

Disclosure of a Criminal Conviction Policy and Procedures

Document SG4	
Policy owner:	Head of Safeguarding and Welfare (Lead DSL)
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Links to College Strategy & College Values	Keeping staff, learners and visitors healthy and safe
Applies to:	All college learners and staff
Monitoring and evaluation:	Safeguarding Committee

Associated documents/policies for this area:

SG1	Safeguarding Policy and Procedures
Unknown	The College Behaviour for Learning Policy
Unknown	College Complaints Policy

Principal	<p>Introduction</p> <p>Newham College is committed to recruiting learners on the basis of their merit and potential and preparing them for work, citizenship and personal development. All applications are</p>
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considered on their individual merits and treated in a fair and equal way, based on the information provided to the College through the application process.

The College recognises its duty to protect the learners,' staff and visitors and the communities around us, and information regarding an individual's criminal convictions may need to be taken into account when deciding whether that individual may begin or continue their studies. The College also notes the specific duties which it holds in relation to certain careers or professions which learners of our programmes may enter.

This policy aims to be equitable to all learners and to meet the legal obligations of the Rehabilitation of Offenders Act 1974 together with those of the Data Protection Act 1998 and the Human Rights Act. Equally, the policy seeks to give effect to the College's duty of care to all members of its community and to recognise the obligations placed on the college by the Children's Act 1989 and Safeguarding our Children 2004.

1. Definitions

1.1 A **criminal record** arises from a conviction. Cautions, reprimands, and final warnings are not criminal convictions, but are given by the Police when a person has admitted to an offence.

1.2 A **relevant criminal conviction** is considered to be convictions (or pending proceedings) for offences against the person, whether of a violent or sexual nature, and convictions for offences involving unlawfully supplying controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking, or a conviction related to extremist behaviour or involving possession of a weapon or bladed article.

1.3 A **spent conviction** (as defined by the Rehabilitation of Offenders Act 1974) is not considered to be relevant unless the application is to a course that requires DBS checks. Under the Rehabilitation of Offenders Act 1974 (ROA) any conviction for a criminal offence can be regarded as spent provided:

- the conviction did not carry a sentence excluded from the Act, such as a custodial sentence of over two and a half years,
- no further convictions occurred within a rehabilitation period.

1.4 **Relevant course** refers to courses that require DBS checks, working with children and vulnerable adults. For such courses, all criminal convictions including spent, verbal cautions and binding-overs must be disclosed.

1.5 Following sentences are **exempt from the 1974 Act and can never become spent**:

- Sentence of imprisonment for life;
- Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years;
- Sentence of preventive detention;
- Sentence of detention during Her Majesty's pleasure or for life;
- Sentence of custody for life;
- Public protection sentences (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders).

2. **Intended Outcomes:**

- Learners or potential learners are not refused access to College courses which they are academically suited for on the grounds of a previous criminal record unless their presence at College has been demonstrated to pose a risk to others or College property, or unless their criminal record significantly limits their chance of success on their chosen course.
- All applicants are asked to disclose unspent criminal convictions and pending prosecutions and appropriate risk assessment is undertaken.
- Assessment of risk is undertaken in a sensitive, discrete and confidential manner, taking into account the needs of all concerned.
- All physical records are kept securely and destroyed as soon as it is practical.
- The College meets all its legal obligations.
- Learners do not begin courses where a previous criminal record is likely to disbar them from some mandatory aspect of the course (e.g. mandatory work experience in childcare courses; police visits in public service courses). Learners are advised before undertaking a course if it is felt that criminal record is likely to significantly impact on their chances of gaining employment in their chosen field. Being offered a place on a course of study does not guarantee that an applicant will be suitable for employment in that field in the future, and applicants are advised to consult with employers or relevant professional bodies for advice. The choice as to whether to undertake the course though remains theirs as they may

have objectives other than the gaining of employment in that particular field for so doing.

- The College works with other agencies involved with the learner to ensure a fair risk assessment and good support for the learner is in place before they undertake a course.
- The College plays an appropriate part in the rehabilitation of offenders.

3. Policy and Procedures

Declaration

3.1 Learners and applicants for admission to a programme of study offered by the College are required to complete either an approved online application form or a paper version of an enrolment form. The forms require applicants to answer a question (hereafter referred to as “the question”) to the effect of “Do you have any unspent criminal convictions?” This shall require an answer of Yes or No by means of ticking a box. Applicants are required to disclose details of criminal convictions, the College reserves the right to decline any applicant who fails to answer the question. The College shall consider taking disciplinary action in accordance with the disciplinary procedures if it discovers that a learner has provided false or incomplete information. In cases of admission to relevant courses, learners are required to disclose any criminal conviction, caution (including verbal caution(s) and order, including spent offences.

4. Procedure

4.1 The procedure for managing criminal conviction disclosures shall be as follows:

Applicants, both full and part time, are required to indicate on the application form/enrolment form if they have any unspent or relevant conviction (or pending proceedings). If the applicant enrolls without completing an application form, they would also be expected to disclose this information at enrolment.

4.2 Where prospective learners make a disclosure at enrolment, the College policy regarding disclosure of relevant convictions will be explained to the applicant. Those answering “yes” to a criminal convictions question are asked to complete a supplementary form (Appendix 1 Safeguarding Enrolment Decision form) giving details of the criminal convictions.

4.3 If an applicant refuses to disclose a conviction, then the enrolment is halted and a conversation around reasons why and confidentially is discussed. If the applicant further refuses to disclose then the enrolment is terminated.

4.4 If an applicant has disclosed unspent or relevant convictions (or pending proceedings), a Recruitment and Admissions Officer will ask for supplementary information (on the Safeguarding Enrolment Decision form). The applicant will either be clear to enrol or refer to the Safeguarding Panel. If conviction is deemed minor and the applicant poses little or no risk, the Admissions Officer places notes on the EBS File.

4.5 If the applicant is referred to the panel, the Appendix Safeguarding Enrolment Decision form must be completed and sent to The Head of Safeguarding and Welfare (Lead DSL) and the Deputy DSL. The applicant should not be enrolled but an explanation given that it will be necessary for the College to gather further information and assessed by a panel consisting of the above DSL and Deputy.

4.6 Where members of the College community identify known offenders, who have not disclosed criminal convictions, such information should be passed to the relevant Head of Safeguarding and Welfare (Lead DSL) and Deputy Principal for Curriculum and Quality for further investigation, and consideration under disciplinary policy.

4.7 The below table is a matrix to help make an informed decision regarding if a learner is considered to be a Low – High risk (1-3)

Rating	Offence	Risk to Community	Time given/served	Time spent out of prison
1	<ul style="list-style-type: none"> • Fighting • Non-serious sexual offence. • Petty Theft • Drugs Possession (class C/B) 	Very low risk to community /learners	Up to 1 year or community service or a fine	5 - 10 years
2	<ul style="list-style-type: none"> • ABH/GBH • Sexual Offence, • Crime with Weapons • Drugs – Class A/B Possession/Supply 	Low risk to community /learners	1 year – 3 years	2 years – 5 years

3	<ul style="list-style-type: none"> • Serious ABH/GBH • Serious Sexual Offence, • Production of or supply of Drugs Class A/B • Murder • Manslaughter 	Medium – High Risk to learners, community or likelihood to reoffend	3 years +	0 – 2 years
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5. Risk assessment

5.1 Addressing issues related to criminal convictions needs an objective, common-sense approach.

5.2 The College will use objective assessment to consider the risk of enrolling learners with criminal convictions. This assessment will:

- consider the nature of the conviction and its relevance to the course in question
- identify the risk to staff, learners and others
- recognise that having a criminal conviction does not preclude ability to learn and succeed.

5.3 The College will seek further information before making a decision about the perceived level of risk that a prospective learners offence poses, and whether the nature of the offence/s is such that the applicant/learner should be offered or retain their place on the course.

5.4 This information will be sought firstly from the applicant themselves through the Safeguarding Enrolment Decision form and/or initial interview and subsequently further information will be sought from appropriate professional agencies (probation services, social services, support workers, etc).

5.5 After a decision is made for the applicant to continue with the enrolment a risk assessment will be undertaken as soon as they have started the course. The decisions will also be recorded with a recommendation of what the risk level is and who were spoken to on the Enrolment Decisions Spreadsheet which only the Lead DSL and Deputy have access too.

5.6 The risk assessment will be carried out by the Safeguarding Enrolment Panel. The risk assessment is based on the following factors:

- the nature of the offence

- the nature of the course
- the extent of contact with children or other vulnerable groups whilst on the course
- the level of supervision available to learners on the course they are planning to join
- any contact the learner will have with the public
- any opportunities within the course for the applicant to re-offend
- the seriousness of the offence/s and its potential relevance to members of the college community and property
- the length of time that has elapsed since the offence occurred
- any information offered by the applicant about circumstances which led to the offence being committed e.g. mitigating circumstances which no longer apply
- whether the offence was a one-off or part of a history of offending
- whether the applicant's circumstances have changed since the offence was committed, making re-offending unlikely
- whether the offence has been de-criminalised by Act of Parliament
- the degree of remorse expressed by the applicant and their motivation to change, supported by the evidence of a report from a professional agency (E.g. social worker)

5.7 Prospective learners are informed that in order to accommodate a learner with relevant unspent convictions, they may be subject to additional controls, checks, searches and /or support to enable them to study at the College.

5.8 Applicants are informed of the decision on whether the application can be progressed by telephone as soon as possible after the Safeguarding Enrolment Panel have met and discussed the case. This would not guarantee a place but that the application can be processed in the normal way.

5.9 The prospective learner is required to notify the HOS/and or Director should they be convicted of any additional offences between the date of risk assessment and the end date of their course.

6. Data Protection – Access to and storage of sensitive information. What happens to information disclosed?

6.1 The college undertakes to discuss any matters revealed in any form of disclosure with the applicant, who will be kept informed of the process and consulted before any decision on their suitability to join or remain on a course, is made.

6.2 The College will destroy all information about ex-offenders who do not obtain a place at College to ensure compliance with the Data Protection Act 1998. Records for applicants admitted onto courses will be retained and disposed of in line with the College data protection procedures.

6.3 Prospective learners who reapply will need to be risk assessed again. Information regarding offences will be kept confidential. Learners need to feel confident that information about their convictions will not be disclosed to anyone unless there is a specific reason for doing so. Information will be kept in a locked filing cabinet and access restricted to individuals on a "need to know" basis or held on a staff members email accounts which by default are password protected.

6.4 Failure to disclose a relevant unspent conviction could result in withdrawal or disciplinary action by the College. The College reserves the right to verify any information that is provided by the applicant.

7. Criminal Records checks (DBS): Specific course criminal record checks

7.1 Where an enhanced disclosure is an essential entry requirement, applicants will be informed via the college publicity material.

7.2 Irrespective of the disclosure of criminal convictions policy, some courses require an enhanced criminal records bureau disclosure (DBS). On certain courses criminal records can be a bar to successful completion of the course or to gaining employment in the vocational area. These issues must be addressed at the application stage.

7.3 These are usually courses which involve working in positions of trust with children, young people or vulnerable adults. All convictions spent or unspent, for any offence may be taken into consideration for these courses. Prospective learners are urged to discuss this at interview should they feel it applies in their case.

7.4 For courses with mandatory elements which require learners to have DBS checks, the interviewing tutor will outline the importance of this and the consequences of not disclosing any record, caution, reprimand or final warning, no matter how minor, at this stage.

7.5 Applicants for these courses should be encouraged to apply for their checks as early as possible.

7.6 Copies of the DBS checks are kept in a confidential file by the course tutor and destroyed when the learner leaves the College.

7.8 If a learner declares a criminal record or a DBS check reveals a criminal record which is likely to cause the learner not be unable to complete some mandatory element of the course, a place cannot be offered. The learner should be directed to Student Information Service for advice on other options

7.9 Where a criminal record is revealed which does not impact on the applicant's ability to complete a course, but which might affect their chances of gaining employment in the vocational area, this should be discussed with them, and a record of the discussion kept on their file. It should also be pointed out where relevant that universities might refuse places on these grounds. A place can still be offered on the course if the admissions tutor is clear that a learner understands the implications and still has valid reasons for doing the course (e.g. it represents a good general grounding for a number of career options or for admissions to a range of university courses).

8. Post enrolment disclosure

8.1 Where it is revealed during a course that a learner has not disclosed a criminal record, the HOS and Director will, in consultation with the Deputy Principal for Curriculum and Quality and the Head of Safeguarding and Welfare (Lead DSL) consider appropriate disciplinary action, dependent on the severity and impact of the disclosure. The College Behaviour for Learning Policy should be followed+

9. Final decision and appeals

9.1 The final decision on whether to offer/maintain a place of study within the college lies with the Safeguarding Enrolment Panel.

9.2 Where a learner fails to reveal a criminal record, which is subsequently revealed, this could lead to withdrawal of the offer of their place within the college.

9.3 An applicant who is unhappy with the outcome of this procedure can appeal to the Deputy Principal for Curriculum and Quality.

	<p>9.4 The appeal must be in writing and must be made within 14 days of the decision made on the application. The Deputy Principal for Curriculum and Quality will respond within a further two weeks of receipt of the appeal.</p> <p>9.5 Should a prospective learner feel that they have grounds for appeal against a decision taken by the College, they should use the College Complaints Policy.</p>

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