



## **Applicant [to be a student] Declaring a Criminal Conviction Procedure**

Reference	GO_21
Created by	Deputy Principal (Quality and Student Experience)
Date	May 2015
Impact assessed by	Deputy Principal (Quality and Student Experience)
Date	March 2021
Approved by	SLT
Date	24 March 2021

Reviewed cycle: Every 2 years, Reviewed in 2017, 2019, 2021, 2023

Date of next review: June 2025

## **1. Purpose**

This procedure has two main purposes:

- i. To identify the procedure to be undertaken when an applicant (student) declares a criminal conviction.
- ii. To provide the basis of any risk assessment prepared as a result of an applicant declaring a criminal conviction.

Notes:

A criminal conviction does not necessarily preclude an applicant from entry to a study programme at the College. However, it may necessitate College staff seeking additional references relating to the applicant and the preparation of a risk assessment, prior to the applicant being accepted onto a study programme. This will help to determine any support required, should the applicant join the College as a student.

In the event of being admitted onto a study programme, that is, the applicant becoming a student, any failure to declare an criminal conviction may result in College staff asking the student to withdraw.

## **2. Procedure to be adopted when an applicant declares a criminal conviction**

See Appendix 2, for a flowchart depicting the procedure to be adopted.

In accordance with Appendix 3, the relevant member of the Strategic Leadership Team (SLT), or in their absence, another member of SLT must be involved with the decision-making process.

In all other cases the relevant Head of Curriculum (HoC) and Designated Safeguarding Lead (DSL) or Deputy Designated Safeguarding Lead (DDSL) must be involved with the decision-making process.

Use Appendix 4 to record discussions relating to the criminal conviction. If necessary, Appendix 5 – Safeguarding Risk Assessment Template should be used.

If an application is unsuccessful, the applicant has a right of appeal in accordance with York College's Admissions Policy

## **3. Background**

### **3.1 When is a criminal conviction spent?**

The Rehabilitation of Offenders Act 1974 gives people with spent criminal convictions, cautions, reprimands and final warnings the right not to disclose them. Many convictions become spent after five years because most lead to fines and community orders. These periods are halved for juveniles.

<b>Prison Sentence</b>	<b>Spent after...</b>
Up to six months	2 years
Up to 2 <sup>1</sup> / <sub>2</sub> years	4 years
2 <sup>1</sup> / <sub>2</sub> years to 4 years	7 years
More than 2 <sup>1</sup> / <sub>2</sub> years	Never spent

Detention and Training Orders (DTO) for 12 – 14 year olds:	
3 month DTO	21 months
6 month DTO	24 months
18 month DTO	3 <sup>1</sup> / <sub>2</sub> years
2 year DTO	4 years
Detention and Training Orders (DTO) for 15 - 17 year olds	half the figures in the prison sentence table above

### 3.2 Rehabilitation Periods

Under the Rehabilitation of Offenders Act 1974 the time it takes for an offence to become 'spent' depends upon the sentence given – not the offence committed.

There is one exception to this rule. Under the Policing and Crime Act 2009 the rehabilitation period for loitering and soliciting is six months. For a custodial sentence, the rehabilitation period is decided by the total length of the sentence imposed by the court, not the time served in custody. Custodial sentences of more than two and a half years can never become spent.

See Appendix 1 (List of Rehabilitation periods)

### 3.3 When must an applicant declare a conviction/caution?

The National Association for the Care and Rehabilitation of Offenders (NACRO) provide guidance on the declaration of convictions and cautions. This can be accessed via their website at <http://www.nacro.org.uk>.

The guidance can be summarised as *an applicant must declare a conviction/caution (even if it is spent) if:*

- Cautions given less than 6 years ago (where individual is over 18 at the time of the caution)
- Cautions given less than 2 years ago (where individual is under 18 at the time of the caution)
- Convictions relating to an offence from a prescribed list – see \* below
- Convictions that resulted in a custodial sentence (regardless of whether served)
- Convictions given less than 11 years ago (where individual is over 18 at the time of the conviction)
- Convictions given less than 5<sup>1</sup>/<sub>2</sub> years ago (where individual is under 18 at the time of the conviction)

In addition, all convictions and cautions relating to serious violent/sexual offending and or safeguarding offences must be disclosed.

Where an individual has more than one conviction, all convictions will be included on a

disclosure certificate (no conviction will be filtered).

\* A summary of the convictions/cautions which must always be disclosed can be found here:

<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

### **3.4 Concurrent and Consecutive Sentences**

If a person receives two or more prison sentences in the course of the same proceedings, the rehabilitation period will depend on whether they are to run concurrently or consecutively. So, for example, two six-month terms ordered to run consecutively are treated as a single term of 12 months, giving a rehabilitation period of 10 years. But two such sentences ordered to take effect concurrently are treated as one sentence of six months, giving a rehabilitation period of seven years.

Prison sentences ordered to run consecutively to sentences already being served are not affected by this rule. So, for example, two six-month terms given at separate court hearings but ordered to run consecutively will be treated as separate six-month terms, each with a rehabilitation period of seven years.

### **3.5 Breach of Court Orders**

If someone is given a probation or conditional discharge order and is later brought before the courts for a breach of the order, this can affect the rehabilitation period applicable to the original conviction. If the court imposes a further sentence when it deals with the breach, then the original conviction will run on until both rehabilitation periods have expired.

Sometimes the courts may not deal with the breach until after the rehabilitation period applying to the original conviction has already expired. If the court then imposes a further sentence in dealing with the breach, the original conviction will still not become spent until the new rehabilitation period has expired.

## Rehabilitation periods

Under the Rehabilitation of Offenders Act 1974, the time it takes for an offence to become 'spent' depends on the sentence given – not the offence committed. There is one known exception to this rule. Under the Policing and Crime Act 2009 the rehabilitation period for loitering and soliciting is six months.

The ROA has been reformed as a result of changes in the law in 2012. These came into force on the 10th March 2014.

For a custodial sentence, the rehabilitation period is decided by the total length of the sentence imposed by the court, not the time served in custody. Custodial sentences of more than two and a half years can never become spent.

Is it spent? The Rehabilitation of Offenders Act 1974 gives people with spent convictions and cautions the legal right not to disclose them when applying for most jobs and for other purposes, like when buying insurance. Apart from those individuals who are given prison sentences of more than 4 years, most people with convictions will benefit from it at some point in their lives. The table below sets out the time it takes for the main sentences to become spent following the changes that were introduced in 2014. This is known as the 'rehabilitation period' for the conviction. A conviction may have a number of rehabilitation periods depending on the sentence – in this situation, the longest one applies. If you have access to the internet, you can also use our online tool [www.disclosurecalculator.org.uk](http://www.disclosurecalculator.org.uk)

### Prison Sentences and Community Orders (with a buffer period)

(Time it takes to become spent)

Sentence	Adult (18+) at conviction/disposal	Young person (U18) at conviction/disposal
Over 4 years or a public protection sentence	Never spent	Never spent
More than 30 months and less than (or equal to) 4 years	Full sentence + 7 years*	Full sentence + 3 ½ years*
More than 6 months and less than (or equal to) 30 months	Full sentence + 4 years*	Full sentence + 2 years*
Less than (or equal to) 6 months	Full sentence + 2 years*	Full sentence + 18 months*
Community order / Youth rehabilitation order	Full length of the order + 1 year	Full length of the order + 6 months

\*Sentence includes time spent on licence

## Other Community Sentences (with no buffer period)

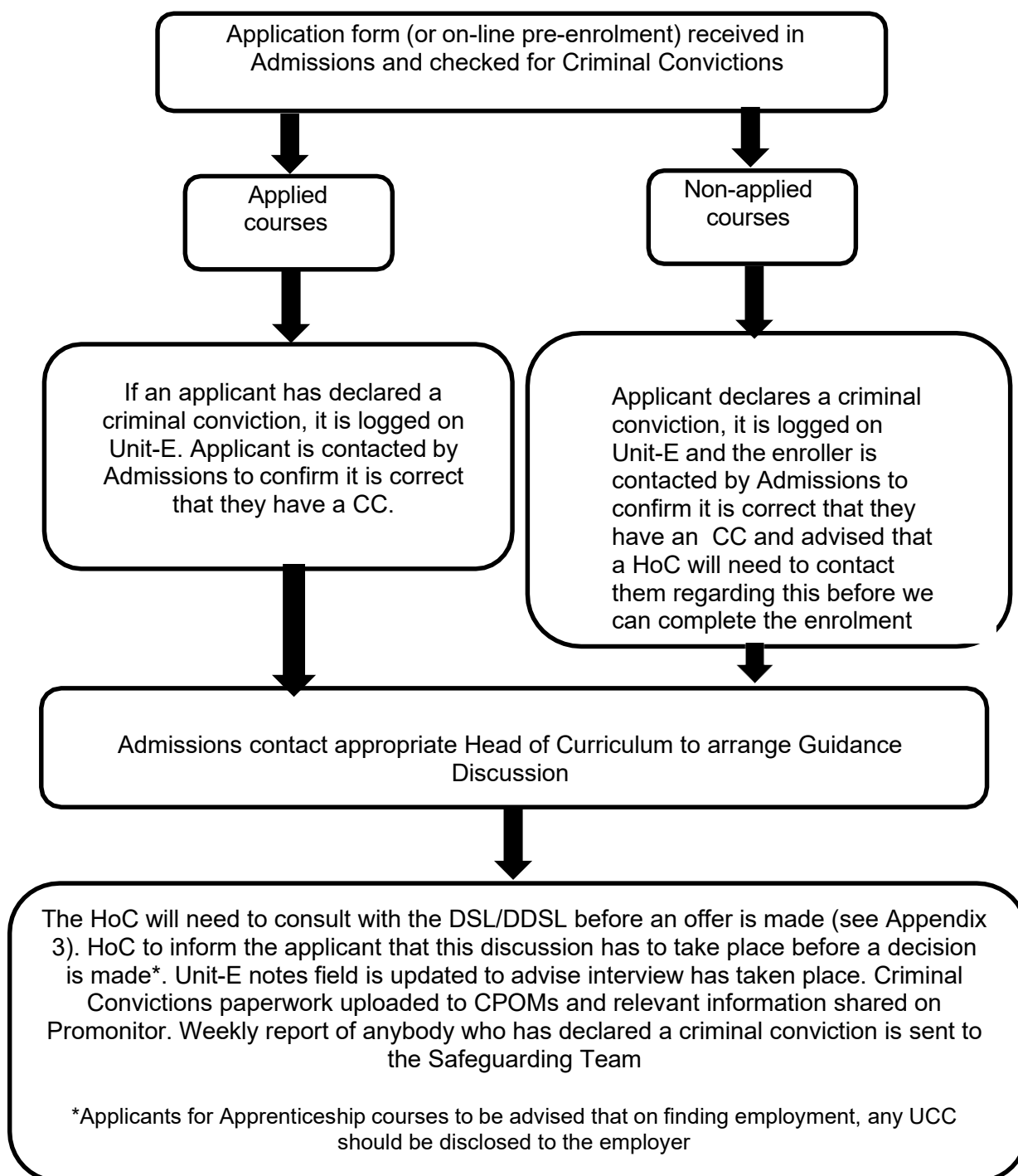
(Time it takes to become spent)

Sentence/Disposal	Adult (18+) at conviction/disposal	Young person (U18) at conviction/disposal
Fine	1 year	6 months
Conditional discharge	Length of the order	Length of the order
Absolute discharge	Spent immediately	Spent immediately
Conditional caution / youth conditional caution	3 months (or when it ends, if earlier)	3 months
Simple caution / youth caution	Spent immediately	Spent immediately
Compensation order	Once it is paid in full	Once it is paid in full
Bind over	Length of the order	Length of the order
Hospital order (with or without restrictions)	Length of the order	Length of the order
Referral order	Length of the order	Length of the order
Reparation order	Spent immediately	Spent immediately
Endorsement (imposed by a court)	5 years	2½ years
Motoring disqualification (imposed by a court)	Length of the disqualification	Length of the disqualification
Relevant order	Length of the order	Length of the order

Source: <https://hub.unlock.org.uk>

## Applicant (to be a Student) Declaring a Criminal Conviction

Contact the appropriate Head of Curriculum (HoC) and the DSL/DDSL (see Section 3 of Procedure). A Criminal Conviction (UCC) pack is available on the Staff Portal.



### Appendix 3 Offence Referral System

This appendix is intended to identify the level of staff seniority that is required when considering the applicant's information. If the Senior Manager wishes to discuss with other colleagues then they may do so. If it is deemed appropriate that a panel is established to consider the situation, the panel shall consist of: relevant Head of Curriculum, relevant Progress Leader, DSL/DDSL and either the Principal (or a Deputy/Vice Principal). The notes taken at such a meeting will be accepted as the source of the decision made about the application.

List of Criminal Offences	Maximum Sentence Time	Level of Management Decision
Murder	Life	SLT
Manslaughter	Life	SLT
Rape	Life	SLT
Sexual assault by penetration	Life	SLT
Robbery	Life	SLT
Aggravated burglary	Life	SLT
Assault – Grievous bodily harm with intent (GBH W/I)	Life	SLT
False imprisonment	Life	SLT
Kidnapping	Life	SLT
Criminal damage (by fire)	Life	SLT
Criminal damage with intent to endanger life	Life	SLT
Possession of a firearm with intent to endanger life	Life	SLT
Possession of a firearm with intent to resist arrest	Life	SLT
Possession of a firearm or imitation firearm with intent to commit an indictable offence	Life	SLT
Supply of drugs (Class A)	Life	SLT
Manufacture of drugs	Life	SLT
Importation of drugs	Life	SLT
Sexual assault – child under 13	14 years	SLT
Causing death by dangerous driving	14 years	SLT
Taking a conveyance (aggravated offence) – causing death	14 years	SLT
Handling stolen goods (HSG)	14 years	SLT
Burglary	14 years	SLT
Supply of drugs (Class B)	14 years	SLT
Supply of drugs (Class C)	14 years	SLT
Sexual assault	10 years	SLT
Threats to kill	10 years	SLT
Possession of a firearm or imitation firearm with intent to cause harassment, alarm or distress	10 years	SLT
Child neglect/cruelty	10 years	SLT
Going equipped to cause criminal damage	10 years	SLT
Criminal damage	10 years	SLT
Assault – Common assault – racially aggravated	2 years	SLT
Fraud by false representation	10 years	SLT
Fraud by abuse of position	10 years	SLT
Fraud by failure to disclose information	10 years	SLT



<b>List of Criminal Offences</b>	<b>Maximum Sentence Time</b>	<b>Level of Management Decision</b>
Possession of drugs (Class A)	7 years	SLT
Theft	7 years	SLT
Possession of a firearm	7 years	SLT
Assault – Actual bodily harm (ABH) – racially aggravated	7 years	SLT
Assault – Grievous bodily harm (GBH)	5 years	SLT
Assault – Actual bodily harm (ABH)	5 years	SLT
Causing death by careless or inconsiderate driving	5 years	SLT
Violent disorder	5 years	SLT
Breach of restraining order	5 years	SLT
Breach of civil injunction	5 years	SLT
Possession of drugs (Class B)	5 years	SLT
Abstracting electricity	5 years	SLT
Possession of a pointed or bladed article	4 years	SLT
Possession of an offensive weapon	4 years	SLT
Affray	3 years	SLT
Going equipped to steal	3 years	SLT
Dangerous driving	2 years	SLT
Possession of drugs (Class C)	2 years	SLT
Taking a conveyance (aggravated offence)	2 years	SLT
Making off without payment	2 years	SLT
Assault – Common assault	1 year or under/fine	HoC
Assault – Battery	1 year or under/fine	HoC
Behaviour likely to cause fear of, or provocation of violence	1 year or under/fine	HoC
Driving a motor vehicle over the prescribed limit	1 year or under/fine	HoC
Driving/in charge of a mechanically propelled vehicle whilst unfit through drink or drugs	1 year or under/fine	HoC
Taking a conveyance (TDA)	1 year or under/fine	HoC
Behaviour intended to cause harassment, alarm or distress	1 year or under/fine	HoC
Drunk & disorderly	1 year or under/fine	HoC
Send letter/communication/article conveying indecent/offensive message	1 year or under/fine	HoC
Send letter/communication/article conveying a threatening message	1 year or under/fine	HoC
Send letter/communication/article conveying false information	1 year or under/fine	HoC
Send communication/article of an indecent/offensive nature	1 year or under/fine	HoC
Send letter/email/article to cause distress/anxiety	1 year or under/fine	HoC
Behaviour likely to cause harassment, alarm or distress	1 year or under/fine	HoC

<b>List of Criminal Offences</b>	<b>Maximum Sentence Time</b>	<b>Level of Management Decision</b>
Drunk & incapable	1 year or under/fine	HoC
Careless or inconsiderate driving	1 year or under/fine	HoC
Other		HoC

**Appendix 4****Criminal Convictions – Record of Discussion with Applicant**

(Page 1 of 2)

<b>Applicant Name</b>	<b>DoB</b>
<b>Course Applied for</b>	
<b>Interviewer</b>	<b>Designated Person</b>

<b>Issue to be Considered</b>	<b>Comments</b>
What was the nature of the offence?	
When was the offence committed? Is it 'Spent' (see Section 2.1 of Procedure)?	
Who was involved? Another offender? The victim?	
Circumstances involved e.g. the involvement of drugs? alcohol?	
The sentence (usually reflects the seriousness of the offence)	
Pattern of offending? A one-off? Is there is history of offending?	
Efforts to avoid re-offending e.g. remorse expressed?	
Involvement of other agencies? e.g. Youth Offending Team? Probation Officer? Others?	
Is the applicant subject of a MAPPA? (Multi-Agency Public Protection Arrangement)	
Is the applicant a Registered Sex Offender?	
Is the applicant on the Child Protection Register?	
Does the applicant have any Learning Difficulties and/or Disabilities? If so, what are they?	

Continued over...

**Criminal Convictions – Record of Discussion with Applicant**  
(Page 2 of 2)

<b>Applicant Name:</b>	<b>DoB:</b>
<b>Course Applied for:</b>	
<b>Interviewer:</b>	<b>Designated Person:</b>

<b>Requirements of the Study Programme and other Safeguards</b>	
Does the study programme involve working with children, young people, vulnerable adults?	
Who might be at risk? Applicant? Other students? Staff? Public? Visitors?	
Will the nature of the study programme present any temptations to re-offend?	
Safeguards existing to protect against offending whilst at College.	
New safeguards thought necessary to protect against offending whilst at College.	
Are there any conditions of enrolment? e.g. supervision? Regular reviews? Other agencies?	

Please note, an offer may, or may not, be made on the basis of this information. Further details may be required and/or a [safeguarding] risk assessment undertaken.

Any offer will only be conditional pending these enquiries/risk assessment (if required).

Has a separate Risk Assessment been carried out? Yes (see attached)  
No

## Signatures

Applicant	
Interviewer	
Designated Safeguarding Person	

## Appendix 5

### Risk Assessment

Assessment for : \_\_\_\_\_  
(Student name)

Date of assessment : \_\_\_\_\_  
Date to be reviewed : \_\_\_\_\_

This risk assessment form should be completed for any student where an element of risk has been identified  
e.g. a student in college who is on a child protection plan; a student in college who has been arrested for an incident and is on bail; a student who is returning to college after a period of absence due to (mental) ill health. This risk assessment should be carried out with the student concerned.

Risk	Who might be harmed	Existing Control Measures	Further Control Measures and person responsible

#### To the staff completing form:

Print name here: \_\_\_\_\_

Sign name here: \_\_\_\_\_

**Please ensure that you inform all other individuals who need to know**

#### To the student who is subject to the risk assessment:

I give my permission for those who need to know to be informed of the above.

Print name here: \_\_\_\_\_

Sign name here : \_\_\_\_\_

**DSL** to review and sign/print name : \_\_\_\_\_

Original to student file; hard copy to DSL/DDSL (under confidential cover) for central storage.

Blank forms can be accessed via the Guidance Discussion app or via the Staff Portal