



# Disclosing criminal records

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## Introduction

This guide is for adult job seekers who are ready and able to work, and who need to disclose their criminal record. To reduce the risk of future misunderstandings and disagreements, it is strongly recommended that applicants provide certain criminal record information to employers. Providing this information is called disclosure. This guide includes information about the law affecting job-seekers and advice on when and how to disclose criminal record information to a prospective employer. An explanation of the terms used in this document is given in the list at the end of the guide.

For the purposes of employment, you will probably have a criminal record if you have ever accepted an official police caution, pleaded guilty or been found guilty in a court. If you are not sure of the details of your record, the Data Protection Act allows you to ask the police for a copy of your criminal record. This is called a subject access request. This is a free service, and the police have up to 40 days from receiving your application to supply the information to you. Similarly, an employer may be entitled to request that you apply for a criminal record certificate – this will depend on the type of job you are applying for. Nacro's Resettlement Advice Service can advise you on this issue if needed. See the details at the end of the guide.

## The legal background

### The Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act (ROA) allows most convictions and all cautions, reprimands and final warnings to be considered 'spent' after a certain period. This period – known as the 'rehabilitation period' – is determined by the sentence or disposal given, rather than by the nature of the offence. The ROA gives people with 'spent' convictions, cautions, reprimands and final warnings the legal right not to disclose them when applying for most jobs, most courses and all insurance purposes.

### Reform of the Rehabilitation of Offenders Act

The rehabilitation periods have been changed and reformed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The reforms aim to establish the right balance between enabling people with convictions to successfully resettle back into society whilst at the same time maintaining public safety. The changes were implemented on 10<sup>th</sup> March 2014.

If you are unsure whether your conviction is 'spent', or whether you may need to disclose it when applying to a specific job or course, please contact **Nacro's Resettlement Advice Service** on 0300 123 1999 or email: [helpline@nacro.org.uk](mailto:helpline@nacro.org.uk).

#### What does 'spent' mean?

Once a conviction, caution, reprimand or final warning becomes 'spent', it means that it does not need to be disclosed to most employers, or when applying for most educational courses, insurance or other purposes. It is against the law for an organisation to obtain information about an individual's 'spent' cautions or convictions unless specifically authorised by law to ask an 'exempted' question, usually related to someone applying for a job or role that is not covered by the ROA.

### The Exceptions Order

Some jobs and courses are not covered by the ROA and are considered 'exempt'. If you apply for an 'exempt' job or course, the employer or course provider is entitled to ask you for a full criminal record declaration and may request a check from the Disclosure and Barring Service (DBS).

If you apply for an 'exempt' job or course, you are advised to declare both 'spent' and 'unspent' convictions, cautions, reprimands and final warnings. However, you do not need to declare any criminal record information that is now filtered under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). This law came into force on 29 May 2013. As a result certain cautions and convictions are now considered 'protected' and therefore filtered from Standard or Enhanced DBS checks. Further information is contained in our [Practical guidance on DBS filtering](#).

### Do I need to disclose cautions or convictions that were 'stepped down'?

The police retain details of convictions, cautions, reprimands and final warnings on the Police National Computer (PNC) until a person reaches 100 years of age. In March 2006, a procedure called 'step down' was introduced, which meant that the police could retain records on the PNC, but they could be removed from standard or enhanced DBS checks after a certain period had elapsed.

In October 2009, as a result of a decision made by the Court of Appeal in relation to a case that was made against the police, all step-down procedures were stopped and reversed. If you applied to have your record stepped down between March 2006 and October 2009, it will now be disclosed on your standard or enhanced DBS check unless it is eligible to be filtered under the filtering legislation that was implemented on 29 May 2013.

### Criminal record checks

There are currently four main forms of criminal record checks: Basic, Standard, Enhanced, and Enhanced and barred Disclosures.

**Basic Disclosures** disclose only 'unspent' convictions. All employers are entitled to request details of 'unspent' convictions and are therefore entitled to request applicants to undergo a Basic Disclosure, which can only be obtained from the DBS for employers in England and Wales and from Disclosure Scotland for employers in Scotland.

**Standard Disclosures** disclose 'spent' and 'unspent' convictions, cautions, reprimands and final warnings that are not eligible to be filtered. If an employer is recruiting for a position that is 'exempt' from the ROA, they are entitled – as a minimum – to request a Standard Disclosure.

**Enhanced Disclosures** disclose 'spent' and 'unspent' convictions, cautions, reprimands and final warnings that are not eligible to be filtered. The police also have the opportunity to disclose any other information that they feel might be relevant for the employer to consider when deciding your suitability for the role that you have applied for. This can include arrests, non-recordable offences, allegations and not-guilty verdicts. Very few Enhanced Disclosures reveal this type of police intelligence. Enhanced Disclosures may also be requested where the employer is recruiting for a position that is 'exempt' from the ROA.

**Enhanced and barred Disclosures** disclose the same information as an Enhanced Disclosure, but will also reveal whether the applicant has been barred from working with children, adults or both, if this information is requested. Enhanced and barred Disclosures are eligible only for roles that involve 'regulated activity' with children or adults.

Information that may be included	Type of disclosure			
	Basic	Standard DBS	Enhanced DBS	Enhanced and barred DBS
'Unspent' convictions	✓	✓	✓	✓
'Spent' convictions (that are not eligible for filtering)	✗	✓	✓	✓
Cautions, reprimands and final warnings (that are not eligible for filtering)	✗	✓	✓	✓
Police intelligence	✗	✗	✓	✓
Inclusion on the children's barred list	✗	✗	✗	✓
Inclusion on the adults barred list	✗	✗	✗	✓

## Preparing to disclose

It is a good idea to be prepared to disclose your criminal record if:

1. You have 'unspent' convictions and you are asked, by the employer, for a criminal record declaration; or
2. You are applying for a job that is 'exempt' from the ROA.

If one of the above applies to you, it is a good idea to check with the organisation or company what the recruitment or admission policy is in relation to the declaration of criminal records. You could check the organisation's website or make an anonymous enquiry with the Human Resources department. If the policy states that jobs are not offered to applicants with 'unspent' convictions, and you have an 'unspent' conviction, it is probably not worth applying. Many employers and organisations consider applicants on a case-by-case basis, so it is worth checking and applying if this is their policy.

Even though you might feel embarrassed about disclosing a criminal record, remember that almost one in four people of working age have at least one conviction and many more have accepted police cautions, reprimands and final warnings. You are not alone, and the employers are likely to have experienced criminal record disclosures before. When disclosing your criminal record, it is important to relate what you write (or say) to the job for which you are applying. A good disclosure offers the employer reassurance about your offence(s). Try to put yourself in the shoes of the employer who is receiving this information and is trying to make a judgment on the basis of the information you are providing. In particular, consider the following:

- **When the offence was committed:** if your offence(s) happened a long time ago, then highlight this. If the conviction is recent but the offence happened a long time before, explain this as well.
- **Number of offences:** if the offence is a one-off and was out of character, highlight this. If you have a number of offences that occurred over a period of time, try to group them together (e.g. “between 2001 and 2005 I was convicted on a number of occasions for offences relating to...”).
- **Relevance:** offence categories include a range of behaviour or offences which can make it difficult for employers to judge whether the offence is relevant to the job you are applying for. For example, burglary can be breaking into somebody’s house and putting somebody in fear of violence, or it could be simply trespassing in a derelict building. If the offence is not particularly relevant, explain this to the employer.
- **Seriousness:** if the offence sounds more serious than the circumstances were, highlight this. One way of explaining to employers that an offence is not as serious as it might sound is by drawing attention to the penalty or sentence that you received.
- **Context:** if there were particular circumstances or reasons behind the offence(s), explain these to the employer. For example, if you had an addiction issue at the time of the offending which you have since addressed, this is important information for the employer to be aware of.
- **Responsibility:** if you took responsibility for the offence(s) at the time – for example if you pleaded guilty at the earliest opportunity, or co-operated with the investigation – then you should say so.
- **Changed circumstances:** this is the most important part of your disclosure – reassuring the employer that whatever the reasons or causes that led to your offending, that you have since addressed them, changed them, or learnt from them.

## Drafting a disclosure statement

The best disclosures are those which are genuine and accurately reflect your circumstances and attitudes. If you take the time to prepare your disclosure in advance of applying for work, you will reduce the chances of being caught off-guard by a question about your criminal record, or gaps in your employment history that might be due to imprisonment or being held on remand. You will also increase your chances of securing a job.

You should prepare your disclosure in writing – also known as a ‘disclosure statement’ – it should be kept as concise as possible. As with any application or CV, a disclosure statement must be tailored to the specific vacancy or sector that you are applying for as different employers may have different concerns. A disclosure statement also provides evidence to the employer of what you disclosed when applying for the job. The statement is personal to you and for that reason you should avoid copying ‘template’ statements, but you should structure the statement in such a way that includes the following:

- Start your disclosure with something positive. State why you are applying for the job and what you can offer in terms of experience, abilities, knowledge and skills.
- Without it sounding like an excuse, explain your offence(s) in your own words, not forgetting to mention causes and reasons – for example previous issues with accommodation, education, employment, management of finances or debt, lifestyle and associates, relationships, substance misuse, mental health, or simply that you made a wrong decision. Try not to let these reasons sound like an excuse as the employer will not be interested. Only highlight the reasons so that you can go on to explain how your circumstances and/or attitudes have changed.
- If your life has changed and improved since the time of your offence(s), explain how and why, and show how you will not get into trouble again as a result of any changes.
- Always offer the names and addresses of people who can give the employer good character references. Remember that the employer is having to make a decision about your suitability when they know very little about you, so offering references from others who know you well and can vouch for your suitability will be helpful.

If you are not sure where to start, you might find it useful to jot down your answers to the following questions:

1. Why are you applying for this job?
2. What makes you think you can do it?
3. Can you tell me about your offence(s)?
4. When did you commit the offence(s)?
5. Why did you commit the offence(s)?
6. Was there anything else happening in your life at the time?

7. How did you feel at the time?
8. How do you feel now?
9. How can I be sure that you are not a risk?
10. How is your life different now?

## When to disclose

### Disclosing during the application stage

Employers use various methods to recruit new staff and the point at which you make your disclosure may not be the same for every job that you apply for. In general, it is a good idea to disclose at the earliest stage required. This is for two reasons: employers prefer it that way and it will help your own peace of mind. If an employer has a problem with your record, it is better to know at the outset.

### Applying with a CV and covering letter

Often, you will be asked to apply for a job with a CV and covering letter. Submitting a CV gives you an opportunity to sell yourself by writing about your experience, knowledge and skills and why you are the best person for the job.

You should not include any information about your criminal record on your CV. If you have gaps in your employment history which are due to time in prison and you are not asked directly to write about your criminal record in your application, you could explain these gaps by stating that you were 'unavailable for work' at a certain period in time. Remember: if you are not asked for a criminal record declaration directly, then there is no need for you to disclose this information at this stage. But you must be prepared to answer fully and honestly if you are asked, at interview, to explain what you mean by 'unavailable for work'.

Nacro advise that you put everything in writing so you have evidence that you disclosed a criminal record. Some people prefer to speak at interview, but it is important to also have a disclosure statement as well. It is likely that the subject will come up at interview and you should do your best to focus on points that relate to the job.

### Applying with an application form

Instead of being asked to submit a CV and covering letter for the job, you might have to complete an application form which includes a section asking you to make a criminal record declaration. Either state on the form that you have a conviction and that you will be happy to discuss it if selected for interview, or prepare a written disclosure statement that can be sent with the application form. If you decide to send a disclosure statement, you should enter on the application form that you are sending a disclosure statement to the relevant person and send it in a sealed envelope marked 'confidential'.

## **Disclosing at the interview**

You might be better at explaining things by speaking rather than by writing. However, it is important to have a written statement as well. When disclosing verbally, you should prepare what you intend to say very carefully in advance. It is difficult to be totally relaxed in an interview and you do not want to be in the position of either letting the disclosure dominate the interview or, on the other hand, finding that you become confused or uncertain in giving the correct information about your record.

You should be aware that sometimes it is not the people interviewing you that will make final decisions about any criminal record declarations. Therefore, if you decide to speak about your criminal record in an interview, take along a written disclosure statement to give to the interview panel so that it can be kept with your application and will serve as evidence that you have disclosed your criminal record.

## **Disclosure: top tips**

### **Find out what you need to disclose**

If you are not sure of the details of your criminal record, or whether you even have one, apply for a subject access request. Failing to disclose 'unspent' convictions when asked is a criminal offence. Failing to disclose 'unprotected' (i.e. not filtered) convictions, cautions, reprimands and final warnings for jobs that are subject to Standard or Enhanced DBS checks will usually result in the job offer being withdrawn. Nacro believes that a £10 investment for a subject access request is worthwhile.

### **Check recruitment policies**

Find out what the organisation's policy is on recruiting people who declare criminal records. If you have 'unspent' convictions and the organisation's policy clearly states that they will not employ people with 'unspent' convictions, you will save yourself a lot of time and energy by knowing this prior to application.

### **Prepare your disclosure**

Make sure that what you say is true and reflects your circumstances. If you lie about your record or mislead an employer and they find out, you are likely to face disciplinary action which could result in dismissal for breaching trust and confidence. Avoid using template disclosure letters – remember that the best and most reassuring disclosures are those that are genuine. It is a good idea to get an objective third party to review your disclosure.

### **Focus on the positives**

Remember that the employer should only be asking about your criminal record as part of their assessment of your suitability for the role. If you are confident that you are able to carry out the required duties and will not pose a risk in the working environment, you need to explain this to the employer.



## **Get feedback**

If you make a disclosure during recruitment and you are unsuccessful, it is easy to assume that this is because of your criminal record. It is always worth asking the employer for feedback if you are unsuccessful – it could be for an entirely different reason and the feedback may help you to do a stronger application/interview next time.

## **Glossary**

Set out below is an explanation of the terms used in this guide.

### **Subject access request**

If you would like a copy of your police record for your own reference, you can apply for a subject access request through the Public Access or Data Protection Office of your regional police force headquarters. The forms are usually available to download on the relevant police force's website.

The Association of Chief Police Officers' (ACPO) Criminal Record Office (ACRO) provides a subject access request service for the majority of police forces. Please go to the ACPO Criminal Record Office [website](#) for further details.

You can request a copy of your Police National Computer record, which will provide details of all convictions, cautions, reprimands and final warnings held on your police record. This is the information that will definitely be disclosed on Standard or Enhanced DBS checks unless the caution or conviction is eligible for filtering. If you would also like details of your local records, which may potentially be disclosed on enhanced DBS checks at the discretion of the Chief Constable, you can apply for your 'full nominal record'.

### **Conviction**

A conviction is a finding or admission of guilt in a criminal court.

### **Caution**

A caution or youth caution (for under 18s) is not a conviction. It is a formal warning about future conduct given by a senior police officer, usually in a police station, after a person has admitted an offence. Accepting a caution is an admission of guilt and for this reason, cautions do form part of an individual's criminal record.

### **Final warning**

A final warning was given by a police officer to a young person who admits their guilt for a first or second offence. However, unlike a reprimand, the young person is also assessed to determine the causes of their offending behaviour and a programme of activities is identified to address them. They were abolished and replaced by youth cautions in April 2013.

### **Reprimand**

A reprimand was given to young offenders (aged under 18) who have committed their first offence. They were abolished and replaced by youth cautions in April 2013.

## Disclosure and Barring Service

In December 2012, the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) were replaced by the Disclosure and Barring Service (DBS). A non-departmental body of the Home Office, the DBS is responsible for processing criminal record checks, and making decisions as to whether an individual should be placed on, or removed from, a barred list.

## Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended 2013)

Previously, all convictions, cautions, reprimands and final warnings on the Police National Computer were disclosed on Standard and Enhanced DBS (formerly 'CRB') certificates until a person reached 100 years of age.

On 29 May 2013, an amendment to the Police Act 1997 was implemented that allows certain minor offences to be removed or 'filtered' from the certificates. Offences that are eligible to be filtered no longer need to be disclosed for jobs that are eligible for Standard or Enhanced DBS checks. For guidance on whether your conviction, caution, final warning or reprimand is eligible to be filtered, please see [here](#).

## Regulated activity

Regulated activity (with children or adults) is work that a barred person is not allowed to do. It is illegal for a person who has been barred from working with children, adults or both to apply for roles that are defined as regulated activity with the relevant workforce. It is also illegal to employ a barred person in a role from which they are barred.

The definition of regulated activity with children and adults is set out in the Safeguarding Vulnerable Groups Act 2006 and was amended by the Protection of Freedoms Act 2012.

### Disclaimer

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