

Clare Adamson MSP
Convener, Education and Skills Committee
Scottish Parliament
Edinburgh
EH99 1SP

Tuesday, 15 October 2019

Dear Ms Adamson,

Thank you for your letter dated 16 September and for the opportunity to provide the Committee with information on universities' actions to support students affected by gender based violence and the specific change made by UCAS to its data collection for the 2019 admissions cycle, on applicants with unspent criminal convictions.

Work to tackle gender based violence in higher education has been a high priority for institutions. Universities strive to be inclusive, safe and respectful places for their students and staff. Sadly, as in the rest of society, that is not always the experience of everyone working or studying in higher education and that is a situation that universities want to address. There are a number of initiatives in this area that I would like to share with the Committee, which you will find more details about below, but this letter starts with the Committee's specific question relating to collection of information on unspent criminal convictions of applicants.

Collation of data relating to the unspent criminal convictions of applicants

1. As noted in the letter from the Emily Test, UCAS changed one aspect of its data collection from applicants for the 2019 entry admissions cycle. Previously UCAS asked two questions in regards to the unspent criminal convictions of applicants. "Question one", as UCAS refers to it, asked all applicants regardless of course(s) to declare whether they have any relevant unspent criminal convictions. UCAS removed this question from the application process for the 2019 admissions cycle. "Question two", which asks the same thing, but of applicants to courses leading to professions (such as teaching or medicine) which are exempt from the Rehabilitation of Offenders Act (1974), remains as part of the UCAS application process as a mandatory question.
2. The change by UCAS was prompted by its need to comply with new data protection legislation including the GDPR and Data Protection Act 2018. Guidance from the Information Commissioner's Office suggests that the justification threshold around asking for information about criminal convictions is high. The collection and processing of this information must be necessary and proportionate as required by the Data Protection Act 2018. However, universities' starting point when alerted to this change in 2018 was to find a lawful basis to continue to collect apposite information. Universities' duty of care to the student and staff community is of paramount concern. We do not agree that the move away from a data collection from all individuals who apply via UCAS at the initial point of application has compromised staff and student safety. We believe it has created an

opportunity to develop more robust, fair and compliant ways of data collection, building on the previous process, which comply with the requirements of UK and European Data Protection Laws. We outline the opportunities for improvement in paragraph six. There is still scope within the Data Protection Act 2018 for institutions to ask applicants, offer holders and returning students to declare 'serious' unspent criminal convictions, and it is open to each institution to determine how to do so, depending on their circumstances and need.

3. As context for data collection is crucial in the statute (as necessary for a specific purpose), universities have needed to consider their new approach individually, via an institution specific Data Privacy Impact Assessment, which must consider and document the necessity and proportionality of processing this data as well as the context, scope and nature of the processing as relevant to the specific circumstances of each institution and student body. In practice, this means institutions have reached different judgements on what is the most appropriate stage in the application and/or admission cycle to collect this information and which categories of unspent convictions are relevant in a higher education context. As UCAS's published good practice guide states, "it is likely there is no 'one size fits all' approach".¹ Whilst this is the case, institutions have shared practice and sought to learn from each other within sector networks as they developed their new approach.
4. Universities Scotland asked our members for information about their new arrangements for data capture. Eight have advised they have moved to new data capture systems in time for entrants to the 2019/20 academic year. A further four institutions had interim arrangements in place for 2019/20 and/or were confident they would have new systems embedded for the start of academic year 2020/21. Of those institutions which could share information on their new/interim arrangements, one institution intended to collect this at the application stage (suggesting no change from the UCAS system), one would do so at the point the institution makes an offer. Four would do so at the point an offer is accepted. Three would do so if/when an application for student accommodation is made. Two institutions intended to capture this information at registration and one at induction. Institutions have reached decisions on the point of data capture following their own data privacy assessments as relevant to the specific circumstances of their institution, it's location, student demographics, the course offering at that institution and whether or not the university offers accommodation.
5. Several institutions provided additional details of other changes and improvements to their data capture from 2019, to be compliant and robust in their approaches. More than one institution advised that it has introduced a new definition as to what it considers to be a relevant unspent criminal conviction (for a more focused data collection than previously). Additionally, one institution was clear that their question would not just cover relevant unspent criminal convictions but also covered live criminal proceedings and police investigation. More than one institution mentioned that their systems will capture this information from all students on an annual basis, for returning as well as new students; including a requirement on the student to advise of any material change in circumstance (e.g. if charged with or under investigation for a serious criminal offence). One institution cited an in-built verification system to avoid false positives.
6. The 2019/20 academic year is the first year of new arrangements and there is plenty of opportunity for institutions to share their practical experience and learn from other institutions throughout Scotland and the UK. It may be that institutions continue to evolve their processes, including future exploration of a shared resource, at a later stage in the process, if this is thought to add value and have a lawful basis. However, we believe that as well as being lawful, the actions taken by institutions have already helped to develop a more robust system compared to the previous approach taken in "question one", for example:

¹ UCAS p8. <https://www.ucas.com/file/189501/download?token=bDvz9h8Q>

- Responses to the previous “question one” were self-declared by the applicant and not verified. This allowed for omissions and false positives (e.g. the declaration of an unspent conviction for speeding offences). UCAS advise that in 2017 the percentage of applicants declaring an unspent, relevant conviction was less than 1%.² Institutions have demonstrated that for positive responses, processes of risk assessment are in place.
- The previous method of data capture collected this information from applicants only once, at a snapshot in time, many months before students began their studies (assuming they did start university). Most undergraduates study with universities for a minimum of four years: requiring the reporting of a material change in circumstance from students in-year provides a more robust approach.
- Not all students use UCAS as the route to apply to university. Whilst it used overwhelmingly by UK full-time undergraduate students (with the exception of the Open University) it is not used by all postgraduates (many of whom apply directly) nor all EU/international students.
- The question was asked of all applicants to university (there were over 300,000 applicants to Scottish universities via UCAS in the most recent cycle) irrespective of whether they will receive or accept an offer of a university place. This gave rise to a disproportionate collection of highly personal data, on a sector level, with no clear link between purpose and processing (as required by GDPR).
- UCAS was the initial point of data capture under the previous system but the data was passed to institutions for processing which is likely to have resulted in differences of approach. Realistically, there has never been a single, consistent UK approach to the processing of this data. The change in approach is not as marked as it may appear.
- “Question one” was phrased to capture all unspent criminal convictions, many of which may not be relevant to a university context. There is now an opportunity to specify the relevant offences for safeguarding purposes (which can mean the safeguarding of the applicant as well as other members of the student community). In doing so, universities can use this to reduce barriers to education faced by students with unspent criminal convictions but who pose no risk to others.

Other actions in hand in Scottish higher education to support victims of gender based violence

Scotland’s universities are involved in a wide range of activities to tackle gender based violence (GBV) and support victims/survivors of gender based violence. Many of these initiatives run at institution level but there is also a very active programme of collaborative work in regions (Fearless Edinburgh being such an example) and at national level, with the Equally Safe Toolkit roll-out and the partnership approach taken through the Scottish Government convened Equally Safe Colleges and Universities Group:

- This month, Universities Scotland published a report, [Changing the Culture in Scottish HE: Two Years On](#), to show the progress universities have made in tackling gender based violence as well as hate crime and harassment, using the 2016 Universities UK *Changing the Culture* report as a framework for action. This was published on our website in early October. Drawing on survey responses from institutions and noting there was an 81% response rate amongst eligible Scottish HEIs, there are many positives in the data. Perhaps, most notable, given the question in the Committee’s letter, is the figure that 62% of responding Scottish institutions said they had put additional support in place for responding students (victims/survivors) since 2016. Other key findings from the survey include:

² UCAS p9. <https://www.ucas.com/file/189501/download?token=bDvz9h8Q>

- 92% respondents have taken a whole institution response to tackling gender based violence, hate crime and harassment.
- 100% of Scottish responding institutions said changes had been embedded in governance structures and/or policies and procedures.
- Universities' approach to tackling all forms of harassment has been very inclusive of students, staff, campus and students' unions with 92% of respondents indicating that students (&/or their representatives) and staff have been involved in the universities' strategic response. 85% of respondents said that third sector and local organisations such as Rape Crisis Scotland have been involved in this way.
- There has been significant progress on mechanisms to support students to report incidents. 77% of universities have published clear information on how to report and 69% have developed new or improved reporting mechanisms.

The results indicate there has been a high level of activity from universities to tackle gender based violence and a rapid pace of change. However, we are mindful that the report still reflects a work in progress to tackle harmful and intolerant behaviours where they exist in our universities. We know that the data report is not likely to indicate as much progress, across all areas, as quickly as everyone would like to see. Universities do not yet have all the answers nor is it possible to say that they are getting everything right but they are very alert to the issues and very aware of the deeply personal and damaging toll that incidents of this kind take on people's lives. The report also includes a set of new recommendations, developed by UUK, designed to maintain momentum and build on progress. As part of the UUK family, Universities Scotland will work closely with UUK to implement (and if, necessary adapt) the action taken to ensure it will also be of benefit to Scotland's universities.

- Universities Scotland has committed staff and Principal resource to support work to tackle gender based violence since late 2017 and has sought to contribute to this agenda where we can add value. Key amongst these projects has been our work with stakeholders to deliver a national roll out the Emily Test's idea of GBV support cards for FE and HE staff receiving an initial disclosure of GBV. We created, tested and delivered 100,000 cards to every college and university in Scotland in September 2018. We also ran a pilot with Police Scotland's G-Division to test the use of the resource by police officers responding to incidents involving students. We followed that up in the spring of this year, producing stickers which list specialist GBV and mental health support services to be displayed in/around university premises, communal spaces, toilet cubicles and accommodation. 50,000 stickers have been shared with colleges and universities across Scotland. As before, we're working with Police Scotland in the latter half of this year to explore the possibility of displaying the stickers in pub and club venues in university towns and cities to extend the visibility and accessibility of these resources.
- Universities Scotland will lead a review of the existing 2016 Student Misconduct Guidelines where misconduct may also constitute a criminal offence. This work is due to start imminently following two scoping meetings with stakeholders earlier this year to help inform the remit. The existing guidelines, produced by Universities UK and Pinsent Masons in 2016, represented a significant step forward at the time but there are real advantages in revising the Guidelines now to reflect highly relevant devolved differences in GBV policy, higher education, legislation and criminal justice systems. The rapid pace of change in the understanding and best practice in this area means that the agenda has travelled some distance since 2016, not least in the need for processes to recognise the potential role

of trauma (and risk of secondary trauma) for reporting students which gives us an opportunity to capture this set a new standard in Scotland. This work will be led by Professor Pamela Gillies, Principal at Glasgow Caledonian University and involve senior management, key stakeholders and bring in external expertise. Our current timeline is for this work to be concluded in time for academic year 2020/21.

We would be very happy to keep the Committee informed of progress on any of these areas of activity.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alastair Sim'.

Alastair Sim
Director