess any risk you that may pose to the University community. Further information on the DBS Panel can be found in the University's Panel Guidance which can be accessed [here](#) [note that the Panel Guidance is currently be updated and this is due to be complete by [date]].

The University's DBS Panel will review the details of the criminal convictions and determine:

- whether the applicant is able to comply with regulatory requirements for their chosen course; and
- the applicant's suitability to study on the regulated course

The possible outcomes are follows:

- (i) Permit the applicant to enrol but subject to the student obtaining two satisfactory professional references;
- (ii) Permit the applicant to enrol with no conditions related to the criminal conviction;
- (iii) Permit the applicant to enrol but subject to conditions related to the offending, for example in relation to University accommodation or the use of IT;
- (iv) Permit the applicant to enrol but on an alternative course; or
- (v) Withdraw the offer/terminate and prevent enrolment by the applicant

The applicant will be notified of the outcome of the Panel's decision within 7 days. Reasons for the Panel's decision will be provided.

7.3.5 Appeal

If the applicant is dissatisfied with the outcome of the Panel's decision they are able to request an appeal to the Pro-Vice-Chancellor and Executive Dean of the Faculty of Health, Education and Life Sciences. Appeals can be made on any of the following grounds:

- There is new evidence which you were unable, for valid reasons, to provide earlier in the process that would have had a significant effect on the outcome of the formal complaint stage;
- The correct procedure was not followed during the formal complaint stage and this has had a significant effect on the outcome;
- The outcome was unreasonable given all the circumstances and the evidence considered.

Appeals should be made in writing and sent to HELS Student Governance, along with any evidence you wish to be taken into account. Student Governance will pass the appeal paperwork to the Pro-Vice-Chancellor for a decision to be made. The Pro-Vice-Chancellor can make any of the following decisions:

- To uphold the appeal and make a new decision in respect of your application; or
- To decline the appeal.

Where the Pro-Vice-Chancellor declines an appeal, the Panel's decision will stand and no further internal appeal is available to applicants. The decision of the Pro-Vice-Chancellor will be communicated to you by HELS Student Governance.

We aim to issue all DBS appeal decisions within 10 working days of receipt.

8.0 Continuing Students

- 8.1 As a continuing student you are under an obligation to make the University aware of any criminal convictions you may acquire during your studies with us. For students on Regulated Courses you may be required to notify the University in the event of your arrest on suspicion of committing an offence, not just when they you are convicted. See Obligation to Disclose at section 4.1.3 above.
- 8.2 Criminal convictions should be notified to criminal.convictions@bcu.ac.uk as soon as possible. You will then be asked to complete the Criminal Convictions Declaration Form to provide the University with more information about the nature of the offending. Unless you are a student on a Regulated Course, your conduct will then be considered under the University's Disciplinary Procedure. For students studying Regulated Courses, any criminal conduct or alleged criminal conduct will be considered under the University's Fitness to Practise Procedure.
- 8.3 If you are a continuing student on a Regulated Course and take a temporary withdrawal for six months or more, you will be required to obtain another enhanced DBS Disclosure before undertaking any placement learning. In some cases, students on Regulated Courses will be required to provide an annual enhanced DBS Disclosure at their own expense to ensure that they have not had any further involvement with the Police and/or Social Services.

9.0 Help and Support

If you would like to discuss your circumstances with someone at the University prior to making an application, or during the application process, please contact criminal.convictions@bcu.ac.uk and someone will be in touch as soon as possible.

10.0 Links to related University Policies/Guidance/Regulations

- 10.1 The University's [Admissions Policy](#)
- 10.2 The University's [Academic Regulations](#)
- 10.3 The [Student Contract](#)
- 10.4 The University's [Disciplinary and Fitness to Practise Procedures](#)

11.0 Links to related external resources

- 11.1 [Unlock](#) is an independent charity that provides information, advice, and support to people with convictions.
- 11.2 [UCAS guidance on criminal convictions](#).

12.0 Appendices

- 12.1 [Appendix 1 – General Applicants Process Flow Chart](#)
- 12.2 [Appendix 2 – Applicants for Regulated Courses Flow Chart](#)
- 12.3 [Appendix 3 – Criminal Convictions Declaration Form](#)