

# EMILYTEST

(SC049072)

## Disclosure (Scotland) Bill

Response from Emilytest

September 2019

### About Us

Emilytest is a registered charity which was founded by Fiona Drouet. Fiona is the mother of 18-year-old Emily Drouet who took her own life at university halls after a campaign of sustained abuse by a fellow student.

Emilytest are leading change across Scotland's higher education institutions. We are collaborating with our partners to achieve safer campuses by delivering prevention and intervention techniques to improve responses to gender-based violence.

### Introduction

We very much welcome this invaluable opportunity to comment on the Disclosure (Scotland) Bill.

Risk assessments play a pivotal role in protecting students. They provide a layer of security in achieving a safe environment for our students to live, work, study and thrive.

Declaration of criminal convictions was previously collected by UCAS - an independent charity providing information, advice, and admissions services to inspire and facilitate educational progression. In May last year (2018) UCAS removed the question from all course applications where PVG checks are not a pre-requisite to the course of study. Please see statement from UCAS below:

'We'll be making changes to the information we collect from applicants about unspent criminal convictions for the 2019 entry cycle. In previous years, everyone was asked to disclose whether they had any unspent, relevant criminal convictions. However, this has now been removed, and we hope this reaffirms that higher education is open to everyone.'

Until now, UCAS asked applicants to respond to two questions regarding criminal convictions:

1. The first question asked applicants to declare whether they had any relevant unspent criminal convictions. This has now been removed.
2. The second question asked those applicants applying to courses leading to certain professions, or occupations exempt from the Rehabilitation of Offenders Act (1974), to declare whether they had any criminal convictions, including spent convictions that were not filtered. This was a mandatory question and remains in place for applications to these courses.

These changes also ensure we meet the requirements of the European General Data Protection Regulation (GDPR). ENDS

Emilytest embarked on a UK-wide campaign to make amendments to the change declared by UCAS. We believe the change compromises the safety of students and staff on university campuses.

While the review in and of itself is a welcome one in that the previous use of information was imperfect, we believe that gathering the previously requested information should be a mandatory requirement.

In order to risk assess applicants, we have to be informed if they have a history of any violent offences. This is of particular importance given the accommodation services offered by the majority of our campuses. Universities, students and their staff are now completely exposed - vulnerable because this safety net of information has not been collected on applications submitted since the 2019 cycle.

We do not suggest or expect universities to deny entry to all applicants with criminal convictions. We simply insist that our universities are given the opportunity to make informed decisions in the best interests of their communities. The absence of the information results in an absence of appropriate safety measures should they ever be deemed necessary. Indeed, it would ultimately remove the institutions' opportunity to explore if they could deliver the level of support required to keep their communities safe.

Universities Scotland and Universities UK formed a taskforce to review this. There is no current, consistent national approach or governance in relation to the collection of this information. Discussions suggest gathering the information at a local level, post-offer however, this is proving troublesome. Universities are left in an exceptionally vulnerable position.

We ask that Declaration of Criminal Convictions is made mandatory in higher education with exception to the Bill applied. This is in line with Equally Safe and the Ministerial letter of guidance to the SFC in relation to gender-based violence.

Our concerns are shared by national Violence Against Women organisations, with written support from Marsha Scott, CEO Scottish Women's Aid and Sandy Brindley, CEO Rape Crisis Scotland.

### **Marsha Scott – Scottish Women's Aid**

SWA urges Scottish universities to investigate the data collection issue further in the context of their parallel obligations and duty of care towards female students and to explore options allowing them to continue the assessment of conviction information. In particular, this assessment may be lawful in terms of the conditions of Schedule 1 of the Data Protection Act 2018, in that processing of this data is necessary to prevent unlawful acts, protect individuals' vital interests, safeguard individuals at risk, protect the public, and defend women's legal rights. It may also be possible to collect this information at a later and less speculative stage of the application process or entry route to the university, making the data request more focused, purposeful, targeted and proportionate, and therefore compliant with GDPR.

### **Sandy Brindley – Rape Crisis**

There are currently significant issues with safety within universities and colleges, with increasing awareness of the very high level of sexual harassment being experienced by women. Some promising work is underway to start to tackle these

issues, not least through the campaigning work that you have undertaken since the tragic death of your daughter.

This seems to us to be a step backwards in our efforts to make universities and colleges safer. Efforts being taken under GDPR to protect our privacy and data should not be used to undermine legitimate steps to ensure safety. A proportionate and sensitive solution can I am sure be found and we would be happy to work with you and others to achieve this.