



Association of British Insurers

Insurers' Approach to People with Convictions and Related Offences

An ABI Good Practice Guide

10 March 2014

Foreword

There are more than 9 million people in the UK with criminal convictions. A significant proportion of these will now 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 for insurance and making 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. This is done with a view to helping ensure that processes and procedures comply with, and exceed where appropriate, legal and regulatory requirements, particularly in regard to satisfying Treating Customers Fairly objectives. Our goal is to ensure that insurers:

- comply with the Rehabilitation of Offenders Act 1974, the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Rehabilitation of Offenders (Northern Ireland) Order 1978, and the Consumer Insurance (Disclosure and Representations) Act 2012;
- provide customers 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 customers 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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Improving access to insurance

Access to insurance is an important part of financial and social inclusion. The Association of British Insurers recognise 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. 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.

It is common practice for insurers to only take into account offences that are relevant to the type of cover, such as motoring offences for car insurance or arson and offences involving dishonesty for household insurance. This includes the unspent convictions or related offences for 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 will never be taken into account. If you are in doubt as to whether your conviction is spent, contact Unlock.

How does this guide help consumers?

This guide is intended to be used by insurers. 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;
- help people find cover if they are not able to provide a quote;
- ensure that customers do not face unreasonable barriers when their conviction history changes; and
- treat customers fairly when dealing with non-disclosure and misrepresentation.

Where can I find more information for consumers?

Guidance for consumers is available from Unlock (a national charity for people with convictions) and they can be contacted using the details provided in Annex B.

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 offences¹. Any reference to convictions or related offences includes all penalties, unless specified otherwise.

There are already a number of general principles and rules (e.g. Insurance Conduct of Business Sourcebook and Treating Customers Fairly) applied to insurers by virtue of regulation by the Financial Conduct Authority (FCA). FCA regulations require that:

- Consumers can be confident that they are dealing with firms where the fair treatment of customers 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*).

These regulations are not prescriptive as to how insurers should approach people with convictions.

Insurers must also comply with different legislation regarding the treatment of prior convictions, depending on which area of the country they are operating in:

- In England and Wales provisions from the Rehabilitation of Offenders Act 1974 (ROA) as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) apply from 10 March 2014,
- In Scotland the Rehabilitation of Offenders Act 1974 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 asked for.

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

¹ You can find more information about the distinction between convictions and related offences in the *Glossary*.

It examines the insurers' right to take into account a previous history of criminal offences, having regard to the provisions in force throughout the United Kingdom.

It also covers the continuing fair treatment of claimants in the light of evolving industry practice, FCA regulations and the treating customers fairly (TCF) regime, 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 a voluntary good practice guide for insurers.

Insurers should note that this guidance does not purport in any way to replace the law and insurers also need to be aware of the full implications of the ROA, LASPO, the ROO and the Consumer Insurance (Disclosure and Representations) Act 2012 (CIA) themselves. Insurers should seek legal advice, where appropriate, in their treatment of risks in the category covered by this guidance.

Authors of the guidance

This guidance has been developed by:

- Association of British Insurers (ABI)
- Unlock, a national charity for people with convictions

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. This can lead to policies being avoided as a consequence of non-disclosure or misrepresentation. It 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 TCF outcomes
- 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

amendments came into effect on 10 March 2014, and the guidance was reissued to take these changes into account.

Format of the guidance

This guidance establishes standards in the following areas:

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

Customer awareness

Aim: To provide customers with clear information about the use of previous convictions and related offences during and after the point of sale

How to achieve the aim

The link between convictions and increased risk may not always be obvious to customers. It is the responsibility of insurers to clearly explain the relevance between a customer'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 customers ask for more information about the relevance of a conviction. This is considered in more detail throughout the *Application process* section of this guidance.
- On websites, provide a link to the ABI and/or Unlock sites that contain information for customers (see *Annex B*).

Application process

Aim: To ensure customers are asked clear and concise questions that provide insurers with relevant information during the application process

How to achieve the aim

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

The Financial Ombudsman Service (FOS) has 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. They cannot rely on customers to disclose information without being prompted.

This FOS advice has been codified by the Consumer Insurance (Disclosure and Representations) Act 2012, which has the effect of replacing the proposer'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 the Act.

Questions must be explicit, clear and concise. Where the insurer asks a clear question, there will be a presumption that the customer realised it would be relevant to the insurer. Insurers can expect customers to answer such questions carefully, accurately and to the best of their knowledge and belief. They must not put the onus on customers to interpret the exact meaning of any implicit requests.

1 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. 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 since the date of the conviction without obtaining further convictions (see *Annex C* for more information).

Details of unspent convictions can be requested by insurers and taken into consideration during the application process when convictions are material facts. There is nothing in either the ROA or ROO to prevent an insurer from asking an open question about all convictions, but if a conviction is spent the proposer can legally state that it does not exist. 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. The insurer commits an offence if it takes into

account spent convictions. Wrongful disclosure of spent convictions to a third party is also an offence.

The onus is on the insured to disclose any unspent convictions when asked a clear question.

Table 1 Rehabilitation guidelines for England and Wales²

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 service	Any	12 months	6 months
Fine	n/a	1 year	6 months
Road traffic endorsement	n/a	5 years	2 ½ years
Disqualification	Any	Period of disqualification	Period of disqualification
Penalty points	n/a	3 years	3 years

It should be noted that the government has included a ‘savings provision’ in the commencement order that bring 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 1988, imposed either by the court or by means of a fixed penalty notice (FPN).³

² 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.

³ 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.

In practice, this savings provision means that the rehabilitation period for motoring offences will not change in England and Wales as a result of the amendments to the ROA. This is because all motoring offences 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
Road traffic endorsement	n/a	5 years	2 ½ years
Disqualification	Any	Period of disqualification	Period of disqualification
Penalty points	n/a	3 years	3 years

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 prevails. This is the case in all jurisdictions. By way of example, *Table 3* illustrates the

Official Ministry of Justice guidance on the treatment of motoring convictions can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286421/rehabilitation-of-offenders-guidance.pdf

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*.

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: 5 years Disqualification: 6 months	5 years
A fine and a 3 year disqualification	Fine: 5 years Disqualification: 3 years	5 years
A fine, a 2 year disqualification, penalty points, and an endorsement	Fine: 5 years Disqualification: 2 years Penalty points: 3 years Endorsement: 5 years	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 are over. Again, this applies in all jurisdictions.

For example, consider an individual that is 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 proposer need not volunteer information about spent convictions and may act as though they do not exist in answer to a specific question without thereby endangering 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.

If customers are not sure whether a previous conviction is spent, insurers should refer them to the www.disclosurecalculator.org.uk or Unlock's public helpline. See *Annex B* for more information.

2 Clear and concise 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 customers (see *Table 5* for examples) and it is less likely that the insurer will be able to defend a decision to avoid on the basis of misrepresentation.

The FOS requires the insurer to provide evidence that it asked a clear question about any material facts to which it received an accurate response. Ombudsmen will consider whether a reasonable customer would realise that a question required the particular information to be given and would 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 the CIA.

The insurer should also consider whether they wish to know about fixed penalty notices or pending prosecutions and, if so, explicit questions should be asked, 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, 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, despite the fact that they can typically be removed from a licence earlier.

Table 5 Examples of clear and concise relevant questions

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

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

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

Where an insurer does not specifically refer to unspent offences in the question, supplementary information (for example in hover boxes) should explain to the customer that they only need to declare unspent offences.

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

3 Explaining the consequences of non-disclosure and/or misrepresentation

Insurers have a duty of care to make clear to applicants the consequences of non-disclosure/misrepresentation. Insurers should ensure that such warnings are adequately prominent during the application process and ask the customer to explicitly confirm that they have understood the consequences of non-disclosure/misrepresentation.

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 customers are required to positively affirm those assumptions are understood.

Insurers should require customers to provide answers to every question – default answers should be avoided, including through online sales and intermediated business. As a minimum, it should be made clear to customers where answers assuming that customers do not have any criminal convictions have been set as the default.

4 Preventing misrepresentation through negative assumption

Experience has shown that, when asked for information about another individual, proposers sometimes inadvertently give wrong 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 proposer 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 the individual for 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 customer must make a definitive statement or the insurer will decline to accept the assumed answer and insist the proposer obtains the information.

5 Considering the sales process and its effect on the customer

Insurers must think carefully about the sales process and its effect on the customer. For instance: is an intermediary involved in collecting

the information on the quotation request form? Does the customer have the opportunity to check their answers?

The customer should have the opportunity to review the information they have provided before it is submitted. This aim can be achieved by providing the customer with a copy of a proposal form or statement of facts (see *Glossary*). This should include all the information that the customer 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 customer with full, or any, cover due to the nature or number of an offence(s), 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.
- Signpost the customer to organisations where they may find information about alternative sources of cover, such as Unlock (see *Annex B* for more information).

Insurers must always be clear when passing customer details on to a third party and ask them to opt-in when this happens. As a minimum, highlight to the customer that their details can and/or have been transferred to a third party.

Mid-term underwriting and renewals

Aim: To ensure that customers 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 customers about their obligation to disclose particular changes in their circumstances and when this needs to happen.

1 Mid-term underwriting

In addition to the duty of disclosure at the initial point of sale, all policies require disclosure of changes to material facts at renewal (see below). There is otherwise no duty to disclose changes in a customer's record of convictions and related offences unless a policy condition provides for mid-term disclosure⁴. 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 on this 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 the legislation.

When reviewing the risk, it is also the insurers' responsibility to clearly explain the link between a customer's conviction and any impact on their terms and conditions when asked (see *Customer 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 customer is unhappy with the insurer's decision, or the insurer is no longer able to provide full cover, the insurer should provide the

⁴ An exception to this occurs where the duty of disclosure is reopened if there is a variation to the contract during its currency, to the extent that new information is relevant to the variation and the insurer has a right to renegotiate terms. For instance, a change of property under a buildings policy or a change of vehicle during a motor policy. However, again, the insurer is obliged to ask specific questions around these details if it wishes to avoid on the basis of non-disclosure/misrepresentation of a material fact.

customer with information about alternative sources of help (see *Referrals and signposting* for more information).

2 Renewal underwriting

At renewal stage, insurers must inform customers about their obligation to disclose changes in their circumstances, including convictions and related offences. 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 customer what has changed since last time.

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

Misrepresentation and associated outcomes

Aim: To treat customers 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. Where possible, 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 in regard to following good practice and 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 guidance for good practice and legal requirements provided by the FCA Insurance Conduct of Business Sourcebook rules (see below and *Annex D*), the FOS and the Consumer Insurance (Disclosure and Representations) Act 2012 should be adhered to, as appropriate.

1 Reaching a decision

Upon receipt of the customer'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 above Consumer Insurance legislation. The insurer may then decide whether to:

- Continue the policy at existing terms;
- Offer to continue 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.

The Consumer Insurance (Disclosure and Representations) Act 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.

The FOS may decide that any misrepresentation by the customer was 'innocent'. In such an event the insurer may be required to reinstate the policy on the terms that would have applied if the company had been given accurate information at the outset. Depending on the terms that then apply, the FOS can tell the insurance company to pay the claim in full, having taken into account:

- Whether the customer has acted honestly and reasonably in the circumstances when they made the misrepresentation.
- An assessment of the reasonableness, the type of policy, the way in which the policy was advertised and sold, and the normal characteristics of consumers in the market.
- Any particular characteristics or circumstances affecting the customer, so far as these were known to the insurer.

Glossary

Circumstances ancillary

This phrase is used in Section 4 of the ROA (and Section 5 of the ROO). It gives effect 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.⁵

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

Customer

A person wishing 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 customer 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 proposer in regard to material facts, including convictions and offences. The SOF must contain a warning

⁵ Section 4(5).

to the policyholder 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 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. The rehabilitation period is from the date of warning or conviction, unless otherwise stated. The table includes the rehabilitation for relevant motoring offences set out in the Road Traffic Offenders Act 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	Never	Never
	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 ⁶	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 Rehabilitation of Offenders Act in Scotland, or the Rehabilitation of Offenders (Northern Ireland) Order 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	

⁶ 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 ⁷	Any	2½ years	
Approved school order	Any	1 year after order expires	
Attendance centre order ⁸	Any	1 year after order expires	
Bind over	Any	1 year or until order expires, whichever is longer	
Borstal training sentence ⁹	Any	7 years	
Care order ¹⁰	Any	1 year or until order expires, whichever is longer	
Caution	Conditional	3 months	
	Simple	Nil (spent instantly)	
Combination order ¹¹	Any	5 years	2½ years
Community order	Any	5 years	2½ years
Community punishment order ¹²	Any	5 years	2½ years
Community punishment order and rehabilitation order ¹³	Any	5 years	2½ years
Community rehabilitation order ¹⁴	Any	5 years	2½ years
Community service order ¹⁵	Any	5 years	2½ years

⁷ Replaced by the youth rehabilitation order.

⁸ Replaced by the community order for adults and the youth rehabilitation order for juveniles.

⁹ Abolished in 1983.

¹⁰ Care orders in criminal proceedings were abolished by the Children Act 1989 and effectively replaced by a supervision order with residence requirements.

¹¹ 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.

¹² Replaced by the community order for adults and the youth rehabilitation order for juveniles.

¹³ Replaced by the community order for adults and the youth rehabilitation order for juveniles.

¹⁴ Replaced by the community order for adults and the youth rehabilitation order for juveniles.

¹⁵ 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 ¹⁶	Any	5 years	2½ years
Curfew order ¹⁷	Any	5 years	2½ 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 ¹⁸	Any	3 years	3 years
Detention in a Young Offenders Institute ¹⁹	More than 6 months	10 years	5 years
	6 months or less	7 years	3½ years
Disqualifications ²⁰	Any	When the period ends	
Drug treatment and testing order ²¹	Any	5 years	2½ years
Endorsements ²²	Any	5 years	2½ years

¹⁶ An ancillary order treated as a sentence in its own right.¹⁷ Replaced by the community order for adults and the youth rehabilitation order for juveniles.¹⁸ This was abolished in 1988.¹⁹ 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.²⁰ This is an ancillary order which is treated as a sentence in its own right.²¹ This has been replaced by the community order for adults and the youth rehabilitation order for juveniles.²² 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 ²³	Any	5 years	2½ years
Forfeiture order ²⁴	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 ²⁵	Before 3 February 2005	1 year or until order expires, whichever is longer	
	On or after 3 February 2005	5 years	2½ years
Referral order	Any	Once the order expires	
Reparation order	Any	2½ years	
Reprimand	Any	Nil (spent instantly)	
Secure training order ²⁶	Any	1 year after order expires	
Supervision order ²⁷	Any	1 year or until order expires, whichever is longer	
Suspended sentence	More than 6 months	10 years	
	6 months or less	7 years	

²³ The rehabilitation period applies even if the offender is subsequently imprisoned for default of a fine.

²⁴ This is an ancillary order which is treated as a sentence in its own right.

²⁵ 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.

²⁶ This was abolished in 2000 and replaced by the detention and training order.

²⁷ 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 ²⁸	Any	n/a	3 months
Youth custody order ²⁹	More than 6 months	10 years	5 years
	6 months or less	7 years	3½ years
Youth rehabilitation order ³⁰	Any	n/a	1 year or until order expires, whichever is longer

²⁸ To be piloted in six areas around the country from mid-2010.

²⁹ This was abolished in 1988.

³⁰ This replaces a number of orders for offences committed after 30 November 2009.

Annex B – Contact information for customers

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.

They have developed a list of insurers and intermediaries who are able to arrange and provide cover to people with unspent convictions. This is available to download free of charge from their Information Hub, to <http://hub.unlock.org.uk/section/money-and-finance/personal-insurance/>.

In 2011, Unlock developed an online tool which is able to work out when an individual's convictions become spent under the Rehabilitation of Offenders Act 1974. This has since been updated to reflect the 2014 changes. Please note that this guidance only applies to individuals living in England and Wales³¹. This is available at www.disclosurecalculator.org.uk.

Unlock also run a confidential peer helpline on overcoming the effects of criminal convictions. Telephone: 01634 247350; Email advice@unlock.org.uk.

³¹ This was revised on 09/09/2014 to reflect that the calculator only applies to individuals living in England and Wales.

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 Act

Insurers are restricted in their underwriting of risks featuring criminal convictions by the Rehabilitation of Offenders Act 1974 in Scotland, the Rehabilitation of Offenders Act 1974 as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in England and Wales, or the Rehabilitation of Offenders (Northern Ireland) Order 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 a prescribed period has elapsed since the date of the conviction, without further conviction. After that time the conviction becomes ‘spent’ and need not be disclosed by the proposer, even where specifically requested by the insurer.

There is nothing preventing an insurer from asking an open question, such as ‘have you ever been convicted of an offence?’ but if the conviction is spent the proposer can legally give a negative answer. Furthermore, if a spent conviction is disclosed the insurer must ignore it if it was spent at the time of disclosure. Failure to ignore a spent conviction and wrongful disclosure to a third party are offences.

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, 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 section

It has been held in law³² that an endorsement for a road traffic offence listed in schedule 2 of the Road Traffic Offenders Act 1988, imposed either by the court or by means of a fixed penalty notice (FPN) 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). 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 now 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

In practice, the savings provision means that there will be 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 2012 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 customers 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 become 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 become 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.

³² Power v Provincial 1997

Annex D – Insurance Conduct of Business Sourcebook (ICOBS)

Background

ICOBS is the FCA's principles-based regulation and provides detailed selling standards where specific issues had been identified by the regulator.

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 customer, paying special regard to those parts of the process for which the insurer, or those acting for the insurer, is responsible.

Relevant rules

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 a rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is for:

- (1) non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or
- (2) non-negligent misrepresentation of a fact material to the risk.

The FCA has proposed amendments to the above rules to reflect the changes made by the Consumer Insurance (Disclosure and Representations) Act 2012. These are currently the subject of consultation.

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

Background

The Act is a product of the Law Commissions' review of insurance contract law, which has 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 proposer's duty to volunteer material information with a duty on them to take reasonable care not to make a misrepresentation during pre-contractual negotiations.

It provides different remedies for the insurer in cases where it has been induced by a misrepresentation to enter into an insurance contract and 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.
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.

Scope

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

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.