

The Impact of Arrest and Criminal Convictions

This is a draft and we are seeking more information, so if you have any relevant experiences with an employer or in obtaining travel visas or any other effect of having a criminal record please contact us: info@activistslegalproject.org.uk

The effect of having a criminal conviction on employment/study

If you are **in employment** then look at your job contract (before you take action!) to see if there are any clauses stating that receiving a criminal conviction could lead to your dismissal. Often these clauses relate to offences committed whilst at work rather than in your spare time. Of course, arrest and conviction aren't the same thing, and getting arrested alone shouldn't be grounds for your dismissal. If your bosses are likely to be supportive then talk to them in general terms before you take action so that they are less shocked after it has happened, as you may need to take time off work later to travel to court cases etc. Also consider whether lots of local publicity about your arrest/conviction may upset your relationship with your employer. Its probably best to keep their name out of the paper. There are some professions where 'bringing the profession into disrepute' can mean that you get struck off and can no longer practice. For example if you are a solicitor and details of your conviction and the fact that you are a solicitor are emblazoned across the front page of the Sun newspaper, could get you struck off by the Law Society. So check with your professional body what the position might be, they may have a confidential phone line.

The biggest impact of having a criminal conviction is likely to be when you are **looking for new employment**. If the job you are applying for involves working with children or vulnerable adults then you will, by law, be required to have a Criminal Records Bureau (CRB) check when you apply (see below for more details). For other kinds of work the job application form may have a section asking about previous convictions (see below for details of what you must disclose). If you don't answer honestly and they find out you do have convictions then this would be grounds for your dismissal. If you do declare convictions make sure you explain what they are for, not simply that it was, say, a conviction for criminal damage, but explain why you did it. Your potential employer may decide you look like trouble. On the other hand they may see you as passionate about your issue and a potentially great new employee!

If you are a **student** check your college/university's code of conduct / disciplinary policy (usually its on their website) to see whether getting a criminal conviction might breach the regulations and what the disciplinary procedure is. Ask other students at your campus who have convictions what the impact has been, if any. If you think your tutor is likely to be sympathetic, consider telling them about your arrest as you may need to miss some course work to go to court. They may also be willing to support you if disciplinary proceedings are brought against you. For more information see our briefing 'Student Protest on Campus'.

The duty to disclose convictions

The Rehabilitation of Offenders Act (1974) provides that after a certain period of time (depending upon the type and length of your sentence) your conviction becomes 'spent' and there is no need to disclose it to a potential employer, insurance company, landlord or credit company. For example, a fine becomes spent after 5 years regardless of the amount. To check whether your conviction falls into the spent category, see the table in the NACRO guide.

<http://www.nacro.org.uk/data/resources/nacro-2005020105.pdf>

There is however a very large category of people for whom convictions can never be spent, including people working in the following professions: doctors, dentists, nurses and midwives, lawyers, opticians, teachers, police officers and people working with children and vulnerable people. So if a job you are applying for falls within the exceptions category then all convictions whether spent or not must be disclosed. Job application forms usually tell you if the job falls into this category. To see a full list of the exceptions see the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or the Liberty Guide at:

http://www.yourrights.org.uk/your-rights/chapters/the-right-to-privacy/spent-convictions-and-rehabilitation-of-offenders/exceptions_to_the_rehabilitati.shtml

Criminal Records Bureau (CRB) Checks

The basic CRB check shows only unspent convictions. The intermediate level check which is needed if you are applying for regular work with children and young people or sick or elderly people and for any other of the exception professions above, shows all convictions, whether spent or not as well as cautions, reprimands and warnings.

There is also an enhanced check for people who are applying for work which regularly involves caring for, training, supervision or being in sole charge of those aged under 18 or vulnerable adults. This check is also required for registration as a child minder or day carer, or approval as a foster carer or parent. It discloses all of the above, plus any mention of you on Department of Education and Skills, and Department of Health Lists. In addition this check also contains any information held by the police, which does not relate to convictions, but which the police consider relevant to the job or voluntary work you are seeking.

You cannot be employed where these checks show up information that relates to certain offences against children or vulnerable adults, otherwise it is at the discretion of the employer whether to employ you. For more information see the Liberty website <http://www.yourrights.org.uk/your-rights/chapters/privacy/spent-convictions-and-the-rehabilitation-of-offenders/employment.shtml>

The duty to disclose cautions

Cautions (also reprimands and warnings) are not criminal convictions (though they do form part of your criminal record). If a potential employer asks for details of your convictions (which most do) you will not have to disclose the

caution. But if a potential employer specifically asks if you have received any cautions, or if they ask if you've ever been in trouble with the police or have a criminal record you will need to disclose it. If you don't answer honestly and your employer finds out, then this could be grounds for your dismissal. If you are applying for a job which requires your employer to run an intermediate or enhanced CRB check on you, they will see details of any cautions, reprimands or warnings that you have received. Records of cautions for recordable offences (offences for which you could be imprisoned) are held on the Police National Computer. These records should be deleted after five years but that's not always the case, it depends on the police force. If the caution was for a sexual offence then it will also appear on the national sex offenders' register. If you want to know if a caution (or conviction) is on record you can find out by filling in a freedom of information request form with your local police service, see further details at:

http://www.met.police.uk/information/request_forms.htm

Applying for a Travel Visa

There are potential difficulties in getting travel visas and entering certain countries for those with convictions. Many countries for which visas are needed, require you to disclose your convictions. The Rehabilitation of Offenders Act 1974 does not apply outside the UK, so the requirement for disclosure may also include convictions that are 'spent' in the UK unless the country has an Act equivalent to the Rehabilitation of Offenders Act (1974). Other countries have their own laws about whether convictions can become spent or not. Check with the Embassy or High Commission of the particular country you plan to visit to find out what their rules are.

Australia and New Zealand have questions on their visa application forms requiring disclosure of convictions. We don't know what happens if you disclose your convictions, but we are aware that it is possible to obtain visas without disclosing convictions and then enter the country without any problem. The US is currently very paranoid about admitting people with convictions and requires disclosure of all convictions however old they are. You are required to attend for an interview at the US Embassy if you have convictions. We are aware that people who have not declared convictions have obtained visas and successfully entered the US. We know of others who have been deported at the point of entry, after failing to disclose their 'activist' convictions.

Getting Insurance/Mortgages

It can be hard to get household, business and other types of insurance/and some mortgages if you have convictions. But its not impossible, you may just have to shop around a bit more. There is a question on most insurance / mortgage proposal forms asking about convictions, as with employers there is a duty to disclose your convictions unless they are 'spent'. Failure to disclose a conviction, which the insurer/mortgage lender later finds out about, could invalidate your insurance policy/mortgage agreement.

July 2008