

September 2017

## 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 online 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 and courses which are subject to a DBS check

9. If you are applying for a post at Middlesex University you will be asked on the electronic application form to give details of any current investigations, charges or convictions. Failure to do so may result in any offer of employment being withdrawn. Additionally, your consent will be required as part of the application process prior to completion of the DBS check.
10. If you are an applicant/student on professional programmes of study you are subject to the interview process. You are required to declare details of any current investigations, charges or convictions. If you are a student enrolled on a non-professional programmes of study, not subject to interview, you will have completed the UCAS application form where you will be asked to confirm criminal record status. Students who fail to disclose a criminal record may have their offer rescinded. Additionally, your consent will be required as part of the application process prior to completion of the DBS check.
11. 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.
12. The Disclosure and Barring Service will send a Disclosure Certificate directly to the individual. Please note that the University does not receive a copy of the DBS certificate as issued by the DBS Service. The individual, if they have completed a paper DBS check, must present the original Certificate to the University (DBS unit for students and Line Manager for Staff). Where an online DBS check is undertaken the individual is required to present this DBS certificate to the University only if it contains information. This is to ensure that the recruitment manager(s) or admissions team can make an informed decision regarding an individual's suitability for the role or programme of study. Note that failure to produce an up-to-date DBS certificate which contains information, 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.
13. Once in post or on a course of study you must inform your line manager, Head of Department or Programme Leader within two working days if you are subject to a police investigation. If you are then subsequently charged with a criminal offence, convicted of a criminal offence or receive a caution, reprimand or final warning you must also inform your

line manager, Head of Department or Programme Leader. For Staff, the line manager or Head of Department/ Programme Leader, in conjunction with HR, will need to consider the nature of the conviction and whether this impacts on your role at the University (see [Guidance on assessing a criminal investigation, charge or record](#)).

14. For Students, there is a requirement for a new DBS check to be undertaken and once the new DBS certificate has been received and presented to Contract Operations Manager, this is referred to Fitness for Practice for a decision.
15. Failure of staff or students 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 or termination of your programme of study.
16. 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.
17. 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/>
18. In addition the University has a duty to refer the same information to the London Borough of Barnet's Local Authority Designated Officer.
19. If you have **lived outside the United Kingdom (UK) for a period of more than 6 months within the last 5 years**, you will be required to provide a police check from the country or countries you lived in outside the United Kingdom, during that period. Your Overseas Police check must be in the English language. If in a foreign language, this must be officially translated into English.

If you are ineligible for a police check in the country you lived in outside the United Kingdom (for example because you were under the age required for police checks in that country, or because you are not a national of that country), or if you are unable to obtain a police check from an overseas country for other reasons, we may accept references from previous places of study or employment in that country. If this applies to you please contact us for further guidance.

Please bear in mind that some overseas countries will charge for a police check. The University is not liable for the cost of your undertaking your Overseas Police check (s). Information for the different countries and fees involved can be found at the above link. If you have **never lived in the UK**, in addition to supplying your international police check, you will need to have an Enhanced DBS check undertaken within three months from the commencement of the programme of study or role for which you are being employed. This is to enable students/applicants sufficient time to obtain the necessary documentation to support their online DBS application. There is no charge levied by the University for the DBS check to be undertaken. For up to date information on obtaining [disclosure for overseas applicants](#) (please click) refer to the DBS webpage. Further information regarding obtaining a police check from other countries is available via the website for guidance on criminal record checks for overseas applicants at the [DBS website](#).

20. **University Requirement for a second DBS check and Certificate** - If an employee/student is required by the University to have a new DBS check undertaken for any reason, then it will be the responsibility of the University to meet the costs of this being undertaken.

21. **Lost/Misplaced DBS Certificates** - Employees/students will be liable for the cost of replacing lost or misplaced DBS Certificates. The University will administer the charge that is levied at the time for this to be undertaken.
22. **Student DBS Certificate Validity Period** - DBS Certificates resulting from a check conducted by the University will normally be treated as valid for the duration of a student's programme of study up to a maximum of 3 years. However, if a student should change their programme of study, interrupt from their studies for 1 year or more, continue studying on the same programme for more than 5 years or there is reason to believe the certificate content is out-of-date, the student will need to undertake a new DBS check. There is no charge levied by the University for the DBS check to be undertaken under these circumstances.
23. For individuals applying for a post or course within the University, who are currently registered with the DBS Update Service, the applicant will need to present their original DBS Certificate from which registration with the DBS Update Service was undertaken and give permission for a check to be undertaken. The University will check that the original DBS Certificate is at the appropriate level for the programme of study/post and ensure the correct barring criteria, before running the on-line DBS Update service check. If the barring criteria is not met a new DBS check will need to be undertaken and the DBS certificate should be presented to the hiring manager for staff (who will pass on the certificate number, date and type to HRS to update PAFIS) or DBS Unit for students. Note: If the applicant's registration with the Disclosure Barring Service has lapsed, a DBS Update Service check cannot be undertaken. [DBS Update Service information](#). Applicants, staff and students are encouraged to register with the DBS Update Service. This can be done within 30 days of the issue of the DBS Certificate, currently at an annual cost of £13.00 to be paid by the individual. By doing this the applicant's DBS updates automatically and a DBS check can be carried out by any Institution, without the need to have a new DBS check undertaken. In this way the Enhanced DBS Certificate remains current as long as they are signed up for the service. For more information and to apply go to [www.gov.uk/dbs-update-service](http://www.gov.uk/dbs-update-service).

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

24. Certificate information for students and staff is not kept on an applicant's personnel file or student 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**. HRS maintains a record of which staff have received a DBS check, and retains the following information in PAFIS the HR Information System: the certificate number, the type of check and the date the check has been carried out. No details of disclosed information contained on the certificate are held in PAFIS.
25. **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.
26. 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 prior to the request being made.
27. Once a student recruitment or staff appointment decision has been made, should there be a dispute or complaint, certificate information may be held for a period of up to six months, to allow for the consideration and resolution to take place. 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.

28. 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 secure 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, Head of Department) 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 and the Contract compliance and Governance Unit, where the individual is applying to be a student of the University

The Dean/Head of Department or delegated person 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.

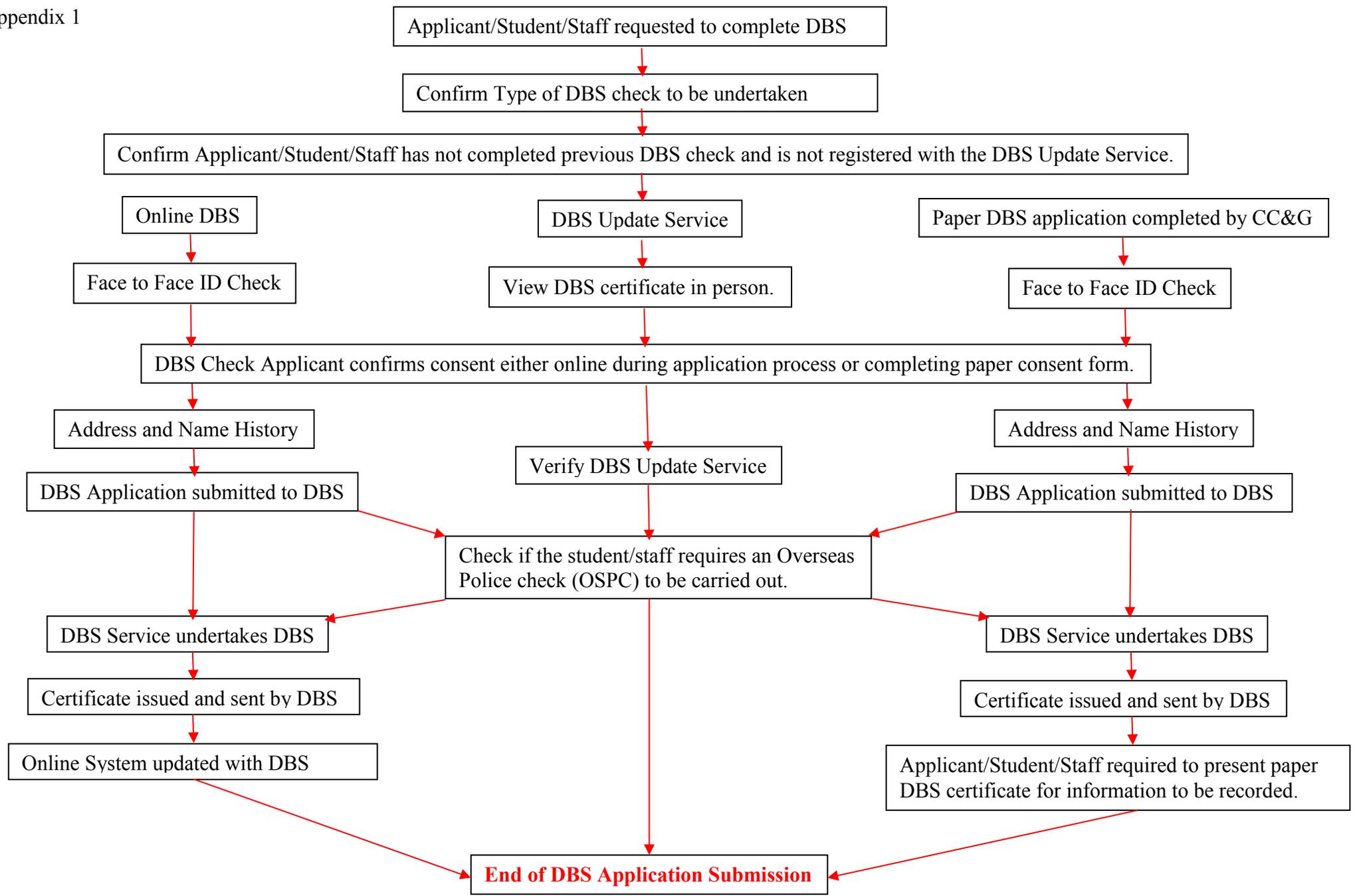
26. If you are a prospective applicant or a current employee or student and need confidential advice on your criminal record in relation to this policy you can contact

<http://www.nacro.org.uk>

27. Transgender process – the DBS offers a confidential checking process for transgender applicants. This process is for transgender applicants who do not wish to reveal details of their previous identity to the person who asked them to complete an application form for a DBS certificate. For more information about the transgender process email [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk)

# DBS Process Map – Applicants, Students and Staff

Appendix 1



**DBS clearance – Actions required for Applicants/Students**

