

PROCESS FOR CHECKING CRIMINAL RECORDS AND DISCLOSURE & BARRING STATUS OF APPLICANTS AND STUDENTS

Approved by Senate on 25 February 2013

Introduction

1. St George's, University of London (SGUL) does not necessarily wish to debar individuals with criminal records from taking advantage of the opportunities provided by Higher Education. A criminal record need not necessarily be regarded as a barrier to studying and graduating at SGUL.
2. However, SGUL must balance its responsibilities to provide a safe and secure environment for its staff, students, visitors, patients in the Trusts with whom we work and others. In addition, SGUL has to take into account the demands of various professional bodies and requirements under the law to protect particular groups of people, e.g. children and vulnerable adults, under the terms of the Protection of Children Act (1999) and the Independent Safeguarding Authority (ISA), established under the Safeguarding Vulnerable Groups Act (2006).
3. To this effect, applicants and currently registered students will be subject to mandatory Disclosure and Barring Service (DBS) checks, where the programme of study requires direct contact with the public including vulnerable groups. In assessing criminal records, SGUL will balance the interest of the applicant/student with its duty of care to special categories of people. SGUL reserves the right to refuse to admit applicants, and the right to terminate the registration of currently registered students, where their criminal record makes it inappropriate for them to be admitted or to continue with their programme of study.

Background

4. The Police Act (1997), which recommended the establishment of a Criminal Records Bureau (CRB), represented a change in the law so that organisations recruiting individuals involved in the care or supervision of children and/or vulnerable adults were required to obtain Disclosures of criminal records. In 2008, the Independent Safeguarding Authority (ISA) was formed to ensure that individuals with recorded offences against children and/or vulnerable adults could not be employed in roles involving contact, defined as 'regulated activity' with these groups. Individuals who may not have offences recorded but who are deemed a future risk through involvement in 'relevant conduct' with children and/or vulnerable adults would also be barred. The ISA introduced a Vetting and Barring Scheme in 2009. In December 2012, the CRB and the ISA merged to form the Disclosure and Barring Service (DBS). This new organisational structure provides a combined barring and criminal records disclosure service.
5. SGUL strives to implement a standardised, consistent and fair approach to checks relating to criminal convictions declared by applicants and students including disclosure of criminal records.

The DBS System

6. SGUL is registered as a body entitled to request DBS checks on individuals, both prospective students and currently registered students, using named counter signatories.

7. Disclosures are initially authorised by the individual concerned, however as disclosures are required by law under safeguarding legislation, any applicant who refuses to authorise the requisite clearance checks will not be able to proceed with an application.
8. Those who currently undergo a DBS check at the request of SGUL, do so at the 'Enhanced Disclosure' level. This checks the Police National Computer (PNC) and Police Information for spent and unspent convictions, cautions, warnings, reprimands, bind over warnings or similar and may also show details of any minor offences, fixed penalty notices, penalty notices for disorder, ASBOs or VOOs and any other relevant and proportionate information (for example, interviews). Checks will also be made against records held by the ISA.

Rehabilitation of Offenders Act (ROA) 1974

9. Under the Rehabilitation of Offenders Act (ROA) (1974), any conviction for a criminal offence can be regarded as 'spent' provided that the conviction did not carry a sentence excluded from the Act, such as a custodial sentence of over 2.5 years, and no further convictions occurred within the rehabilitation period. Once a conviction is regarded as spent, the rehabilitated person does not have to reveal its existence in most circumstances and can answer 'no' to the question 'Do you have a criminal record?'
10. Certain occupations are however exceptions and these are listed in the ROA (Exceptions) Order (1975). Of the programmes at SGUL, the following professions are exempt from the provisions of the ROA (1974): Medical Practitioners, Nurses and Midwives and any professions to which the Health Act (1999) applies. The Exceptions Order specifies and defines particular posts which involve '*working with children*' and/or '*vulnerable adults*'. The majority of clinical programmes at SGUL fall within these definitions.
11. The following category of employment is also exempt from the ROA (1974): *Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of his/her normal duties.* This is widely interpreted by NHS Trusts as a requirement for applicants for all posts to which the Health Professions Order (2001) applies to declare any criminal record whether it is spent or not.

Grounds for Refusing Admission or Refusing Continuation of Programme of Study

12. The test which SGUL will use when deciding whether the criminal record of an applicant/student gives reasonable grounds for refusing admission or continuation of study is whether the record: (a) poses a real threat to the safety or property of staff, students, visitors, patients in the Trusts with whom we work and those coming into contact with the applicant/student during their studies or others involved in SGUL business; or (b) would be contrary to the law or to the requirements of any relevant professional or other regulatory body.
13. A statement about criminal records disclosure will be included in the prospectus, website and in information sent to applicants when they are made an offer of admission. This will state that a criminal record may not necessarily be a bar to being accepted onto the programme of their choice.
14. For undergraduate programmes, the UCAS application form requires applicants to declare any criminal record by answering the question "If you have a relevant criminal conviction, enter Yes (Y) in the box". However it must be noted that those with a spent conviction can legally answer "no" to this question.

15. Applicants will be given a deadline by which to complete their application forms for Enhanced DBS checks. In general, these application forms will only be passed to the DBS for processing once the student has fulfilled all of the other conditions of their offer.
16. For applicants whose place depends upon A level results, or other examinations; or who are admitted through the UCAS clearing process, the Enhanced DBS checks will be carried out late in the application cycle and it is unlikely that the Disclosures will be available before the start of the academic year. Therefore, earlier on in the application cycle, applicants on relevant programmes are asked to complete and sign a form, disclosing whether they have ever received any cautions, convictions, reprimands or warnings either spent or unspent offences. At this stage, all applications, whether or not any criminal record information has been revealed by the applicant, will be considered in open competition alongside all other applications.
17. If information relating to offences is not given, or is incomplete then SGUL reserves the right at any stage to reject the application.
18. If information relating to a criminal record is given, the applicant is asked to provide further background information (in the form of an anonymous statement) on the circumstances surrounding the criminal record. They are asked to include the following information:
 - The date that each offence occurred, the nature of each offence, the charges brought, and whether these charges resulted in a caution, conviction, reprimand, or warning, and the associated penalty;
 - Whether (s)he considers the criminal record or any other matter revealed to be relevant to the program that he/she has chosen to study (including any secondments or placements);
 - For each offence, (s)he is asked to explain the circumstances leading to that offence, to state whether the offence(s) involved violence, threats of violence, either from the applicant, or from another person present, to state whether the circumstances surrounding the offence(s) were unique, and if so, how;
 - Whether his or her circumstances have now changed; how, and what evidence can they provide to support this.
 - Evidence that they are unlikely to offend again.
19. The Director of Student Services will provide the student with an opportunity to discuss the statement and may require the applicant to provide information from other third parties who may have a view on the above matters. The parties may include probation officers and others who are professionally or personally involved in the rehabilitation of, or are familiar with, the applicant. The Director of Student Services may also seek specialist advice.
20. The outcome of the DBS Disclosure, the anonymised statement, and any third party information as mentioned in Paragraph 19, will be considered by a specially convened panel who will review the applicant's suitability for the course. The membership of the panel shall consist of three members of senior SGUL staff.
21. As soon as the panel has reached a decision, the applicant will be advised as to whether as a result of the offences disclosed, their application to SGUL has been terminated. Such confirmation shall always be in writing. If their application has been terminated, then the notification will provide a summary of the reasons (if not precluded under DBS regulations).

22. Every effort will be made to make DBS decisions by the start of the academic year. If an applicant has made a disclosure and a decision is unlikely to have been made prior to the start of the academic year, the applicant will be contacted and advised of the status of their application. (see SGUL Admissions Policy).
23. If an applicant feels that an error has occurred during this process on the grounds of a procedural anomaly in the handling of the application, then they have the right to complain about the decision (see SGUL Admissions Complaints Policy).
24. Complaints should be made in writing to the Head of Student Services within 14 days of receiving the decision. The complaint will then be dealt with at the formal stage of the Admissions Complaints Procedure. (See SGUL Admissions Complaints Policy)
25. Once a final decision has been reached, this information will be held in accordance with the DBS guidance on secure handling, storage and usage (Appendix 1).
26. Applicants who have made a disclosure which is not considered a barrier to studying at SGUL will be advised prior to enrolment that they may be asked to disclose their offence(s) to healthcare-related professional regulatory bodies upon graduation. SGUL as an institution cannot predict how any regulatory bodies will view an application for registration, in light of the applicant's offence(s). Similarly if the regulatory body introduces additional guidelines during a student's time at SGUL, and before qualification, SGUL has no means of foreseeing how this may affect their future professional registration.
27. Applicants with disclosed cautions, warnings and/or offences whose applications to SGUL have progressed will be advised that they may have to undergo independent DBS checks at the request of placement providers during their programme.
28. If a DBS check reveals that an applicant is banned from working with young people under the age of 18, this application will not progress and the applicant will be notified.
29. If a DBS check reveals an applicant who is banned from working with vulnerable adults, the applicant will not be admitted to the course which involves contact with vulnerable adults and the applicant will be notified.

Retrospective checks on currently registered students

30. All returning undergraduate students who re-enrol at the start of the academic year, and who underwent an Enhanced CRB or DBS Disclosure at the start of their course, will be asked to answer the following questions:
 - Since completing the Criminal Records Check at entry to the programme of study at St George's, University of London; have you had any further criminal convictions (this includes spent convictions), cautions, investigations or other findings or orders of a criminal nature?
 - Have you ever been, barred, excluded or prevented from working with Children or Vulnerable Adults in the course of any employment, regulated or controlled activity, as defined by the Safeguarding Vulnerable Groups Act 2006, whether paid or unpaid?
 - Has a child in your care or the household in which you live (have lived) been placed on a child protection register or placed in care?
 - Have you ever been suspended from any professional practice or subject to any suspension order by any local authority, professional body, inspectorate or similar licensing/registration authority, which may

reasonably be regarded as preventing you from working with children or vulnerable adults?

- Do you know of any reason or circumstances that would prevent you from continuing your programme of study or working with Children or Vulnerable Adults in any regulated or controlled activity, as defined by the Safeguarding Vulnerable Groups Act 2006?

31. Students who answer 'Yes' to any of the questions in Paragraph 30, or who obtain a criminal record after admission, will have their case considered by a specially convened panel. Such students will be required to prepare a statement according to Paragraph 18, for the consideration of the specially convened panel. The membership of the panel shall consist of three members of senior SGUL staff.
32. The panel will reach a decision regarding the student's suitability for continuing on their chosen programme of study taking into account where applicable his/her potential to practise appropriately in a clinical setting. The decision of the committee will be communicated in writing.
33. Appeals will be handled in accordance with Paragraph 24. Cases may be reported to the Student Progress Monitoring Committee as a Fitness to Practise concern.

On-going Obligations

34. SGUL reserves the right to ask any student to undergo a DBS check at any stage of their programme, given reasonable grounds.
35. Following the initial DBS checks, applicants and registered students are all obliged to report any subsequent criminal proceedings immediately to the Head of Student Services. SGUL reserves the right to withdraw offers of admission or terminate the registration of students where, in accordance with Paragraph 12 above, their criminal record makes it inappropriate for them to continue their studies.

False Declaration or Failure to Declare

36. If at any stage an applicant/student fails to accurately disclose information required on their past criminal record, then this will be regarded as an extremely serious matter. It may lead to an offer of admission being withdrawn, or if the applicant has commenced their programme of study, it may lead to registration being terminated.

Security

37. SGUL complies fully with the DBS's own Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information. (see Appendix 1)
38. All information provided by an applicant/student relating to their criminal record will not be disclosed outside of SGUL.
39. Information within SGUL relating to criminal records will be restricted to only those who are involved in any of the processes detailed above.
40. All information relating to criminal records will be kept securely. In particular documents will be stored in locked filing cabinets and access to keys or lock combinations to those filing cabinets will be restricted.

41. Disclosure documents returned by the DBS to SGUL will be destroyed confidentially within six months of completion of the admissions process or, if a student is admitted onto a programme of study, six months after registration. Documents may be retained with the agreement of the DBS in exceptional circumstances, i.e. when a dispute is raised.
42. In the case of disclosure of a criminal offence, information about the offence will be kept for the purpose of making a decision about a student's suitability for his or her studies. This information will be held securely by SGUL, not on the student's Registry file, with access restricted to those with good reason to see this information. This information will also be destroyed after six months. In the case of a continuing student, if the disclosure results in a Fitness to Practise enquiry, further evidence will be gathered as part of this separate process. Consent from the DBS would allow information gained during the disclosure to be included in the investigation and to retain it for longer than the usual 6 months.

Appendix 1

POLICY STATEMENT ON THE SECURE STORAGE, HANDLING, USE, RETENTION & DISPOSAL OF DISCLOSURES AND DISCLOSURE INFORMATION

General Principles

As an organisation using the Disclosure and Barring (DBS) service to help assess the suitability of applicants for positions of trust, SGUL complies fully with the DBS's own Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information. This written policy is available to those who wish to see it on request.

Storage & Access

Disclosure information is never kept on an applicant's or student's file and is always kept separately and securely, in lockable, non-portable storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

Handling

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.

Usage

Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's or student's full consent has been given.

Retention

We do not keep Disclosure information for any longer than is absolutely necessary. No information on applicants' or students' criminal records will be kept for longer than six months after completion of the admissions process or, if admitted onto a programme of study, six months after registration.

If, in very exceptional circumstances, it is necessary to keep Disclosure information for longer than six months, we will consult the DBS and will give full consideration to the data protection and human rights of the individual before doing so.

Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail, until such time that the information will be disposed of in a confidential manner.

Disposal

Once the retention period has elapsed, we will ensure that any Disclosure information is promptly destroyed by secure means, i.e. by shredding. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopies or other images of the Disclosures or any copies or representations of the

contents of the Disclosures. However, notwithstanding the above, SGUL may keep a record of the date of issue of a Disclosure, the name of the subject, the unique reference number of the Disclosure and the details of the decision taken by SGUL.

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