



# How and when to disclose a criminal conviction

**As an Employment Advisor it is important to know what to do if a participant discloses to you that they have a criminal conviction.**

Before going any further, Employment Advisors and participants should be familiar with the [Rehabilitation of Offenders Act 1974](#). This act has revolutionised the pathway for offenders after they have served their sentence, and is currently in the early stages of being legally reviewed to bring it up to date.



Despite the fact that **1 in 3 adult males has a criminal record**, not all employers are clued up on their obligations regarding individuals with convictions. Employers can

be influenced by a great deal of prejudice when dealing with someone who has a criminal record.

If you have an unspent conviction, you have very little legal protection when applying for work.

However, it is unlawful for an employer to subject you to any 'prejudice' because of a conviction if it is now spent, for jobs where the Rehabilitation of Offenders Act (ROA) 1974 applies. In practice, this should not arise very often, as it would be difficult for an employer to discover a spent

conviction without a standard DBS check (which should only be done for roles exempt from the ROA), or through your own admission.

It is possible that an employer could learn of your conviction inadvertently (e.g. through others), so it's important to know what legal rights you have.

## Seeking employment with a spent conviction

The ROA allows most convictions to be considered spent after a set period of time. Unless you receive a prison sentence of over 4 years for a sexual, serious violent crime, or have any type of indefinite sentence or order, your conviction will become spent at some point.

Once your conviction is spent, this entitles you (for jobs where it applies to), in basic terms, to portray yourself as somebody who has never been convicted, i.e. it allows you 'to legally lie' (subject to the exceptions listed on the next page).

Spent convictions should not be used as evidence in employment tribunals, without the consent of the person concerned and questions should not be asked that would elicit or hint at such information.

If your contract of employment asks you to disclose your convictions, you would not be required to disclose any that are spent (see section 43 of the ROA). As a general rule, you would not be breaching any employment contract if you failed to disclose a spent conviction and, if you were dismissed for failing to disclose a spent conviction, then you may have legitimate grounds to bring a case of unfair dismissal.

## The Exceptions

Certain jobs are exempt from the ROA and will require you to disclose spent convictions.

However, you should only disclose when you are sure that you are applying for a position that requires you to do so. The vast majority of jobs and professions are not covered by these exemptions and a request to disclose spent convictions can be ignored unless the position is exempt.

**Below is a brief list of the types of jobs that might require you to disclose spent convictions:**

- Doctors, dentists, midwives and nurses
- Solicitors
- Accountants
- School based jobs
- Jobs with social services providers
- Jobs that involve the supervision or training of people under the age of 18

It an offence for employers to make decisions on a spent conviction for the majority of roles. Therefore, it is very important that Employment Advisors help participants to understand if a conviction is spent or not spent.

The above act allows for convictions to become 'spent convictions' or remain an 'unspent conviction'. A spent conviction means that the conviction does not have to be disclosed to the Employment Advisor or to the employer on a basic

disclosure certificate. An unspent conviction means that it will show up on a DBS check upon application for a job role.

## How to support the individual based on their criminal offence

### Do I have to disclose a conviction?

If the conviction is not spent, a participant need not disclose their conviction unless they are asked by the employer. It is also important to give consideration to if the offence relevant to the job being applied for. If the conviction is relevant to the job being applied for, it is important to set out the expectations of being a successful candidate if they do not disclose.

If an employer specifically asks a candidate to disclose unspent convictions and they choose not to do so, the employer is within their rights to disqualify them from the application process, but in this instance it is in everyone's best interest for participants to disclose their conviction.



### What to do once a conviction has been disclosed?

Once a conviction has been disclosed there are actions an Employment Advisor can take to limit any automatic prejudice against their participant.

An Employment Advisor can contextualise the criminal offence by putting the offence in context against the participants many skills and capabilities. An Employment Advisor has the power to try and guide an employer to see past the conviction. It can also be helpful for Employment Advisors to comment on the participant's engagement and whether it has anything to do with the line of work in question. They can also consider how long ago the offence took place and whether it was an isolated incident.