

## APPLICANTS AND STUDENTS WITH CRIMINAL RECORDS PROCEDURE

### 1. Introduction

1.1 EKC Group does not wish to debar individuals with criminal records from taking advantage of the opportunities provided by further education. In general a criminal record is not be regarded as an obstacle to studying on any programme offered by EKC Group. In any event, EKC Group will not take into account, when dealing with existing students and selecting applicants for admission, criminal convictions which are deemed "spent" under the terms of the Rehabilitation of Offenders Act 1974 unless such convictions are deemed as "exceptions" under the terms of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. If spent offences are required to be disclosed this will always be indicated on the application form.

1.2 EKC Group must also balance its responsibilities to provide a safe and secure environment for its staff, its students, visitors and others. In addition the Group sometimes has to take into account the demands of various professional bodies and requirements under the law to protect special categories of people, e.g., children, vulnerable adults and the mentally ill.

1.3 EKC Group will balance the interest of the student/applicant with its responsibilities to other people. The Group does reserve the right to refuse to admit/exclude students where their criminal record makes it inappropriate for them to be admitted/attend.

### 2. The legislative context

2.1 Balanced against the duty to protect and care for members of their communities, EKC Group must consider the legal rights of their applicants. Human rights legislation may apply here, but the principal piece of relevant legislation is the Rehabilitation of Offenders Act 1974, amendments to which were brought into force in early 2014. EKC Group staff will not make moral judgements concerning the past actions of an applicant; the only point of having a process for assessing an applicant's criminal convictions is to seek to determine whether:

- a. an applicant poses an unacceptable risk to any College or business unit within EKC Group's community; or
- b. the applicant is unable to meet the particular professional or statutory requirements that exist for some courses.

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2.2 Applicants cannot be required to declare convictions that are 'spent' under the Rehabilitation of Offenders Act 1974 (except in the case of those courses which require disclosure under 4.1). The definition of 'spent' is complex, being affected by such factors as the type of the offence, the age at which the person was found guilty and the sentence received; further information about how and when convictions become spent is available on the websites provided by [Unlock](#) and [Nacro](#). Rehabilitation periods are covered under section 8.

### 3. Grounds for Refusing Admission

3.1 The test EKC Group will use is whether the criminal record of an applicant/student gives reasonable grounds for considering that the admission/continuation of studies of the individual: (a) poses a real threat to the safety, safeguarding or property of staff, students, visitors, those coming into contact with the applicant during their studies or others involved in EKC Group business; or (b) would be contrary to the law or to the requirements/guidance of any relevant professional or other regulatory body.

3.2 In addition to the above, where third parties are involved in the delivery of a programme, applicants/students may also have to meet the requirements of such third parties.

### 4. Process

4.1 All applicants are required to disclose relevant unspent (and in the circumstances mentioned above, spent) offences when applying for admission to EKC Group. If information relating to offences is not given or is incomplete, then the Group reserves the right at any stage to reject the application. Applicants also agree where required to submit to additional criminal record checks and other relevant enquiries which may require the applicant to disclose any spent convictions. Currently, applications for checks are made by EKC Group to the Disclosure and Barring Service (DBS) for the following courses:

- Childcare and Early Years
- Health and Social Care
- Education
- Teaching Assistants

4.2 If a DBS check is returned as positive and the applicant is unable to enrol on the programme of choice because they cannot meet the professional or statutory requirements

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for the programme, they will be offered an appointment with an EKC Group Careers Adviser so that they may obtain information, advice and guidance on alternative options.

4.3 Where applicants/students have disclosed an unspent criminal conviction, wish to make a voluntary disclosure about a spent conviction or are applying for a course which requires a DBS check, form CD1 must initially be completed by the interviewer or member of staff processing the application/enrolment.

The form must be completed with the applicant/student present so that all relevant details can be captured. It is illegal to ask a student about spent convictions unless they require a DBS check under the ROA. However, some students may wish to voluntarily disclose a spent conviction which may then necessitate a risk assessment being carried out for safeguarding purposes. In such cases, the CD1 form should be completed in full.

4.4 Where applicants/students have disclosed an unspent criminal conviction and/or their conviction is spent and they are applying for a course which requires a DBS check, form CD1 must be completed in full and signed by the student and the member of staff. It is the responsibility of the member of staff to fully explore the circumstances of any criminal conviction(s) with the applicant to help inform the subsequent risk assessment. They must also ensure that the applicant/student understands the consequences of not answering the questions truthfully.

Applicants/students may be required to provide information from other third parties who may have a view on their suitability for the course of study. The parties may include probation officers and others who are professionally or personally involved in the rehabilitation of the applicant or are familiar with the applicant. This information will be used to support the risk assessment.

When the form is completed and signed off, it must be forwarded to:

- 1) The Assistant Principal  
or
- 2) The Operations Manager WorkHigher for applications to apprenticeship programmes and work-based learning programmes  
or

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3) the Deputy Principal, IntoWork, for community learning, ESOL and other IntoWork programmes.

They will then form a panel of staff (usually from the College/business unit's safeguarding team) to carry out a risk assessment (section 3.2 of CD1). This is done to inform the decision whether to accept or decline an applicant and is based on the level of risk. The applicant may be invited to a panel meeting to gain further information (see letter CD2). The panel may take advice from other qualified and experienced members of staff such as Safeguarding Leads/Officers. The Assistant Principal/ /Operations Manager, WorkHigher, Deputy Principal, IntoWork will communicate their decision to the student. Such confirmation shall always be in writing. If admission has not been allowed, then notification will provide a summary of the reasons why. Letter CD3 is used to communicate a 'proceed' decision and letter CD4 is used to communicate a 'decline' decision.

4.5 The completed CD1 form will be stored in the relevant College/business unit safeguarding file. It will be retained until the student has completed their programme of study and then destroyed. In the interests of protecting other staff and students and to facilitate any reasonable adjustments, the fact that a risk assessment has been undertaken will be recorded on ProSolution.

4.6 Where there are safeguarding concerns (e.g. sexual predation, child protection etc) the designated Safeguarding Lead will be engaged in undertaking the risk assessment with the Assistant Principal (or, for apprentices, the Operations Manager, WorkHigher). These risk assessments will be sent to the relevant Deputy Principal for review and sign off and will be retained under the same protocols that apply for the storage of safeguarding documentation.

4.8 If an applicant has been declined admission then he/she may appeal to the College/business unit Principal. Such appeals must be lodged in writing within 14 days of the date of the written notification of the decision that admission has been denied.

4.9 If a student obtains a criminal record after admission then the matter shall be dealt with under the regulations relating to general student discipline. Factors mentioned under 4.3 may again be considered.

## **5. Ongoing Obligations**

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5.1 Where applicants have been admitted to EKC Group and are likely to come into contact with vulnerable persons e.g., children or vulnerable adults, or there is good reason to believe that a false declaration of a criminal record has been made, then applicants must agree to submit to a criminal records check.

5.2 If at any stage between application and completion of a programme of study an individual is charged with an offence that would ordinarily or potentially lead to a custodial sentence or if they are convicted of a criminal offence, then they shall immediately inform their prospective (if an applicant) or existing (if a student) Programme Director or the relevant Assessor (if an apprentice) who must then refer the matter to the Operations Manager, WorkHigher.

The Programme Director/Operations Manager, WorkHigher will liaise with the Assistant Principal or Deputy Principal of WorkHigher as appropriate to undertake a risk assessment using form CD1 which will inform a decision about the applicant or student's place on the programme.

## **6. False Declaration or Failure to Declare**

6.1 If at any stage an applicant/student fails to disclose accurate information on their past criminal record, then this will be regarded as an extremely serious matter and may lead to any offer being withdrawn; if the applicant has commenced their programme of study, the student may be required to cease their studies and may be subject to disciplinary procedures.

## **7. Security**

7.1 Except where third parties are involved in the delivery of the relevant programme of study all information provided by an applicant/student relating to their criminal record will not be disclosed outside of EKC Group. The fact that a risk assessment is in place will be recorded on ProSolution. Where there is limited information to support a full risk assessment, a dynamic approach to the risk assessment will need to be taken i.e. risks are assessed on the information available at that time and updated as and when the situation changes.

7.2 The forms to record the disclosure of criminal records at interview must be retained separately from the student's file.

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7.3 All criminal record disclosure forms need to be collated at the end of the interview process and sent to a designated member of staff at each College or for apprenticeship programmes the Operations Manager, WorkHigher who will ensure that they are filed securely in the appropriate safeguarding file.

7.4 All criminal records disclosures will be destroyed using the confidential waste service. In accordance with Data Protection legislation, access to information relating to criminal records will be restricted to the designated member of staff and safeguarding leads.

## 8. Rehabilitation periods (please see notes below)

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. Rehabilitation periods 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’.

The ‘buffer periods’ are halved for those who are under 18 at date of conviction (save for custodial sentences of six months or less where the ‘buffer period’ is 18 months). The rehabilitation periods for sentences with additional “buffer periods” which run from the end date of the sentence are shown in the table below:

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the <u>end</u> date of the sentence (including the licence period).	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the <u>end</u> date of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years

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Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order**	1 year	6 months

\*Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

\*\*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.

The following table sets out the rehabilitation period for sentences which do not have “buffer periods” and for which the rehabilitation period runs from the date of conviction:

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered).	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge,	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order*	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

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\*Compensation Orders – it is important that individuals obtain proof of payment from the court and keep this document to prove that the compensation order has been paid in full.

The following sentences are exempt from the 1974 Act and can never become spent:

- a) Sentence of imprisonment for life;
- b) Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years;
- c) Sentence of preventive detention;
- d) Sentence of detention during Her Majesty's pleasure or for life;
- e) Sentence of custody for life;
- f) 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).

### **Notes**

Information in this section is taken from the gov.uk site which provides up to date guidance on the Rehabilitation of Offenders Act <https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>