

Policy and Procedure for the Declaration and Handling of Criminal History Disclosures

(formally Criminal Convictions Policy and Procedure)

Issue	Date of 1 st Issue	Last Reviewed	Date of Next Review	Responsibility of
01	September 2020		June 2023	Risk & Compliance Officer

This document can also be produced in alternative formats upon request.

RELATED DOCUMENTATION

Title	Location	Owner
Access NI Policy Statement	Gateway	Head of HR
NI FE Colleges Safeguarding, Care and Welfare Policy	Gateway and Public Website	FE Sector
Guidance for applicants (new)	Public Website	
Higher Education Admissions, Admissions Appeals and RPL Policy	Gateway and Public Website	Manager for Centre for Excellence for HE

SUMMARISED CHANGE LOG

Location	Change from/addition/deletion	Change To
Whole Document	Convert to standardised policy template	SWC standardised template
	Refresh of entire policy including Policy title	

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1. Policy aim

The aim of this policy is to ensure that applicants to South West College courses, who make a disclosure of a criminal record, have access to a fair and confidential admissions process while preserving the College's duty of care to the entire student and staff community.

South West College recognises that access to education and training is one key element in the effort to assist those with a criminal record not to reoffend and to move on in life. South West College supports this aim through its many social inclusion programmes in addition to the standard College provision.

This policy and accompanying procedural documents outline:

- The circumstances where there is a requirement for disclosure
- The means by which a disclosure is made
- The process for assessing the risk posed by an applicant making a disclosure

2. Policy statement

South West College actively promotes equality of opportunity for all and welcomes applications from a wide range of applicants, including those with a criminal record.

Having a criminal record will not prevent an applicant from being considered by the College nor will the information disclosed necessarily prevent a person from studying the course of their choice. However, depending on the course, there may be occasions whereby a spent or unspent conviction may preclude an applicant from enrolling on that course. In such cases, the College will discuss this with the applicant and will endeavour to offer alternatives where the conviction might not necessarily be an issue.

Failure to disclose, and subsequent discovery of a conviction, will be treated seriously by the College and may result in a student being withdrawn from their course.

3. Data protection, confidentiality and consent

The information disclosed on criminal convictions is considered to be 'sensitive personal data' under the terms of the Data Protection Act 2018. The College will ensure that all such information is processed, stored and protected in accordance with the College's Data Protection Policy, the FE Retention and Disposal Schedule and the College wide Privacy Statement.

The documents generated during the application and enrolment process will include:

- Application form
- Enrolment form
- Criminal Record Disclosure Form (CRD Form),
- Record of the Disclosure Panel decision, and (on occasions)
 - AccessNI disclosure information
 - Supporting documentation provided by external agencies, and
 - “Conditions of Acceptance” contract

All documents generated will be kept separately, in a locked filing cabinet and stored under the management of the Designated Safeguarding Lead. The documents relating to unsuccessful applicants will be destroyed by no later than 28 days of the decision of the Disclosure Panel being communicated to the applicant with the exception of the record of the decision of the Disclosure Panel. The notes of the Disclosure Panel will include minimum information ie:

- Applicant Name
- Course applied for
- Date of application
- Date of Panel decision
- Reason for refusal

For successful candidates all documentation will be retained in accordance with the FE Retention and Disposal Schedule

The College will treat all disclosures and discussions regarding any disclosure confidentially. The College has established a confidential disclosure process to safeguard the applicant and the information disclosed. If, in the course of its assessment of the risk posed by an applicant making a disclosure, the College is required to contact an external organisation such as the Probation Board or NIACRO, written consent from the applicant will be sought at the application stage.

4. The obligation to make a disclosure

It is the policy of South West College that all those who apply to study with the College will be required to disclose any unspent criminal convictions on the Criminal Record Disclosure Form (CRD Form).

South West College respects the fact that under the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 (as amended), it is not always necessary to declare a criminal record, depending on the offence(s). Under certain circumstances once a

period of time has lapsed from the date of a conviction and when there have been no further convictions, the conviction becomes **spent**. For some guidance on determining whether a conviction is spent refer to Appendix 1.

However, South West College will make applicants with a criminal record aware that there are courses, professions and occupations which require the full declaration of a criminal record. When applying for one of these courses the College requires the applicant to disclose any criminal record that would be disclosed on an enhanced AccessNI check. Failure to do so may result in a student being asked to withdraw from the course.

The College will specify the courses where AccessNI enhanced checks are required in all course marketing materials. Additional details on these courses can be found in Appendix 2.

5. AccessNI disclosure checks

As a Registered body of AccessNI, the College will handle all AccessNI Enhanced Disclosure checks securely and will fully comply with the AccessNI Code of Practice. The College will treat the subject of every AccessNI check fairly and will not discriminate, but will assess each certificate individually.

6. The procedure for making a disclosure

South West College will require that the disclosure of convictions is made via the College Disclosure Form. The College will make provision for applicants to make a disclosure at the **APPLICATION STAGE** in order that a risk assessment can be undertaken prior to enrolment. The College will make available on its website a Criminal Record Disclosure Form (CRD Form) and guidance notes for an applicant making a disclosure.

7. Student application risk assessment process:

The purpose of Risk Assessment is to identify and assess any applicant whose declared record of offences indicates they could be a risk to themselves, other students, staff, visitors or the College environment. The Student Risk Assessment is one way in which the college works to provide a safe and inclusive environment for all students and staff.

The risk assessment will be undertaken by a Disclosure Panel (DP). The DP will always comprise 3 members as follows:

- The Designated Safeguarding Lead
- The Safeguarding Assistant on the campus where the applicant wishes to study, and one of the following:
 - o The Head of Faculty responsible for the area of study the applicant wishes to pursue
 - o the Programme Coordinator for a Social Inclusion Programme
 - o The Safeguarding Champion for a Social Inclusion Programme if relevant

The Panel will discuss the nature of the disclosure, its relevance to the course applied for, and will seek advice from external agencies if necessary. The Panel will designate the risk outcome as one of three possible outcomes:

Green	Application accepted - proceed to enrolment
Amber	Application accepted but with terms and conditions
Red	Unable to proceed with application

In the case of the outcome being Amber or Red the applicant, the Designated Safeguarding Lead will offer the applicant an explanation. If the applicant is unable to proceed to enrolment on their chosen course, the Designated Safeguarding Lead will also offer advice on the options available regarding other courses where their criminal record would not pose a barrier. In the case of the outcome being Green the Designated Safeguarding Lead will inform the applicant and also advise the College's Admission Service to proceed with the application.

It may be necessary to share information about an applicant with a criminal record to appropriate staff or work placement provider. South West College will release this information on a 'need to know' basis only.

8. Grounds for refusal of entry to a course

The main grounds for rejecting an applicant declaring a criminal conviction are:

- Following the risk assessment, it may be that Disclosure Panel considers that the risk presented cannot be managed satisfactorily while maintaining a duty of care to others.
- In the case of placements, although the College might consider that a particular offence does not bar someone from admission, or may decide to admit an applicant to a course following an enhanced disclosure, a placement provider might decide not to accept the student for a placement. In such

circumstances if the placement is an integral part of the course it will not be possible to proceed with an offer for admission, or with admission at a later stage.

- In cases where relevant professional bodies or organisations (such as the General Medical Council for example), or companies acting on their behalf, or companies or organisations which are providing placements, have their own views and consider that particular offences are unacceptable, although the College may be willing to admit an applicant to a course there is a possibility or likelihood that even if the student successfully completes the course, he/she will not be able to practise or to take up a post in the related profession.

In any situation where an applicant is unable to proceed, or if the College is concerned that it is unlikely that they will be able to practise a related occupation at the end of it, the College will inform the applicant in writing giving them an explanation.

9. Convictions after the commencement of a course

If a student is convicted of a criminal offence after he/she has applied or started a course he/she must inform the Designated Safeguarding Lead immediately by email to dsl@swc.ac.uk or by telephone 028 82250109. All information will be treated confidentially and in line with data protection. The student will also be made aware of support organisations such as NIACRO.

10. Concerns raised about a student

South West College will investigate any disclosure made about an applicant or student by another student, member of staff or member of the public. In the event that any concern proves to be valid and the applicant or student has not made a disclosure to the College, the Disclosure Panel will undertake a risk assessment as per the application stage or take a decision as to whether the student can continue with their studies.

11. Action required if a disclosure is made at enrolment stage

On many occasions, a prospective student will wish to enrol directly onto a course, bypassing the application process. This is standard procedure for most part time and evening courses for example.

The College enrolment form requires a prospective student to indicate if they have a criminal record. The enrolment form may be completed in person, over the phone or in due course, online. If a prospective student ticks the box or indicates verbally that they have a conviction, they will be directed to the Criminal Records Disclosure Form

on the College website. Alternatively, they may request a form from admissions or that one be posted out.

At this stage the prospective student must be told that their enrolment is on hold until the form is returned to the College in the manner instructed on the Disclosure form. On receipt of the form the process for risk assessing an applicant with a disclosure will be followed. Completion of the risk assessment will be undertaken in a timely manner in order to allow the prospective student to commence their course as quickly as possible, if appropriate.

12. Appeals


Applicants who have been refused a place at the College as a result of a Risk Assessment may appeal against this decision in writing within 14 days from the date on the letter to Chief Executive. The Chief Executive will consider each individual case and confirm their decision to the applicant in writing.

13. School links and under 16 year olds on social inclusion programmes

South West College relies on the school sending their pupils to the College on the School Links Programme, to inform the College if a pupil is being managed under a risk assessment following the disclosure of a criminal record. The College reserves the right to conduct its own risk assessment if it considers that there is a risk to the pupil or to its own student and staff population.

Applicants to a Social Inclusion Programme who are under 16 will be subject to the College's Risk Assessment procedure and the College will liaise with the applicant's parent or guardian.

Signed  Date 16/09/2020
Chair of the Governing Body

Signed  Date 16/09/2020
Chief Executive

Appendix 1 Determining if a Conviction is Spent

Table 1 provides some guidance for determining if a conviction is 'spent'. However, 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. South West College advises applicants to seek advice from eg NIACRO (contact details are available on their website www.niacro.co.uk/contact-details).

Sentence	Aged 18 or over at conviction	Under 18 years at conviction
Absolute Discharge	6 months	
Probation Order, Bind Over, Conditional Discharge, Care/Supervision Order	Date Order ceases OR 1 year – whichever longer	
Attendance Centre Order Juvenile Justice Centre Order Youth Conference Order, Reparation Order, Community Responsibility Order	1 year after Order expires	
Hospital Order	5 years or 2 years after Order expires – whichever longer	
Fine or Community Service Order Combination Orders	5 years	2 ½ years
Prison – (immediate or suspended) OR Young Offenders Centre – sentence of 6 months or less	7 years	3 ½ years
Prison – (immediate or suspended) OR Young Offenders Centre over 6 months up to and including 2 ½ years	10 years	5 years
A period of detention of less than 6 months under Article 45 of the CJ (Children) (NI) Order 1998	N/A	3 years
A period of detention over 6 months but less than 30 months under Article 45 of the CJ (Children) (NI) Order 1998	N/A	5 years
NB: CUSTODIAL SENTENCE OF MORE THAN TWO AND A HALF YEARS CAN NEVER BECOME SPENT Offences dealt with by sentences of 30 months imprisonment or more are <u>never spent</u> ; in practice this means that the more serious offences must always be declared.		

Table 1 Advice on when convictions become spent

Please Note:

- Consecutive prison sentences count as a single term when calculating the rehabilitation period.
- If more than one sentence was imposed for an offence, the longer rehabilitation period applies.
- If a person receives a new conviction during rehabilitation period:
 - for a summary offence (i.e. can only be tried at Magistrates Court) both rehabilitation periods expire separately;
 - for a more serious offence (i.e. which **could** be tried at the Crown Court) **neither** conviction will become spent until longest period expires.
- Cautions, reprimands and final warnings are not considered to be convictions and become “spent” but may be disclosed on an Enhanced AccessNI check.
- A spent conviction will remain on your criminal record.

Appendix 2 Exemptions to the Provision of the Rehabilitation of Offenders (Exceptions) Order (NI) 1979

There are certain professions and occupations that are exempt from the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 (as amended). This means that for certain professional courses **all criminal convictions** must be declared regardless of when the offence was committed.

The types of courses for which this is relevant include:

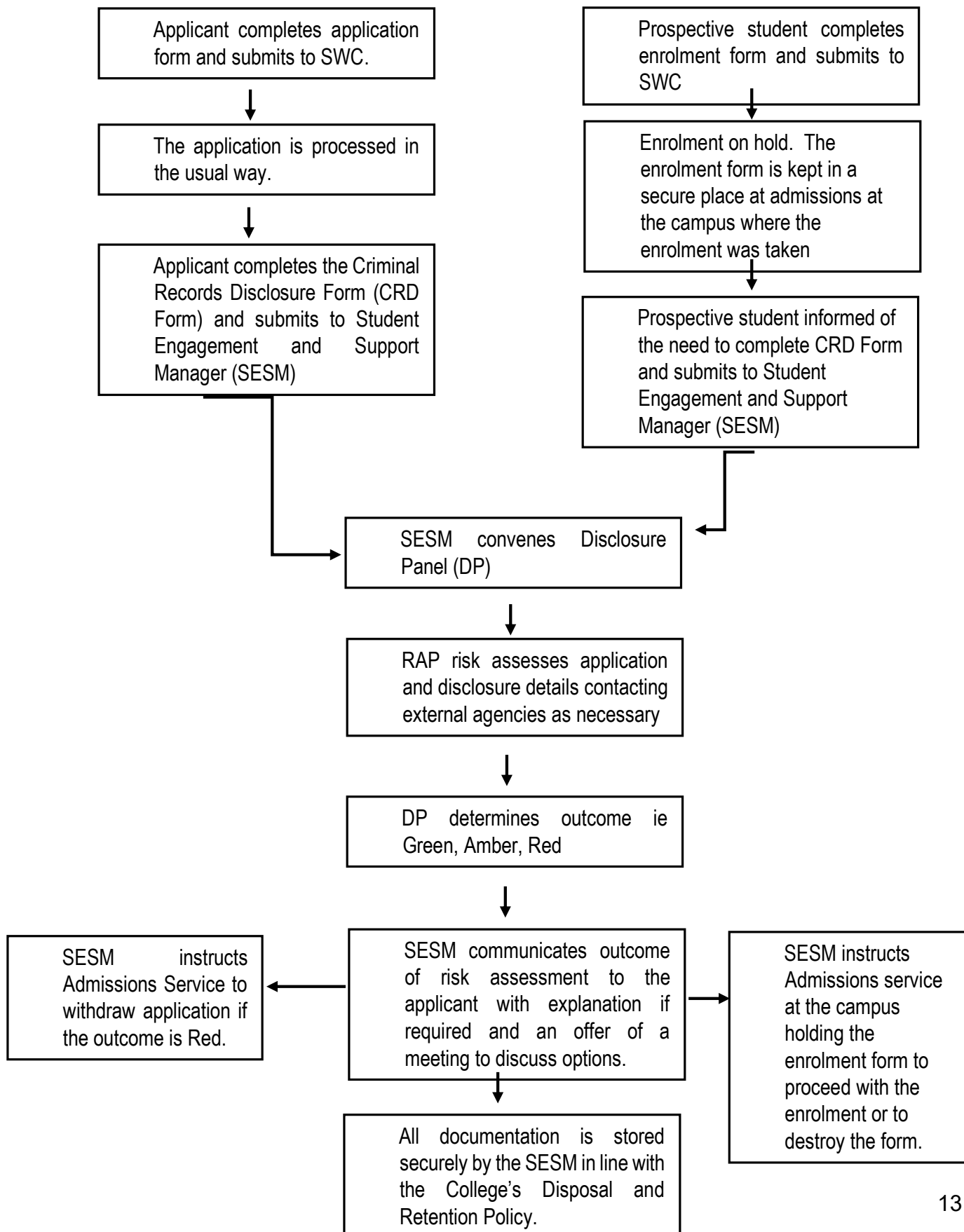
- teaching,
- health, social work,
- veterinary medicine,
- veterinary science or
- courses involving working with children or vulnerable adults.

The list of professional posts exempt from the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 (as amended) is extensive but can be summarised as follows:

- **Work that involves contact with children or young people or vulnerable adult groups**
e.g. provision of health care or social services, work with children such as youth work, education, or with adults with learning disabilities, mental illness, the elderly.
- **Professions that are regulated by Law** - e.g. medical practitioner, nurse, chemist, optician, accountant, manager of an insurance company.
- **Posts involving national security** e.g. security personnel or senior civil service posts.
- **Posts concerned with administration of justice** e.g. police officers, solicitors, probation officers, traffic wardens, judges, prison officers.

This information is particularly relevant where a course contains a work placement element. Students on such courses will also be required to complete an Access NI check prior to the start of work placement. If it is found that a student has a criminal record that they did not disclose, they may be withdrawn from their course.

Appendix 3 Flowchart summarising the risk assessment process



Appendix 4 South West College Criminal Records Disclosure Form (CRD Form)

South West College aims to ensure that anyone who make a disclosure of a criminal record will have access to a fair admissions process while preserving the College's duty of care to the entire student and staff community.

South West College actively promotes equality of opportunity for all and welcomes applications from a wide range of applicants including those with a criminal record. Having a criminal record will not prevent an application from being considered by the College nor will the information disclosed necessarily prevent a person from studying the course of their choice.

Instructions for Completing this Form

Please complete this form as fully and as accurately as possible, using black ink and block capitals. If you miss out any sections, we will not be able to process your form straight away, and this will delay your application. You should read the accompanying "Guidance Notes for Applicants Making a Criminal Record Disclosure" when completing this form.

Everyone completes Part A of this form which asks for basic information about you.

Everyone completes Part B of this form to provide details of any relevant criminal record details (see guidance notes) that may be relevant to them.

Only those applying for a course in any area which is regulated completes Part C of this form.

It is optional but advisable to complete Part D of this form which gives you the opportunity to set the context of any criminal history you disclose. This will allow us to risk assess your application as fully as possible.

Everyone completes Part E of this form taking notice of the declarations and consent you are signing

Instructions for Returning the Form

Put your completed form inside an envelope marked '**Confidential - for the attention of the Student Engagement and Support Manager**'. Seal the envelope, put it inside another envelope and send it to:

**South West College Fairview Campus
1 Dublin Road,
Enniskillen
Co.Fermanagh
BT74 6AE**

The information you give on this form will be handled confidentially by the College's Disclosure Panel and in line with Data Protection legislation. As soon as the Disclosure Panel has made a decision on your suitability to attend the College, we will write to you to let you know the outcome.

Part A

Your name:

Your address:

Your mobile telephone no:

Your date of birth:

Course(s) applied for:

If you would like the support of a Student Wellbeing Officer while studying at the College, please tick here.

☐

PART B

Everyone completes this section with any details of unspent convictions:

What was the charge for? <i>eg shoplifting, common assault etc.</i>	When were you given it? <i>eg 2004</i>	What was the outcome? <i>eg probation order, custodial sentence etc.</i>
1		
2		
3		
4		
5		
6		
7		
8		
9		

Continue on a blank page if necessary - write your name on it, and attach it to this form.

PART C

Complete this section if you are applying for a course to work in an area which is classed as 'regulated activity'. Please include anything which could be revealed in an AccessNI Disclosure Check ie spent and unspent convictions, cautions.

What was the conviction for? <i>eg shoplifting, common assault etc.</i>	When were you given it? <i>eg 2004</i>	What was the outcome? <i>eg probation order, custodial sentence etc.</i>
1		
2		
3		
4		
5		
6		
7		
8		
9		

Continue on a blank page if necessary - write your name on it, and attach it to this form.

PART D

This section is your opportunity to explain the circumstances surrounding your convictions and provide a balanced view on you as a whole person.

Please give relevant details about the circumstances under which you came to have this criminal record(s).

The disclosure Eg PART B item 1	Your comments/explanation of the circumstance surrounding

Provide any other information you wish to support your application or

Please feel free to attach a separate disclosure statement. Advice on how to do this can be obtained from NIACRO's disclosure service.

PART E

Please give us the full name, job title, telephone number and address of someone we can contact for more information to support your application. This person will be in the criminal justice system such as a police officer, social worker or probation officer. We will use this information only if we need it to assess your suitability for the course you have applied for.

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Declaration

I give consent to South West College to process the information I have given on this form for any purposes connected with my studies, for my health and safety or that of others while on College premises, or for any other legitimate reason. Please tick here if you agree ☐

I agree to South West College's Disclosure Team contacting the person named above for information about my offending, as part of the risk assessment process to ascertain on my suitability to attend the College. Please tick here if you agree ☐

I certify that the information I have given on this form is correct.

Your signature: _____

Date: _____

If someone else has filled in this form for you, please print their full name, position and organisation below.

Their name: _____

Their position: _____

Their organisation: _____

A printable version of this form is available on the College website

Document Development

Please complete with details regarding the development of this Policy.

D1. Working Group

Details of staff who were involved in the development of this policy:

Name	Position
Joanne Lucas	Risk & Compliance Officer
Ciaran McManus	Assistant Chief Executive
Sharon McGrath	Head of Services
Sharon Pritchard	Student Engagement and Support Manager
Jacqueline McDowell	Centre for Excellence for Social Inclusion Manager

D2. Consultation

Details of staff, external groups or external organisations who were consulted in the development of this policy:

Please refer to Equality Screening Consultation Guidance.

Name	Organisation	Date
Mr Jonny Pardoe	NIACRO	April 2020
Mr Donal Collins	Equality Commission	1 May 2020

D3. Approval Dates:

Details	Date Approved
Equality Screening	1 May 2020
Quality Checked	
CMT	
Governing Body	

D4. Communication Plan:

Please provide details and dates as to how this policy will be communicated, implemented and disseminated:

Action:	Action by:	Date:
Policy to be placed on Gateway	J Lucas	On approval
Training to be organised for relevant staff eg admissions staff, safeguarding assistants	J Lucas	By end September 2020

D5. Document History

Issue no. under review (Please see the front page)	Date of review: (Date)	Who was involved in reviewing the document? (Name/s)	Were changes made to the document after reviewing? (Yes or No)	If changes have been made, please provide brief details:	New Issue No.	If Yes, did the document need to go through consultation again? (Yes*/No)	If Yes, did the document need to be Equality Screened again? (Yes*/No)	If Yes, date those affected by document will be alerted of updated document: (Date)