

## **Disclosure of convictions to Insurers**

A key area of risk management for all employers is maintaining appropriate and valid insurance cover for their organisation.

Most employers will know that failing to disclose criminal convictions of individuals working or volunteering with their organisation is just one of the ways in which an insurance policy can be invalidated. However, is it as simple as 'disclose all convictions in all circumstances'?

When it comes to insurance it is vital that an organisation takes every step necessary to ensure that its insurance remains valid. It will be required to disclose information that it is aware of and any information that would be revealed through reasonable enquiry. Through steps taken in your recruitment process you should be aware of any relevant past convictions of your employees and volunteers and you will need to carefully consider the circumstances in which such convictions should be disclosed to your insurers.

Under the Rehabilitation of Offenders Act 1974, there comes a time when an ex-offender is considered by law to be rehabilitated. The period between conviction and rehabilitation is known as the rehabilitation period. Once this rehabilitation period has ended, the ex-offender's record is effectively wiped clean and his or her convictions become 'spent'. This means that for all purposes that individual must be treated as a person who has not been sentenced for that particular offence.

As a result your insurers cannot require you to disclose information on spent convictions and any question which seeks to reveal a spent conviction does not have to be answered.

### **To disclose or not to disclose?**

For adults in most circumstances, the rehabilitation period will be:

- 10 years from the date of conviction where the adult is sentenced for more than 6 months and up to 30 months or less; and
- 7 years from the date of conviction where the adult is sentenced for 6 months or less.

These rehabilitation periods may vary if the individual is convicted of one or more further offences during his or her rehabilitation period.

During the rehabilitation period, convictions should be disclosed to insurers. Once the rehabilitation period has ended, the conviction is spent and should not be disclosed to insurers.

If an adult is sentenced for more than 30 months, he is never legally considered to have been rehabilitated and his or her conviction can therefore never be spent. Such convictions should always be disclosed.

The rules for disclosure are different again if an individual is detained in hospital rather than in prison. Typically this happens where a hospital Order is made under Part III of the Mental Health Act 1983. In this situation, the rehabilitation period is 5 years from the date of detention, or a period beginning on the date of detainment and ending 2 years after the hospital Order ceases, whichever is the longer period. During the rehabilitation period such Orders should be disclosed to insurers, once the rehabilitation period has ended, they should not.

## **Exclusions**

There are exceptions, for example for organisations that require their employees or volunteers to work with children or vulnerable adults, in financial or banking services, law enforcement, the judiciary, in the prison service, in health or the law, or in posts in private security. Convictions will generally never become spent in relation to such positions.

## **Other issues**

Before disclosing information on convictions to an insurer, you will need to consider your obligations under data protection legislation. Information on someone's criminal convictions is considered sensitive personal data. The best way to ensure compliance with your data protection obligations in this situation would be to obtain express consent from the particular individual before disclosing. There may be other ways of complying with these obligations depending upon the facts of the particular situation.

## **Keeping under review**

For organisations that engage those with past convictions, it is important to carefully consider the circumstances in which these convictions should be disclosed to insurers to ensure that insurance policies are not invalidated. This should be considered not only at the point of employment, but also periodically to ensure the duty of utmost good faith to disclose all relevant information to insurers is met. This is typically achieved by appointing a particular person to have explicit responsibility for insurance arrangements who reviews policies and disclosure obligations at least once a year.

For more information please contact:

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