

Produced by Human Resources

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## Human Resources Policy Statement HRPS27

### DISCLOSURE OF CRIMINAL RECORDS

#### Scope of the Policy

1. This Policy applies to all prospective and current students and all prospective and current staff (including temporary and part-time hourly paid staff).

#### Background

2. The Rehabilitation of Offenders Act (ROA) 1974 was introduced to ensure that ex-offenders are not discriminated against when applying to study or work. Under the Act, prospective students and staff are not required to disclose information on criminal convictions after a set period of time for jobs or courses that do not require a Disclosure and Barring Service (DBS) disclosure. However, they must declare all unspent convictions (but not offences which have been dealt with by prompt payment of a fixed penalty notice or a penalty notice for disorder<sup>1</sup>).

Certain types of work or programmes of study are exempt from the Act as they involve contact with young people under 18 or with vulnerable adults, or are positions of trust. Examples include financial services, dealing with Home Office visas, education, nursing, midwifery, social work, healthcare, sport and recreation and welfare services. Middlesex University is registered with the DBS to assess suitability for such programmes of study or positions of trust. The University will assist the employee or student to apply for an up to date DBS certificate which will list all spent and unspent convictions which the DBS deem appropriate to disclose.

4. In addition, the University requires all applicants and employees to disclose any police investigation they are subject to; any pending charges the police have brought against them and any new criminal convictions (but not offences which have been dealt with by prompt payment of a fixed penalty notice or a penalty notice for disorder<sup>1</sup>).
5. The University undertakes not to discriminate unfairly against a disclosure of an investigation, charge or criminal record. **Disclosure will not necessarily bar an individual from studying or working with the University.** This will depend on the nature of the programme of study or the employment and the circumstances and background of the individual's offence(s). (see [Guidance on assessing a criminal investigation, charge or record](#))

<sup>1</sup> *Motoring offences, anti-social and nuisance offences are criminal offences. However, those dealt with by payment of a fixed penalty notice within 28 days are considered discharged and do not need to be declared. If a penalty notice is not paid within 28 days and you are found guilty you then have a criminal conviction.*

## PROCEDURES

### Posts which are not subject to a DBS check

6. If you are applying for a post at Middlesex University you will be asked on the application form to give details of any current investigations, charges or convictions.
7. If you are subject to a police investigation, are charged or convicted of a criminal offence (but not offences dealt with by way of prompt payment of a fixed penalty notice or a penalty notice for disorder) during your employment, you must let your line manager know within two working days.
8. The line manager, in conjunction with HR, will need to consider the nature of the investigation, charge or conviction and whether this impacts on your role or the University (see [Guidance on assessing a criminal investigation, charge or record](#)). Failure to disclose may result in disciplinary action, and may be considered gross misconduct which may result in dismissal.

### Posts which are subject to a DBS check

9. If you are applying for a post at Middlesex University you will be asked on the application form to give details of any current investigations, charges or convictions.
10. In addition the University will apply to the DBS for a check on all current and spent convictions, cautions, reprimands and warnings. The DBS will disclose information it deems to be relevant.
11. The DBS will send a disclosure certificate directly to the individual. The individual will need to produce this DBS certificate to the University. Failure to produce an up to date DBS certificate could lead to withdrawal of an offer to study or of employment or expulsion or dismissal (if already studying or in post) under the relevant University procedures.
12. Once in post or on a course of study you must inform your line manager or Head of Department within two working days if you are subject to a police investigation, charged with a criminal offence, convicted of a criminal offence or receive a caution, reprimand or final warning. The line manager or Head of Department, in conjunction with HR or the Academic Registrar, will need to consider the nature of the conviction and whether this impacts on your role or course of study or the University (see [Guidance on assessing a criminal investigation, charge or record](#)). Failure to disclose a police investigation, charge, conviction, caution, reprimand or final warning may result in disciplinary action. Depending on the nature of the disclosure and its impact on your role or course, failure to disclose may be considered as gross misconduct which may result in dismissal.
13. It is an offence to apply for, offer to do, accept or do any work with children (paid or unpaid) if barred from working with children. It is an offence knowingly to offer a barred person work or a placement with children/vulnerable adults or to allow them to continue in such work.
14. The University has a duty to refer to the DBS any information about an individual where it considers them to have caused harm or pose a risk of harm to vulnerable groups. Information on referral can be found on the DBS website:  
<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/services/dbs-referrals/>
15. In addition the University has a duty to refer the same information to the London Borough of Barnet's Local Authority Designated Officer.

16. For up to date information on obtaining [disclosure for overseas applicants](#) (please click) refer to the DBS webpage.
17. If an applicant already has a DBS certificate which was issued by the DBS online service the University will conduct an online check to ensure it is still valid and up to date. If the DBS certificate is less than 6 months old but was not issued by the online service it may be possible to use this again. Ultimately it is for the University to determine whether to accept previously-issued DBS checks.

### **Secure Storage, Handling, Use, Retention and Disposal of DBS Certificates and Certificate Information**

18. Certificate information is not kept on an applicant's personnel file. It is kept separately and securely, in lockable, non-portable, storage cabinets with access strictly controlled by the counter-signatories and **limited to those who are entitled to see it as part of their duties.**
19. **Certificate information is only** passed to those who are authorised to receive it in the course of their duties. The counter-signatories will be responsible for maintaining a record of all those to whom Certificates or Certificate information has been revealed. It is recognised that it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.
20. Certificate information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given in writing.
21. Once a student recruitment or staff appointment decision has been made, we only keep Certificate information for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in exceptional circumstances, it is considered necessary to keep Certificate information for longer than six months, we will consult the DBS about this and will give full consideration to the Data Protection and Human Rights of the individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.
22. Once the retention period has elapsed, Certificate information is destroyed securely. We will not keep any photocopy or other image of the Certificate or any copy or representation of the contents of a Certificate. However, notwithstanding the above, we may keep a record of the date of issue of a Certificate, the name of the subject, the type of Certificate requested, the position for which the Certificate was requested, the unique reference number of the Certificate and the details of the recruitment decision taken.

For further information on any aspect of DBS please visit its website:

<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

### **Guidance on assessing a criminal investigation, charge or record**

23. The University undertakes not to discriminate unfairly against any disclosure of a criminal investigation, charge or record. Any disclosure **will not necessarily bar an individual from studying or working with the University.** This will depend on the nature of the programme of study or the employment and the circumstances and background of the individual's offence(s).
24. A number of factors are taken into account when considering the relevance of a disclosure:
  - *The nature of the investigation, charge or offence*

Some types of investigation, charge or offence (e.g. sexual or violent offences) may be particularly strong indicators that an applicant is unsuitable and should not be offered a place or be employed; or that a current student or employee may be suspended, excluded or dismissed from the University

- *The nature of the University course or placement or post,*

The nature of the course or placement or post will help to assess the relevance of the disclosure.

- *The age of the offence*

A minor offence that occurred many years in the past may often have less relevance than a recent offence. The prospect of rehabilitation must be weighed against the need to protect children, vulnerable adults or members of the public, staff and students.

- *The frequency of the offence*

A series of offences over a period of time is more likely to give cause for concern than an isolated (minor) conviction.

- *The activity they will be undertaking and whether it is regulated or controlled*

The DBS defines activities as being either regulated or controlled. In some circumstances a person barred by the DBS can sometimes be employed in a controlled activity, depending on the nature of the role and providing safeguards are in place such as stringent supervision. However, barred individuals are not allowed to be employed or volunteer in a regulated activity.

- A regulated activity may be defined as an activity of a specified nature i.e. teaching, training, instruction, mentoring, care, supervision, advice, guidance, treatment, therapy or transport, that involves one to one contact with children or vulnerable adults on a frequent, intensive or overnight basis
- A controlled activity may be defined as an ancillary support worker in further education, or a healthcare setting (e.g., cleaner, caretaker, catering staff, receptionist) which is done frequently or intensively and gives the opportunity for contact with children or vulnerable adults

25. The relevant Senior Manager (Dean, Director, Academic Registrar) will make the final decision on whether to offer a place / work to an applicant who is the subject of a police investigation, charge or criminal record using published guidance and advice from Human Resources.

The relevant Senior Manager (Dean, Director, Academic Registrar) will make the final decision on whether to suspend or dismiss an employee who is the subject of a police investigation, charge or criminal record following a disciplinary procedure and advice from Human Resources.

The Dean and Academic Registrar will make the final decision on whether to suspend or exclude a student who is the subject of a police investigation, charge or criminal record.

26. If you are a prospective applicant or a current employee or student and need confidential advice on your criminal record in relation to this policy you can contact <http://www.nacro.org.uk>