



# **Insurers' Approach to People with Convictions and Related Offences**

**An ABI Good Practice Guide**

**July 2019**

## Foreword

There are more than 11 million people in the UK with criminal convictions. A significant proportion of these will be spent.

Access to, and fair treatment by, financial services providers is an important part of social inclusion. However, some people with convictions and related offences encounter difficulties when looking to purchase insurance or to make a claim.

This guidance has been produced to assist insurers in their treatment of personal lines household and motor customers with convictions and related offences. The guidance aims to help to ensure that insurers' processes and procedures comply with, and exceed where appropriate, legal and regulatory requirements, particularly in regard to satisfying the Insurance Distribution Directive and its requirement to act honestly, fairly and professionally in accordance with the customer's best interests.<sup>1</sup> Our goal is to help to ensure that insurers:

- comply with the relevant legislation, notably:
  - Rehabilitation of Offenders Act 1974;
  - Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO);
  - Rehabilitation of Offenders (Northern Ireland) Order 1978;
  - Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA);
  - General Data Protection Regulation (GDPR);
  - Data Protection Act 2018 (DPA);
- provide consumers with clear information about the use of previous convictions during and after the point of sale;
- offer cover to people with convictions and related offences where possible, or help people find an alternative insurer if cover cannot be provided; and
- ensure that consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, process a claim or make a complaint.

This guidance covers these areas and others.

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<sup>1</sup> Insurance Distribution Directive, Article 17, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32016L0097>

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## Improving access to insurance

Access to insurance is an important part of financial and social inclusion. The Association of British Insurers (ABI) recognises that some people with previous convictions may encounter difficulties when looking for insurance or making a claim and this guide is intended to ensure that providers treat people fairly.

### Why do previous convictions matter?

Insurance premiums are calculated on the basis of risk. Insurers, especially motor and property insurers, look at many different factors when assessing risk; unspent convictions are just one factor that may affect the cost or availability of a particular policy.

Insurers should take into account only offences that are relevant to the type of cover. This includes the unspent convictions or related offences of everyone to be covered by the policy (e.g. all named drivers for motor insurance, and anyone living in the property for household insurance). Spent convictions should never be taken into account. If a consumer is in doubt as to whether a conviction is spent, they should contact Unlock (a national charity for people with convictions).<sup>2</sup>

### How does this guide help consumers?

This guide is intended to be used by insurers.<sup>3</sup> Consumers can expect that insurers following this guide will:

- provide clear information about how they use previous convictions;
- ask clear and concise questions during the application process and will not ask questions which either misrepresent or imply an obligation to disclose convictions which should not be disclosed. This will better enable consumers to provide details of their unspent convictions so that tailored decisions can be made;
- help people find cover if they are not able to provide a quote;
- ensure that consumers do not face unreasonable barriers when their conviction history (or the history of third parties relevant to the cover) changes. This includes removing convictions that become spent during the course of the policy and reviewing the policy to ensure that spent convictions will no longer have any impact on the cover provided under the policy; and
- treat consumers fairly when dealing with non-disclosure and misrepresentation.

### Where can I find more information for consumers?

Guidance for consumers is available from Unlock who can be contacted using the details provided in *Annex B*.

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<sup>2</sup> [www.unlock.org.uk](http://www.unlock.org.uk)

<sup>3</sup> This guide is to assist insurers in their dealings with customer with convictions. It will be shared with Unlock, but it is not a consumer focused guide. Guidance for consumers is available from Unlock.

## Introduction

### The purpose of the guidance

This guidance sets out a series of high-level standards on how UK personal lines household and motor insurers should treat people with convictions and related offences.<sup>4</sup> Any reference to convictions or related offences includes all penalties (unless specified otherwise).

There are a number of general principles and rules (e.g. within the Insurance Conduct of Business Sourcebook (ICOBS) and the Insurance Distribution Directive (IDD)) that apply to insurers by virtue of regulation by the Financial Conduct Authority (FCA). While the FCA is not prescriptive as to how insurers should approach people with convictions, it requires all firms to be able to show consistently that fair treatment of customers is at the heart of their business model. There are six customer outcomes that firms should strive to achieve, including:

- consumers can be confident that they are dealing with firms where the fair treatment of consumers is central to the corporate culture (*Outcome 1*); and
- consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale (*Outcome 3*).

Insurers must also comply with different legislation regarding the treatment of prior convictions, depending on where in the UK they operate:

- In England and Wales, the Rehabilitation of Offenders Act 1974 (ROA) as amended by LASPO, applies;
- In Scotland, the Rehabilitation of Offenders Act 1974<sup>5</sup> applies; and
- In Northern Ireland, the Rehabilitation of Offenders (Northern Ireland) Order 1978 (ROO) applies.

This guidance covers the treatment of disclosure during the application process, mid-term and renewal underwriting, and non-disclosure/misrepresentation discovered subsequently. Any reference to non-disclosure includes both the omission and misrepresentation of material information that the insurer requested.

The guidance recognises that insurers have a fundamental responsibility to all policyholders to achieve an equitable contribution to the risk pool from which the losses and liabilities of claimants are met. This involves the evaluation of rating factors of which an

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<sup>4</sup> You can find more information about the distinction between convictions and related offences in the *Glossary*.

<sup>5</sup> The Rehabilitation of Offenders Act 1974 (ROA) is currently being reviewed in Scotland. The Management of Offenders (Scotland) Bill was introduced on 22 February 2018 and completed Stage 3 on 26 June 2019. The Bill is expected to receive Royal Assent and be enacted into law at an unknown date. The Bill proposes to reduce the length of disclosure periods and extends the range of custodial sentences covered by the provisions of the Act. More information on the Bill and the changes can be found here <https://www.parliament.scot/parliamentarybusiness/Bills/107731.aspx>. Readers should note that once the Bill is enacted into law this Guide will be updated.

individual's past conviction record may be material to a particular product line.

The guidance examines insurers' right to take into account the previous history of a consumer's criminal convictions, having regard to the provisions in force throughout the United Kingdom.

It covers the consumer's duty to take 'reasonable care' not to make a misrepresentation during the application process.

It also covers the continuing fair treatment of claimants in the light of evolving industry practice, FCA requirements and the IDD, with the intention of strengthening existing practices in these areas; but it is not a definitive guide.

### **The status of the guidance**

This is not FCA-confirmed guidance. This is voluntary good practice guidance for insurers. It has been prepared in consultation with ABI members, the Ministry of Justice, the Information Commissioner's Office and Unlock.

Insurers should note that this guidance does not purport in any way to replace the law or regulatory requirements. Insurers also need to be aware of the full implications of the ROA, LASPO, ROO, CIDRA, the GDPR and the DPA. Insurers should seek legal advice, where appropriate, in their treatment of risks covered by this guidance.

Insurers are encouraged to regularly review their products and processes to ensure that their approach is consistent with the ROA and other relevant legislation.

Aggregators, brokers and software houses play a significant role in the personal lines market. While the question sets used will be influenced by the underwriting approaches of insurer partners, insurers will have limited influence on the specific questions asked.

The scope of this guidance is, therefore, restricted to business where the insurer wholly controls the question sets.

Where aggregators, brokers and software houses are part of the distribution chain, insurers should seek to influence the question sets used by those with whom they partner and encourage them to follow the guidance.

### **Background**

In 2008, a research paper by Unlock raised concerns that people with unspent convictions can sometimes find it difficult to access insurance products and that it is not always clear what people with convictions need to disclose to their insurers. The research highlighted examples of good and bad practice.

In 2009, access to insurance for people with criminal convictions was discussed at the ABI's Tackling Crime Conference and the ABI subsequently conducted a survey of the property and motor markets to establish existing underwriting and claims-handling processes.

The ABI's Property and Motor Committees agreed that the ABI should develop good practice guidance to help insurers:

- comply with the ROA;
- assist people with convictions find appropriate cover in line with Treating Customers Fairly outcomes; and
- ensure people with convictions are treated fairly at all stages.

The guidance was first published in February 2011.

In 2012, the LASPO Act introduced changes to the ROA that impacted rehabilitation periods in England and Wales. These changes came into effect on 10 March 2014, and the guidance was reissued to take these changes into account.

The guidance has been amended further to reflect changes to legislation, notably in relation to data protection, and to reflect the findings of insurance research conducted by Unlock.<sup>6</sup>

### **Format of the guidance**

This guidance establishes standards in the following areas:

- Consumer awareness
- Application process
- Referrals and signposting
- Renewals and mid-term underwriting
- Claims

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<sup>6</sup> Insurance providers & criminal records: Research into the questions asked (September 2017) <http://www.unlock.org.uk/wp-content/uploads/Insurance-providers-and-criminal-records-Sept-2017.pdf>



## Consumer awareness

**Aim: To provide consumers with clear, fair and not misleading information about the use of previous convictions and related offences during the quote process and after the point of sale**

### How to achieve the aim

The link between convictions and increased risk may not always be obvious to consumers. It is the responsibility of insurers to clearly explain the relevance between a consumer's conviction and any impact on the acceptance of insurance and their terms and conditions.

- For telephone and face-to-face sales, consider setting a script for staff to use when consumers ask for more information about the relevance of a conviction.<sup>7</sup> This is considered in more detail throughout the *Application process* section of this guidance.
- Insurers should make it explicit/clear what type of convictions are relevant to the type of policy consumers are applying for to avoid consumers making misrepresentations, non-disclosure or excessive disclosure. As different insurers have different risk appetites, the type of convictions relevant will vary depending on the insurer and the type of policy.
- Insurers should use clear definitions. For example, when talking about motor offences, insurers should make it clear what is a motoring conviction and what is not.
- On websites, provide a link to the ABI and/or Unlock sites that contain information for consumers (see *Annex B*).
- Consider directing consumers to insurer's privacy information policies to understand more about how their data is being used.

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<sup>7</sup> In line with data protection requirements, call handlers for insurers who use the MyLicence scheme are prohibited from viewing the data. This is due to the sensitive nature of the data. The data relates to the proposer's motor convictions, entitlements and endorsements and is sourced directly from the DVLA. In this case, insurers should signpost consumers to information that explains the relevance of motor convictions (for example, ABI and/or Unlock sites). Insurers can also refer consumers to the DVLA's service (<https://www.gov.uk/view-driving-licence>) if they wish to check what appears on their licence/the endorsements or convictions they may have.

## Application process

**Aim: To ensure consumers are asked clear and specific questions that provide insurers with relevant information during the application process**

### How to achieve the aim

Insurers need to achieve a balance between giving consumers all relevant information about their proposal and cover, while making the application process efficient and straightforward.

The Financial Ombudsman Service (FOS) and FCA guidance have stated that insurers must ask specific questions to obtain the information they need to assess risk and set the premium and terms of a policy. Insurers cannot rely on consumers to disclose information without being prompted.<sup>8 9</sup>

This FOS and FCA advice has been codified by CIDRA 2012, which has the effect of replacing the consumer's duty to volunteer material with a duty on them to take reasonable care not to make a misrepresentation during pre-contractual negotiations. It applies to consumer insurance contracts only. Commercial insurance contracts are not subject to the Act. See *Annex E* for more information about CIDRA.

Insurers should only ask for relevant information. Questions must be explicit, clear and concise. Where the insurer asks a clear question, there will be a presumption that the consumer realised it would be relevant to the insurer. Where appropriate, insurers should consider providing explanatory contextual information to help the consumer answer the question accurately. Insurers can expect consumers to answer such questions carefully, accurately and to the best of their knowledge and belief. Insurers must not put the onus on consumers to interpret the exact meaning of any implicit requests.

### Collecting information about unspent convictions

Insurers are restricted in their underwriting of risks featuring criminal convictions under the ROA (or ROO in Northern Ireland), which sets rehabilitation periods based on the sentence handed down (see *Table 1 for England and Wales and Table 2 for Scotland and Northern Ireland*), during which past convictions classed as unspent must be disclosed if asked by the insurer. Both the ROA and ROO enable individuals with convictions to 'wipe the slate clean' for the purpose of social rehabilitation, once the prescribed period has elapsed from the date of the conviction, providing no further convictions have been obtained (see *Annex C* for more information).

<sup>8</sup> FOS Technical Note, [https://www.financial-ombudsman.org.uk/publications/technical\\_notes/misrepresentation-and-non-disclosure.htm](https://www.financial-ombudsman.org.uk/publications/technical_notes/misrepresentation-and-non-disclosure.htm)

<sup>9</sup> ICOBS 5.1.4, <https://www.handbook.fca.org.uk/handbook/ICOBS/5/1.html>

Details of unspent convictions can be requested by insurers and taken into consideration during the application process when convictions are material facts.

While the ROA and ROO do not prevent an insurer from asking an open question about all convictions, insurers should not ask questions which either explicitly or implicitly suggest that spent convictions should be disclosed. If a conviction is spent, a consumer does not have to disclose it.

Asking an open question about all convictions may lead consumers to believe that they will not be accepted or accepted on reasonable terms and therefore deter them from applying for the policy. As such, asking a question which may elicit information on spent convictions may not be compliant with the FCA principle that a firm must pay due regard to the interests of its customers and treat them fairly, and the duty to act in the customer's best interests under ICOBS 2.5.-1.

Insurers should avoid asking policy questions which could potentially lead to over or under-declaration of convictions and should avoid questions which request information on spent convictions. Furthermore, if a spent conviction is disclosed, the insurer is under a statutory duty to ignore it, if it was spent at the time of disclosure.

**Table 1 Rehabilitation guidelines for England and Wales<sup>10</sup>**

Sentence	Length	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Imprisonment/Young Offenders Institute	More than 48 months	Forever	Forever
	More than 30 months and less than (or equal to) 4 years	Sentence + 7 years	Sentence + 3.5 years
	More than 6 months and less than (or equal to) 30 months	Sentence + 4 years	Sentence + 2 years
	6 months or less	Sentence + 2 years	Sentence + 18 months
Community order	Any	Order +12 months	Order + 6 months
Fine	n/a	1 year	6 months
Endorsement for Road Traffic Offence	n/a	5 years	2 ½ years
Disqualification <sup>11</sup>	Any	Period of disqualification	Period of disqualification
Penalty points <sup>12</sup>	n/a	3 years	3 years

It should be noted that the government included a 'savings provision' in the commencement order that brought the amendments to the ROA into force. This savings provision maintains a rehabilitation period of 5 years (or two and a half years where the offender is under 18) for an endorsement for a road traffic offence listed in Schedule 2 to the Road Traffic Offenders Act (RTA) 1988, imposed either by the court or by means of a fixed penalty notice.<sup>13</sup>

<sup>10</sup> Rehabilitation periods in this table apply from 10 March 2014. A comprehensive list of rehabilitation periods can be found in Annex A of this document.

<sup>11</sup> A driving disqualification normally results in an endorsement, so would not be spent for a period of 5 years (for adults)

<sup>12</sup> Speed awareness courses are sometimes used as an alternative to penalty points. Speed awareness courses are not classed as a conviction, so do not need to be disclosed.

<sup>13</sup> The commencement order for the changes to the ROA, including the savings provision, can be found here: [http://www.legislation.gov.uk/uksi/2014/423/pdfs/uksi\\_20140423\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/423/pdfs/uksi_20140423_en.pdf).

In practice, this savings provision means that the rehabilitation period for motoring offences does not change in England and Wales as a result of the amendments to the ROA. This is because motoring offences normally attract an endorsement.

**Table 2 Rehabilitation Guidelines for Scotland and Northern Ireland**

Sentence	Length	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Imprisonment/Young Offenders Institute	More than 30 months	Forever	Forever
	Over 6 months and up to 30 months	10 years	5 years
	6 months or less	7 years	3 ½ years
Community service	Any	5 years	2 ½ years
Fine/Compensation	n/a	5 years	2 ½ years
Absolute discharge	n/a	6 months	6 months
Endorsement for Road Traffic Offence	n/a	5 years	2 ½ years
Disqualification <sup>1</sup>	Any	Period of disqualification	Period of disqualification
Penalty points	n/a	3 years	3 years

1. A driving disqualification normally results in an endorsement

Comprehensive lists of rehabilitation periods in England and Wales and Scotland and Northern Ireland can be found in *Annex A*.

It should be noted that the changes to the ROA in England and Wales included in the LASPO Act also change the period at which rehabilitation begins for some offences. For example, the rehabilitation period for custodial sentences in England and Wales now begins after the sentence, including any licence period, has been completed. In Scotland and Northern Ireland, the rehabilitation period begins once the conviction is administered.

In circumstances where more than one penalty is imposed, the longer of the respective periods of rehabilitation applies, with one exception; A driving disqualification normally results in an endorsement, so would not be spent for a period of 5 years, irrespective of the length of disqualification. This is the case in all jurisdictions. By way of example, *Table 3* illustrates the rehabilitation period in England and Wales for an

adult for motoring offences attracting different combinations of sentences, subject to no further relevant conviction being sustained during the original periods. Rehabilitation periods for different combinations of sentences for Scotland and Northern Ireland are shown in *Table 4*.<sup>14</sup>

**Table 3 Examples of rehabilitation periods for differing sentences in England and Wales**

Sentence	Rehabilitation period(s)	Disclosure period
A fine	Fine: 1 year	1 year
A fine and a 6 month disqualification	Fine: 1 year Disqualification: 6 months	1 year
A fine and a 3 year disqualification	Fine: 1 year Disqualification: 3 years	3 years
A fine, a 2 year disqualification, penalty points, and an endorsement	Fine: 1 year Disqualification: 2 years Penalty points: 3 years Endorsement: 5 years	5 years

**Table 4 Examples of rehabilitation periods for differing sentences in Scotland and Northern Ireland**

Sentence	Rehabilitation period(s)	Disclosure period
A fine	Fine: 5 years	5 years
A fine and a 6 month disqualification	Fine: 1 year Disqualification: 6 months	5 years
A fine and a 3 year disqualification	Fine: 1 year Disqualification: 3 years	5 years
A fine, a 2 year disqualification, penalty points, and an endorsement	Fine: 1 year Disqualification: 2 years Penalty points: 3 years Endorsement: 5 years	5 years

<sup>14</sup> The rehabilitation periods in Table 3 and Table 4 reflect what is stated in the ROA and ROO. In specific circumstances, the rehabilitation periods may differ. For example, a driving disqualification is usually accompanied by an endorsement, so the rehabilitation period would be 5 years.

Where an individual is convicted for a second offence before the original conviction is spent, then neither offence will become spent until the rehabilitation period for both offences is over. Again, this applies in all jurisdictions. For example, consider an individual convicted of speeding on 1 January 2015, attracting a rehabilitation period of 5 years as a result of an endorsement. Independent of other convictions, this conviction would become spent on 31 December 2019. However, if the same individual is convicted for speeding a second time on 1 July 2015, again attracting an endorsement, neither of the two convictions will become spent until 30 June 2020.

The provisions in Section 4(1) and 4(2) of the ROA (Section 5(1) and 5(2) of the ROO) have the effect that in completing the application process the consumer need not volunteer information about spent convictions and may act as though they do not exist in answer to a specific question. This will not endanger the validity of the insurance cover. If a spent conviction is disclosed, the insurer must ignore this information.

Insurers must also disregard 'circumstances ancillary' to the spent conviction, which could include proceedings leading to the conviction or an incident giving rise to a conviction. See *Glossary* for a more detailed explanation of 'circumstances ancillary'.

Given the differences in disclosure periods between England and Wales, and Scotland, insurers should note that for the ROA 1974 "rehabilitation periods should be determined with reference to the law of the jurisdiction to which the inquiry relates".<sup>15</sup> If a change of location (e.g. moving from England to Scotland or vice-versa) causes a change in disclosure period, as stated elsewhere in this Guide, insurers should not take into account spent convictions. Decisions over whether changes in the disclosure period will affect the cover/policy are commercial decisions at the discretion of the individual insurer and beyond the scope of this Guide.

When insuring foreign nationals who have been convicted in their home country, insurers should be aware that the ROA 1974 applies. Section 1(4)(a) of the Act confirms that the references to convictions include convictions by or before courts outside of Great Britain, Scotland and England and Wales. When considering the rehabilitation periods for particular sentences under Section 5 of the Act, Section 5(7)(f) sets out that a sentence imposed by a court outside of England & Wales should be treated as the sentence under Section 5 to which it most closely relates to.

If consumers are not sure whether a previous conviction is spent, insurers should refer them to the [www.disclosurecalculator.org.uk](http://www.disclosurecalculator.org.uk) or Unlock's public helpline. See *Annex B* for more information.

## 2 Data Protection

Insurers must be able to access all relevant information needed to assess risk and accurately set the premium and terms of a policy. Insurers recognise the importance of data protection and have a legal duty to process personal data in a fair and proportionate manner.

On 25 May 2018, the GDPR came into force and replaced the previous

<sup>15</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/299916/rehabilitation-of-offenders-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299916/rehabilitation-of-offenders-guidance.pdf)

legal framework for data protection. The DPA 2018 implements the provisions of the GDPR in the UK and replaces the Data Protection Act 1998.

Under GDPR Article 10, information about criminal convictions is no longer treated as 'sensitive personal data', but similar safeguards apply to its processing. If insurers are processing criminal conviction data or data about offences, they must identify both a lawful basis for general processing and an additional condition for processing this type of data. If the insurer cannot identify an appropriate condition, they are prohibited from processing the data. The processing of criminal records data will be authorised where:

- The data subject has given his or her explicit consent. The GDPR sets a high standard for consent. Consent requires a clear and affirmative action. Data subjects must give a specific, informed and unambiguous indication that signifies agreement to the processing of their criminal conviction data. Insurers must not infer consent from silence, pre-ticked boxes or inactivity – there must be a positive opt-in. Insurers must be able to demonstrate consent by keeping records to verify this. In the absence of consent, insurers should look for a different lawful basis; or
- Providers of insurance can demonstrate that processing this data is necessary for an insurance purpose. This basis for processing data can only be relied upon if the data is necessary for the insurance process and where the insurer cannot reasonably be expected to obtain consent and where they are not aware that a person withholds their consent.

### 3 Enforced subject access

Section 184 of the DPA 2018 makes it a criminal offence to require an individual to exercise their subject access rights to gain access to information about their criminal convictions and cautions.

The provisions in subsection 184 (2) DPA 2018 outlaw enforced subject access. Insurers may no longer ask a policyholder or applicant to complete a subject access request (SAR) to obtain criminal conviction data. This includes incentivising SARs, for example, by offering a lower premium to consumers who agree to a SAR.

Insurers may seek access to an individual's criminal history through the appropriate statutory procedures (Disclosure and Barring Service (DBS) in England and Wales, Disclosure Scotland in Scotland and Access Northern Ireland in Northern Ireland). Any information relating to a criminal record must be processed in accordance with the compliance responsibilities found under the GDPR and the DPA 2018.

### 4 Basic Criminal Records Checks

Basic checks are a type of criminal record check that can be used by insurers to validate claims. Basic checks show any unspent criminal records (as defined by the ROA 1974). Spent convictions will not show on a basic check.<sup>16</sup>

<sup>16</sup> Insurers' should be aware that Basic Criminal Record checks have limitations. For example, where a conviction is unspent at inception, it may become spent later when a claim occurs. The insurer is entitled to rely on misrepresentation at application under CIDRA 2012. However, the Basic Check will not identify the conviction at claim once it is spent. If an insurer has cause to re-investigate claims made in prior years, basic checks allow the consumer to avoid the consequences of misrepresentation, where a voluntary disclosure at application would not have done.



Insurers will generally rely on the information that consumers provide to them. When making a claim, insurers will undertake claims validation, which may include a criminal records check.

In accordance with Section 184 DPA 2018<sup>17</sup>, which outlaws enforced subject access, insurers may not ask a policyholder or applicant to complete a subject access request to obtain criminal conviction data (see *Annex F*). Insurers may, however, ask a policyholder or applicant to provide proof of unspent convictions by asking them to provide a basic disclosure certificate. This either contains information about every unspent conviction of an applicant or states that there are no convictions.

The DBS started processing basic criminal record checks for people in England and Wales in September 2017. Since 1 January 2018, basic checks are no longer available to applicants in England and Wales from Disclosure Scotland.

## 5 Staff awareness and Training

Insurance providers should ensure that all relevant staff are trained on the ROA 1974 and other relevant legislation and have access to internal guidance that enables them to respond appropriately to queries relating to ROA raised by consumers.

## 6 Clear and specific relevant questions

Insurers should ask explicit questions about the type of convictions that need to be disclosed and avoid implicit wordings. A request for 'relevant' information may be confusing for consumers (see *Table 5* for examples) and it is less likely that the insurer will be able to defend a decision to avoid the policy on the basis of misrepresentation. When a conviction is disclosed, insurers should consider whether they should seek additional information about the nature of the conviction to enable them to assess, for example, whether it is relevant.

The FOS requires the insurer to provide evidence that it asked a clear question about any material facts to which it received an inaccurate response. The FOS will consider whether a reasonable consumer would realise that a question required the particular information to be given and will not allow a policy to be avoided for non-disclosure in cases where no question was asked. The purpose of this approach is to discourage vague, open-ended questions, which is reflected in CIDRA 2012.

Insurers should also consider whether they wish to know about fixed penalty notices or pending prosecutions and, if so, they should ask explicit questions, bearing in mind that a fixed penalty is not a conviction.

For motor insurers, given that the savings provision maintains the rehabilitation period of five years solely for road traffic endorsements (and two and a half if under 18), it is recommended that questions explicitly reference road traffic endorsements. It is also recommended that information is provided to consumers to explain that endorsements are distinct from penalty points, and that they are only rehabilitated after 5 years, notwithstanding that they can typically be removed from a licence earlier.

<sup>17</sup> Previously section 56, DPA 1998

**Table 5 Examples of clear and concise relevant questions**

Aim	Good practice: Explicit wording	Poor/Illegal practice: Implicit wording
<p>To obtain information about unspent convictions and offences under ROA that will typically affect acceptance of the risk, premium and terms.</p>	<p>Do you have any unspent non-motoring convictions?</p>	<p>Do you have any relevant convictions?</p> <p>Have you ever been convicted of an offence?</p>
	<p>Do you have any unspent motoring convictions, including endorsements for road traffic offences?</p>	
	<p>Do you have any unspent convictions, including endorsements, not only relating to motor vehicles and driving?</p>	
<p>To obtain information about unspent convictions and offences under ROA for everyone covered by the policy that will typically affect acceptance of the risk, premium and terms.</p>	<p>Do you, or any other named drivers, have any unspent convictions, including endorsements for road traffic offences?</p>	<p>Do you, or any other named drivers, have any relevant convictions?</p> <p>Do you, or any other people residing in the property, have any relevant convictions?</p>
	<p>Do you, or any other people residing in the property, have any unspent convictions? This includes lodgers and family members.</p>	
<p>To obtain information about other related offences not covered by ROA that will typically affect acceptance of the risk, premium and terms.</p>	<p>Do you have any pending prosecutions? This includes any fixed penalty notices that you have formally disputed.</p>	<p>Do you have any relevant pending prosecutions?</p>
	<p>Have you sustained any fixed penalty notices for an endorsable offence in the past 5 years?</p>	<p>Have you had an endorsable offence in the past 5 years?</p>

The example questions above include reference to unspent offences. As many consumers will not know what an unspent offence is, insurers should provide consumers with clear and concise information explaining the difference between spent and unspent offences. Such information can be found at:

<http://hub.unlock.org.uk/knowledgebase/differences-unspent-spent-convictions/>

It is best practice for insurers to be clear and explicit in the questions asked. Insurers should make it clear in the questions asked that consumers only need to disclose unspent convictions. Where an insurer does not specifically refer to unspent offences in the question, supplementary information (for example in hover boxes in online applications) should explain to the consumer that they only need to declare unspent convictions. Insurers should be mindful of the fact that asking a question which could elicit information about spent convictions may be in breach of ICOBS and the consumer's best interest rule under the IDD.

Insurers should ensure that consumers are aware that they should not disclose spent convictions.

Where insurers ask about unspent *offences*, rather than unspent *convictions*, supplementary information (for example in hover boxes) should also explain to the consumer what might constitute an offence that needs to be declared (for example, both convictions imposed by a court and fixed penalty notices).

## **7 Explaining the consequences of non-disclosure and/or misrepresentation**

Insurers have a duty of care to make clear to consumers the consequences of non-disclosure or misrepresentation. Insurers should ensure that such warnings are adequately prominent during the application process and ask the consumer to explicitly confirm that they have understood the consequences of non-disclosure/misrepresentation. It should be made clear that the consequences of non-disclosure/misrepresentation may be serious, and in some cases can lead to the policy being avoided.

For online sales, this aim can be achieved with the use of text displayed alongside a question; for telephone sales, information can be provided in the call script. Where assumptions about previous convictions form part of the application process, insurers should make sure that consumers are required to positively affirm those assumptions are understood.

Insurers should be mindful that warnings about non-disclosure could prompt some consumers to think that it is necessary to disclose spent convictions. Insurers should therefore take reasonable steps to ensure that consumers know that they are under no obligation to disclose spent convictions. This can be achieved by asking clear and specific relevant questions as outlined in Table 5.

Insurers should require consumers to provide answers to every question – default answers should be avoided, including through online sales and intermediated business.

Under CIDRA 2012, consumers have a duty to take reasonable care not to make a misrepresentation during the application process. Consumers should be made aware that non-disclosure/misrepresentation can have a number of consequences such as the policy being avoided, and claims rejected.

## **8 Preventing misrepresentation through negative assumption**

Experience has shown that, when asked for information about another individual, consumers sometimes inadvertently give incorrect answers because the required information is not immediately available to them. Thus, when asked if an additional driver or other member of the household has a conviction, the consumer who does not know the answer might respond in the negative 'not as far as I am aware', rather than take the trouble to revert to that individual to obtain the correct information. This is particularly relevant for telephone and face-to-face sales.

In this situation, the insurer should make it clear that the consumer must make a definitive statement, or the insurer will decline to accept the assumed answer and insist the consumer obtains the information.

## **9 Considering the sales process and its effect on the consumer**

Insurers must think carefully about the sales process and its effect on the consumer. For instance: is an intermediary involved in collecting the information on the quotation request form? Does the consumer have the opportunity to check their answers?

The consumer should have the opportunity to review the information they have provided before it is submitted. This can be achieved by providing the consumer with a copy of a proposal form or statement of facts (see *Glossary*). This should include all the information that the consumer has provided regarding unspent criminal convictions and prominent warnings about the consequences of failing to answer questions carefully, accurately and to the best of their knowledge and belief.

## Referrals and signposting

**Aim: To help people find cover**

### How to achieve the aim

Where insurers are unable to provide the consumer with full, or any, cover due to the nature or number of unspent offences or convictions, the insurer should provide information about alternative sources of help. The insurer should:

- consider setting up referral arrangements with distributors who provide cover to people with particular convictions; and/or
- signpost the consumer to organisations where they may find information about alternative sources of cover, such as Unlock or the BIBA 'Find a Broker Service' (see *Annex B* for more information).<sup>18</sup>

Insurers must always be clear when passing on consumer details to a third party and ask the consumer to explicitly agree to this. If consumers do not consent to their personal details being shared, insurers should signpost them to information about alternative sources of cover.<sup>19</sup>

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<sup>18</sup> <https://www.biba.org.uk/find-insurance/>

<sup>19</sup> Insurers should ensure compliance with Article 14 of GDPR regarding information to be provided when personal data has not been obtained from the data subject.

## Mid-term underwriting and renewals

**Aim: To ensure that consumers do not face unreasonable post-sale barriers when a conviction history changes, either mid-term or at the renewal stage**

### How to achieve the aim

Insurers have a duty to inform consumers about their obligation to disclose particular changes in their circumstances and when this needs to happen.

#### 1 Mid-term underwriting

Since CIDRA came into effect in April 2013, consumers have a duty to take reasonable care not to make a misrepresentation to the insurer. This applies both at application stage and on variation of the policy. There is no duty to disclose changes in a consumer's record of convictions and related offences unless a policy condition provides for mid-term disclosure. Where such a condition exists, it must satisfy the requirements of the Unfair Terms in Consumer Contracts Regulations (UTCCR) 1999 and insurers should consider their practice in regard to new convictions. If it is practice to take action mid-term, the insurer should consider making equal provision to disregard convictions at the point they become spent mid-term. If it is practice to leave the removal of terms, once a conviction becomes spent, until renewal, then to apply terms for new convictions prior to renewal may be deemed unfair under CIDRA.

When reviewing the risk, it is also the insurer's responsibility to clearly explain the link between a consumer's conviction and any impact on their terms and conditions when asked (see *Consumer awareness* for more information). Any decision should be consistent and set against the outcomes below:

- Increase or decrease the premium
- Apply exclusions or limitations to the policy
- Withdraw cover

As a minimum, any decision should reflect the insurer's approach to underwriting the risk at application stage, although it is good practice to assess each disclosure individually based on previous experience of the policyholder. This should include consideration of any mitigating circumstances.

If a consumer is unhappy with the insurer's decision, or the insurer is no longer able to provide full cover, the insurer should provide the consumer with information about alternative sources of help (see *Referrals and signposting* for more information).

## 2 Renewal underwriting

At renewal stage, the consumer is under the same duty to take reasonable care not to make a misrepresentation, as they are essentially treated as if they are entering a new contract. Insurers should therefore make it clear to consumers what information that are required to disclose at renewal. This may include recent convictions. Where a conviction has become spent during the life of the previous term, insurers must be proactive in removing this information from the policyholder's record. It is good practice for insurers to provide a copy of information about convictions previously provided, so as to make it clear to the consumer what has changed since last time.

See *Annex C* for information about the effect of further convictions.

## Misrepresentation and associated outcomes

**Aim: To treat consumers fairly when dealing with misrepresentation that occurred before a contract was entered into**

### How to achieve the aim

In the event of misrepresentation, insurers should always try to understand the reasons for it before making a final decision. The insurer should ask the consumer why the information was incomplete or incorrect.

This section of the guidance does not seek to cover the general effects of misrepresentation, nor insurers' obligations on following good practice or legal requirements when dealing with relevant cases, since this is not unique to risks featuring criminal offences.

Where a criminal offence is the material fact upon which a risk is voidable, the regulatory and legal requirements provided by the FCA ICOBS rules (see below and *Annex D*), the FOS and CIDRA 2012 should be adhered to, as appropriate.

### 1 Reaching a decision

Upon receipt of the consumer's comments and completion of other enquiries, the insurer will need to consider the materiality and relevance of the misrepresented information, taking into account the FCA rules, FOS guidance and the relevant consumer insurance legislation. The insurer may then decide whether to:

- continue the policy at existing terms;
- offer to continue the policy, subject to revised terms;
- agree with the policyholder to adjust the premium and/or terms for the remainder of the insurance year and beyond, as appropriate; or
- avoid the policy and return the premium, if appropriate.

In the event of a claim, the additional considerations in the next section of this guidance will apply.

### 2 Claims

In considering claims, insurers should adopt a balanced approach to understanding all circumstances in the event of misrepresentation and, where appropriate, apply proportionate remedies for unspent convictions.



CIDRA 2012 sets out remedies available for qualifying misrepresentations made before the contract is entered into under two categories: 'deliberate' (or reckless) and 'careless' misrepresentations. This would also apply at renewal stage. It reflects the approach already taken by the FOS, with the intention of making the law simpler and clearer.<sup>20</sup>

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<sup>20</sup> FOS Technical Note, Misrepresentation and Non-disclosure, [https://www.financial-ombudsman.org.uk/publications/technical\\_notes/misrepresentation-and-non-disclosure.htm](https://www.financial-ombudsman.org.uk/publications/technical_notes/misrepresentation-and-non-disclosure.htm)

## Glossary

### Circumstances ancillary

This phrase is used in Section 4 of the ROA (and Section 5 of the ROO). It means that a person is not obliged to disclose “a conviction which has become spent or any circumstances ancillary thereto”. Insurers should, therefore, disregard circumstances ancillary to a spent conviction. The ROA states that any of the following are circumstances ancillary to a conviction:

- (a) the offence or offences which were the subject of that conviction;
- (b) the conduct constituting that offence or those offences; and
- (c) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence.<sup>21</sup>

The circumstances that led to the conviction may be relevant. For example, in relation to a motor policy, the conviction may have arisen as a result of a road traffic accident or incident. It is therefore recognised that other sections of the application or claims forms may contain questions in this respect.

An example of good practice is outlined in the *Application process* section.

### Consumer

A person seeking to buy an insurance policy.

### Insurer

An insurer will, through contractual agreement, undertake to compensate specified losses, liability, or losses suffered pursuant to the terms of an insurance policy. For this benefit the consumer pays the company a fee, called a premium.

### Multiple penalties

In circumstances where multiple penalties have been imposed, the longer of the respective periods of rehabilitation prevails.

### Related offence

For the purposes of this guidance, a related offence is a penalty not specifically mentioned in the ROA guidelines. For instance, this could include a driving ban and penalty points on a driving licence.

### Statement of facts

The statement of facts (SOF) is usually issued with policy documents subsequent to the point of sale and states, among other things, the information declared by the consumer in regard to material facts, including convictions and offences. The SOF must contain a warning

<sup>21</sup> Section 4(5).

to the consumer of the need to notify the insurer immediately if any information shown is incomplete or incorrect. This enables the insurer to re-evaluate the risk, where necessary. The warning should contain a statement that, where such correction is offered by the policyholder, a revised SOF showing the correct information will be issued with a request to contact the insurer if it is not received. This will avoid a dispute if it is subsequently claimed that a correction was made which the insurer either did not receive or failed to action.

Where possible, insurers should issue an updated SOF when renewal of a policy is invited.

## Annex A – Rehabilitation periods

### England and Wales

The LASPO Act amended the rehabilitation periods set out in the Rehabilitation of Offenders Act in England and Wales only.

The table below sets out the sentences, orders and warnings and the rehabilitation period attached to each. For minor sentences, the rehabilitation period is from the date of warning or conviction. For custodial sentences, the rehabilitation period will begin after the sentence, including any licence period, has been completed. The table includes the rehabilitation for relevant motoring offences set out in the RTA 1988.

Sentence, order or warning	Length or type	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Prison	Over 4 years	Forever	Forever
	More than 30 months and less than (or equal to) 4 years	Sentence + 7 years	Sentence + 3.5 years
	More than 6 months and less than (or equal to) 30 months	Sentence + 4 years	Sentence + 2 years
	Less than (or equal to) 6 months	Sentence + 2 years	Sentence + 18 months
Detention and Training Order	Any	N/A	As other prison sentences (see above)
Sentence of Detention	Any	As other prison sentences (see above)	
Removal from Her Majesty's	N/A	1 year	6 months

Sentence, order or warning	Length or type	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Service			
Service Detention	Any	Sentence + 1 year	Sentence + 6 months
A Fine	Any	1 year	6 months
A Compensation Order	Any	The date on which the payment is made in full	
A Community or Youth Rehabilitation Order <sup>22</sup>	Any	The length of the order + 1 year	The length of the order + 6 months
A Relevant Order	Any	The length of the order	The length of the order
Disqualification	Any	The length of the disqualification	
Absolute Discharge, Caution, Warning , Reprimand	Any	Spent immediately	
Conditional Caution	Any	Once Conditions End	
Endorsement for Road Traffic Offence	Any	5 years	2.5 years
Penalty Points	Any	3 years	3 years

### Scotland and Northern Ireland

The LASPO Act does not amend the ROA in Scotland, or the ROO in Northern Ireland.

The table below sets out the sentences, orders and warnings and the rehabilitation period attached to each for Scotland and Northern Ireland. The rehabilitation period is from the date of warning or conviction, unless otherwise stated.

Sentence, order or warning	Length or type	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Absolute discharge	Any	6 months	

<sup>22</sup> Where no final date is provided, the rehabilitation period for the order is 2 years, starting from the date of conviction.

Sentence, order or warning	Length or type	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Action plan order <sup>23</sup>	Any	2½ years	
Approved school order	Any	1 year after order expires	
Attendance centre order <sup>24</sup>	Any	1 year after order expires	
Bind over	Any	1 year or until order expires, whichever is longer	
Borstal training sentence <sup>25</sup>	Any	7 years	
Care order <sup>26</sup>	Any	1 year or until order expires, whichever is longer	
Caution	Conditional	3 months	
	Simple	Nil (spent instantly)	
Combination order <sup>27</sup>	Any	5 years	2 ½ years
Community order	Any	5 years	2 ½ years
Community punishment order <sup>28</sup>	Any	5 years	2 ½ years
Community punishment order and rehabilitation Order <sup>29</sup>	Any	5 years	2 ½ years
Community rehabilitation order <sup>30</sup>	Any	5 years	2 ½ years
Community service order <sup>31</sup>	Any	5 years	2 ½ years

<sup>23</sup> Replaced by the youth rehabilitation order.

<sup>24</sup> Replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>25</sup> Abolished in 1983.

<sup>26</sup> Care orders in criminal proceedings were abolished by the Children Act 1989 and effectively replaced by a supervision order with residence requirements.

<sup>27</sup> Replaced by the community punishment and rehabilitation order, which was itself replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>28</sup> Replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>29</sup> Replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>30</sup> Replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>31</sup> Replaced by the community punishment order, which was itself replaced by the community order for adults and the youth rehabilitation order for juveniles.

Sentence, order or warning	Length or type	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Compensation order	Any	Once the compensation order is paid in full	
Conditional discharge order	Any	1 year or until order expires, whichever is longer	
Confiscation order <sup>32</sup>	Any	5 years	2½ years
Curfew order <sup>33</sup>	Any	5 years	2 ½ years
Detention and training order	More than 6 months	n/a	1 year after order expires for 12-14 year olds 5 years after order expires for 15-17 year olds
	6 months or less	n/a	1 year after order expires for 12-14 year olds 3½ years after order expires for 15-17 year olds
Detention centre order <sup>34</sup>	Any	3 years	3 years
Detention in a Young Offenders Institute <sup>35</sup>	More than 6 months	10 years	5years
	6 months or less	7 years	3½ years
Disqualifications <sup>36</sup>	Any	When the period ends	
Drug treatment and testing order <sup>37</sup>	Any	5 years	2 ½ years
Endorsements <sup>38</sup>	Any	5 years	2½ years

<sup>32</sup> An ancillary order treated as a sentence in its own right.

<sup>33</sup> Replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>34</sup> This was abolished in 1988.

<sup>35</sup> This was abolished for those under 18 in 2000 and replaced by the detention and training order, but it is still available for those aged 18-20 years

<sup>36</sup> This is an ancillary order which is treated as a sentence in its own right.

<sup>37</sup> This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>38</sup> This is an ancillary order which is treated as a sentence in its own right.

Sentence, order or warning	Length or type	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Final warning	Any	Nil (spent instantly)	
Fine <sup>39</sup>	Any	5 years	2 ½ years
Forfeiture order <sup>40</sup>	Any	5 years	2½ years
Hospital order	With or without a restriction order	5 years or 2 years after order expires, whichever is longer	
Penalty Points	Any	3 years	
Prison sentence	More than 30 months	Forever	
	Over 6 months and up to 30 months	10 years	5 years
	6 months or less	7 years	3 ½ years
Probation order <sup>41</sup>	Before 3 February 2005	1 year or until order expires whichever is longer	
	On or after 3 February 2005	5 years	2 ½ years
Referral order	Any	Once the order expires	
Reparation order	Any	2½ years	
Reprimand	Any	Nil (spent instantly)	
Secure training order <sup>42</sup>	Any	1 year after order expires	
Supervision order <sup>43</sup>	Any	1 year or until order expires, whichever is longer	
Suspended sentence	More than 6 months	10 years	
	6 months or less	7 years	

<sup>39</sup> The rehabilitation period applies even if the offender is subsequently imprisoned for default of a fine.

<sup>40</sup> This is an ancillary order which is treated as a sentence in its own right.

<sup>41</sup> This was replaced by the community rehabilitation order, which was itself replaced by the community order for adults and the youth rehabilitation order for juveniles.

<sup>42</sup> This was abolished in 2000 and replaced by the detention and training order.

<sup>43</sup> This has been replaced by the youth rehabilitation order.



Sentence, order or warning	Length or type	Period (Adults aged 18 and over when sentenced)	Period (Minors aged 17 and under when sentenced)
Youth conditional caution <sup>44</sup>	Any	n/a	3 months
Youth custody order <sup>45</sup>	More than 6 months	10 years	5 years
	6 months or less	7 years	3½ years
Youth rehabilitation order <sup>2546</sup>	Any	n/a	1 year or until order expires, whichever is longer

Note: The Rehabilitation of Offenders Act 1974 (ROA) is currently being reviewed in Scotland. The Management of Offenders (Scotland) Bill was introduced on 22 February 2018 and completed Stage 3 on 26 June 2019. The Bill is expected to receive Royal Assent and be enacted into law at an unknown date. The Bill proposes to reduce the length of disclosure periods and extends the range of custodial sentences covered by the provisions of the Act. More information on the Bill and the changes can be found here <https://www.parliament.scot/parliamentarybusiness/Bills/107731.aspx>. Readers should note that once the Bill is enacted into law this Guide will be updated.

<sup>44</sup> Came into force in April 2013 following a successful pilot period.

<sup>45</sup> This was abolished in 1988.

<sup>46</sup> This replaces a number of orders for offences committed after 30 November 2009.

## Annex B – Contact information for consumers

The **Association of British Insurers** provides information on its website to help people with non-standard risks, including unspent criminal convictions, find appropriate cover. Website: <https://www.abi.org.uk/Insurance-and-savings/Tools-and-resources/How-to-buy-insurance>

**Unlock**, a national charity for people with convictions, provides information and advice services for people with convictions, as well as working with employers, insurers and others to develop best practice policies and practices.

Unlock maintains a list of intermediaries and insurers who may be able to arrange and provide cover to people with unspent convictions. This is available to download free of charge from its Information Hub. This can be found here: <http://hub.unlock.org.uk/section/money-and-finance/personal-insurance/>.

In 2011, Unlock developed an online tool which calculates when an individual's convictions become spent under the ROA 1974. This has since been updated to reflect the changes introduced by LASPO in 2014. Please note that this guidance only applies to individuals living in England and Wales. This is available at [www.disclosurecalculator.org.uk](http://www.disclosurecalculator.org.uk). Insurers' can use the disclosure calculator, by registering for an account, to check if a conviction is spent. More information is available at <http://hub.unlock.org.uk/disclosure-calculator/user-guide/>.

Unlock also runs a confidential peer helpline on overcoming the effects of criminal convictions. Telephone: 01634 247350; Email [advice@unlock.org.uk](mailto:advice@unlock.org.uk).

## **Annex C – Rehabilitation of Offenders Act 1974, Legal Aid Sentencing and Punishment of Offenders Act 2012 & Rehabilitation of Offenders (Northern Ireland) Order 1978**

### **Background to the Acts**

Insurers are restricted in their underwriting of risks featuring criminal convictions by the ROA 1974 in Scotland, the ROA 1974 as amended by the LASPO Act in England and Wales, and the ROO 1978 in Northern Ireland. The main objectives of these are to enable convicted persons to 'wipe the slate clean' for the purpose of social rehabilitation, once the prescribed period has elapsed from the date of the conviction, providing no further convictions have been obtained. After that time the conviction becomes 'spent' and need not be disclosed by the consumer, even where specifically requested by the insurer.

While the ROA and ROO do not prevent an insurer from asking an open question about all convictions, doing so may be contrary to ICOBS 2.2.2R, which requires firms to communicate in a way that is clear, fair and not misleading. Insurers should therefore avoid asking open questions, as these could potentially lead to over or under disclosure. If a conviction is spent, the consumer does not have to disclose it. If a spent conviction is disclosed, the insurer must ignore it if it was spent at the time of disclosure.

### **Rehabilitation periods**

In Scotland and Northern Ireland, the rehabilitation period begins on the date of conviction. In England and Wales, the start of the rehabilitation period depends on the penalty and is specified in the amended ROA.

It is the penalty which dictates the period of rehabilitation, not the nature of the offence. Where more than one penalty is imposed in connection with a conviction, the longer of the respective periods of rehabilitation prevails. For example, the rehabilitation period for a road traffic endorsement is 5 years (or two and a half years if under 18), whereas a 1 year driving disqualification is spent when the disqualification ends after 1 year. If both were given together, neither become spent until both of them do, which is after 5 years.

In most cases, the rehabilitation period for offenders under the age of 18 is half the period of adult offenders. Further details of this is provided in *Annex A*.

It has been held in law that an endorsement for a road traffic offence listed in schedule 2 of the RTA 1988, imposed either by the court or by means of a fixed penalty notice, is a sentence for the purposes of the 1974 Act, and may become spent after 5 years (or two and a half years where the offender is under 18).<sup>47</sup> The savings provision included in the commencement order for the changes to the ROA included in the LASPO Act, ensures that the 5 year rehabilitation period for endorsements for road traffic offences stays at 5 years in England and Wales under the amended ROA. This position has been clarified in guidance issued by the Ministry of Justice:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/286421/rehabilitation-of-offenders-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286421/rehabilitation-of-offenders-guidance.pdf)

In practice, the savings provision means that there is no change to rehabilitation periods for motoring offences. This is because the DVLA endorses licences for all motoring offences.

For property insurers, the amendments to the ROA included in the LASPO Act have the effect of changing rehabilitation periods in England and Wales. Provided insurers were previously complying with this guidance, there should be no need for changes to questions for consumers to accommodate the amendments. However, it is **strongly recommended** that insurers confirm this themselves for all of their distribution channels.

### Further convictions

Throughout the United Kingdom, if a further conviction for either a triable 'either-way' or 'indictable' offence is sustained during a period of rehabilitation of an earlier conviction, both convictions remain unspent until the longest of them becomes spent. An indictable offence is one which, by virtue of its severity, must be tried in a Crown Court, although certain indictable offences may be heard summarily (e.g. by a Magistrates' Court in England and Wales; a Sheriff Court or District Court in Scotland; and a County Court in Northern Ireland). Either-way offences, including theft, drugs offences and some involving violence against the person, are triable either by a magistrates' court or by the Crown Court.

In England and Wales, if a further conviction for a summary offence is sustained during a period of rehabilitation of an earlier conviction both convictions remain unspent until the longest of them becomes spent. Summary only offences are offences that can only be tried in a magistrates' court.

In Scotland and Northern Ireland, if a further conviction for a summary offence is sustained during a period of rehabilitation of an earlier conviction, its rehabilitation period runs separate to previous unspent convictions.

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<sup>47</sup> Power v Provincial 1997

## Annex D – Insurance Conduct of Business Sourcebook (ICOBS)

### Background

The overall aim of ICOBS is to ensure that insurance customers are treated fairly. ICOBS outlines high-level standards that apply to all non-investment insurance product sales (general insurance and protection policies)

Insurers should adhere to ICOBS when establishing the facts and credibility of allegations that non-disclosure arose as a consequence of failures during the sales process and their effect on the consumer, paying special regard to those parts of the process for which the insurer (or those acting for the insurer) is responsible.

### Relevant rules

Rule 2.2.2R and Principle 7 state that when an insurer communicates information, including via a financial promotion, to a customer or other policyholder, it must communicate it in a way that is clear, fair and not misleading.

Rule 2.5.-1R requires firms to act honestly, fairly and professionally in accordance with their customers' best interests.

Under Rule 5.1.4.G, insurers should bear in mind the restriction on rejecting claims (ICOBS 8.1.1R (3)). Ways to ensure that a customer knows what must be disclosed include:

- (1) explaining to the customer the responsibility of consumers to take reasonable care not to make a misrepresentation and the possible consequences if a consumer is careless in answering the insurer's questions, or if a consumer recklessly or deliberately makes a misrepresentation; and
- (2) asking the customer clear and specific questions about the information relevant to the policy being arranged or varied.

Rule 8.1.1 states that an insurer must:

- (1) handle claims promptly and fairly;
- (2) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;
- (3) not unreasonably reject a claim (including by terminating or avoiding a policy); and
- (4) settle claims promptly once settlement terms are agreed.

Rule 8.1.2 provides that, for contracts entered into or variations agreed before 1 August 2017, a rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is:

- (1) in relation to contracts entered into or variations agreed on or before 5 April 2013, for:

- (a) non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or
- (b) non-negligent misrepresentation of a fact material to the risk; or
- (2) in relation to contracts entered into or variations agreed on or after 6 April 2013, for misrepresentation by a customer and the misrepresentation is not a qualifying misrepresentation (see ICOBS 8.1.3R); or
- (3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a pure protection contract):
  - (a) under a 'life of another' contract, the warranty relates to a statement of fact concerning the life to be assured and, if the statement had been made by the life to be assured under an 'own life' contract, the insurer could have rejected the claim under this rule; or
  - (b) the warranty is material to the risk and was drawn to the customer's attention before the conclusion of the contract.

Rule 8.1.2A provides that, for contracts entered into or variations agreed on or after 1 August 2017, cases in which a rejection of a consumers claim would be unreasonable include, but are not limited to rejection:

- (a) for misrepresentation, unless it is a qualifying misrepresentation;
- (b) where the claim is subject to the Insurance Act (IA) 2015, for breach of warranty or term, or for fraud, unless the insurer is able to rely on the relevant provisions of the IA 2015; and
- (c) where the policy is drafted or operated in a way that does not allow the insurer to reject.

Rule 8.1.2B provides that. for contracts entered into or variations agreed on or after 1 August 2017, a rejection of a consumer policyholder's claim for breach of a condition or warranty (that is not subject to, and within, section 10 or 11 of the IA 2015) is unreasonable unless the circumstances of the claim are connected to the breach.

## Annex E – Consumer Insurance (Disclosure and Representations) Act 2012

### Background

The Act was borne out of the Law Commissions' review of insurance contract law, which had the aim of bringing the law into line with current practice as developed by industry statements of practice, FOS guidance and FCA rules. The Act only applies to consumer insurance. Commercial insurance contracts are not covered by the Act.

### Main Provisions

The Act has the effect of replacing the consumer's duty to volunteer material information with a duty on the consumer to take reasonable care not to make a misrepresentation during pre-contractual negotiations.

The Act provides different remedies for the insurer in cases where it has been induced by a misrepresentation to enter into an insurance contract. The insurer's remedy depends upon the nature of the consumer's misrepresentation.

1. If the misrepresentation was honest and reasonable then the validity of the contract is unaffected by it.
2. If the misrepresentation was careless the insurer has a remedy based upon whether it would have entered into the contract on different terms or not at all.
  - (a) If it would not have entered into the contract at all it may treat the policy as void and decline any claim under the policy but must return the premiums paid.
  - (b) If it would have entered the contract on different terms (e.g. subject to a compulsory excess), the contract may be taken to include those different terms, and these would apply retroactively to any claim under the policy. If the premium would have been higher any benefits or indemnity from a claim under the policy would be subject to reduction in proportion to the underpayment of the premium.<sup>48</sup>
3. If the misrepresentation is deliberate or reckless then the insurer has the option of avoiding the contract and refusing a claim under the policy. The insurer would be entitled to retain the premium unless there was a good reason why it should be returned.

<sup>48</sup> In January 2019, the FOS amended its technical note on the Act to reflect that additional premiums are, in certain circumstances, a fair remedy in cases of misrepresentations made at application stage. The full technical note is available here: [https://www.financial-ombudsman.org.uk/publications/technical\\_notes/misrepresentation-and-non-disclosure.htm#a3](https://www.financial-ombudsman.org.uk/publications/technical_notes/misrepresentation-and-non-disclosure.htm#a3)

## Scope

The Act applies to consumer insurance contracts, as distinct from commercial contracts.

A consumer insurance contract means a contract between an individual who enters into the contract *wholly or mainly for purposes unrelated to the individual's trade, business or profession* and an insurer.

## Further Information

For more detailed information Members should refer to the Act and the accompanying Explanatory Notes.<sup>49 50</sup>

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<sup>49</sup> <http://www.legislation.gov.uk/ukpga/2012/6/contents>

<sup>50</sup> <https://publications.parliament.uk/pa/bills/lbill/2010-2012/0068/en/2012068en.htm>



## Annex F – ABI Guidance on Enforced Subject Access: Disclosure of Criminal Convictions

### Issue

In light of Section 184 DPA 2018, which outlaws enforced subject access, this note outlines ways in which insurers can continue to seek disclosure of unspent criminal convictions.

### Background

Where there have been suspicions that a policyholder or applicant for insurance has undeclared unspent criminal convictions, some insurers may previously have asked the individual to complete a subject access request (SAR) to obtain personal data from a data controller. While the request will typically be used to obtain conviction details from a police force, it could be used for other purposes, including obtaining DVLA documentation, benefits documents or employment documentation.

On 10 March 2015, Section 56 of the DPA 1998 came into force, covering enforced SARs to obtain 'relevant records' from 'relevant data controllers', including in relation to 'contracts for services', such as insurance. This has been reproduced in s.184 of the DPA 2018 and makes it a criminal offence punishable by unlimited fines in England and Wales (and fines not exceeding the statutory maximum in Scotland and Northern Ireland) to make a SAR in the circumstances set out in s.184.

### Basic DBS check

An insurer wishing to verify the criminal conviction history of a policyholder or potential policyholder may use the Disclosure and Barring Service (DBS).

The DBS has introduced basic criminal record checks for people in England and Wales, replacing the service previously provided by Disclosure Scotland.

A basic disclosure certificate either contains information about every unspent conviction of an applicant or states that there are no convictions, although the exact content will differ according to whether the application is processed under legislation pertaining to England and Wales or to Scotland.<sup>51</sup>

More information/guidance on data protection is available from the Information Commission's Office (ICO): <https://ico.org.uk/for-organisations/guide-to-data-protection/>

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<sup>51</sup> Insurers' should be aware that Basic Criminal Record checks have limitations. For example, where a conviction is unspent at inception, it may become spent later when a claim occurs. The insurer is entitled to rely on misrepresentation at application under the CIDRA 2012, however the Basic Check will not identify the conviction at claim once it is spent. If an insurer has cause to re-investigate claims made in prior years, Basic checks allow the consumer to avoid the consequences of misrepresentation, where voluntary disclosure at application would not have done.