

Criminal Records Policy

Navitas University Partnerships - Europe

Document:

For Use By:	University Partnerships Europe
Responsibility	Human Resources / Designated Safeguarding Lead
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1 About this policy

- 1.1 This document sets out our policy on asking questions about a prospective (or existing) employee's criminal record, carrying out UK Disclosure and Barring Service (DBS) checks or other similar checks if you have resided in another country.
- 1.2 This policy sets out our commitment to comply with the UK DBS Code of Practice and our data protection obligations, to treat prospective employees fairly and not to discriminate unfairly against any subject of a criminal record check on the basis of a conviction or other information revealed. Its purpose is to set out how we comply with our data protection obligations in respect of criminal records information and seek to protect such information, and to ensure that staff understand and comply with the rules governing the collection, use and deletion of criminal records information to which they may have access in the course of their work.
- 1.3 We are committed to complying with our data protection obligations and the UK DBS Code of Practice in relation to criminal records information, in particular:
 - 1.4.1 in relation to the circumstances in which we seek criminal records information;
 - 1.4.2 by being concise, clear and transparent about how we obtain and use such information, and how (and when) we delete it once it is no longer required; and
 - 1.4.3 by ensuring the correct handling, use, storage, retention and disposal of UK DBS certificates and certificate information or other criminal records information provided from overseas.

2 Policy statement

- 2.1 Having a criminal record will not necessarily prevent a person from working with us. We will take into account the circumstances and background of any offences and whether they are relevant to the position in question, balancing the rights and interests of the individual, our employees, students and partners.
- 2.2 We will treat all applicants, employees, workers and contractors fairly but reserve the right to withdraw an offer of employment or engagement if you do not disclose relevant information, or if an enhanced UK DBS check (or similar overseas check) reveals information which we reasonably believe would make you unsuitable for the role.

3 Scope and definitions

- 3.1 This policy applies to criminal records information relating to job applicants and current and former staff, including employees, temporary and agency workers, contractors and apprentices.
- 3.2 Staff should refer to the Global GDPR & Privacy Policy, UPE Criminal Records Privacy Notice and, where appropriate, to its other relevant policies.
- 3.3 We will review and update this policy in accordance with our data protection obligations. It does not form part of any contract of employment or contract to provide services and we may amend, update or supplement it from time to time.

4 Asking for criminal records information

- 4.1 Due to our requirements to safeguard our students and the nature of our business, all applicants are required to disclose any “unspent” criminal convictions as part of their application. Under the Rehabilitation Act, 1974 (amended), ex-offenders are not required to disclose to prospective employers convictions defined as “spent”. Please refer to the [current list of spent and unspent conviction periods](#).
- 4.2 Certain posts that undertake regulated activities will require an enhanced DBS check. Such roles are exempt from the Rehabilitation Act, 1974.
- 4.3 For other prospective members of staff (such as ad hoc consultants or contractors), the HR team will assess whether it is justified in seeking criminal records information for that particular post and, if so:
 - 4.3.1 whether it is appropriate to limit the information sought to offences that have a direct bearing on suitability for the job in question;
 - 4.3.2 whether the information should be verified with the DBS; or
 - 4.3.3 whether any overseas criminal records information should be checked if you have resided overseas as set out in paragraph 7 below.
- 4.4 If an assessment under paragraph 4.3 has been carried out for the same or a similar post within the last 12 months, the HR department may rely on that assessment.
- 4.5 We are justified in obtaining criminal records information for the following reasons:
 - 4.5.1 it necessary for the performance of the employment contract;
 - 4.5.2 required in order for us to comply with a legal obligation;
 - 4.5.3 required in order to protect the vital interests of vulnerable service users; and/or
 - 4.5.4 necessary for the purposes of our legitimate interests in safeguarding our students.

- 4.6 Applicants are only required to provide criminal records information in relation to convictions and cautions that we would be legally entitled to see in an enhanced UK DBS check for the relevant post, i.e.:
 - 4.6.1 if the post is not exempt from the Rehabilitation of Offenders Act 1974, we will ask applicants to provide information about any criminal records but will inform them that they are not required to disclose convictions that are spent under the Rehabilitation of Offenders Act 1974; and
 - 4.6.2 if the post is exempt from the Rehabilitation of Offenders Act 1974, we will ask applicants to provide information about any convictions, cautions, reprimands or final warnings which are not filtered (or 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)). For further information on filtering, see Appendix 1.
- 4.7 All application forms, job adverts and recruitment briefs will contain a statement (if relevant) that an application for an enhanced UK DBS certificate will be submitted in the event of the individual being offered the position or an alternative overseas equivalent check if they have resided overseas.
- 4.8 Applicants will be asked about criminal records information at the interview stage of the recruitment process.
- 4.9 Before an individual is asked about criminal records, they will be provided with a copy of this policy.

5 DBS checks

- 5.1 In carrying out an enhanced UK DBS check to verify criminal records information, we will:
 - 5.1.1 make every subject of an enhanced DBS check aware of the existence of the DBS Code of Practice and makes a copy available on request. A copy is available [here](#); and
 - 5.1.2 comply with the DBS Code of Practice.
- 5.2 We will not rely on a previously-issued UK DBS certificate unless the individual has signed up to the DBS Update Service.
- 5.3 Once criminal records information has been verified through a UK DBS check, we will:
 - 5.3.1 if inconsistencies emerge between the information provided by the individual and the result of the UK DBS check, deal with this in accordance with paragraph 6;
 - 5.3.2 record that a UK DBS check was completed and whether it yielded a satisfactory or unsatisfactory result.

5.4 We will not seek criminal records information from any source other than the individual concerned or the UK DBS unless specifically stated. If overseas criminal records information is required we will inform you in accordance with clause 7 of this policy.

5.5 UK DBS check information will be handled and kept in accordance with the UPE Criminal Records Privacy Notice.

5.6 Where a current staff member has a previously issued DBS certificate, and has not signed up to the update service, we will request a new DBS certificate every three (3) years.

6 Where an unsatisfactory DBS or inconsistent result is obtained

6.1 Where the DBS check comes back with an unsatisfactory result or a result which is inconsistent with the information provided by the prospective member of staff, we will contact the individual and ask for a copy of the UK DBS certificate.

6.2 We have a legal duty, when recruiting staff to work in regulated activity with children or vulnerable adults, to check as a part of the DBS check process whether they are on the relevant children's or adults' UK barred list. If a prospective employee's name does appear on the relevant barred list, it would be against the law for us to employ them to work or volunteer with the relevant group.

6.3 If a prospective employee, worker or contractor is not barred from working with the relevant group, but nevertheless has a criminal record, it is up to us to decide on their suitability for the role. We will not refuse a prospective employee employment simply on the basis that they have a criminal record. Before making a decision, we will:

6.3.1 ask the prospective employee to explain and provide details of the inconsistency in the result before making any decisions; and

6.3.2 carry out a risk assessment.

6.4 In carrying out a risk assessment, we will take account of:

6.4.1 the relevance of the conviction or other matter revealed to the position in question;

6.4.2 the seriousness of the offence or other matter revealed;

6.4.3 the circumstances of the offence;

6.4.4 the age of the offence;

6.4.5 whether there is a pattern of offending; and

6.4.6 whether circumstances have changed since the offending took place.

6.5 Having considered the information in the UK DBS certificate, we will delete the UK DBS certificate and any record of the information contained in it unless, in

exceptional circumstances, the data protection lead or HR department assesses that it is clearly relevant to the ongoing employment relationship.

- 6.6 If the data protection lead or HR department assesses that the information in the UK DBS certificate is relevant to the ongoing employment relationship, it (and any record of the information contained in it) will be kept securely for no longer than is necessary.

7 Overseas Criminal Records Checks

- 7.1 If you have lived or resided overseas, we may also undertake criminal records information checks in the relevant country/countries. The requirements will vary depending on the country where checks are requested from and as a result we will provide you with further information if we are seeking overseas criminal records checks at the time. These checks may include but are not limited to the following:-
 - 7.1.1 asking you to provide a certificate of good standing or equivalent confirming whether you have any criminal records in a particular country;
 - 7.1.2 a check of any professional regulating authority in respect of any imposed sanction or restriction to your role; and/or
 - 7.1.3 a check of a criminal records database or similar.
- 7.2 Applicants are only required to provide criminal records information in relation to convictions and cautions that we would legally be entitled to see in the country where the overseas check is sought.
- 7.3 In some circumstances, if the timeframe to obtain criminal records information from overseas cannot be completed before you commence employment we may ask you to sign a declaration to confirm that you have no criminal convictions in any country.
- 7.4 Where any check comes back with an unsatisfactory result or a result which is inconsistent with the information provided by the prospective member of staff, we will contact the individual and ask for further information.
- 7.5 We have a legal duty, when recruiting staff to work in regulated activity with children or vulnerable adults, to check whether they are on the relevant UK children's or adult's barred list. If an overseas criminal records check provides information suggesting that the prospective member of staff would be placed on the barred list had the offence been committed in the UK then it will be against the law for us to employ them to work or volunteer with the relevant group.
- 7.6 If a prospective employer, worker or contractor has an overseas criminal record, it is up to use to decide on their suitability for the role. We will not refuse a prospective employee employment simply on the basis that they have an overseas criminal record. Before making a decision, we will:

- 7.6.1 ask the prospective employee to explain and provide details of the inconsistency in the result before making any decisions; and
 - 7.6.2 carry out a risk assessment.
- 7.7 In carrying out a risk assessment, we will take account of:
 - 7.7.1 the relevance of the conviction or other matter revealed to the position in question;
 - 7.7.2 the seriousness of the offence or other matter revealed;
 - 7.7.3 the circumstances of the offence;
 - 7.7.4 the age of the offence;
 - 7.7.5 whether there is a pattern of offending; and
 - 7.7.6 whether circumstances have changed since the offending took place.
- 7.8 Having considered the information in the overseas criminal records check, we will delete the certificate and any record of the information contained in it unless, in exceptional circumstances, the data protection lead or HR department assesses that it is clearly relevant to the ongoing employment relationship.
- 7.9 If the data protection lead or HR department assesses that the information in the overseas criminal record check is relevant to the ongoing employment relationship, it (and any record of the information contained in it) will be kept securely for no longer than is necessary.

8 Training

We will ensure that all those within the organisation who are involved in the recruitment process:

- 8.1 have been suitably trained to identify and assess the relevance and circumstances of offences; and
- 8.2 have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

Appendix 1

Level of DBS check and filtering

1 Requesting a DBS certificate

- 1.1 For all prospective members of staff, we will request a basic DBS check.
- 1.2 In addition, for some roles we are entitled to request an enhanced DBS check and we will carry out a search of the children's or adults' barred list.

2 Filtering of protected convictions and cautions

- 2.1 Certain old and minor convictions and cautions are 'protected', which means:
 - 2.1.1 they are filtered out of an enhanced UK DBS check;
 - 2.1.2 they need not be disclosed by prospective employees; and
 - 2.1.3 they will not be taken into account in making decisions about employing a prospective employee.
- 2.2 Certain 'listed offences' will never be filtered out (see [here](#)). The list includes offences which are particularly serious, relate to sexual or violent offending or are relevant in the context of safeguarding.
- 2.3 A conviction will be a protected conviction (ie filtered) if:
 - 2.3.1 the offence was not a listed offence; and
 - 2.3.2 it did not result in a custodial sentence (or sentence of service detention); and
 - 2.3.3 it is the individual's only conviction; and
 - 2.3.4 where the individual was an adult at the time of conviction, 11 years or more have passed since the date of the conviction (or five years six months or more have passed since the date of conviction if the individual was under 18 at the time of conviction).
- 2.4 A caution will be a protected caution (i.e. filtered) if:
 - 2.4.1 the offence was not a listed offence; and
 - 2.4.2 where the individual was an adult at the time of the caution, six years or more have passed since the date of the caution (or two years or more have passed since the date of conviction if the individual was under 18 at the time of conviction).
- 2.5 For further guidance on filtering, see [the DBS filtering guidance](#).