

DBS Checks

Disclosure of convictions

There are a number of areas of your life where you may be asked to disclose whether or not you have a criminal record, including in relation to employment, education, insurance and travelling abroad. We most frequently receive queries about criminal record checks which are requested by prospective employers when a person applies for a new job, and this note therefore focuses on disclosing convictions in the employment context.

When you are applying for a job, you may be asked whether you have ever been convicted of a criminal offence or whether you have ever been given a caution, reprimand or warning for an offence (in the rest of this fact sheet, cautions, reprimands and warnings are referred to as “cautions”).

Whether or not you have to disclose any convictions or cautions you have received will depend on:

- (i) The **type** of Disclosure and Barring Service (DBS) check you must undertake (if any);
- (ii) Whether or not the conviction or caution is “**spent**”;
- (iii) Whether or not the conviction or caution is “**filtered**”.

Further information about each of these elements is set out below. As a first step, if you are not sure what exactly is on your criminal record or the dates on which you received convictions or cautions, we would advise that you make a **subject access request** to the Association of Chief Police Officers Criminal Records Office (ACRO). More information on how to do this can be found on our “Subject Access Request” factsheet.

Types of DBS checks

There are three types of DBS checks that a person can undergo:

- **Basic**
- **Standard**
- **Enhanced**

A basic check can potentially be requested by any employer, but in practice not all employers ask for them. Standard and enhanced checks can only be requested in relation to certain categories of employment set out in legislation. A basic DBS check will disclose only **unspent** convictions, whereas standard and enhanced DBS checks will disclose any **unspent or spent convictions**, unless they have been “**filtered**”.

Spent and unspent convictions

In most instances whether you are required to disclose a previous conviction or caution will depend on whether it is ‘**spent**’ or not.

Under the Rehabilitation of Offenders Act 1974, as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, many convictions and cautions become spent after a certain period of time, known as the **rehabilitation period**. The length of the rehabilitation period depends on the type of offence committed and the punishment imposed. An exhaustive list can be found in the Act; here are some examples:

| Sentence / Caution | Rehabilitation Period |
|--|--|
| Prison/Youth custody sentence between 2.5 years and 4 years (including suspended sentences) | 7 years* |
| Prison/youth custody sentence between 6 months and 2.5 years (including suspended sentences) | 4 years* |
| Prison sentence of 6 months or less | 2 years (1.5 years for those under the age of 18 at the time of the conviction) |
| Most fines | 1 year* |
| Community order or youth rehabilitation order | 1 year* (Two years if the order does not specify a time period) |
| Cautions, warnings and reprimands | Immediately spent |
| Conditional cautions | Once the conditions end |

*Note: These rehabilitation periods are reduced by half if the offender was under the age of 18 at the time of the conviction.

The rehabilitation period for offences which result in a custodial sentence or community order commence at the end of the entire sentence (regardless of the date of release from prison).

Certain convictions never become spent. These include, in particular, those that resulted in a sentence of imprisonment, youth custody or corrective training for a period of more than four years.

Filtering of convictions

Under the Rehabilitation of Offenders Act 1974, 'the 1974 Act', certain convictions and cautions can be filtered out and not disclosed on a DBS check. This means that the disclosure of certain convictions and cautions will not be required once a certain period has passed.

These periods are as follows:

- Cautions and warnings: *will not be disclosed after **6 years** from the date of the caution*
(If received when **under the age of 18**, this period is: **2 years**)
- Convictions that did not result in a prison or suspended prison sentence: *will not be disclosed after **11 years** from the date of the conviction*
(If received when **under the age of 18**, this period is: **5½ years**)

A conviction will only be eligible for filtering if it did not result in a prison or suspended prison sentence. There are some more serious offences that are ineligible from being filtered out, including offences involving violence, safeguarding offences and sexual offences.

All convictions will be disclosed if there is more than one on an individual's record. This rule does not apply to cautions.

Liberty is currently challenging the DBS system, and in particular this rule that multiple convictions will always be disclosed, on the basis that it breaches Article 8 of the European Convention on Human Rights (ECHR). In May 2017, the Court of Appeal held that the current system is unlawful: <https://www.libertyhumanrights.org.uk/news/press-releases-and-statements/court-appeal-rules-criminal-records-disclosure-scheme-unlawful>

This case has now been appealed by the Government to the Supreme Court. If the Supreme Court upholds the findings of the Court of Appeal, a new system for filtering criminal records may be introduced.

Further detail on which employers can request a DBS check and what information they are entitled to see can be found on the factsheets titled “Standard DBS checks” and “Enhanced DBS checks”.