

STUDENT CRIMINAL CONVICTION DECLARATION AND RISK ASSESSMENT POLICY AND PROCEDURE

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1. Introduction

City of Portsmouth College (COPC) is committed to offering a fair and transparent admissions process where learners are recruited on the basis of their ambitions and aspirations, past achievements, learning potentials, and their preparedness to become productive citizens of the COPC learning community. COPC fully recognises and takes very seriously its role in assisting ex-offenders in the process of rehabilitation.

This policy aims to treat all prospective and existing learners equally and fairly in line with the Equalities Act 2010 and, concomitantly, meet its legal obligations under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013), the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Data Protection Act 2018, the Children's Act 1989, the 2004 Amendments to the aforementioned Act and the Keeping Children Safe in Education Act 2020.

COPC takes very seriously its commitment to safeguard potential and existing students, staff, contractors and visitors and the need to consider closely an individual's criminal convictions when deciding whether that individual may begin or continue with their studies with the COPC. Moreover, COPC recognises that certain criminal convictions may preclude an individual from accessing particular careers or professions which may be inextricably linked to that person's chosen programme of study, childcare for example.

2. Definitions and justifications

Key definitions of the terms used throughout this document and clear justifications for their disclosure are given in this section.

2.1 Criminal record

The legal definition of 'criminal record' is 'a list of crimes of which someone has been convicted in a magistrate' court or the Crown Court.' Potential students are expected to disclose past and current criminal convictions at the application stage of their enrolment. This allows COPC colleges to identify individuals who may be a risk to themselves, other students, staff, contractors, visitors, or the college environment so that proper safeguarding decisions can be made.

2.2 Cautions, conditional cautions, and youth cautions

Cautions, conditional cautions, and youth cautions (formerly reprimands or final warnings issued to individuals aged under 18) are issued by the police when an individual accepts responsibility for an offence. Again, correct disclosure of these by the potential learner will help to ensure the college is able to make the most appropriate safeguarding decisions.

2.3 Relevant criminal convictions

In line with the reasons given previously, COPC expects students to disclose relevant, unspent criminal convictions which relate to any kind of violence including (but not limited to) threatening behaviour, offences concerning the intention to harm or offences which resulted in actual bodily harm; offences listed in the Sex Offences Act 2003; the unlawful supply of controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking; offences involving weapons and firearms; offences involving arson; and offences listed in the Terrorism Act 2006.

2.4 Spent criminal convictions

Criminal convictions that are 'spent,' as defined by the Rehabilitation of Offenders Act 1974 or will be spent at the time of starting the programme of study do not to be declared by the student unless the programme of study requires a check to be conducted by the Disclosure and Barring Service (DBS).

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) explains that any conviction for a criminal offence can be regarded as spent provided that; the conviction did not carry a sentence excluded from the Act, such as a custodial sentence of over two and a half years and no further convictions occurred within the rehabilitation period.

2.5 Relevant course

The term 'relevant course' refers to courses which require DBS checks to be conducted, for example those which will involve the learner coming into contact with children and vulnerable adults. For the purposes of safeguarding, all criminal convictions including those which are 'spent,' cautions, reprimands and binding-overs must be disclosed. (See Appendix 6 for guidance on spent convictions).

3. Declaration of criminal convictions

In line with the COPC admissions policy, all applicants are required to complete enrolment forms, accurately and honestly, including the section which explicitly poses the question, 'Do you have any unspent criminal convictions?'

Failure by the individual to answer this question accurately and completely may result in disciplinary action being taken against that individual. A possible outcome of the disciplinary could be the permanent exclusion of the individual from any and all of the constituent COPC campuses.

4. Managing disclosures of criminal convictions

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

Applicants are required to indicate on the enrolment form if they have an unspent or relevant conviction (or pending proceedings). Applicants are expected to disclose this information at enrolment. All applicants are asked to disclose unspent criminal convictions and pending prosecutions at enrolment, and appropriate risk assessment is undertaken.

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). Students are advised before undertaking a course if a criminal record is likely to significantly impact on their chances of gaining employment in their chosen field.

Where applicants make a disclosure at enrolment, COPC policy regarding disclosure of relevant convictions will be explained to the applicant. Those answering "Yes" to a criminal conviction question are asked to complete a supplementary form (Appendix 1 Criminal conviction Declaration form A) giving details of the criminal convictions.

If an applicant has disclosed a spent conviction (which is not relevant conviction), a designated staff member (Safeguarding Officer) must sign the enrolment form and the

applicant is cleared to enrol. No records of the spent conviction shall be held by the College.

If an applicant has disclosed unspent or relevant convictions (or pending proceedings), a designated staff member (i.e., Safeguarding Officer) shall interview the applicant and either clear to enrol or refer to a Criminal Conviction Panel. If conviction is deemed minor and the applicant poses little or no risk, the relevant staff member must sign the Criminal Conviction Declaration Form and clear the applicant to enrol. (Appendix 5 provides a check list of factors to consider when assessing the risk and severity of offence.)

If the applicant is referred to the panel, a signed letter (Appendix 2) must be given to the applicant, and the Criminal Conviction Declaration form (Appendix 1) must be completed and sent to the SMT Safeguarding Lead. 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.

Applicants who fail to attend Criminal Conviction Panel meeting without notice shall have their applications to study at the College withdrawn.

Where members of the College community identify known offenders, who have not disclosed criminal convictions, such information should be passed to the SMT Designated Safeguarding Lead for further investigation, and consideration under disciplinary policy.

5. Risk Assessments

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

It is incumbent on COPC and its constituent colleges to work with other agencies involved with the learner to ensure a fair risk assessment and good support for the student is in place before they undertake a course.

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

- focus on learners' abilities, skills, qualifications, and experience.
- 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.

Assessment of risk is undertaken in a sensitive, discrete and confidential manner, taking account of the needs of all concerned.

- i. The College will seek further information before making a decision about the perceived level of risk that a prospective learner's offence poses, and whether the nature of the offence/s is such that the applicant/student should be offered or retain their place on the course.
- ii. This information will be sought firstly from the applicant themselves through the criminal conviction declaration form and/or initial interview and subsequently further information will be sought from appropriate professional agencies (probation services, YOTs, social services, support workers, etc.).

- iii. The risk assessment will be undertaken as soon as possible after the disclosure. A risk assessment may require a meeting with the applicant. In this case, a Criminal Conviction Panel meeting will be arranged within 7 days of the application and a letter sent to the prospective learner to advise them of the date and time of the meeting.
- iv. The risk assessment will be conducted by the Criminal Conviction Panel, which shall consist of SMT Designated Safeguarding Lead, Curriculum Manager, and a Safeguarding Officer. At least two of the three panel members must be present to conduct a criminal disclosure risk assessment.
- v. 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 students 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., YOT, social worker)
- vi. Prospective learners may choose to be accompanied by an advocate of their choice to the panel meeting. In cases where the learner is under 18, the parent, guardian or carer will also be invited to the meeting.
- vii. Prospective learners are informed that in order to accommodate a learner with relevant unspent convictions, they may be subject to additional controls and /or support to enable them to study at the College.
- viii. Applicants are informed of the decision of the Criminal Conviction Panel by telephone/ letter as soon as possible after the panel meeting. This would not guarantee a place but that the application can be processed in the normal way.
- ix. If the applicant is cleared to enrol, a copy of the notes of the meeting and the risk assessment will be sent to the relevant Curriculum Manager and to the Safeguarding Team. This information will be held securely and provided to those with a genuine need to know.

- x. The prospective learner is required to notify the College should they be convicted of any additional offences between the date of risk assessment and the end date of their course.

6. Data Protection

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. All records are kept securely and destroyed in line with data protection policies.

The College will destroy all information about ex-offenders who do not obtain a place at the 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.

Prospective learners who reapply will be asked to declare any conviction since joining the College. 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 securely, and access restricted to individuals on a “need to know” basis.

Failure to disclose a relevant unspent conviction could result in exclusion from the College. The College reserves the right to verify any information that is provided by the applicant.

7. DBS checks for specific courses

Irrespective of the criminal convictions disclosure policy, some courses require an enhanced criminal DBS check.

On certain courses criminal records can be a bar to successful completion of the course or to gaining employment in the vocational area. 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 application stage should they feel it applies in their case.

For courses which require DBS checks, applicants will have informed of the importance of this and the consequences of not disclosing any criminal record, caution, reprimand or final warning, no matter how minor.

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.

A place can still be offered on the course provided the applicant 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).

Where an enhanced disclosure is an essential entry requirement, applicants will be informed through publicity material and at enrolment.

8. Post enrolment Disclosures

Where it is revealed during a course that a learner has not disclosed a criminal record, the Curriculum Director/Assistant Principal, in consultation with SMT Safeguarding Lead, will consider appropriate disciplinary action, depending on the severity and impact of the disclosure.

- Minor issue which does not pose any risk to the College community or impact on the student's ability to complete the course might attract a warning.
- Significant issues which might pose a risk to the College community or impact on the learner's ability to complete the course a disciplinary hearing with a Curriculum Director/Assistant Principal. This might lead to the student being withdrawn from the course if the risk is judged to be significant or if they are unable to complete some mandatory element of their course.

Where a criminal prosecution or conviction occurs during the course, the Criminal Conviction Panel will make a judgement on appropriate action. Personal tutors and support services will be alerted to any support needs of learners.

9. Final Decisions and Appeals

The final decision on whether to offer/maintain a place of study within the college lies with the Senior Leadership Team. Where a learner fails to reveal a criminal record, which is subsequently revealed, this could lead to exclusion.

An applicant who is dissatisfied with the outcome of a Criminal Conviction Panel may appeal against the decision to the senior member of the college's SMT. The appeal must be in writing and must be made within 14 days of the decision made. The senior manager shall respond in a writing within a further two weeks of receipt of the appeal.

10. Monitoring and Review

This Policy will be reviewed annually.

Appendix 1: Criminal Conviction Declaration (CCD) Form

Why do we ask?

The details requested are an essential part of the application process. They allow us to ensure we provide opportunity for you access appropriate courses, and that we uphold our legal duty of care and safeguarding all students, staff, and visitors. All information given will be treated in the strictest confidence.

You are asked to declare **unspent** or **relevant conviction** or **pending proceedings**.

Criminal conviction means: You have been found guilty in court of an offence.

Unspent: Convictions and cautions sometimes become spent after a certain period. These do not need to be declared unless the course you are applying for requires an enhanced disclosure from the Disclosure and Barring Service (DBS). Please note that some custodial sentences can never be considered spent.

Relevant convictions: You are asked to declare are the following:

- offences against the person whether of a violent or sexual nature.
- offences involving the unlawful supply of controlled drugs or substances where conviction concerns commercial drug dealing or trafficking,
- Offences related to terrorism or Involving possession of a weapon or bladed article.

Full Name:	Age:
Course applied for:	Campus:
Type of offence (s):	
Date of offence (s):	
Type of sentence (s):	Lengths of sentence (s):
Do you have a Youth Offending / Probation Officer or Drug Intervention Program Key worker?	
Yes / No	
If Yes, Name:	
Address or contact telephone number:	

Appendix 2: Referral to Panel Applicant Letter

August / September 2020

Dear applicant,

Further to your declaration of relevant criminal conviction, the College now needs to gather more information from the probation /youth offending services in order to conduct a risk assessment.

The College will contact you shortly to invite you to a meeting to discuss the conviction(s) and the circumstances surrounding the offence.

You are welcome to come to the meeting with a family member, social worker, probation or youth offending officer.

Applicants 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 the College has been demonstrated to pose a risk to others or property, or their criminal record significantly limits their chance of success on their chosen course.

The risk assessment and the meeting are undertaken in a sensitive, discrete and confidential manner, taking account of the needs of all concerned.

Finally, if you are unclear about the detail of any part of this letter, or have questions, please contact the College by emailing us (*college safeguarding email address*)

Yours faithfully,

Vice Principal (Student Experience and Designated Safeguarding Lead)

Appendix 3: Criminal Conviction Panel Risk Assessment Form

Appendix 3: Criminal Conviction Panel Risk Assessment Form

Name of applicant:		Date of Birth:		
Course applied for:		Campus:		
What was the offence(s)?				
	Notes	High	Medium	Low
1. What was the sentence?		Custodial	Suspended, community, conditional discharge	Warning, caution, reprimand, fine, absolute discharge
2. When was the offence committed?		In the past 3 years	Between 3 and 10 years	More than 10 years before
3. Is there a pattern of specific offences? If yes, state nature of pattern:		Yes	Some pattern	No pattern
4. Is the applicant involved in Treatment or Therapy? If yes, who? (Drug intervention program)				
5. Is Youth Offending / Probation service involved? If yes, how do they assess risk of re-offending		High risk of re-offending	Medium	Low or no risk
6. Applicant's attitude towards offence/s?		Does not take responsibility / is not remorseful	Some acceptance and remorse	Remorseful / accept responsibility
7. What has changed since conviction?				

(Treatment, change of friends, etc)	
8. Is the applicant in a stable environment? (Supportive family, friends, job)	
9. Other factors (Does the course include placement, or DBS checks? Mental health issues?)	
10. Are there any Licence conditions set out to the applicant (restrictions to enter certain postcodes, strict curfews) which the applicant could breach by enrolling at college?	

Declaration and Decision

The Panel understands the College's policy on the recruitment of applicants with criminal convictions and has recognised this in its deliberations. On consideration of the risk assessment form, interview with the applicant (and other parties) and a relevant report, the Panel believes that the applicant:

- should not be enrolled
- should be enrolled without any conditions
- should be enrolled with conditions

State the conditions (attendance target, regular report from Probation services, etc)

Signed by chair of Panel:

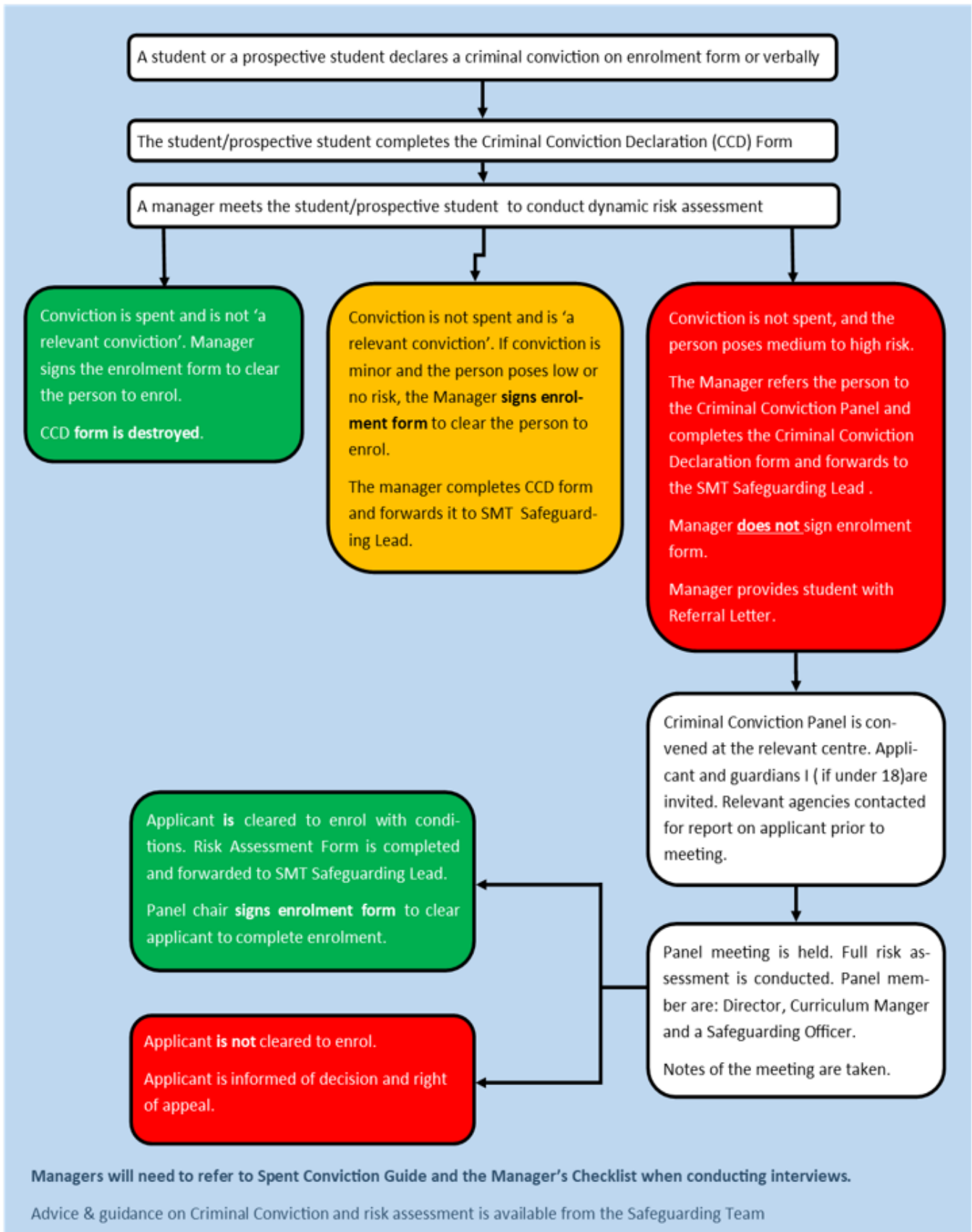
Name:

Date:

This form and other related document should be forwarded to SMT Designated Safeguarding Lead

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Appendix 4: Criminal Conviction Disclosure procedure flowchart
Criminal Conviction Disclosure & Risk Assessment flowchart



Appendix 5: Guide & Checklist for conducting interviews with applicants.

Unspent and relevant convictions

Applicants with the following relevant and unspent convictions are likely to require referral to the Criminal Conviction Panel unless the risk levels are very low. Risk should be assessed using the checklist provided below.

Murder Manslaughter Attempted Murder GBH ABH Common Assault	Offences against children Sexual Assault Grooming Offensive Weapons (guns, bladed articles) Violent Extremism Supply of controlled drugs or substances	Rape Assault by penetration Armed Robbery Terrorism offences
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Applicants with convictions other than those listed above do not normally require referral to a Criminal Conviction Panel unless the risk levels are considered be too high. They should be interviewed, and risk assessed using the following factors:

Check list

<ol style="list-style-type: none"> 1. How long-ago conviction/s occurred. 2. Patterns in offences 3. Pending convictions 4. If alcohol/drugs were a factor 5. Circumstances surrounding conviction. 6. Number of separate conviction/s 7. Sentence type 8. Rehabilitation 	<ol style="list-style-type: none"> 9. Life/work/Family experience since convicted. 10. Conduct in previous educational or work. 11. Course appropriateness e.g., cohort, timetable, duration, health & safety factors, work placement etc. 12. Mental health, cognitive and behavioural disorders 13. Engagement with external support 14. On tag/curfew or Bail condition 15. Attitude to conviction
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Having interviewed the applicant using the factors listed above, if the judgement is that there is little or no risk, the applicant should be cleared to enrol. Otherwise, a referral to Criminal Conviction Panel should be made.

Further advice is available from the Safeguarding team.

(College safeguarding email address)

Appendix 6: Guidance on Spent conviction (Rehabilitation of Offenders Act 1974 and Legal Aid, Sentencing and Punishment of Offenders Act 2012)

How long will it take before a caution or conviction becomes spent?

The rehabilitation period (the length of time before a conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, which we have called the 'buffer period.'

Sentence/disposal		For adults (over 18 when convicted) Conviction is spent after	For children (under 18 when convicted) Conviction is spent after
Prison	over 4 years	Never spent	Never spent
	more than 30 months and less than (or equal to) 48 months	Sentence + 7 years	Sentence + 3.5 years
	more than 6 months and less than (or equal to) 4 30 months	Sentence + 4 years	Sentence + 2 years
	less than (or equal to) 6 months	Sentence + 2 years	Sentence + 18 months
Detention and training order (over 6 months)		N/A	As prison sentences
Detention and training order (6 months or less)		N/A	As prison sentences
Sentence of detention (over six months but not exceeding 30 months)		As prison sentences	As prison sentences
Sentence of detention 6 months or under)		As prison sentences	As prison sentences
Removal of her Majesty's service		1 year	6 months
Service detention		1 year	6 months
Community order or Youth Rehabilitation order ⁱ		12 months	6 months
Fine		1 year	6 months
Compensation order		Once paid in full	Once paid in full
Hospital order (Under Mental Health Act)		End of order	End of order
Conditional discharge, Binding over, Care order, Supervision order, Reception order		End of order	End of order
Absolute discharge		Spent immediately	Spent immediately
Disqualification		End of disqualification	End of disqualification
Relevant order		End of order	End of order
Conditional caution		Once condition ends	Once condition ends
youth caution, warnings, reprimand		Spent immediately	Spent immediately

Are there any sentences which are not covered by the 1974 Act?

The 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).

Appendix 6: Spent conviction guide

ⁱ In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

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