

Student Criminal Convictions Disclosure Policy STU17

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Student Criminal Convictions Disclosure Policy

1. Policy Aim

Aim

The aim of this policy is to have in place a robust disclosure and risk management process in respect of the disclosure of student criminal convictions and for the management of this information in keeping with legal obligations.

2. Data Protection Statement

The information disclosed on criminal convictions is considered to be 'sensitive personal data' under the terms of data protection legislation. The College will ensure that all such information is stored and protected in accordance with the College's data protection policies and procedures and has put in place a confidential disclosure process to safeguard the student and the information disclosed.

The Northern Regional College actively promotes equality of opportunity for all and welcomes applications from a wider range of applicants including those with criminal convictions.

Having a conviction will not necessarily prevent an application from being considered by the college nor will the information disclosed necessarily prevent an applicant from studying the course of their choice. However, if a student has previous convictions not disclosed; if discovered they may result in a student being asked to leave the course. Depending on the course, there may be occasions whereby a current/previous conviction may preclude a student from doing a particular course. We will discuss this with a student in full and can offer alternatives where this might not necessarily be an issue.

Student Risk Assessment is an important part of the Admissions Process for all prospective students at Northern Regional College. The purpose of Risk Assessment is to identify and assess any applicant whose known behaviour or record of offences indicates that they may be a risk to themselves, other students, staff, visitors or the College environment. Student Risk Assessment is one way in which the college works to provide a safe and inclusive environment.

Northern Regional College has a legal obligation known as “Duty of Care” to do everything reasonable to protect students, staff and visitors from potential harm. The College has Risk Assessment and Admissions Procedures that we use ensure that our “Duty of Care” is upheld. As part of the procedures, we require students to declare if they:

- Are serving/have served a custodial sentence
- Are currently/have been on licence
- Are serving any type of order

3. Disclosure

It is the policy of Northern Regional College that all those who apply to study with the College will be required to disclose any unspent criminal convictions by way of the **Northern Regional College Disclosure Form**. In applying for certain courses applicants will also be required to disclose spent convictions on the **Northern Regional College Disclosure Form**.

3.1 Rehabilitation of Offenders Order 1978

Under the Rehabilitation of Offenders (NI) Order 1978 it is not always necessary to declare criminal convictions depending on the offence. Under certain circumstances once a period of time has lapsed from the date of conviction and there have been no further convictions the conviction becomes **spent**. This means that the ex-offender if asked if they have a criminal record can legally answer ‘no’. The Order **only** covers custodial sentences of up to two and a half years. Offences dealt with by sentences of 30 months imprisonment or more are never spent; in practice this means that the more serious offences must always be declared.

The definition of ‘spent’ is complex, being affected by such factors as the type of the offence, the age at which the person was found guilty and the sentence received. The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) can provide further information on spent and unspent convictions (telephone number 028 9032 0157, Fax: 087 0432 1415 Email: niacro@niacro.co.uk).

There are certain professions and occupations that are exempt from the Rehabilitation of Offenders Order (NI) 1978. This means that for certain professional courses all criminal convictions must be declared regardless of when the offence was committed.

The types of courses for which this is relevant include: **teaching, health, social work, or courses involving work with children or vulnerable adults.**

The list of professional posts exempt from the Rehabilitation of Offenders Order (NI) 1978 is extensive but can be summarised as follows:

- WORK THAT INVOLVES CONTACT WITH CHILDREN OR YOUNG PEOPLE OR VULNERABLE ADULT GROUPS – e.g. provision of health care or social services, work with children such as youth work, education, or with adults with learning disabilities, mental illness, the elderly.
- PROFESSIONS THAT ARE REGULATED BY LAW - e.g. medical practitioner, nurse, chemist, optician, accountant, manager of an insurance company.
- POSTS INVOLVING NATIONAL SECURITY e.g. security personnel or senior civil service posts.
- POSTS CONCERNED WITH ADMINISTRATION OF JUSTICE e.g. police officers, solicitors, probation officers, traffic wardens, judges, prison officers.

This information is particularly relevant where a course contains a work placement element.

Students on courses that involve a work placement will also be required to complete an Access NI check prior to the start of work placement. This means that the student will be required to complete a form which will be passed to Access NI for a criminal record check. Certain convictions will prevent students from working with children or vulnerable adults, and if it is found that a student has a criminal record that they do not disclose, they may be withdrawn from their course. It is always recommended that if a student or member of staff is unsure about a criminal record and how this may affect a college course, they are welcome to contact the Designated Safeguarding Team for advice.

The following table shows the nature of the conviction and the ‘spent’ period attached to it. **If a conviction is ‘spent’ you do not have to mention it, even when asked, unless applying for a post which is exempt under this legislation.**

| Sentence | Aged 18 or over at conviction | Under 18 years at conviction |
|---|--|-------------------------------------|
| <i>Absolute Discharge</i> | <i>6 months</i> | |
| <i>Probation Order, Bind Over, Conditional Discharge, Care/Supervision Order</i> | <i>Date Order ceases OR 1 year – whichever longer</i> | |
| <i>Attendance Centre Order Juvenile Justice Centre Order Youth Conference Order, Reparation Order, Community Responsibility Order</i> | <i>1 year after Order expires</i> | |
| <i>Hospital Order</i> | <i>5 years or 2 years after Order expires – whichever longer</i> | |
| <i>Fine or Community Service Order Combination Orders</i> | <i>5 years</i> | <i>2 ½ years</i> |
| <i>Prison – (immediate or suspended) OR Young Offenders Centre – sentence of 6 months or less</i> | <i>7 years</i> | <i>3 ½ years</i> |
| <i>Prison – (immediate or suspended) OR Young Offenders Centre over 6 months up to and including 2 ½ years</i> | <i>10 years</i> | <i>5 years</i> |
| <i>A period of detention of less than 6 months under Article 45 of the CJ (Children) (NI) Order 1998</i> | <i>N/A</i> | <i>3 years</i> |

| | | |
|---|------------|----------------|
| <p><i>A period of detention over 6 months but less than 30 months under Article 45 of the CJ (Children) (NI) Order 1998</i></p> | <p>N/A</p> | <p>5 years</p> |
| <p>NB: CUSTODIAL SENTENCE OF MORE THAN TWO AND A HALF YEARS CAN NEVER BECOME SPENT</p> | | |

Please Note:

- Consecutive prison sentences count as a single term when calculating the rehabilitation period.
- If more than one sentence was imposed for an offence, the longer rehabilitation period applies.
- If a person receives a new conviction during rehabilitation period:
 - (i) for a summary offence (i.e. can only be tried at Magistrates Court) both rehabilitation periods expire separately;
 - (ii) for a more serious offence (i.e. which **could** be tried at the Crown Court) **neither** conviction will become spent until longest period expires.
- Cautions, reprimands and final warnings are not considered to be convictions and become “spent” immediately unless relevant to exempted posts.
- A spent conviction will remain on your criminal record.

3.2 non-disclosure of relevant unspent criminal convictions

If the college becomes aware of a student offence that has not been disclosed. The college will review the risk and decide if the student must withdraw from the course (if enrolled) or be prevented from enrolling.

3.3 Access NI Checks

As a Registered Body of Access NI, the College will handle all Access NI Enhanced Disclosures checks securely and will fully comply with the Access NI Code of Practice. The College will treat the subject of every Access NI check fairly and will not discriminate solely on the basis on information revealed on such disclosure certificates.

The College will ensure that all disclosure information is handled sensitively and kept in a confidential, secure manner.

Access NI Enhanced Disclosure Checks – the disclosure of unspent convictions

For some courses *disclosure* is required by law or by an external statutory or regulatory body. Certain types of courses require the disclosure of both spent and unspent convictions, and indeed non conviction information e.g. formal cautions, informed warnings and non conviction bind-over orders, and diversionary youth conferences. And in some cases if someone is facing prosecution.

The following occupational areas are defined as “exempt” under the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 and may also be defined as Regulated Activity under the Safeguarding Vulnerable Groups (NI) Order 2007, as amended :-

teaching, health, social work, or courses involving work with children or vulnerable adults, any criminal convictions, cautions (including verbal cautions), reprimands, final warnings and bind-over orders are exempt from the Rehabilitation of Offenders (Northern Ireland) Order 1978.

In such circumstances applicants/students will be asked to agree to a criminal record check. Course teams will specify the courses where Access NI enhanced checks are required and advise students of the College’s enhanced disclosure process.

It is possible, however, that although the College considers it acceptable to admit an applicant to a specific course, that the relevant professional bodies or organisations (such as the General Medical Council or The Training and Development Agency for Schools (TDA), for example), or companies acting on their behalf, or companies or organisations which are providing placements, may have their own views and consider that particular offences are unacceptable.

In the case of statutory or professional bodies or organisations it may be the case that although the College may be willing to admit an applicant to a course there is a possibility

or likelihood that even if the student successfully completes the course the applicant will not be able to practise, or to take up a related profession.

3.4 Student Placements

In the case of placements, although the College might consider that a particular offence does not bar someone from admission, or may decide to admit an applicant to a course following enhanced disclosure, a placement provider might decide not to accept the student for a placement. In such circumstances if the placement is an integral part of the course it will not be possible to proceed with an offer for admission, or with admission at a later stage.

In either case, if the College is concerned that a student may not be able to proceed with the course, or that it is unlikely that they will be able to practise a related occupation at the end of it, we will inform the applicant in writing of this possibility so that the applicant does not start the course under any 'misapprehension' as to their prospects. College staff may also discuss the issue informally with the applicant.

3.5 Convictions after the commencement of a course

If a student is convicted of a criminal offence after he/she has applied or started the course he/she must inform the Student Services Manager immediately. All information will be treated confidentially and in line with data protection. The student will also be made aware of support organisations such as NIACRO who are able to provide advice and guidance.

4. Student Application Risk Assessment Procedures:

The purpose of Risk Assessment is to identify and assess any applicant whose declared record of offences indicates they could be a risk to themselves, other students, staff, visitors or the College environment.

It is imperative that anyone with an unspent criminal conviction or who wishes to undertake a course of study where criminal convictions would not be spent, they must declare this either upon enrolment or if convicted after enrolment then when on the course. Failure to do so could result on the withdrawal of the student from the course.

The following steps should be followed by the College when requesting and processing disclosure information:

1. Complete Disclosure Form

Students applying to the College who have a criminal conviction, caution or warning are required to declare these on the College's Enrolment form. Following on from this they must declare the details on the College **Disclosure Form (MS Form)** which in turn will be accessed by the Student Services Manager.

2. Consent to Contact External Agencies in Support of Your Application

Applicants must give their consent in order for the College to obtain information from an external agency (e.g. Any Criminal Justice Agency including but not limited to Probation Board for Northern Ireland, Police Service of Northern Ireland, NIACRO) whose involvement may be required in this process to independently verify:

- The Chronology of offences and convictions
- Probation Board Risk Assessment – what they have assessed the applicants current level of risk to be.
- What programmes have been completed to address the offending.
- References.

3. A Risk Assessment is Conducted

The feedback from such external organisations is an important part of the process, from which we can establish risk posed, and what type of support measures may be necessary. Failure to provide consent means that we cannot conduct a meaningful assessment on the risk posed; therefore, the application to study at the college will be withdrawn.

It may be the case that the applicant has not had any involvement with a Criminal Justice Agency, in such cases appropriate references will be sought by the college.

Once feedback from the external organisation has been received the Designated Safeguarding Officers will then meet and consider the student's application and conduct a Risk Assessment process.

Risk Assessment data is classed as 'sensitive data' and only those authorised to access the information as stated in this policy can do so.

There are four possible outcomes from a Safeguarding Risk Assessment which include:

- Acceptance
- Acceptance with conditions (these can be support and monitoring)
- Refusal
- Deferred

4. Recommendation is Determined

The recommendation is made by the Designated Safeguarding Officers, after the risk assessment has been completed. If the recommendation is positive, the applicant will receive written confirmation of the outcome of the Risk Assessment. If the decision is negative, further information / interview could be asked for.

It is important to note that during a course of study, an individual's circumstances may change. The College reserves the right to conduct a Risk Assessment on any student at any time if it is found the student has previous or current convictions they have failed to disclose.

5. Student and Staff are Informed of the Decision

Student is advised as to whether or not their application can proceed through the admissions and enrolment processes.

If the application has been rejected the staff need only know that it is due to a criminal record disclosure but not the nature of the disclosure. Otherwise, the application is given the green light to move through the application and enrolment process and the "Hold" status is removed from the application.

5.7 Flowchart summarising the Risk Assessment process.

STUDENT APPLICATION RISK ASSESSMENT PROCESS

Student completes Northern Regional College application form.



Student identifies, from completing the College application form, that because they have a criminal record, they must complete either a
Northern Regional College Disclosure Form



Student completes appropriate form in full and form is referred to Student Services Manager



The Application is marked “On Hold” in the Admissions Process.



Designated Safeguarding Officers assesses whether or not the criminal activity is relative to the programme of study. If it is not relevant central admissions are advised that the student’s application is to proceed.

If the Safeguarding Officers assesses the criminal activity to be relative to the programme of study the Student’s written permission is requested in order for the college to contact Any Criminal Justice Agency including but not limited to Probation Board for Northern Ireland, Police Service of Northern Ireland, NIACRO involvement to independently verify the student’s criminal background. It may be the case that the applicant has not had any involvement with a Criminal Justice Agency, in such cases permission to contact appropriate references will be sought by the college.

If such permission is not granted the student application is withdrawn.



Once feedback has been received from the external organisation Designated Safeguarding Officers will conduct an independent risk assessment to assess the suitability of the applicant to study at the College.



Outcome of Risk Assessment process is determined. Designated Safeguarding Officer makes a recommendation regarding admission to a particular course. Where required, further information is obtained



Student is advised as to whether or not their application can proceed through the Admissions and enrolment process

5. Student Enrolment Risk Assessment Procedures

The student enrolment risk assessment procedures differ slightly from the application risk assessment procedures as it is possible for a student just to turn up on the evening a class commences to enrol. Consequently, the onus is on the student to declare their conviction and to go through risk assessment procedures prior to enrolling on their programme of study.

All potential students to the college must disclose unspent criminal convictions and **on certain courses** spent convictions, through the College's criminal convictions disclosure form which can be accessed from the College website. Once a criminal convictions declaration form is completed, no potential student of the college can enrol on a programme of study until the appropriate risk assessments have been conducted by the college's Designated Safeguarding Officers. To enrol the potential student would require the explicit written consent of the College's Designated Safeguarding Officers in support of their enrolment onto the specific programme of study. Consequently, potential students wishing to simply enrol on a programme of study must fill in their Criminal Convictions Disclosure/Enhanced Disclosure form at least 4 weeks ahead of the scheduled start of their proposed programme of study. This will ensure that there is enough time to conduct appropriate risk assessments ahead of the course commencing.

6.1 STUDENT ENROLMENT RISK ASSESSMENT PROCESS

Student completes Northern Regional College Enrolment Form.



Student identifies, from completing the College Enrolment form, that because they have a criminal record, they must complete either a
Northern Regional College Disclosure Form



Student completes appropriate form in full



Designated Safeguarding Officers assesses whether or not the criminal activity is relative to the programme of study. If the safeguarding officers assesses that it is not relevant to the programme of study, the student is advised that they can go ahead and enrol on the programme of study.



If the Safeguarding Officers assesses the criminal activity to be relative to the programme of study the Student's permission is requested in order for the college to contact any Criminal Justice Agency including, but not limited to, Probation Board for Northern Ireland, Police Service of Northern Ireland, NIACRO involvement to independently verify the student's criminal background. It may be the case that the applicant has not had any involvement with a Criminal Justice Agency, in such cases permission to contact appropriate references will be sought by the college.

If such permission is not granted the student application is withdrawn.



Once feedback has been received from the external organisation College Safeguarding Officers will conduct an independent risk assessment to assess the suitability of the applicant to study at the College.



Outcome of Risk Assessment process is determined. Designated Safeguarding Officer makes a recommendation regarding admission to a particular course. Further information may be required.



Student is advised as to whether or not their enrolment can proceed. If appropriate the Student Services Manager writes an email in support of student enrolment.

6. School Links

Under 16's attending college on School Links Programmes are required to disclose unspent convictions at interview stage, prospective school links students are asked if they have a criminal record, it is also on the application form they complete. If they do, they are asked to complete a Declaration Form before they leave, so we can start the process quicker as some students start within two weeks. If a Risk Assessment is required, the student and their Parents/ Guardian/Carer will be written to as they are required to attend the Risk Assessment with their son/daughter.

7. Confidentiality

The information collected during the Risk Assessment process will be made available to staff on a need-to-know basis only.

The information will be stored securely at all times in line with the Data Protection Act. Generally, the following staff will require access to Risk Assessments in the execution of their duties:

- Designated Safeguarding Officers / Champions
- Student Services manager
- Assistant Vice Principal Teaching and Learning
- Vice Principal Teaching and Learning

Following a Risk Assessment, relevant information concerning a student and the nature of any conviction will be made available to specific staff and work placement providers on a need-to-know basis.

8. Appeals

Applicants who have been refused a place at College as a result of a Risk Assessment may appeal against this decision in writing within 14 days from the date on the letter to the Vice Principal / Assistant Vice Principal Teaching and Learning. The Vice Principal or Assistant Vice Principal will consider each individual case and confirm their decision to the applicant in writing.

9. Retention of Data

In line with college academic record data keeping procedures, all Student Risk Assessment records will be kept on file for 10 years. Risk Assessment data is classed as 'sensitive' data, the files will be kept separately, in a locked filing cabinet and stored under the management of the Designated Safeguarding Officer.

10. Quality Assurance

Comments and complaints regarding this document will be handled through the College's comments and complaints mechanisms. If you have a comment or complaint, or require further information regarding the process, please e-mail quality.improvement@nrc.ac.uk

The following processes must be followed to monitor and review this document:

- a. It will be monitored on an ongoing basis and subject to a full review at least every two years.
- b. It may also be updated if changes or improvements in processes or procedures are identified.
- c. In monitoring and reviewing the document, the following will be taken into consideration:
 - feedback regarding the content and format of the document;
 - uptake and usage;
 - comments or complaints regarding the document;
 - Equality information and monitoring data.