

# **University of Cumbria Policy on Disclosure of Criminal Background for Students in Relation to Work with Children and Vulnerable Groups**

## **1. INTRODUCTION AND LEGAL REQUIREMENTS**

In meeting current legislation, the University of Cumbria must fulfil its obligations to ensure that students who work with children, young persons and vulnerable groups are fit to do so and do not have any statutory limits or bars on the activities in which they partake. The Disclosure & Barring Service (DBS) exists at a national level to facilitate necessary checks on the criminal records background of persons seeking to work with children and vulnerable groups.

Relevant legislation is as follows: -

- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, (Amendment) Order 2013, Update 2014, Updated 2020.
- Joint Circular on the Protection of Children (1986)
- Department of Health Circulars HC (88)9, HOC 8/88, WHC (88)10, HSG (94) 43
- Part V of the Police Act 1997
- Protection of Children Act (2004)
- Criminal Justice and Court Services Act 2000 (Schedule 4)
- Safeguarding Vulnerable Groups Act 2006
- Protection of Freedoms Act 2012
- Working Together to Safeguard Children 2018
- Keeping Children Safe in Education 2021 (Upcoming changes to guidance on 1<sup>st</sup> September 2022)
- Data Protection Act 2018 (The UK's implementation of the General Data Protection Regulation, GDPR)

Most courses for which the University requires applicants to undergo the Disclosure and clearance procedure will be subject to an Enhanced check via the DBS. The Enhanced check will show:

- convictions that have not been 'filtered' (removed) under legislation introduced on 29<sup>th</sup> May 2013, updated November 2020;
- cautions not subject to filtering (as above);
- reprimands not subject to filtering (as above);
- final warnings not subject to filtering (as above);
- non-conviction information from local police records which a chief police officer thinks may be relevant in connection with the course.

For further information on which offences are subject to filtering, please see

<https://www.gov.uk/government/publications/dbs-filtering-guidance/dbs-filtering-guide>

The Enhanced certificate will also state if there is nothing on record.

## **2. DBS APPLICATION PROCEDURES**

Applicants who are made an offer will be directed to relevant pages on the Admissions section of the University's website containing information about the requirement to self-disclose any criminal record and providing access to the University's 'Criminal Record Self Disclosure Form'. These pages also give outline information about the procedure for the DBS check.

Applicants who accept the University of Cumbria's offer as their firm choice will then be directed at a later stage to another Admissions information page with more detailed guidance, once all initial decisions have been received. This process commences approximately three months prior to course start. Where timescales are condensed this may lead to e.g. provisional registration until such time as clearance is received.

As part of the DBS process, students will be required to provide evidence of their 'Right to Work in the UK'. Further information can be found on our DBS webpage [here](#).

### **3. EQUAL OPPORTUNITIES IN RELATION TO EMPLOYEES AND STUDENTS WITH CRIMINAL RECORDS**

The University is committed to the principle of equality of opportunity and therefore makes every effort to prevent unfair discrimination against those applicants with a criminal record, whilst keeping at the forefront the need to protect children and vulnerable adults. To this end:

- the University will provide clear course descriptions and person specifications and will utilise clear application forms
- candidates will be selected for interview for admission to a course, based on those skills, qualifications and experience identified as requirements in the course specifications
- a DBS criminal record disclosure will only be requested/required on the basis of it being proportionate and relevant to the course concerned, and in compliance with the relevant statutory instruments governing such courses.

Disclosure and clearance will therefore be required for those on courses which involve contact with children, young people and vulnerable groups

- the University of Cumbria will ensure that those involved in the clearance process will be appropriately trained and experienced in identifying the relevance and circumstances of offences, and will have appropriate guidance and training in the relevant legislation
- where a DBS check is required, application forms, adverts, course information and place offer letters will contain a statement that a DBS check will be requested in the event of an individual being offered a place and firmly accepting this place.
- where a DBS check forms part of the selection process, applicants with any unfiltered (i.e. still on record) criminal history will be asked to provide details of this on the University of Cumbria self-declaration form.
- the self-disclosure and clearance process will be treated separately from any discussion of the candidate's suitability for admission. DBS checks will be seen as complementary to existing recruitment practice and will only be sought after a candidate has been provided with a provisional offer of a place and has firmly accepted this offer.
- to avoid any possibilities of direct or indirect discrimination as part of the student experience and in the interests of objectivity, parity, consistency and quality assurance, the DBS clearance procedure will be dealt with by senior designated staff from the Student and Academic Administration Service (SAAS) and appropriate senior Departmental representatives.

Where it is considered necessary to interview a candidate in relation to his or her criminal records background, this shall be conducted by a minimum of two senior persons from the groups mentioned above.

- the University will satisfy itself as to the identity of those applying for courses.
- where it is not possible to clear candidates for admission to courses on the basis of available documentation, the University will ensure that an open and measured discussion takes place with the candidate regarding the nature and circumstances of the offence(s).
- failure to reveal relevant information, or denial of relevant information or a criminal record, could lead to withdrawal of an offer of a place. However, candidates will be given the opportunity to discuss such situations fully before a decision to withdraw an offer of a place is made.
- all subjects of a DBS certificate will be made aware of the existence of the DBS Code of Practice. This can be viewed [here](#).
- a copy of this Policy will be accessible to all candidates via the University website.

#### **4. CRIMINAL RECORDS AND ELIGIBILITY FOR TRAINING/ADMISSION**

Having a criminal record will not automatically be a barrier to training, unless the individual appears on one of the 'Barred Lists'. Some past offenders may be legally barred from working with children and/or adults in 'Regulated Activity': broadly speaking, this is work involving close and unsupervised contact with children or adults in vulnerable groups, done on a regular basis.

##### **People barred from working with Children and Vulnerable Groups**

Under the Protection of Children Act (1999); The Children Act (2004); Working Together to Safeguard Children (2018); the Criminal Justice and Courts Services Act (2000) (Schedule 4); and the Safeguarding Vulnerable Groups Act 2006; it is an offence for a person barred from working with children or adults in Regulated Activity to apply for such work, and for an employer knowingly to employ a barred person in such a capacity.

Anyone barred from working with children or adults in Regulated Activity would have been placed on the DBS Children's Barred List or Adults' Barred List as applicable and would have received a formal 'notification of barring' letter at the time.

##### **People not on a Barred List**

Certain of the most serious offences are classed as 'Automatic Barring Offences'; there are other offences after which the individual is allowed to make representations as to why they should not be placed on a Barred List.

Most other offences (that do not lead to being placed on a Barred List) do not constitute an outright barrier to training, and the key principle is that otherwise suitable applicants should not be refused admission because of offences which are not relevant to the course of training.

Applicants who do have a criminal record (that is not subject to filtering) must give the University sight of their DBS certificate on receipt as, under the provisions of the Protection of Freedoms Act, the recruiting body no longer receives a copy of the DBS certificate.

Where an applicant has offences on his/her DBS certificate, these will be considered in relation to:

- whether there has been a failure to disclose or a denial of the criminal record, without a satisfactory reason, or a deliberate misrepresentation of the circumstances of the offence(s)
- the nature and seriousness of the offence(s), and its relevance to the intended professional training (e.g. whether the course involves 1 to 1 contact with vulnerable groups; the level of supervision received by the student; responsibility for finance or valuable items; contact with the public; opportunities for the student to re-offend)
- the policies of professional bodies, and of employers in whose organisations a student may be undertaking placement, in relation to particular offences
- the number and frequency of offences
- the recency of the offence(s) and the length of time that has elapsed since the offence(s)
- whether the applicant has a pattern of offending behaviour or other relevant matters
- the level of intent; the circumstances of the offence(s) and the explanation(s) offered by the applicant
- the wider personal, financial or domestic circumstances of the individual at the time of the offence(s)
- any changes in lifestyle, circumstances or attitudes on the part of the individual subsequent to the offence(s)
- the country in which the offence was committed (e.g. some activities are offences in Scotland but not in England)
- whether an offence has since been decriminalised
- any further character references which may be required to enable the University to make a reasoned and reasonable decision. References will only be sought with the candidate's consent.

Nonetheless it may be that, although a candidate has not committed an offence which constitutes an *automatic* barrier to training, they presents a criminal record profile which the University feels prevents them from meeting the criteria in the course specification for admission to that professional course of training. This could be due to the seriousness, number, frequency, nature or recency of the offence(s). Such a decision would only be reached after having taken all reasonable steps to assess risk factors and to consider the candidate's situation fairly.

This shall include the ultimate right of the Chair of the clearance panel to refuse admission on these grounds.

## **5. OUTCOMES OF THE CONSIDERATION OF CRIMINAL OFFENCES**

There are a range of possible outcomes arising from consideration of a candidate's criminal record. These are:

- where a DBS certificate confirms information which the University has already considered (via the self-declaration form and supporting documentation), the offer of a place will not be rescinded without good reason.

- having considered the evidence, references and/or representation by the individual and found them to be satisfactory, the offer of a place may be confirmed and the candidate cleared for admission without condition.
- if the risk assessment criteria for the course suggest that some risks remain and if unconditional clearance is not possible, precautions may be put in place at the discretion of the Chair of the DBS clearance interview panel to provide satisfactory safeguards. This could mean that the candidate is placed 'on probation' in the course, and his/her position reviewed periodically.

This outcome would involve regular meetings with an appropriate Departmental representative to monitor conduct and personal circumstances, according to the assessed risks in question. As such, the relevant facts will need to be disclosed to the Departmental representative on a need-to-know basis.

Similarly, for applicants to the PGCE School Direct programme (non-salaried route), it will be necessary to disclose to the University's associates in training. Candidates will be asked to consent to this in writing as a condition of acceptance on course. No disclosure will be made without the candidate's consent.

- where, after interviewing the candidate and after reasoned and reasonable consideration of all the relevant facts, it is felt that the candidate cannot be admitted to a professional training course, the University reserves the right to **withdraw** the offer of a place. The candidate shall be so advised and shall be given the reason for the decision in writing. It may be possible to offer an alternative, non-vocational course.

## 6. APPEALS

Appeals against the outcome of a DBS clearance decision can only be made on the following grounds:

- i) maladministration in the conduct of the DBS clearance procedure;
- ii) new evidence which was not available at the time of the original consideration of the DBS certificate and supporting information.
- iii) proven lack of fairness, or undue discrimination, in the conduct of the consideration of the case.

If, in the view of the person considering the appeal, the appellant does not clearly demonstrate one or more of the above grounds for appeal, the appeal will be automatically rejected: the onus is therefore on the applicant to establish on which of the above grounds they are making the appeal, as well as providing the required explanation or evidence that they wish to be taken into account.

Any request for an appeal must be made within **10 calendar days** of receipt of the decision made by the DBS Clearance Panel. It should be noted that the Appeals section of the University Admissions Policy and Procedure – Review of Admissions Decision cannot be used for appealing against DBS clearance decisions. The Admissions Policy and Procedure – Review of Admissions Decision relates solely to appeals against the rejection of a candidate on academic grounds.

Appeals will be considered and either upheld or dismissed by the University's Director of Student and Academic Administration Service (or designate), whose decision will be final. Applicants should address their appeal to: Director of Student and Academic Administration Services, University of Cumbria, Bowerham Road, Lancaster, LA1 3JD.

Please note that appeals against conviction information reported on the DBS certificate cannot be addressed by the University and applicants must contact the DBS (please see section 8. below).

## 7. COMPLAINTS

If an applicant has a complaint regarding the administration of the procedures, this should be addressed to the Director of Student Services (or designate) - and will be dealt with in accordance with the Admissions Policy and Procedure – Review of Admissions Decision. Applicants should address any complaints to: Director of Student Services, University of Cumbria, Bowerham Road, Lancaster, LA1 3JD.

## 8. CHALLENGING INFORMATION ON DBS CERTIFICATES

If an applicant for a course of study disputes information (which they deem to be incorrect, such as conviction information) on the DBS certificate, they should contact the DBS and should notify the appropriate Counter signatory (as indicated on the DBS certificate).

## 9. CONFIDENTIALITY

### Including use of the electronic DBS processing service 'eBulk'

The University complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosure information.

To this end:

- **Storage:** Disclosure information will be kept separately from a student's personal file in secure, non-portable, lockable storage containers.

Electronic results in the form of e-certificates are, since the introduction of the 'Single Certificate' by the DBS, no longer available via the eBulk service. Result data is limited to the date of issue and unique reference number of the certificate and an indication whether the certificate contains any criminal record information or not, but it does not reveal what that information may be.

All result data whether hard copy DBS certificates or information on the e-Bulk system will be treated in accordance with the DBS Code of Practice. Any member of staff with access to DBS results is fully aware of policy on the secure handling of Disclosure information and the DBS Code of Practice.

- **Access:** The eBulk system is secure, and access is only granted to authorised personnel.

Access to any Disclosure information whether held on the eBulk system or in hard copy format will be strictly controlled and limited only to those who are entitled to see the documentation as part of their duties (in accordance with Section 124, Police Act (1997)).

- **Handling/Use:** the University will maintain a record of all those to whom Disclosure information has been revealed, and recognises that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

DBS certificate information will only be used with the applicant's consent, and for the specific purpose for which it was requested.

- **Retention:** documents relating to DBS certificate information will be retained in accordance with DBS guidelines (for a maximum of 6 months) and with regard to relevant Data Protection and Human Rights legislation.

In exceptional circumstances it may be considered necessary to retain DBS certificate information for longer than this. In this event the University would consult the DBS and would give full consideration to Data Protection and Human Rights legislation before doing so.

- **Disposal:** after the requisite period hard-copy DBS certificate information will be destroyed by secure means (shredding, pulping or burning) and will not be either photocopied or kept in any insecure receptacle.

A record will be kept of the date of issue of a DBS certificate; the name of the subject; the level of DBS certificate requested; the course for which the DBS certificate was requested; the unique reference number of the DBS certificate; and details of the recruitment decision taken.

- **Incomplete applications:** if online eBulk applications are not completed in full, they are removed from the system automatically after a set period of time in compliance with Data Protection legislation.

## 10. CLEARANCE FOR COURSES NOT REQUIRING DBS CHECKS

From September 2019 UCAS removed its question asking about any 'relevant' criminal convictions which are unspent under the Rehabilitation of Offenders' Act. Applicants to a course that does not require a DBS check are therefore no longer required to provide information relating to unspent criminal convictions.

The University of Cumbria operates in differing contexts such as:

Under 18 year old students on campus

Vulnerable adults on campus

Nursery provision in the campus grounds at Lancaster

Under 18 year olds on campus visits through schools and colleges or attending events

In order to protect both the individual applicant and the wider public, the University gives applicants that have firmly accepted their place but do not require DBS checks the opportunity to self-disclose. The criteria above would be applied when considering the case. This may be risk to self (for example probation conditions) or others to reach a decision in relation to the applicant's admission to university.

## 11. USE OF DBS CERTIFICATES NOT OBTAINED VIA THE UNIVERSITY OF CUMBRIA

### a) Update Service

Since the introduction of the DBS 'Update Service' in June 2013, the University has been accepting DBS certificates issued by other organisations for entrants from 2014 onwards, as long as the following conditions are met: -

- The applicant has registered the DBS certificate with the Update Service;

- The applicant can produce a) the DBS certificate and b) a form of ID (passport; driving licence; or birth certificate) confirming that they are the person named on the certificate and showing their date of birth;
- The certificate is at the required level (Standard or Enhanced);
- The job role on the certificate is specified as being in the exact required workforce only: Child, Adult or both Child and Adult. If the job role contains more than the exact workforce we are entitled to know about for the course concerned, we will not be able to accept the certificate;
- The certificate includes a check of the necessary Barred List(s) only: Children's, Adults' or both. If the certificate includes a check of a Barred List which we are not entitled to access for the course concerned, we will not be able to accept the certificate;
- The certificate was obtained for a paid and not a voluntary role.

Applicants should note that, if the result of the University's 'Status Check' via the Update Service indicates that there has been a change in information between the time of issue of the certificate and the time of the status check, they will be required to apply for a new DBS check in order that the University can see and consider this new information.

## **b) Use of existing DBS checks obtained via an employer**

### **i. CPD courses**

Certain designated programmes will accept DBS certificates (or evidence thereof) issued by an employer. These are generally professional development courses in the Health field (e.g. Continuing Professional Development-CPD courses), which are related to the applicant's current employment and for which they have already been DBS-cleared.

However, the University reserves the right to request a new DBS application in individual cases where this may be necessary, for example if the applicant is not already in current relevant employment or is self-employed.

### **ii. Courses where there is a partner employer**

There are also certain other programmes for which the DBS check will be processed via the employing body, where the responsibility for the DBS check rests with that employer: examples of these are the salaried route of the School Direct PGCE.

For the salaried route of the School Direct PGCE, the University will require evidence of the DBS check either from the employing school or from the applicant.

**iii. Courses with placement requirements outside current employment** If the course to be undertaken at the University of Cumbria involves placements outside that of the student's current employment then a new, University of Cumbria DBS check will be required. This is the case with the BSc (Hons) Nursing Degree Apprenticeship, where the learning outcomes of the programme are likely to necessitate the student undertaking clinical practice outside their existing employment.

## **Widening Access**

For applicants to pre-registration Nursing or other professional Health courses under the 'Widening Access' scheme (secondment), the University will not carry out its own DBS check and responsibility lies with the employing Trust to ensure that the applicant has been DBS-cleared under its own procedures. This is in accordance with the terms of the contract signed by all in the NHS North West partnership of Trusts, which agrees to such 'transferability' of DBS certificates in this specific circumstance only.



## **12. DISCLOSURE SCOTLAND CHECKS: NHS PLACEMENTS IN SCOTLAND**

Students on certain professional Health training courses may be required to undertake clinical placements with an NHS organisation in Scotland at some point during their programme. Registration with the Scottish 'Protecting Vulnerable Groups (PVG)' Scheme will be needed to do this: as this legislation is not in operation in England and Wales and is not therefore part of the DBS check, students will have to apply for a new check via Disclosure Scotland - specifically, a PVG Scheme Record. The host setting will act as the point of contact for this.

Applicants to the Foundations in Professional Practice: Return to Practice programme who are undertaking their clinical practice with a Scottish organisation will need to apply for a PVG Scheme Record via Disclosure Scotland *in lieu of* a DBS check: a DBS check would be redundant because they will not also be doing clinical practice in England.

The host setting will act as the point of contact for this, but the University of Cumbria will require sight of the completed PVG Scheme Record certificate from the applicant.

## **13. ACCESS NORTHERN IRELAND (AccessNI) CHECKS**

Applicants to the Foundations in Professional Practice: Return to Practice programme who are undertaking their clinical practice in a Northern Ireland setting may need to apply for a criminal record check via AccessNI instead of a DBS check, depending on the requirements of the placement setting.

The host setting will act as the point of contact for this, but the University of Cumbria will require sight of the completed AccessNI certificate.

## **14. DBS CHECKS FOR THE PGCE SCHOOL DIRECT PROGRAMME**

There is a distinction between the salaried/non-salaried routes of this programme. As per the Department for Education's 'Initial teacher training (ITT): criteria and supporting advice', the University will be responsible for processing the DBS check for the non-salaried route, and the school for the salaried route.

For the non-salaried route, as the recruitment decision is a joint one between the University and the partner schools alliance, the University will share any information revealed as part of the DBS check process with the designated Professional Partnership Leader at the alliance. This will only be done having obtained the explicit written consent of the applicant to do so. If consent were to be withheld it would not be possible for the applicant to be DBS-cleared by the University: therefore, the offer of a place would be withdrawn.

The decision on suitability for admission on DBS grounds to the salaried route lies with the employing alliance and not with the University of Cumbria, but the University has supplied good practice guidance to its partner schools to try and ensure parity of approach between the two routes.

## **15. PERIOD OF VALIDITY OF DBS CERTIFICATES**

DBS checks have no formal period of validity and as such cannot expire. The University of Cumbria considers a student's check to be valid for the duration of the course, unless that student intercalates (takes time out from their course) or becomes an 'external' student for 6 months or more. External students may be awaiting a deferred or re-sit placement.

In either of the above cases, a repeat DBS check must be processed before the student's return to course. The cost for this must be met by the student. This includes students on courses that fall within our Health provision: this allows for only one University-funded DBS check, at the point of admission. This requirement applies regardless of the circumstances of the intercalation or external status.

In lieu of a new DBS check being required in such cases, if a returning student has registered a previous DBS check with the Update Service, a status check via the Update Service may be used to satisfy the DBS requirement upon return to course, subject to the conditions in section 11 above.

It is the duty of any individual student to report anything which might impact their DBS status immediately to their personal tutor.

## **16. QUALITY ASSURANCE IN RELATION TO DBS CHECKS**

Through this Policy the University will:

- demonstrate full compliance with the Code of Practice set out by the DBS;
- co-operate with requests from the DBS to undertake assurance checks as to the proper use and safekeeping of DBS certificate information;
- report to the DBS any suspected malpractice in relation to the Code of Practice or any suspected offences in relation to the misuse of DBS certificates;
- review new courses to assess whether they involve any risk;
- ensure that staff who recruit have guidance on the admission of ex-offenders;
- provide staff training for those involved in its DBS clearance procedure.

## **17. MONITORING AND REVIEW**

This Policy is subject to biennial review or sooner where new legislation, regulations or codes of practice are introduced.

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