

To disclose or not to disclose?

Disclosing to employers - Information series

The Golden Rule - "You only have to disclose if you're asked"

- Our general view is that you shouldn't voluntarily disclose.
- If an employer wants to know, then they should ask you.

Exceptions to the golden rule – When you might disclose even if you're not asked

Although you legally don't have to disclose unless you're asked, it's sometimes not as simple as that.

Technically, you won't have done anything wrong by not disclosing if you're not asked, but ultimately, it can be hard to challenge an employer who later finds out, particularly if you've only recently started the job, as you have very few legal rights. There's a couple of scenarios that we often come across where, on reflection, individuals may have been better-off disclosing. However, this is ultimately something you have to decide in your own case.

- **Scenario 1 - "We do checks"** - You might think that you've not been asked about your criminal record. However, if the employer is going to carry out a formal criminal record check, you might be better off disclosing whatever will come back on the level of check that they'll be carrying out. Most employment positions that are not covered by the Rehabilitation of Offenders Act 1974 will involve a standard or enhanced check. Even if they don't ask about convictions or criminal records during the initial recruitment process, they might state in their company policy that they will do. Yet remember – they'll still need your consent before being able to do a criminal record check on you.
- **Scenario 2 - If you prefer to disclose** - Although our general view is that people shouldn't voluntarily disclose, some people prefer to disclose even if they don't have to. For some roles, your past might actually help – for example, you might be applying for a 'peer' role.
- **Scenario 3 - If you're on licence/probation/MAPPA** - If you're subject to licence, probation, MAPPA or police notification, you need to be aware that these authorities may come to a decision as to whether they wish to inform a potential employer of your past (or ask you to disclose), even if the employer hasn't asked you about convictions. This varies on a case-by-case basis, so you should keep them up to date with the details of the jobs you're applying for.

- **Scenario 4 - If you think the employer will find out and change their mind** - This is a difficult scenario, because the *chance* that the employer might find out shouldn't *normally* be enough to suggest that you should disclose even if you're not asked. As a result, this is something which has to be decided on a case-by-case basis – for example, if your case has been featured in the local press, if you're well-known locally, or if you're going into a high-profile role.
- **Scenario 5 – If you're barred** - If you're barred from working with specific groups (for example if you're on the 'children' or 'adult' barred lists) then it is illegal for you to even attempt to work with the groups that you're barred from.

Exceptions to the golden rule – When you might not disclose even if you are asked

This applies in three particular scenarios:

- **Scenario 1 – If you don't legally have to disclose** - Employers are only allowed to ask about certain cautions or convictions. What the employer is allowed to ask, and so what you need to disclose if they do ask, depends on the role that you're applying for:
 - a. If the job is covered by the Rehabilitation of Offenders Act, you only have to disclose unspent convictions – even if the employer asks you to disclose spent convictions too.
 - b. If the job is not covered by the Rehabilitation of Offenders Act and an employer is doing a standard or enhanced check, you only have to disclose cautions and convictions that are not yet filtered – even if they employer asks you to disclose “all” cautions and convictions.
- **Scenario 2 – If you think the wrong level of check is being done** - If you have strong evidence to suggest that the employer is carrying out an ineligible check, you can decide to [challenge this first](#) (particularly if you have spent convictions). For information on the types of jobs not covered by the Rehabilitation of Offenders Act, [search for 'eligibility' on hub.unlock.org.uk](#).
- **Scenario 3 – If you'd rather disclose at a different stage to when you're asked** - For example, you might get asked on an application form, but you might decide to disclose at interview instead. See our separate information on when to disclose for more detail.

If you're asked to disclose and you don't

Some people take a risk and choose not to disclose. However, if you're asked about your criminal record, and it doesn't fall under one of the exceptions to the golden rule (above), there could be some implications if you don't disclose and the employer later finds out:

1. They could see it as a breach of trust
2. They could withdraw their job offer, and they'll have grounds for dismissal at a later stage
3. You could be prosecuted – for example, under s.2 of the Fraud Act 2006