



Exploring tertiary education for people with convictions.

2016

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This report presents the findings of the Study With Conviction project undertaken between month July 2015 and January 2016. The project was funded by the Scottish Funding Council and the work was undertaken by Recruit with Conviction in partnership with the Centre for Youth and Criminal Justice.

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Executive Summary

Having a criminal conviction or the likelihood of getting one has significant statistical relevance to the widening access agenda, however the available data about students with convictions was either unavailable or lacked integrity and context in order to produce meaningful quantitative information about the successes of the

sector in attracting people with convictions and supporting them to succeed. Setting a benchmark now, would also permit comparisons over the long term.

While a conviction is not a protected characteristic, the ways in which it intersects with protected characteristics means that barriers relating to convictions have an impact on equalities.

The most significant challenges facing people with convictions relate to poverty, low aspirations and mismatched attainment against natural abilities. Tertiary education institutions are inclusive organisations and the widening access agenda promotes solutions for barriers which are associated with poverty and having a criminal conviction. Therefore resolving barriers relating to criminal convictions is not a panacea but it helps an individual to deal with one label which is particularly stigmatising, “An Offender”.

Criminal conviction disclosure is the one common barrier faced by people with convictions and it has complex dynamics which are unique to each person. People with convictions perceive criminal record disclosure questions negatively and make assumptions that conviction disclosure will be used as part of the point scoring mechanism, that procedure and practice is mismatched. They often carry anxiety about disclosure and fail to disclose effectively for a variety of reasons. This is often confounded by negative experience of disclosure in other situations and poor communication skills. Most people require independent support to make honest and effective criminal conviction disclosures and messages about the inclusive nature of institutions should be better cascaded and there are opportunities to improve the way that conviction disclosure is requested.

The legislation which defines if and when criminal convictions should be disclosed or withheld is complex and there is a shortage of trained professional inside or outside tertiary education. Assumptions are commonly made that career advisers have this skill-set, however feedback from careers advisers suggests that they do not provide technical support for this.

There is a shortage of suitable support relating to conviction relevance, disclosure and related anxieties and low awareness about the impact that asking for disclosure can make. There are also an unknown number of students who are convicted while studying and they tend not to come forward for the support that they need. There is an ongoing need for a knowledgebase for education institutions and a support function for staff, students with convictions and prospective students with convictions.

Courses which require Protecting Vulnerable Groups (PVG) scheme membership have very different disclosure requirements. People with convictions commonly deselect themselves after assuming they would be automatically excluded. There is a fine line between rejecting a capable person and reserving a place for someone who is ineligible for scheme membership or professional registration. Academic

selectors work with employers and professional registration bodies to help them unpick this and should continue to do so.

Courses which do not require PVG scheme membership sometimes do and sometimes do not request conviction disclosure. Processes exist so that conviction disclosure should not be considered with academic assessment. The decision to admit or reject a person disclosing convictions is usually a risk decision made by an expert panel, a senior manager or devolved to departments. In the vast majority of cases where risk concerns are raised, these concerns prove insignificant or control measures are implemented and in each institution rejections were isolated instances.

The design of admissions systems has created fair processes for dealing with information after it has been disclosed and while the UCAS process has removed some conviction disclosure requirements by asking for relevant unspent criminal convictions rather than all unspent convictions, it has failed to replicate best practice in employment where some employers delay asking for disclosure until after an offer is made to an applicant.

Recommendations

Recommendation 1: Knowledge base and Helpline

The Scottish Funding Council should commission a central service for colleges and universities to provide a knowledge base and helpline facility for students and staff to provide accurate information. This will support people to disclose effectively when they are required to do so and advise on conviction relevance relating to career and course choices etc.

This central body should also co-ordinate the development of all the recommendations laid out in this study and report progress to the SFC.

Recommendation 2: Available Data

Methods of collecting and analysing relevant conviction data in relation to the student cycle should be explored by the Scottish Funding Council in partnership with Scottish criminology academics.

Having a criminal conviction or the likelihood of getting one has significant statistical relevance to the widening access agenda, however the available data about students with convictions was either unavailable or lacked integrity and or the required context to produce meaningful quantitative information about the successes of the sector in attracting people with convictions and supporting them to succeed. Setting a benchmark now, would also permit comparisons over the long term.

Recommendation 3: Equality Impact

All reasonable efforts should be made by UCAS, Colleges and Universities to mitigate the impact of conviction disclosure for all applicants in order to support

widening access and equality objectives.

Recommendation 4: Legislative reform

The Scottish Government should implement the proposed changes to the Rehabilitation of Offenders Act 1974 in Scotland in order to reduce the stigma and potential discrimination faced by people with convictions.

Recommendation 5: Students studying for professions exempt from the Rehabilitation of Offenders Act 1974 should have support available.

Courses which are linked to such professions and occupations which are exempt from the 1974 Act should include awareness sessions about the impact of convictions on these professions as well as signposting for students to seek support if they are charged.

Recommendation 6: Local Authorities

Local Authorities should integrate specific conviction disclosure support for all people with convictions through their local employability pipelines.

Recommendation 7: Support for students being convicted for the first time

The NUS should facilitate collaboration between student support services, student associations to seek solutions and the proposed helpline service so that students who are arrested or convicted feel more confident about seeking effective support.

Recommendation 8: Awareness about conviction stigma

The SFC should develop a strategy to improve awareness about conviction disclosure anxiety and the offender stereotype should be considered within existing or new unconscious bias training in further and higher education.

The potential for disclosure outside the processes, suggests that academic assessors should have some awareness training on subjects such as their employer's procedure for dealing with criminal history, unconscious bias training and conviction disclosure anxiety. A wider group of education staff should also know where to signpost individuals and where to find additional information.

Recommendation 9: Advice for course choices and job search

With central support from a helpline service, institutions, support services and careers services should offer support relating to disclosure of convictions and conviction relevance throughout the student cycle in order to prepare people with convictions for honest and effective disclosure methods. This should include course choice and employment as well as meeting the pastoral care needs of students with convictions.

Recommendation 10: UCAS procedure

In order to comply with changing provisions to protect people with convictions set out in the Rehabilitation of Offenders Act 1974 in Scotland. UCAS should either avoid asking for criminal conviction disclosure for Scottish Universities or set out separate disclosure forms for Scottish Universities so that applicants can disclose in line with Scots law when applying for Scottish Universities and English Universities within the same application.

Recommendations 11 – PVG Before course

There would be a benefit to both students and institutions if PVG scheme membership can be resolved before students start courses. This would allow admissions assessors to be more confident about offering places where there may be borderline concerns about the applicant's scheme membership. It also creates much more clarity for students. Also some students pick up new convictions or PVG markers while they are studying and are too anxious to tell anyone and there are obvious ramifications for completing their course and/or professional registration. Disclosure Scotland has confirmed that they can issue PVG scheme membership for courses training people for regulated work. The whole issue of removing unknown barriers at the earliest stage needs explored including professional registration options for students with borderline convictions.

Recommendation 12: Implement conviction disclosure support signposting on applications

Review the methods of seeking personal conviction disclosure so that it is initially a support question in private which should enable individuals to be well informed about their own criminal history relevance for course choices and signposting to a support service which will help the individual contextualise their convictions and disclose them effectively for inevitable future disclosures.

Recommendation 13: Risk Assessment Panels

If a risk panel is used to accept or reject an applicant for the purposes of safety of students or staff, then it should include at least one expert member who is specifically trained in criminal justice risk assessment. In many institutions this would be a member of academic staff within a social work or criminology discipline.

Recommendation 14: Technical Knowledge of the Rehabilitation of Offenders Act 1974

More employees in existing specialist roles require technical training in disclosure. This should include the rights and responsibilities of individuals relating to disclosure

of their convictions for the purposes of applying for courses or employment. This should be supported by a helpdesk for students and staff.

Recommendation 15: Quality Controls

QAA and Education Scotland should develop quality controls relating to maintaining consistency between policy and practice should be applied to practice for admission of people with convictions.

Introduction

The Colleges and Universities participating in the Study With Conviction project demonstrate fair policies regarding the matriculation of students with convictions.

Support services are prepared for barriers which commonly intersect disadvantage and poverty and which can be linked with conviction, including issues such as low self esteem, mental health problems, trauma, being a victim of crime, bereavement, substance abuse, debt, learning disabilities, low qualification attainment, mismatched qualification attainment and abilities, and relationship problems.

A wide range of stakeholders were interviewed for this project and they included people with convictions as well as staff from universities, colleges, Universities Scotland, Education Scotland, SWAP, SHEP, Access to Industry, Apex Scotland, Positive Prisons, Local Authority Criminal Justice Social Work and the Scottish Prison Service.

The stakeholders who engaged with the project from education institutions demonstrated a keen attitude to be fair, compassionate and consistent. However few people properly consider the following questions:

- How common are convictions?
- Do we harbour conscious or unconscious bias relating to people with convictions and how does that manifest when it is combined with other “different from me” observations such as weight, height, race, gender and other barriers or protected characteristics?
- Do people with convictions face discriminatory decisions from employers, insurers, landlords and others?
- When a range of decisions go against people with convictions, do they tend to attribute their criminal record as the important factor in this decision?
- To what extent is there self de-selection by people with convictions due to misconceptions and does this contribute to self selecting stereotypes and avoidance behaviour, self de-selection, lying on application forms and conviction disclosure anxiety?

- What rights and responsibilities do people with convictions have to withhold or disclose conviction information in different circumstances?
- Do people with convictions know about these rights and responsibilities?
- How does it feel to be asked about your criminal history?
- Is a criminal conviction a reliable risk proxy?
- How many students are arrested or convicted while they are studying and what support do they need?

These questions, among others were raised and discussed by participants throughout the project. Where evidence was found; this report will contextualise it and make recommendations for policy and practice decisions.

Methods

This report uses both evidence from a desk based review of available information and research, and empirical data collected during the Study With Conviction project. 80 stakeholders from education and criminal justice (including people with lived experience of criminal justice) were interviewed. The project also facilitated a stakeholder event inside HMP Barlinnie in partnership with University of Strathclyde which included the participation of serving prisoners. Community of practice events were facilitated to help unpick the problems and solutions in more detail and start to inform opportunities for practical changes in the participating organisations. This information is supplemented by existing research where it was available.

These approaches were used in order to understand whole system problems and potential solutions which relate to the impact of having criminal convictions on access to and outcomes from further and higher education in Scotland.

Available Research

Most of the relevant research literature regarding criminal convictions in relation to matriculation of students has been written in an American context where there is a subtext of incidents involving firearms in education institutions. It provides little relevance to this project or Scotland, where there is not a gun culture and public protection mechanisms are in place such as the Police Act (Scotland) 1997, Protecting Vulnerable Groups Act (Scotland) 2007 as well as Multi Agency Public Protection Arrangements (MAPPA) which actively monitor and share information about known individuals who may pose a risk of harm to others.

Section 1: Numbers and profile of those with convictions.

The Study with conviction project made freedom of information requests to UCAS, Police Scotland and the Scottish Court Service in order to establish if there was any reliable large scale meaningful data relating to criminal convictions and studying. We found that no data was routinely collected or available. Our enquiries to education institutions regarding available information showed that the information they held was limited in value because of the following reasons:

- Where data was available it related to Yes/No criminal conviction information which could vary from petty offences through to serious and persistent offending histories. The vast majority of convictions processed by Scottish Courts relate to summary offences disposed by small fines or community orders. Therefore the lack of context diminishes the value of the data.
- The information is collected from a self disclosure mechanism which is likely to include over-disclosure of non-conviction information as well as non-disclosure of convictions. Therefore even the Yes/No information would not pass scrutiny tests.

There is limited evidence about the frequency and characteristics of people with convictions in Scotland, but where the data exists this is explored below, along with an equality impact assessment relating to good practice in supporting people with convictions.

Having a criminal record does not define individuals in any meaningful way. In the reporting period 2013-14¹, only 13% of court disposals involved a custodial sentence (of which 66% were sentences for 6 months or less), 17% were community orders however 55% of all sentences were fines and a further 15% were other sentences such as admonishments. From this information we can see that 70% of sentences result in minimal or no further engagement with criminal justice support. The crimes and offences are commonly minor but include a small number of serious crimes which are reported widely. Therefore the criminal record label should be considered with caution.

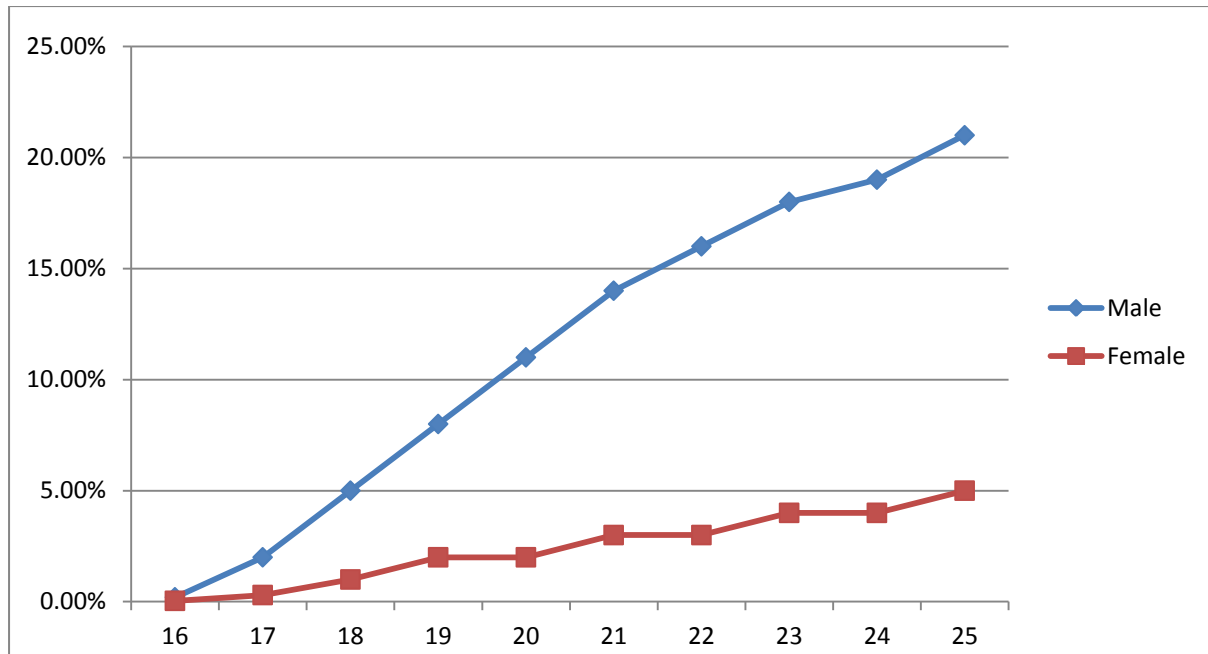
a) Age and Gender

Evidence reveals that at least one-third of the adult male population and nearly one in ten of the adult female population is likely to have a criminal record. Using 2011 data from the Scottish Offender index, the chart below shows the percentage of people who have been convicted in court at least once based on their age. This excludes diversions from prosecution, direct measures and children's panel

¹<http://www.gov.scot/Resource/0048/00481722.pdf>

interventions which may show up on higher level disclosure certificates such as PVG scheme membership. Children’s Hearing System, convictions before 1989 and convictions for motoring and other minor offences are also excluded.

Figure 1: Percentage of people who have been convicted in court at least once based on their age



Source: McGuinness, P., McNeill, F. and Armstrong, S. (2013), 'The use and impact of the Rehabilitation of Offenders Act (1974):Final Report', SCCJR 02/2013, University of Glasgow.²

Figure 1 shows that whilst potential students of school leaving age are unlikely to have convictions there is a higher probability that adult returners will have a conviction. The graph also shows that 16% of all 22 year old men in Scotland have at least one criminal conviction and while this average cannot be directly related to the profile of a 22 year old male graduate but it strongly suggests that a significant minority of students graduate with convictions.

The graph also demonstrates clear gender differences therefore unnecessary barriers relating to criminal conviction disclosure would affect men disproportionately.

b) Ethnicity

In 2011/12 minority groups represented 3.9% of the prison population compared to an estimate of 3.2% of the general population in Scotland.³

²<http://www.sccjr.ac.uk/publications/the-use-and-impact-of-the-rehabilitation-of-offenders-act-1974final-report/>

³<http://www.gov.scot/Publications/2013/06/1953/10>

The most comprehensive available statistical information about race and the criminal justice system relates to England and Wales but not Scotland. Figure 2 below demonstrates disproportionate links between criminal justice interventions and ethnicity sourced from Statistics on Race and the Criminal Justice System 2012⁴.

Figure 2: Proportion of individuals in England and Wales in the Criminal Justice System by ethnic group, compared to general population.

Data	Type of Ethnicity ⁽¹⁾	Time Period ⁽²⁾	Ethnic Group					Unknown	Total
			White	Black	Asian	Mixed	Chinese or Other		
Population aged 10 or over	Self-identified	2011	87.1%	3.1%	6.4%	1.7%	1.7%	-	49,443,451
Stop and Searches (s1) ⁽³⁾	Self-identified	2011/12	67.1%	14.2%	10.3%	2.9%	1.3%	4.2%	1,120,084
Arrests	Self-identified	2011/12	79.5%	8.3%	5.9%	3.0%	1.4%	1.8%	1,235,028
Penalty Notice for Disorder	Self-identified	2012	68.8%	2.1%	5.5%	0.6%	3.8%	19.3%	106,205
Cautions ⁽¹⁾	Officer Identified	2012	83.9%	7.0%	5.2%	-	1.4%	2.6%	188,610
Court Proceedings (Indictable)	Self-identified	2012	71.4%	7.8%	4.7%	1.9%	1.1%	13.1%	375,874
Convictions (indictable)	Self-identified	2012	73.2%	7.5%	4.5%	1.8%	1.1%	11.9%	308,124
Sentenced to Immediate Custody (Indictable)	Self-identified	2012	70.6%	8.9%	5.5%	1.9%	1.7%	11.4%	81,082

Whilst, Scotland has different racial demographics from the rest of the UK and the limited available information suggests a less significant ethnic minority correlation with criminal justice, Scottish Universities recruit from the whole of the UK and beyond and therefore if unnecessary barriers relating to criminal conviction disclosure exist, these would affect people from some ethnic groups disproportionately.

c) Religion

Research commissioned by the Scottish Parliament, “The report Offender Demographics and in Scotland and the UK”⁵ confirms “there are a disproportionate number of Catholics in Scottish jails, which is especially pronounced in the west of Scotland, and further that this disproportionality is evident in long term sentence length.” In England, the factors of disproportionality and religion in jails tends to focus on Muslims. In Scotland the number of Muslims in jails is small, but their

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269399/Race-and-cjs-2012.pdf

⁵http://www.scottish.parliament.uk/S3_PublicPetitionsCommittee/Submissions_07/Researchaspublished-24-12-10.pdf

numbers are also disproportionately high in Scottish prisons. The available information relates to people serving prison sentences rather than a wider cohort of people with convictions, so the evidence relating to barriers of minor irrelevant conviction is not available. However the research also indicates disproportionate poverty linked to Roman Catholics and Muslims in Scotland and the poverty conviction linkage is well referenced. Therefore, if there are unnecessary barriers relating to criminal conviction disclosure, these would affect people from some religious groups disproportionately.

d) Disability

There is no available data relating to disability intersections with criminal histories in Scotland, however feedback from the British Association for Supported Employment in Scotland (BASE), describes “the mix of an offending history and a disability, either diagnosed or not as creating one of the most complex and challenging groups to support.”

Feedback from Supporting Offenders with Learning Disabilities Network in Scotland (SOLD) confirms "There is not currently a validated method for identifying people with learning disabilities in the criminal justice system in Scotland. While precise numbers are unclear, it is generally believed that a significant minority of people with a learning disability do come into contact with the criminal justice system. Members of the SOLD network believe that there is need for immediate action to ensure that those people with learning disabilities that are currently in the criminal justice system are identified and have access to support including while in custody and upon release" The SOLD Network are currently seeking to establish improved methods of identifying people with learning disabilities inside the criminal justice system.

e) LGBT

While there is no data which links LGBT people with offending, direct feedback from the Equality Network suggests that LGBT people in prison are at risk of sexual assault and mental health issues and they stated that “LGBT people are at particularly high risk of being treated very badly by services”. This suggests that criminal convictions would impact more negatively on LGBT people.

f) Looked after children

A Who Cares Scotland information-sheet from July 2013 suggests that 50% of Scottish prisoners have been in care and the young male prisoner population is estimated at 80% from a care background. This suggests that people with care experience would have a high likelihood of facing further disadvantages if they faced unnecessary barriers relating to criminal conviction disclosure.

g) Poverty

The correlation between poverty, inequality and criminal justice in Scotland is clear and is set out in detail in research from the Edinburgh Study of Youth Transitions which shows that young people from deprived neighbourhoods are more likely to be convicted than young people from more affluent neighbourhoods for similar offences. Poverty, Inequality and Justice: Justice Matters November 2015.⁶ The theme linking poverty and crime in Scotland is reinforced by Social Exclusion and Imprisonment in Scotland,

“Throughout the range from most prosperous to most deprived communities there is a near absolute correlation between level of deprivation and imprisonment rate”.⁷

This evidence suggests that people from neighbourhoods which are ranked with higher deprivation would have a high likelihood of facing further disadvantages if they faced unnecessary barriers relating to criminal conviction disclosure.

The MOJ DWP and HMRC data joining project “Experimental statistics from the 2013 MoJ /DWP /HMRC data share“ Jan 2014⁸ used a cohort of 4.3 million people in with convictions in England and Wales and correlated criminal conviction data to economic activity data. The results show correlation with low pay and unemployment throughout an 8 year period for which the data was available.

They found that for those who had convictions their median P14 income (this excludes income from self employment, cash-in-hand work and some lower paid jobs. The P14 income is gross income and includes income for part-year and part-time work – it does not only reflect full-time, annual income.) was £14,300 in 2011/2012 (eight years after conviction/caution or release from prison). No direct general population comparison is available, however the Annual Survey of Hours and Earnings, which calculates the figures on a different basis, shows that the median amount of earnings (full-time and part-time) for UK employees aged 16 and over in 2011 was £21,100.”

The median income by ethnicity for people with convictions, 8 years after their conviction was: White - North European £14,600, White - South European £10,700. Black £11,400, Asian £11,700, Chinese, Japanese or South East Asian £12,400, Middle Eastern £8,700, Unknown £16,500. The Median income in 2011/12 for men with convictions was £15,300 and for women with convictions was £9,400.

⁶<http://scottishjusticematters.com/the-journal/poverty-inequality-and-justice-november-2015/>

⁷<http://www.scotpho.org.uk/downloads/SocialExclusionandImprisonmentinScotland.pdf>

⁸<https://www.gov.uk/government/statistics/experimental-statistics-from-the-2013-moj-dwp-hmrc-data-share>

The median income in 2011/12 by type of sentence, 8 years after their conviction: Absolute discharge £12,300, Conditional discharge £12,500, Fine £15,700, Community sentence £12,700, Suspended Sentence Order £12,400, Immediate custody £10,300.

These results suggest that even minor criminal convictions which are largely disposed by fines, absolute discharge or conditional discharge still have a long term correlation with deprivation and that custodial sentences correlate with poverty most acutely.

The results also imply a multiplying negative effect of intersecting convictions with certain protected characteristics although direct comparisons with gender and ethnicity pay gaps in the general population would require further research. Some feedback from stakeholders suggested that women and people from minority ethnic backgrounds face more difficulty with disclosure.

Section Summary

Although the criminal conviction marker is not a protected characteristic, its correlation with disadvantage and apparent negative impact when intersecting other barriers should be considered as an equality impact. Therefore unnecessary barriers to people with convictions, not only obstruct the widening access agenda but such unnecessary barriers also indirectly affect protected characteristics in various ways.

Recommendation 1: Knowledge base and Helpline

The Scottish Funding Council should commission a central service for colleges and universities to provide a knowledge base and helpline facility for students and staff to provide accurate information. This will support people to disclose effectively when they are required to do so and advise on conviction relevance relating to career and course choices etc.

This central body should also co-ordinate the development of all the recommendations laid out in this study and report progress to the SFC.

Recommendation 2: Available Data

Methods of collecting and analysing relevant conviction data in relation to the student cycle should be explored by the Scottish Funding Council in partnership with Scottish criminology academics.

Having a criminal conviction or the likelihood of getting one has significant statistical relevance to the widening access agenda, however the available data about students with convictions was either unavailable or lacked integrity and or the

required context to produce meaningful quantitative information about the successes of the sector in attracting people with convictions and supporting them to succeed. Setting a benchmark now, would also permit comparisons over the long term.

Recommendation 3: Equality Impact

All reasonable efforts should be made by UCAS, Colleges and Universities to mitigate the impact of conviction disclosure for all applicants in order to support widening access and equality objectives.

Section 2: Conviction Barriers

People with convictions and their key workers shared various experiences, observations about criminal convictions as a barrier and the comments below capture some of the challenges they faced:

“Every time I’m asked the question it feels like my past is ahead of me again”

Criminal convictions knock the confidence out of people and so much of our work is about raising self esteem.”

“People with convictions are walking about with a ball and chain basically but it’s often a much bigger and heavier ball and chain in their mind.”

“One person who came to see me had a conviction for graffiti; she was convinced that this conviction would stop her from getting onto a course which needed PVG Scheme membership. These perceptions are too common and it usually comes from poor advice from peers or other agencies”

“There is a shortage of support to advise people what they need to disclose and how to do it and people don’t even think to ask for it”

“There are some crimes where there is not usually much associated stigma, such as minor road traffic offences which sometimes end up in court but most people need support to disclose convictions. Unfortunately, there is not much support available and people don’t think to look for it.”

These participant comments illustrate the perceptions people hold and the impact of asking for disclosure. If people are properly supported to understand conviction relevance and to disclose convictions accurately and effectively, then their problems accessing education courses are rare. However, most people with convictions don’t get support from anyone to do this and are inclined to avoid applications which ask for disclosure, fail to disclose or disclose ineffectively.

The scale of the disclosure issue

The Boxed Out research from USA estimated that 67% of applicants who initially tick the criminal history question fail to complete the application compared to 20% of those who do not tick the box. The research also uncovers further attrition in the next stages of the application when more details are requested and cites one institution which reported that only 5 out of 30 applications proceeded when further information was requested. This is based on a sample of 5,752 applications where the box is initially ticked.

There are some methodological flaws in the boxed out research in that this comparison does not account for individuals who initially lied when asked to tick the

criminal history question. Also there is no control group which matches the other common profile markers of the people with criminal histories. However, the report does demonstrate emotive and practical responses, whereby people de-select themselves when they are asked to disclose convictions.⁹

UCAS were unable to provide comparative data in the UK and while there are cultural and legal differences between Scotland and the USA, this research is consistent with the following experiment related to disclosure and employment in the UK.

Business in the Community is a leading charity which engages with UK businesses to support corporate social responsibility. They identified similar attrition problems in applications for employment where the criminal conviction question is asked and launched a business campaign in October 2013 called Ban the Box UK. This campaign specifically asks businesses to delay requesting criminal record disclosure until later in the recruitment process (ideally after the job offer has been made) and if disclosure is required. The campaign also seeks to improved procedures wrapped around this.

A Business in the Community Survey of 123 prisoners¹⁰ showed “Only a third of prisoners said they would apply to a job with a tick box” and “Nearly half of prisoners suggested they would not declare their convictions when asked on an application form, many for fear of automatic rejection”

“One barrier is their perceptions, they de-select themselves when they see a conviction disclosure question on an application form”

The impact on outcomes

Beyond the immediate impact of the worry about justice interventions affecting study, a criminal conviction has an immediate effect on job outcomes.

One of the students mentioned above was convicted for possession to 2 ecstasy tablets at a music festival and described vividly how getting arrested and then eventually convicted had a significant impact on his mental health when he was a student. He was terrified to disclose this to anyone at University and was under the impression that he might get kicked off his course if anyone found out. His ambition was to become a teacher and similarly his failure to seek or find support or guidance on the matter, left him assuming that the teaching profession would be closed off to him as a result of his conviction.

⁹http://communityalternatives.org/pdf/publications/BoxedOut_FullReport.pdf

¹⁰<http://www.bitc.org.uk/our-resources/report/finding-work-after-prison-what-prisoners-think-about-tick-box#sthash.e0a2Vrbp.dpuf>

After completing his course, he was offered graduate jobs on 2 separate occasions and then refused them because the conviction showed up on a disclosure certificate. He had looked up information on the internet which appeared to show that his conviction was “spent” under the terms of the Rehabilitation of Offenders Act 1974, however the information he found related to rehabilitation periods in England and Wales rather than Scotland. When he came to the attention of the Study With Conviction Project, he was working in a fast food outlet in a role which was completely mismatched to his abilities. However, after the project provided him with the correct information and introduced him to a graduate employer they sought to head-hunt him. He is now reviewing his options and also re-considering his options for teacher training.

A community justice planning officer who was interviewed explained minor convictions like this are commonplace but they present no public risk, therefore they require no additional supervision from community justice services and as a result it is unlikely that there would be available specialist support for them. Such resources are particularly short and are prioritised for people who are in chaotic situations or present a risk to themselves or others. However clearly there is a need to address support requirements like this.

a) Disclosure barriers

The experience of disclosure is different for each individual. The following factors summarise the feedback from justice workers and people with convictions.

Anxiety: People with convictions most commonly demonstrate anxiety about disclosing convictions. Anxiety levels are on a scale which relate to factors including the personal resilience of the individual, negative or positive experiences and perceptions of previous disclosure. Other factors like advice from elders about the consequences of criminal records were attributed to escalating anxiety about minor convictions as well as personal aspirations.

Prison experience was seen to escalate this anxiety for conviction disclosure, partly because prison sentences tend to reflect more serious crime but also because people report a “contamination perception” whereby people who have prison experience feel judged that they have been somehow contaminated by the badness of prison over and above the conviction.

Justice workers also agreed that conviction disclosure anxiety escalated with the seriousness or perceived seriousness or toxicity of the conviction. Examples given were, sex offences, racial crime and arson as offence labels which people are most anxious about disclosing regardless of seriousness of the offences. Other concerns raised related to personal safety from vigilante actions after disclosure of such offences.

Anxiety was also seen to escalate for people with relatively minor convictions after experiencing disclosure setbacks or through embarrassment or where they held inaccurate assumptions about the way that their criminal record would be used against them.

“We try to stop people ruling themselves out because of disclosures and encourage them to apply because we know that it is not necessarily a barrier to them moving into education.”

Poor Communication Skills: The other disclosure behaviour which creates barriers was described in interviews as poor communication skills and sometimes perceived as apathetic. This can occur when an individual has little self awareness that convictions may be perceived as negative, or conviction disclosure may have been habitually used as a shock tactic in the past, or may be a coping mechanism for the anxiety. This might lead to a terse verbal statement along the lines of "I just stabbed a guy" rather than explaining the context of their life experiences, or the situation they were in.

Embarrassment and shame: Mistakes of the past are very personal. The way that crime can intertwine with trauma, abuse and a mental health problem (as well as many other things) means that disclosure emotions are complex. Key workers commonly cited low self esteem as a problem and that people with convictions often perceived that they would instantly be judged by their accents, their appearance and their home neighbourhood so the conviction just becomes another excluding factor.

“When they ask you about convictions, it makes you feel so small”

Lack of Knowledge about rights: The interviews demonstrated a widespread lack of specialist knowledge or services to support people to understand their rights to withhold disclosure at certain times under the Rehabilitation of Offenders Act 1974. Significantly different “rehabilitation periods” between Scotland and England and the misperception of information as relating to the UK exacerbates the problem. Some admissions staff also made assumptions that individuals would know if their convictions were spent or unspent.

“I know people who have convictions that are long gone and they have not applied for promotions at work or they haven’t returned to education simply because they think someone is going to find out about that.”

Human tendencies: Justice key workers also explained that some people describe their convictions inappropriately using terms like “it was just” or fail to present a factual account of the circumstances in other situations people appear to find disclosure a cathartic experience. Similarly participants from outside the justice

sector commonly fed back that they had not considered how difficult it is to answer a criminal conviction disclosure question.

b) Discrimination

There was widespread agreement among stakeholders that sometimes it is right to discriminate against someone on the grounds of their conviction. This could relate to properly assessed evidence of risk to others and in other situations it could relate to protecting the person with convictions against training for a profession which they could never work in given the nature of their convictions. However, exclusion on the grounds of vocational relevance to convictions should be tempered with the understanding that the course may relate to a personal interest and provide transferrable skills to take to other occupations. A range of factors which lead to discrimination were raised by stakeholders and are described below.

Ill informed risk assessment: Complex decisions can be made using inaccurate information from someone who lacks expertise. Criminal Justice Social Workers have such expertise and stakeholders in tertiary education commonly cited valuable information from these sources. Similarly, stakeholders from 2 universities mentioned that they have a criminologist as a member of the decision panel when conviction risk decisions are escalated. If an institution seeks to be as inclusive as possible, then poor understanding of risk can conflict with duty of care responsibilities.

Procedural failures: These could include failures in information assurance relating to the conviction information, or a staff member making a decision beyond their authority to exclude someone on the grounds of their conviction after an applicant discloses unexpectedly during an interview or on a personal statement.

Conscious or unconscious bias: Crime is particularly emotive and personal experiences of crime or the experiences of family or friends could influence decisions. Similarly a conviction combined with a “not like me” observation relating to an applicant’s appearance, accent or even a protected characteristic may also influence decisions. There is a tendency for people to overemphasise personal characteristics to explain someone else's negative behaviour or failures, rather than considering the situation's external factors.

“Things were going really well at the college interview until I raised the issue of my criminal history and I was told that I would never be able to work with young people because of my convictions. The fact that I was already doing voluntary work at a youth club was not considered and I left that interview devastated and demoralised.”

Perceptions of Apathy: Poor disclosure is described above and failure to disclose effectively can give assessors a perception of apathy towards the conviction. People with convictions also raised concerns that a conviction from their past is no longer relevant to their life and being asked the question feels like an intrusion.

“The guy asking me the questions at the college didn’t seem to appreciate that the conviction was 10 years ago and the offence happened 2 years before that. I got a community order so it wasn’t the crime of the century.”

Criminal history disclosure occurring outside the normal admissions process.

While conviction history information is normally separated from any academic decision making there are a number of ways that it can leak in to the academic assessment regardless of any Chinese wall inside a college or university.

One of the individuals supported by the Study With Conviction project attended the stakeholder event at HMP Barlinnie and sought support from the project to complete an application for University after he was liberated from prison.

He was planning to disclose his criminal history in his personal statement in the application in order to factually explain the previous 19 months of his life and to provide context relating to why 2016 would be an ideal time for him to start as a mature undergraduate. Had he disclosed in this way then it would have practical difficulty for the academic assessors to evaluate his application without also considering his criminal history. However, the applicant makes a good point in that his prison experience provides a useful context for the academic assessor to consider his wider positive motivations for starting to study particularly this year.

Another concern for this individual relates to the academic interview and how he would practically account for what he has done recently in an honest and transparent manner unless he also disclosed his time in prison.

Two of the careers advisers who engaged in the project also described common situations where college lecturers ask about the criminal history of applicants during interviews even where the college has a policy of not asking about criminal history and their courses do not require PVG certification. Other feedback from people with convictions suggests that the practice of being asked for disclosure by tutors may be more widespread.

In such circumstances people with convictions may be caught off guard and disclose inappropriately or over-disclose spent convictions which would be discriminatory for the college to consider under the Rehabilitation of Offenders Act 1974.

In other cases lecturers may have prior or third party information about individuals, make assumptions about the criminal history of applicants based on other verbal or non-verbal clues and/or apply an internet search using the applicant’s name to seek

more information which would commonly return news information. For more information¹¹ on the “Google effect” see an article from the charity Unlock.

These points suggest that wider communication of policies for the disclosure of convictions should be communicated internally and externally and that some awareness training is required.

In some situations PVG registration is requested as a classroom exercise where students or applicants were asked to write down details all of the details about their criminal history. People with convictions have described as embarrassing and without sensitivity for the personal nature of this information or consideration that the individual may avoid disclosure and self de-select. At the admissions end this process was generally seen as an efficient mechanism for disclosure but it was also described by a legal adviser as an article 8 human rights infringement as well as a Data Protection Act breach.

“I was asked to fill in my criminal record details on a form while I was in a group of other people applying. I felt so uncomfortable, not even my family knows about my criminal conviction and here I was surrounded by strangers being expected to fill it in”

One person with conviction who engaged with the project described a situation at her college. She had disclosed her convictions up front and then when the PVG scheme membership information came through to the college, they advised her PVG had been assessed as unsuitable for her to go on placement and this would prevent her from getting her qualifications. This decision was made without consulting her or providing her with an opportunity to discuss how she has changed her life. She was also told that her convictions had breached the risk level which is allowed and therefore she would be unable to appeal the decision. She also felt that discussions about her convictions were also conducted without due regard for her privacy. She is a vulnerable person who has made extraordinary changes in her life to get to where she is. Her identity as a student rather than an ex-offender is precious to her and she feels that education is making her thrive so the prospect of losing all this was painful for her. After an intervention from the college principal she was given permission to complete the placement and she has been asked to support changes to college policy and procedure regarding disclosure of criminal convictions.

The Legislative Framework

The legislative framework which gives some rights to people with convictions over disclosure and the way information is interpreted is complex. The Rehabilitation of Offenders Act 1974 has complex algorithms and exceptions and NACRO advised that there are implications relating to the European Convention of Human Rights and that there are currently test cases surrounding disclosure with current legal

¹¹<http://www.unlock.org.uk/unlock-speak-at-ico-policy-conference-the-google-effect-criminal-records-and-the-right-to-be-forgotten/>

challenges using Article 8 “right to respect for one's "private and family life, his home and his correspondence". A short note about the legislative background is available in [Appendix 1](#).

The Scottish Government has proposed changes to the 1974 Act in order to reduce the time periods that individuals need to disclose their convictions for.

“Concerns about disclosure are different for each person. It helps if they know their rights under the Rehab Act (Rehabilitation of Offenders Act 1974) but most people don’t have a clue.”

Recommendation 4: Legislative reform

The Scottish Government should implement the proposed changes to the Rehabilitation of Offenders Act 1974 in Scotland in order to reduce the stigma and potential discrimination faced by people with convictions.

Recommendation 5: Students studying for professions exempt from the Rehabilitation of Offenders Act 1974 should have support available.

Courses which are linked to such professions and occupations which are exempt from the 1974 Act should include awareness sessions about the impact of convictions on these professions as well as signposting for students to seek support if they are charged.

Section 3: Support that works

There was widespread agreement among stakeholders that holistic support is the primary requirement for all disadvantaged people. This builds personal resilience to thrive in education despite additional barriers such as poverty, poor health, substance abuse, fear, negative experiences of school etc. Developing the right support for dealing with conviction disclosure, is therefore not a panacea but it helps an individual to deal with one label which is particularly stigmatising. “The Offender”

Largely the stakeholders who support people with convictions were positive about the inclusiveness of colleges and universities. If an individual receives the right support then they can have a much smoother transition to education, though education and into employment. The stakeholders defined the following requirements.

- Conviction relevance advice relating to how their convictions might or might not impact on their opportunities for education or employment.
- Technical awareness of their rights to withhold conviction information at certain times.

- Support on how to disclose convictions honestly and effectively in applications to education or employment.

After researching the local impact of criminal convictions in relation to social deprivation, Fife Council have implemented a multi partnership project for people with convictions. This includes **Apex Scotland** to provide rounded disclosure support for the purposes of education and employment. Such specialist services are uncommon and where they exist they tend to focus on small numbers of people with serious or persistent offending histories. Therefore, the integration of this service with the mainstream employability pipeline enables more people with convictions, including the much wider group of people with minor convictions who normally receive no support. This combined with a MAPPA protocol agreement with the local college (which minimises the requirement of any disclosure), is evidence of a well designed whole system approach to support people with convictions to access education.

In Edinburgh **Access to Industry** provide community college opportunities and access courses for people who would not normally consider education, many of them have convictions. They combine rounded disclosure support for people with convictions to continue on to college where they retain the support of a case worker.

In Glasgow, **SWAP West** ask for criminal record disclosure as a support question in order to provide appropriate advice on course/career choice for individuals seeking to progress to Higher Education as adult returners. They have key staff with technical knowledge of the Rehabilitation of Offenders Act 1974 and other relevant legislation in order to support individuals on what needs to be disclosed in different situations. Their experience in supporting people with convictions provides them with sensitivity to conviction disclosure anxieties and problems.

All these services engaged with the project and help potential students first to see the benefits of disclosing fully and as soon as possible, framing such a decision as a positive statement about the individual's current state. They also help individuals to be realistic about the possible implications of such disclosure, with an eye towards alternative, positive routes back into education. If the end result of disclosing criminal convictions is likely to be a "dead end" for the student in terms of his/her original ambition, then they are guided onto suitable alternative paths.

a) Supports for people with care experience

Who Cares? Scotland manages a Corporate Parenting Scotland project¹² supporting Colleges and Universities to develop Corporate Parenting strategies and fulfil their obligations as Corporate Parents. There are close links between care experience and a risk of offending and Who Cares Scotland advocacy is an important service which people with care experience can access.

¹²<http://www.corporateparenting.co.uk/>.

The Children and Young People (Scotland) Act 2014 sets out responsibilities for Colleges and Universities in Scotland for corporate parenting. The Centre of Excellence for Looked After Children in Scotland (CELCIS) has a briefing paper¹³ which sets out responsibilities.

During interviews widening access professionals explained that a range of mechanisms are in place to support access to tertiary education and support people throughout the student cycle if they disclose their care experience. And that contextualised admission processes are in place to counter the attainment gap.

b) Supports for studying after prison

Positive Prison? Positive Futures... is a community of interest which draws upon the shared lived experiences of people who are or have been subject to punishment. They have an expertise about the stigma of prison.

One man with prison experience who was interviewed completed a degree and postgraduate at 2 separate universities but another university had rejected him on the grounds of a risk assessment. He is now studying for a further post graduate qualification and while working as a business manager. His conviction is very serious event from his youth and he was the subject of a high profile media campaign while studying for his first degree and was a victim of social media trolling too. The peers in his course became concerned but the course leader was able to speak to them as a group and resolve tensions. This individual then resolved to ensure that he disclosed his past to people as soon as he started to get to know them and this approach has tended to work for him since then. This individual is obviously resilient and capable with good communication skills and has been well supported.

In another case someone with prison experience disclosed his convictions to peers and the fallout was so great that he was unable to continue the course.

The experience of life after prison is unique to each individual, but there are common experiences of stigma, recovery from incarceration and integration problems which other people with lived experience of prison will understand better than most. Positive Prisons? Positive Futures... provide informal peer mentoring connections and can provide advice and guidance to students studying after prison.

c) Supports for students being convicted for the first time

Interviews with support services in colleges and universities and the workshop with careers advisers suggested that few individuals came forward seeking support. However the project interviewed 3 individuals who were convicted for the first time when they were undergraduates and each of them recalled similar emotions about the experience. Each was the first person in their immediate family to be convicted

¹³http://www.celcis.org/files/6714/3878/4827/Inform_Children_Young_People_Act_Part_9-v2.pdf

and they all described symptoms of anxiety as they were waiting for each stage of the criminal justice process to proceed and they were sure that it affected their study. All of them were worried about the impact of their conviction on their status at the University and whether or not they would be removed. All of them were worried about the way that it would affect their career prospects. None of them sought the help of careers services but one of them spoke to a lecturer who failed to understand the wider implications of the conviction and merely provided a warning about alcohol consumption. One of them did not even seek the support of student peers. One of them told a parent in the weeks before he was due in court after months of anguish. All of them were disposed by fines of £200 or less which demonstrates the minor nature of the offences. While this feedback only relates to 3 individuals, it is consistent with other feedback from key workers who describe similar account of people who have one minor conviction. These accounts suggest that there may be a significant number of other students who are suffering in silence.

Recommendation 6: Local Authorities

Local Authorities should integrate specific conviction disclosure support for all people with convictions through their local employability pipelines.

Recommendation 7: Support for students being convicted for the first time

The NUS should facilitate collaboration between student support services, student associations to seek solutions and the proposed helpline service so that students who are arrested or convicted feel more confident about seeking effective support.

Recommendation 8: Awareness about conviction stigma

The SFC should develop a strategy to improve awareness about conviction disclosure anxiety and the offender stereotype should be considered within existing or new unconscious bias training in further and higher education. The potential for disclosure outside the processes, suggests that academic assessors should have some awareness training on subjects such as their employer's procedure for dealing with criminal history, unconscious bias training and conviction disclosure anxiety. A wider group of education staff should also know where to signpost individuals and where to find additional information.

Recommendation 9: Advice for course choices and job search

With central support from a helpline service, institutions, support services and careers services should offer support relating to disclosure of convictions and conviction relevance throughout the student cycle in order to prepare people with convictions for honest and effective disclosure methods. This should include course choice and employment as well as meeting the pastoral care needs of students with convictions.

Section 4: The procedures used relating to conviction disclosure

Admissions and support staff who were interviewed for the project described different systems and approaches to admissions and criminal record disclosure.

The most significant difference in approaches to seeking criminal record disclosure relates to whether or not the course requires PVG scheme membership for regulated work placements such as medicine, nursing, teaching, social work and social care

Courses which have no special disclosure requirement (most courses)

Courses which do not require PVG scheme membership sometimes do and sometimes do not request conviction disclosure. Usually this is made at an institutional level. All stakeholders from education described processes to separate conviction disclosure from academic assessment. The decision to admit or reject a person disclosing convictions is usually a risk decision made by an expert panel, a senior manager or devolved to departments. In the vast majority of cases where risk concerns are raised, admissions stakeholders consistently advised that concerns prove insignificant or control measures are implemented and in each institution rejections were described in terms of rare occurrences. On face value this appears robust but the project did not scrutinise any decisions to reject individuals. See also UCAS procedures. [Appendix 2](#)

Not all universities use the criminal conviction disclosure on UCAS forms for courses unless there is a special disclosure requirement for a course such as medicine. Similarly many colleges choose not to ask for disclosure at all except in such circumstances and they recognised that the question as an unnecessary barrier.

Courses which lead to professional registration and require PVG and involve regulated work as defined in the Protection of Vulnerable Groups (Scotland) Act 2007

There are various courses which have vocational work elements with vulnerable people and include Medicine, Nursing and Social Care work among others. Admission staff for such courses are tasked with a complex set of factors to consider in their decision making process which go beyond academic suitability.

Stakeholders described 3 additional factors which need to be considered.

1. Will the applicant be able to get PVG scheme membership? If not, then they will not be able to undertake a work based placement or complete the course
2. Will a placement provider be willing to employ them for the vocational element?
3. An individual can complete their course before being refused professional registration with GMC, NMC or SSSC or other bodies.

Stakeholders from the institutions recognised the requirement to find the right balance and were positive about removing barriers whenever they could. They also described ongoing liaison with placement providers, regulatory bodies and employers. However, many stakeholders lacked awareness about the emotional impact of criminal record disclosure and a lack of available advocacy about what to disclose and how to disclose convictions. The emphasis was more procedural in order to make it clear to individuals to get everything down, even if the individual was unclear as to whether or not they were obliged to disclose it. In some cases there was also no awareness of requirements that some spent convictions are now protected and these should not be requested and should be ignored if disclosed.¹⁴

Other Courses training for Professions and Occupations which are exempt from the Rehabilitation of Offenders Act 1974

Several courses train students for occupations and professions which are exempt from the Rehabilitation of Offenders Act 1974. These include pharmacy, law, accountancy, many banking positions, police officers and a number of other occupations which are referenced in the Rehabilitation of Offenders Act 1974, Exclusions and Exemptions Order Scotland 2013¹⁵. Such courses which train people for an exempt profession are also exempt from the 1974 Act and disclosure of spent and unspent convictions can be requested unless that conviction is protected. (For more information on protected convictions see **the legislative frameworks surrounding criminal conviction disclosure**)

UCAS can allow universities to specify whether or not to ask for disclosure of spent convictions in such cases but universities are reluctant to seek full disclosure unless there is a vulnerable person's element to the course. While this is advantageous for the applicant in terms of avoiding initial discrimination, there are risks that an individual with spent convictions could graduate and only fully understand disclosure problems when they start to apply for employment or professional registration as an accountant, a pharmacist or a lawyer.

Good Practice Examples

Both the University of Edinburgh and Edinburgh Napier University use a **panel risk assessment system** which includes at least one expert member who is specifically trained in criminal justice risk assessment from a criminal justice risk assessment tools. On face value this appears to provide both fairness and address safety concerns. The procedures are both transparent for applicants and monitored in the organisations' quality systems.

¹⁴<https://www.disclosurescotland.co.uk/news/UKSCFAQs.htm>

¹⁵<http://www.legislation.gov.uk/sdsi/2013/9780111019085>

Many college admissions stakeholders explained that they **do not ask for previous conviction information routinely**. Some liaise with criminal justice agencies through the Multi Agency Public Protection Arrangements MAPPA to find out if any applicants present risks of harm to other students or staff. If necessary they implement risk controls or refuse the applicant entry.

University of Stirling invites NHS employers into interviews and they support the fitness to practice assessment¹⁶ for student nurse applications. The observation from this is that the university assessor should not feel compelled to draw a conservative line in deselecting an applicant in case who has a conviction.

There are lots of initiatives in place to engage with groups of people. Processes for contextualised admissions favour people with convictions in that they have a higher likelihood of care experience and deprivation. Widening access specialists explained that more evidence would be required before a conviction marker could be used for contextualised processes.

Ban The Box model used as an employment best practice

The Ban the Box model asks companies to consider whether or not the conviction disclosure question should be asked, then if the employer chooses to ask for disclosure, then it is delayed as far as possible so that applicants do not de-select themselves.

Companies signed up to ban the box include, Alliance Boots, Amey, Barclays, Carillion, Interserve, Ricoh and Sodexo.¹⁷

The current UCAS Procedure

UCAS currently require all applicants to disclose relevant unspent convictions for all courses and where the course has a vocational element which included regulated work, then acknowledgement of a wider range of criminal history is required.

The available guidance on the UCAS web-form is blurred by variances in the 1974 Act between Scotland and the rest of the UK. The UCAS application web-form links rehabilitation period guidance to the Ministry of Justice for England and Wales. UCAS web-forms viewed on 25/11/2015 and analysed. The UCAS procedure for grouping disclosure for the application rather than for the institution creates some disclosure problems because some convictions are spent in England but not Scotland and vice versa. After the implementation of proposed changes in Scotland, more convictions will be spent sooner in Scotland. Therefore the UCAS process

¹⁶ <https://www.nmc.org.uk/concerns-nurses-midwives/what-we-do/what-is-fitness-to-practise/>

¹⁷ <http://www.bitc.org.uk/programmes/ban-box/who-has-banned-box-0>

creates non-compliance with the legislation because Universities will be passed inappropriate makers for spent convictions. For more information on UCAS see [Appendix 2](#)

Supporting Professionalism in Admissions (SPA)

SPA have produced an extensive toolkit¹⁸ for dealing with disclosure of convictions which sets out processes and procedures to enable consistency in decision making.

In many respects the document is fair and sets out standards for consistency and transparency. It has been referenced by some staff in education institutions and seeks to create frameworks for information flows.

It also suggests that “Admissions Offices will need to consider provision of training in this relatively complex area for all staff involved in the process, including those who answer queries from applicants, and may also find it useful to refer applicants to a body that specialises in providing guidance.”

However the document does not consider the support required to make effective disclosures, the likelihood of an applicant with convictions understanding their rights or existing public protection processes which are executed by the justice system such as rehabilitation programmes, parole and supervision arrangements or MAPPA. This leaves the relevance of a criminal conviction question unchallenged.

The SPA document also does not consider discriminatory factors against people with convictions mentioned in [Section 2](#) and as such does not consider similar best practice solutions in employee recruitment promoted by Business in the Community.

What would best practice look like?

The Community of Practice Workshops allowed participants to discuss best practice and of the key elements and explained below.

Criminal history and outstanding charges are always a relevant support question where a support services professional is concerned about changes in behaviour or a careers adviser is advising on course choices or applying for employment. The stakeholders who first picked up convictions as students described their anxiety about seeking help or disclosing their convictions to anyone. University Career Advisers were cautious about asking students for conviction information because they felt it conflicted with their approach for a student led service delivery; however they saw the value in raising the issue of convictions for students to think about and

¹⁸ <https://www.spa.ac.uk/sites/default/files/Good-practice-criminal-convictions.pdf>

seek support for when they address groups. Other careers and employability advisers viewed the conviction histories as a requirement to provide accurate information for conviction relevance and disclosure.

Similarly in the case of courses where PVG registration or other higher level checks are required relating to vocational elements, then there is value in receiving this information early in the application process so that students can be advised properly about the likely implications of their convictions. Ideally there should be initial signposting for independent advice so that applicants can properly consider what will and what will not appear on a disclosure certificate. There can often be delays in the PVG process and it can be damaging for an individual to start a course and then to be told that they cannot continue.

In the case of courses which have no special disclosure requirement then initial signposting for support may be useful so that the individual may consider conviction relevance to future employment prospects. Otherwise existing community justice supervision and sharing systems should provide relevant protections from known individuals. If such an individual was intent on deceiving their justice supervisor then it is unlikely that they would disclose convictions on an application.

If unforeseen wider reasons are required to request conviction disclosure, then it would ideally be requested after a conditional offer is made although some participants were concerned about the practicality of this.

One of the people with convictions who engaged with the project was left feeling suspicious about the decision from a university to deselect him because he had been requested to provide conviction disclosure information before any interview and was deselected soon after sending in his disclosure. Therefore the ideal time to request conviction information in the application process would be with the conditional offer as a proviso. This way everything is transparent.

Recommendation 10: UCAS procedure

In order to comply with changing provisions to protect people with convictions set out in the Rehabilitation of Offenders Act 1974 in Scotland. UCAS should either avoid asking for criminal conviction disclosure for Scottish Universities or set out separate disclosure forms for Scottish Universities so that applicants can disclose in line with Scots law when applying for Scottish Universities and English Universities within the same application.

Recommendations 11 – PVG Before course

There would be a benefit to both students and institutions if PVG scheme membership can be resolved before students start courses. This would allow admissions assessors to be more confident about offering places where there may be borderline concerns about the applicant's scheme membership. It also creates much more clarity for students. Also some students pick up new convictions or PVG markers while they are studying and are too anxious to tell anyone and there are obvious ramifications for completing their course and/or professional registration. Disclosure Scotland has confirmed that they can issue PVG scheme membership for courses training people for regulated work. The whole issue of removing unknown barriers at the earliest stage needs exploring including professional registration options for students with borderline convictions.

Recommendation 12: Implement conviction disclosure support signposting on applications

Review the methods of seeking personal conviction disclosure so that it is initially a support question in private which should enable individuals to be well informed about their own criminal history relevance for course choices and signposting to a support service which will help the individual contextualise their convictions and disclose them effectively for inevitable future disclosures.

Recommendation 13: Risk Assessment Panels

If a risk panel is used to accept or reject an applicant for the purposes of safety of students or staff, then it should include at least one expert member who is specifically trained in criminal justice risk assessment. In many institutions this would be a member of academic staff within a social work or criminology discipline.

Recommendation 14: Technical Knowledge of the Rehabilitation of Offenders Act 1974

More employees in existing specialist roles require technical training in disclosure. This should include the rights and responsibilities of individuals relating to disclosure of their convictions for the purposes of applying for courses or employment. This should be supported by a helpdesk for students and staff.

Recommendation 15: Quality Controls

QAA and Education Scotland should develop quality controls relating to maintaining consistency between policy and practice should be applied to practice for admission of people with convictions.

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Appendix 1

The legislative frameworks surrounding criminal conviction disclosure

The Rehabilitation of Offenders Act 1974, provides rights for people with criminal convictions. Unless they have a prison sentence which is longer than 30 months, then, their convictions will become spent after a period of time, known as a rehabilitation period. The 1974 Act was changed in the Legal Aid Sentencing and Punishment of Offenders Act 2012 in England and Wales and were implemented in March 2014.¹⁹ These changes provided significant new protections for people with convictions against discrimination from employers or providers of services. The Scottish Government set out proposals in a consultation in 2015²⁰ which (when implemented) will provide some shorter rehabilitation periods in Scotland than the rest of the UK.

It is discriminatory to disadvantage to an individual on the grounds of a spent conviction and spent convictions are considered to be very confidential personal information by public authorities.

¹⁹ <https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

²⁰ <http://www.gov.scot/Resource/0047/00477178.pdf>

There are a number of exclusions and exceptions to the 1974 Act which are detailed in the Rehabilitation of Offenders Act 1974 Exclusions and Exceptions Order (Scotland) 2013. This includes professions such as medicine, nursing, lawyers, pharmacists and many other occupations including traffic wardens and prison officers.

A new class of “protected convictions” was implemented by the Scottish Government in September 2015 and this provides new rights to people with older and less serious convictions by removing them from disclosure or consideration, even where the profession or occupation is exempt from the 1974 Act.

The Police (Scotland) Act 1997 implemented facilities whereby employers can check on the criminal history of employees which are processed by Disclosure Scotland.

The Protecting Vulnerable Groups (Scotland) Act 2007 implemented a scheme membership for people working with children or vulnerable adults and employers are updated should an individual become considered for barring if their behaviour becomes a concern to the police.

Beyond the legislation, many professional bodies such as Scottish Social Work Services Council (SSSC), Nursing and Midwifery Council (NMC) and others apply fitness to practice tests which include criminal history considerations.

The complexities of the 1974 Act commonly result in over-disclosure of spent or protected convictions. This is information which institutions have no right to handle or consider. The Information Commissioner’s Office provides guidance²¹ to employers on such matters in their document employment practices code in relation to compliance with the Data Protection Act 1998. Under key points in Section 2.15.3 it advises data processors to

1. Use a computerised or manual system to ensure spent convictions are deleted from the system.
2. Identify if your organisation may be justified in making exceptions to this, for example, certain convictions held in connection with workers who work with children.

If the applicant mistakenly discloses a spent or protected conviction then the conviction information should be deleted in most circumstances.

Justice key workers who were interviewed explained that people with convictions are normally unaware of their rights to withhold disclosure and the algorithm for calculating whether or not convictions are spent is complex and it is not easy to find reliable sources of support.

²¹https://ico.org.uk/media/for-organisations/documents/1064/the_employment_practices_code.pdf

APPENDIX 2

UCAS Processes explained

Retrieved from UCAS weblink <https://www.ucas.com/corporate/about-us/privacy-policies-and-declarations/ucas-declaration> on 25/11/2015

UCAS currently require all applicants to disclose relevant unspent convictions for all courses and where the course has a vocational element which included regulated work, then acknowledgement of a wider range of criminal history is required.

The available guidance on the UCAS web-form is blurred by variances in the 1974 Act between Scotland and the rest of the UK. The UCAS application web-form links rehabilitation period guidance to the Ministry of Justice for England and Wales. UCAS web-forms viewed on 25/11/2015 and analysed. The UCAS procedure for grouping disclosure for the application rather than for the institution creates some disclosure problems because some convictions are spent in England but not Scotland and vice versa. After the implementation of proposed changes in Scotland, more convictions will be spent sooner in Scotland. Therefore the UCAS process creates non-compliance with the legislation because Universities will be passed inappropriate markers for spent convictions.

The algorithm which defines a conviction as spent is complex but Scottish Institutions should consistently use the algorithm currently defined for Scots law. The law relates to the jurisdiction where a service or employment is provided rather than where an offence is committed. Therefore applicants should use the Scots law to define disclosures in applications to Scottish Universities and the English law in applications to English or Welsh Universities, regardless of where the crime was committed.

While in most cases the English Law is more favourable to the applicant there are odd scenarios where English law is less favourable. For example when an individual has multiple summary convictions over a long period of time and some convictions would be spent in Scotland but not in England. The general criminal conviction question relates to all applications and there is no function to amend multiple applications to Scottish and English Universities.

These complications result in Universities requesting information which they cannot legally use creating data protection problems, as well as raising the likelihood of under-disclosure or over disclosure of a criminal conviction history.

Further variances will occur when proposed amendments to the 1974 Act in Scotland are applied as expected in 2016. This is likely to result in some convictions becoming

spent more quickly in Scotland than in England. Therefore the UCAS system as it stands would at times be seeking disclosure of spent convictions for Scottish Universities more commonly which infringes the rights of the individual under the 1974 Act.

Similar inconsistencies occur in Scotland and England when defining the information that should be disclosed for courses requiring PVG scheme membership (POVA in England) and again over disclosure can be requested which infringes the rights on an individual.