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Information
Guide

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Criminal Law & Fraud



If you have received a caution or been convicted of an offence then you may have to tell your employer about it. This guide aims to show what you need to disclose and when.

Do I need to disclose my conviction or caution?

Prospective employers will often ask about past convictions and related matters, either on the application form or at interview. In these circumstances, you must disclose all unspent convictions.

You may be refused or dismissed from employment and may even commit a criminal offence if you fail to disclose such a conviction when asked. However, no action may be taken against you unless the employer has expressly asked you for information on your past convictions.

If you receive a further conviction whilst an existing conviction remains unspent you should seek specialist legal advice – the effect of the new conviction on your disclosure duties can vary according to the nature of the offence.

Subject to the important exceptions listed below, there is no requirement to disclose spent convictions. This means that you cannot be refused or dismissed from employment for having a conviction which is spent or for failing to disclose such a conviction. An employer may not normally refer to a spent conviction in a reference. If they do, it may be possible for the employee to sue the employer for defamation.

Cautions, reprimands and final warnings are not criminal convictions. If you have received a caution, reprimand or final warning and are asked whether you have any “criminal convictions”, you are entitled to answer “no”. However, you may be asked instead whether you have a “criminal record.” This is a less precise term, but is usually understood to mean convictions. Therefore in normal circumstances, if you are asked whether you have a “criminal record”, you are entitled to answer “no” if you have no convictions. However, if you do have a caution you will not be entitled to answer “no” if one of the exclusions listed below applies.

A driving licence endorsement does not fall within the terms of the Rehabilitation of Offenders Act – you need not declare an endorsement to an employer.

What are ‘spent’ and ‘unspent’ convictions?

Under the Rehabilitation of Offenders Act 1974, convictions for certain offences become “spent” after a period of time. This means that the convicted person is treated for certain purposes as if they had never been charged with or convicted of the offence.

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The period of time which must pass before a conviction becomes spent is called the Rehabilitation Period. The length of the rehabilitation period depends upon the sentence imposed (see table below). A further conviction may have the effect of extending the rehabilitation period for the original offence. Sentences of more than two and a half years can never become spent.

Rehabilitation period

The Rehabilitation Period depends on the type of sentence, but runs from the date of conviction for the period shown below:

Sentence (in order of increasing severity)	Rehabilitation period for adults	Rehabilitation period for young people (i.e. under 18 at conviction or disposal)
Simple Caution, Reprimand or Final Warning	Spent immediately	Spent immediately
Conditional Caution	3 months	3 months
Absolute Discharge	6 months	6 months
Conditional Discharge (CD)	12 months or the period of the CD, whichever is longer	12 months or the period of the CD, whichever is longer
Community sentences and fines	5 years	2.5 years
Imprisonment or detention in a Young Offenders Institution (YOI) up to and including 6 months	7 years	3.5 years
Imprisonment or detention in a YOI for more than 6 months but not more than 2.5 years	10 years	5 years
Imprisonment or detention in a YOI for more than 2.5 years	Never spent	Never spent

The Rehabilitation Period for a suspended sentence (a sentence that does not take effect unless the defendant does not comply with the court's order) is the same as for a non-suspended sentence.

If a defendant is sentenced for more than one offence and is given multiple sentences to be served concurrently (i.e. at the same time), the Rehabilitation Period will be that of the longest offence. Where a defendant is sentenced for more than one offence and is given multiple sentences to be served consecutively (i.e. one after the other), the defences are aggregated (added together) to calculate the rehabilitation period.

Exceptions

People in certain occupations have to disclose spent convictions and cautions and may be excluded or dismissed from employment because of them. These occupations include, but are not limited to:

- Teachers and anyone in contact with children or vulnerable adults;
- Social or health service related professionals involving patient contact;
- Accountants and certain finance professionals;
- Lawyers;
- Pharmacists;
- Police officers; and
- Taxi drivers

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Unless you are told that one of these exceptions applies AND you are asked for the details of your spent convictions or cautions, then you do not have to disclose them.

My employer has asked me to consent to a Criminal Records Bureau (CRB) check.

The Criminal Records Bureau is an agency of the Home Office. Its role is to provide access to criminal records from the PNC (see below) and other information to certain organisations through a service known as “disclosure”, commonly known as CRB checks. If you are going to work in a position of trust you may be asked to apply for a CRB check, or to consent to the organisation applying on your behalf.

There are two levels of disclosure – standard and enhanced.

Type of disclosure	Who is it for?	What does it show?
Standard disclosure	A standard CRB check will be requested where there is a position of trust, for example lawyers, accountants and those working in regulated financial services, taxi drivers and jobs involving regular contact with children or vulnerable adults.	<ul style="list-style-type: none"> - All convictions (including spent convictions), cautions, reprimands and warnings held on the PNC which have not been stepped down – alternatively it will state that there are none. - Whether the individual is barred from working with children and other groups.
Enhanced disclosure	An enhanced CRB check will be requested where the job is a sensitive position involving a far greater degree of contact with children or vulnerable adults. An enhanced CRB check will also be required if certain licences are applied for (for example, gaming and lottery licences) and for judicial appointments.	<ul style="list-style-type: none"> - All convictions (including spent convictions), cautions, reprimands and warnings held on the PNC <u>including</u> those which have been stepped down – alternatively it will state that there are none. - Whether the individual is barred from working with children and other groups. - It may also contain local police force information considered relevant by Chief Police Officers, including arrests and police interviews even where a person has subsequently been released without charge or acquitted at trial.

What is the Police National Computer?

The Police National Computer (known as the PNC) is a police database which holds information about the criminal records of individuals. It contains a wide range of data, including details of arrests, convictions, cautions, reprimands, warnings and penalty notices for disorder. The retention of data on the PNC is governed by guidelines drafted by the Association of Chief Police Officers (ACPO).

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Useful links

Criminal Records Bureau (page hosted by the Home Office)
<http://www.homeoffice.gov.uk/agencies-public-bodies/crb/>

Independent Safeguarding Authority
<http://www.isa.homeoffice.gov.uk/>

Business Link pages regarding employment checks
<http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1073858787&r.l2=1073858914&r.l3=1084607697&r.s=tl&topicId=1084415157>

I require further advice in relation to the disclosure of my criminal record. What should I do?

Fisher Meredith can advise you in relation to the requirements to disclose any criminal records to prospective or existing employers, including in relation to referrals made to the Independent Safeguarding Authority.

For further information on cautions, convictions and their effect please contact Miriam Andrews on 020 7091 2715 or at miriam.andrews@fishermeredith.co.uk.

If you are concerned about the legality of your caution or inappropriate disclosure for CRB purposes contact our Police & Prison Law Department via our helpline on 0800 014 7445.

For all enquiries in relation to Employment law, please contact Anastasia Mavroudis on 020 7091 2705 or at anastasia.mavroudis@fishermeredith.co.uk.

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