

Criminal Convictions Procedure

Student Experience

Version 2.1

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1. Introduction

- 1.1 Solent University (hereby now referred to as 'the University') aims to provide a diverse, inclusive, supportive, and positive environment for work and study. It values the contributions of all staff and students (please note that the term 'student' refers to all types of learners, for example apprentices and cadets) and is committed to ensuring that the rights of individuals are respected, and that each person is treated with dignity, respect, and courtesy.
- 1.2 Whilst promoting equality of opportunity, the University has a duty of care to provide a safe environment for its staff and students, which includes people under the age of 18. Therefore, at point of enrolment all new applicants are required to declare to the University any 'unspent' criminal convictions or where there is a pending court case. This requirement is for all University courses with more specific requirements for professional practice courses e.g., Nursing, or Social Work (please note disclosure is required in advance of the point of enrolment for professional practice courses and includes disclosure of any spent convictions - please see section 8 for further details). The requirement to declare also applies to existing students who may incur a conviction (referred to as a 'student criminal conviction declaration') in the duration of their studies.
- 1.3 This procedure seeks to ensure that the University operates a fair, reasonable, and transparent process and additionally recognises the importance of education in access and widening participation and providing educational opportunities. Having an unspent criminal conviction should not deter or be a barrier to a prospective applicant or current student studying for a course. Each declaration will be considered thoroughly on a case-by-case basis and decision making is based on the course applied for (i.e., 'standard', or 'professional practice') and the nature of the conviction.
- 1.4 This procedure operates alongside the University admissions and recruitment policies, for further information please [click here](#) and the University [Safeguarding Policy](#). Any concerns or questions regarding this procedure or regarding a student criminal conviction declaration can be put in writing to the Deputy Head of Student Experience (Wellbeing) at safeguarding@solent.ac.uk

2. Scope of Procedure and Legislative Requirements

- 2.1 This procedure aims to ensure that the University balances legal obligations, as specified in the [Rehabilitation of Offenders Act 1974](#) (referred to as 'the Act' in this procedure), with its duty of care to students, staff, and visitors. This procedure provides a fair framework for applicants and students to declare criminal convictions in order that the University can assess their suitability for their chosen course of study balanced against possible risk to the University community.
- 2.2 Under the Act, all cautions and convictions may become spent unless they are a conviction that has resulted in a sentence of 4 years or more or a public protection sentence, regardless of length. Once a caution or conviction is spent a person does not have to reveal its existence in most circumstances unless the Exceptions Order 1975 applies (e.g., the role applied for is involved with children or has a regulated body which requires full disclosure of all convictions as outlined in the Act).
- 2.3 In applying this procedure, the University will be observing the rehabilitation periods as set out in Section 5 of the Act and, therefore, any convictions that are regarded as spent will not require disclosure or will be disregarded if inadvertently disclosed by the applicant (unless they are applying for a professional practice course).
- 2.4 This procedural framework will also apply to applicants or students under license or serving custodial sentences, furthermore the Act is relevant to all applicants and students, regardless of nationality and/or place of residence. 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, they are requested to declare all convictions on their Visa application.
- 2.5 This Procedure applies to all new applicants, existing students at Solent University and students enrolling via Solent University for a course delivered elsewhere under a Partnership agreement.

3. Definitions

3.1 Criminal Conviction - A criminal conviction refers to a final judgement/plea of guilty following a charge and prosecution for a criminal offence.

3.2 'Relevant' Criminal Conviction - This applies to the criminal conviction for offences such as those listed below. Convictions obtained outside of the UK for any of the offences listed are also considered to be relevant offences:

- 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
- Offences listed in the Sexual Offences Act 2003
- The unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking
- Offences involving firearms or arson
- Offences listed in the Terrorism Act 2006

3.3 'Spent' and 'Unspent' Convictions - After a specified period 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. If the relevant period has not passed, then the conviction will be 'unspent'. 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 normally not require disclosure unless the applicant is required to disclose for a professional practice course. Further guidance on the distinction between spent and unspent convictions can be found [here](#).

3.4 'Protected' Convictions - Set out in the Exceptions Order 1975 (as amended) within the Act, is a protected conviction which refers to those which are filtered during the DBS process and would not appear on a DBS certificate. A protected conviction can only be applied when it does not relate to a listed offence, no custodial

sentence was imposed, and the individual has no other convictions. Other criteria are also applied based on age at the time of the conviction and time elapsed since.

- 3.5 'Standard' Courses - These are courses that are not regulated by Professional, Statutory and Regulatory Bodies (PSRBs). Most courses at the University are not regulated by PSRBs. *NB this does not refer to the academic regulation of courses*
- 3.6 Professional Practice Courses - These are 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 and Social work. Applicants for Professional Practice Courses will be required to obtain a satisfactory Enhanced Disclosure & Barring Service check in order to be able to enroll on the course (see section 8 for further detail).

4. Declaration of Criminal Convictions

- 4.1 All new applicants are required to declare criminal convictions upon enrolment. A letter from the University explains the requirement to declare criminal convictions and upon declaration a specific form will be sent to the applicant for completion.
- 4.2 For current students the Criminal Convictions Declaration form can be found [here](#) on the student portal, this should be sent to the Deputy Head of Student Experience (Wellbeing) within 5 working days of the conviction to safeguarding@solent.ac.uk.
- 4.3 Should admissions staff wish to make an offer to an applicant who has declared a criminal conviction, the offer will be held until approval to proceed has been given by the Deputy Head of Student Experience (Wellbeing) following a Criminal Conviction Panel (see section 9).

5. Basis for Processing Criminal Conviction Data

- 5.1 The University recognises that people with criminal convictions face several barriers including accessing higher education, the University therefore applies a proportionate, fair, and transparent approach to assessing the relevance of the applicant's criminal record to ensure that the right decisions are reached.
- 5.2 The University also has a duty of care to protect and safeguard the welfare of children, adults with care and support needs and other students and visitors utilising the University. These requirements are laid out in the University [Safeguarding](#)

[Policy](#). As a public sector institution, the University also has an ongoing duty to act in the wider public interest.

- 5.3 The basis for processing criminal conviction data is to enable the University to fulfil these responsibilities. The data will be used only to review the context of a conviction(s) and to assess whether the conviction(s) presents a possible risk to the wider University Community and for professional practice courses enables assessment of the suitability to continue as outlined in the Act by the Exceptions Order 1975.
- 5.4 As underpinned by the Rehabilitation of Offenders Act 1974 the University will predominantly focus on relevant offences, for example violence against the person or those outlined in the Sexual Offences Act or where there is evidence of multiple unspent convictions.
- 5.5 For professional practice courses all convictions disclosed or identified within the DBS certificate will be considered by the relevant course team (see section 8).

6. Data conditions, Compliance, and Accountability

- 6.1 In processing this personal data, the University operates in accordance with the 6 principles of the General Data Protection Regulation (GDPR). All relevant information or data relating to a disclosure of a criminal conviction (s) will be:
 - Retained securely with access strictly controlled
 - Retained no longer than required and in line with University retention policy (for enrolled students 6 years plus 1)
 - Will only be used for the purposes outlined in this procedure
 - Gathered and held in line with GDPR and the Data Protection Act 2018
- 6.2 If the applicant does not accept their place or commence their studies at the University copies of any information pertaining to the criminal conviction will be destroyed no later than 1 year of receipt.
- 6.3 Any enquiries regarding data and information management can be directed to the Policy, Governance, and Information Rights Team at information.rights@solent.ac.uk.

7. Standard Course Procedures

- 7.1 On receipt of disclosure of a criminal conviction, the University's Deputy Head of Student Experience (Wellbeing) will facilitate a Criminal Convictions Panel which will be convened at the earliest opportunity, to determine if the student/applicant can continue onto their chosen course.
- 7.2 The decision making of the panel involves consideration of the University's duty of care to staff and students, the public interest and its commitment to individual human rights, the right to an education and the right not to be discriminated against as protected under the Rehabilitation of Offenders Act 1974. All cases will be considered on an individual basis in a fair and equitable manner.
- 7.3 In the case of a continuing student accessing the on-line enrolment system, their progress will be halted by the system if they declare at re-enrolment that they have been convicted of a relevant criminal offence since their last enrolment, this will remain in place until the Criminal Convictions Panel decision. The student will be referred to the on-line declaration form (see paragraph 4.2) with instructions to return this at the earliest opportunity to the Deputy Head of Student Experience (Wellbeing) at safeguarding@solent.ac.uk
- 7.4 If an enrolment has been completed and it is subsequently discovered that a student has a criminal conviction that they did not declare, depending on the circumstances, the [University's student disciplinary procedures](#) may be invoked. In such cases, the Complaints and Appeals Manager will liaise with the Deputy Head of Student Experience (Wellbeing) to agree next steps, which may on occasion include putting in place pre- cautionary safeguarding measures, these will be dependent on the nature of the conviction. If it relates to a student on a Professional Practice Course the Fitness to Practise Policy may apply (see section 8 for further information). The conviction may also have impact on any current or imminent work placements that require an enhanced DBS check.
- 7.5 On receipt of the completed declaration form, the Deputy Head of Student Experience (Wellbeing) will commence the procedure as outlined in section 9.
- 7.6 For students and cadets at Warsash Maritime Academy the views and interests of the sponsoring companies will also be considered whilst weighing up possible known or knowable risk, this procedure will operate to ensure all students/cadets are treated fairly and equitably. The Warsash Maritime Academy places an obligation

on sponsoring companies to inform them if their sponsored cadet has an unspent criminal conviction.

8. Professional Practice Course Procedures

- 8.1** Whilst the general criminal conviction process for professional practice and standard courses remains the same, within the Act there is a provision known as the 'Exceptions Order' which recognises specific roles where disclosure of a fuller criminal history is relevant.
- 8.2** In line with the Exceptions Order 1975 within the Act, specific courses at the University, which are subject to regulation via the Professional, Statutory or Regulatory Bodies e.g., Social Work and Nursing, will automatically require disclosure of all spent and unspent convictions and an Enhanced Criminal Record check will be required at point of entry (UCAS application/admissions stages).
- 8.3** The Exceptions Order 1975 includes the following roles:
- Jobs which involve working with children
 - Jobs within the legal system
 - Jobs in healthcare
 - Jobs in accounting
 - Some transport jobs e.g., taxi drivers
 - Jobs within animals e.g., Vets and RSPCA Officers
- 8.4** The University has responsibility (also outlined in the [Fitness to Practise Policy](#)) to ensure that student conduct upholds the reputation of their chosen profession; that they do not pose a threat to safety and that they are professionally suitable according to the codes of conduct and standards of the relevant Professional, Statutory or Regulatory Body (PSRB).
- 8.5** Where there is notification of a criminal conviction, or disclosure/notification of a relevant current criminal investigation for an offence deemed not in line with the professional behaviours required from the regulatory bodies, then it is made explicit to applicants that they may be withdrawn from the course.
- 8.6** For current students in professional practice courses who become a subject or suspect in a criminal investigation or conviction, whilst studying, who have contact with vulnerable adults or children via placement or voluntary roles, may also have

their case notified to the Local Authority Designated Officer (LADO). For further information please refer to the Safeguarding Policy and Fitness to Practise Policy.

9. Criminal Conviction Panel Process

9.1 Stage 1 Initial Assessment of the Conviction

9.1.1 The Deputy Head of Student Experience (Wellbeing) will establish if the offence is spent and/or relevant. Relevant offences could include one of the following:

- 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 or more.
- Offences listed in the Sex Offences Act 2003
- The unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking
- Offences involving firearms or arson
- Offences listed in the Terrorism Act 2006

9.1.2 Any conviction that is made by a court outside of Great Britain and would not be considered spent under the UK Rehabilitation of Offenders Act 1974 must also be disclosed and assessed. Minor offences such as motoring offences will be disregarded.

9.2 Stage 2 Criminal Convictions Panel

9.2.1 If a conviction is thought to be relevant and not spent, the Deputy Head of Student Experience (Wellbeing) or nominated senior lead will proceed to stage 2. The Deputy Head of Student Experience (Wellbeing) or nominated senior lead will set up a Criminal Convictions Panel of relevant staff and provide detail pertaining to the conviction. The Criminal Convictions Panel will comprise of the following:

- Head of Dept (or an appropriate representative)
- Student Achievement Team Leader
- Head of Student Success
- Safeguarding Manager
- Campus & Residential Services Manager

9.2.2 The Criminal Convictions Panel has responsibility for deciding if an offer may be made to an applicant who has declared a criminal conviction and in the case of a current student decide if they can continue their course. This decision involves consideration of the University's duty of care to staff and students; and its commitment to an individual's right to an education, and the right not to be discriminated against as outlined by the Rehabilitation of Offenders Act 1974. All cases will be considered on an individual basis. The Criminal Convictions Panel will treat all applicants and students in a fair and equitable manner.

9.2.3 As a part of the decision-making process there will be careful consideration of known or knowable risk and the management of any identifiable risk associated with the conviction.

9.2.4 The following factors will be taken into consideration when assessing risk:

- The nature of the offence and if this has any bearing on the applicant or student's suitability to be a member of the student body (e.g., violent, sexual or drug related crimes)
- The length of time since the offence was committed
- The age of the applicant or student when the offence was committed
- If there has been a history of repeat offending or more than one specified offence
- Any mitigating or aggravating circumstances which significantly impacted upon the applicant or student at the time the offence was committed
- Any professional supporting statements/character references e.g., from a teacher or probation officer
- The requirements of the course being applied for i.e., is it a professional practice course and do specific professional standards apply

9.2.5 The Deputy Head of Student Experience (Wellbeing) will have responsibility for giving advice to the panel regarding the nature of the offence and for obtaining supporting information from authorities identified by the applicant or student or identified by the Safeguarding Manager, this may include from Probation Services, Police or Local Authority Designated Officer (this list is not exhaustive however all enquiries will be reasonable and proportionate).

9.2.6 Upon consideration of the information available the Criminal Convictions Panel will consider the following outcome options:

- Unconditionally accept the application/allow the student to continue their studies
- Defer the decision to seek further information or seek clarity on information provided
- Following completion of a risk management plan establish certain conditions/precautionary measures to enable the university to manage an acceptable level of risk e.g., that the applicant or student does not live in University halls of residence or must engage in support services
- For applicants; refuse the application on the basis that the risk posed to students and staff is significant and cannot be effectively or safely managed
- For current students; refuse to allow the student to continue their course on the basis that the risk posed is significant and cannot be effectively or safely managed

9.2.7 Where further information or clarity is required, the Deputy Head of Student Experience (Wellbeing) or nominated lead will be tasked with gathering that further information including contacting the applicant or student in the first instance. The Deputy Head of Student Experience (Wellbeing) and the Criminal Convictions Panel will endeavour to keep any delay to a minimum throughout the procedure.

9.2.8 In such circumstances as when a condition or precautionary measure is required, the applicant or student will be notified in writing within 5 -10 working days and will be required to accept the conditions in writing within the same timeframe. The applicant or student can request a face-to-face or telephone discussion to discuss matters if so required. The applicant or student will also be made aware that certain members of the University community may need to be informed of the agreed measures to enable enforcement of the conditions, e.g., the University Estates and Facilities Service staff or the Safeguarding Manager.

9.2.9 If it is decided that an offer cannot be made based on the criminal conviction declared and the assessment made by the panel pertaining to risk, the student will be notified in writing by the Deputy Head of Student Experience (Wellbeing). The notification will detail the rationale for the decision and provide guidance regarding the appeals procedure. In the case of an existing student, they will be

notified in the same way and at that stage they will not be allowed to re-enrol or maybe suspended or withdrawn from their course.

10. Criminal Conviction Panel Appeal Process

10.1 Stage 3 Appeals

10.1.1 An applicant or current student may appeal against the decision of the Criminal Convictions Panel in the following circumstances:

- Where an applicant has been rejected or a student has not been able to re-enroll or has been withdrawn and has evidence that would counter the decision made by the panel

or

- Where an offer has been made subject to a condition and the applicant or student has evidence that indicates the condition is unfair or disproportionate or discriminatory

or

- Where there is evidence indicating the relevant processes have not been appropriately followed as per the University Policy & Procedure

10.1.2 The applicant or student should appeal in writing against the decision within 10 working days of receipt of the Criminal Convictions Panel's decision and should establish the grounds of their appeal providing any further evidence that they wish to be considered.

10.1.3 At this stage the Appeal Panel will be comprised of the original Criminal Convictions Panel, which will have an opportunity to reconsider its decision in the light of further information. The Panel will have the following options available:

- To overturn the original decision and make an offer
- To overturn the original decision and make an offer subject to certain conditions
- To reduce or amend conditions
- To uphold the original decision

10.1.4 The applicant or student will be notified of the Criminal Convictions Panel's decision in writing as soon as possible. In cases other than when the original decision of the panel has been overturned, the applicant or student should also be made aware of the Stage 4 (Final Appeals Panel) of the Procedure.

10.2 Stage 4 Final Appeal Panel

10.2.1 Applicants will have the opportunity to pursue a Stage 4 Final Appeal. This Stage 4 Final Appeal Panel will be comprised of appropriate senior members of staff who have not previously been involved in the original decision-making process and will involve a meeting of the new Panel. The Deputy Head of Student Experience (Wellbeing) will be responsible for setting up and providing advice to the Final Appeal Panel.

10.2.2 The Final Appeal Panel will be comprised of the following staff:

- A Head of Dept or Director of Professional Service as Chair of the Panel
- Deputy Head of Student Success (Achievement and Transformation)
- Head of Professional Service and/or the University Chief Student Officer and Registrar

10.2.3 The applicant or student will be invited, by the Deputy Head of Student Experience (Wellbeing) to attend the Stage 4 Final Appeals Panel giving them an opportunity to make their appeal in person. The applicant or student will have the opportunity to be accompanied by a family member or friend. The applicant or student should provide details of this companion to the Chair of the Final Appeal Panel within 5 days of the hearing date.

10.2.4 Where the applicant or student does not wish to attend in person written representation may be provided. Written representations and further evidence must be provided within 5 working days of the hearing date.

10.2.5 The applicant or student will be given 10 working days' notice of the hearing date. The applicant or student may seek to have the hearing date changed in cases where they can show good cause (e.g., work commitments, previous engagements etc.) The applicant or student should notify the Deputy Head of Student Experience (Wellbeing) of their reasons for their non-attendance if they wish to request a new hearing date; and an alternative mutually convenient date will be arranged as soon as possible. However, if the Chair of the Panel does not accept the reasons given or the applicant or student does not respond, the hearing will take place in their absence.

10.2.6 The findings of the ‘Stage 3’ Appeal and the original decision of the Criminal Convictions Panel will be presented to the Final Appeal Panel by the Deputy Head of Student Experience (Wellbeing). The Chair of the Panel will notify the applicant or student in writing within 5 working days of the decision of the Final Appeal Panel Meeting.

10.2.7 Where the student has exhausted the University’s internal appeals processes the University will provide the student with a ‘Completion of Procedures Letter’. The letter will draw the student’s attention to the Office of the Independent Adjudicator for Higher Education Student Complaints Scheme, to whom any final appeal can be made.