

This factsheet tells you about changes to the sexual offences laws and how these affect previous convictions for offences which have now been decriminalised. It gives advice on what can and cannot be disclosed in a Criminal Records Bureau (CRB) check. If you are trans and would like more information about how to protect yourself from disclosure about your gender history such as previous names, please see our fact sheet [CRB Checks And Gender Identity](#).

Spent and unspent convictions

If you have ever been convicted of a criminal offence it will be recorded on the Police National Computer. Under the Rehabilitation of Offenders Act 1974 criminal convictions can become spent or ignored after a rehabilitation period. The rehabilitation period varies depending on the sentence or order imposed by the court. Custodial sentences of more than two and half years can never become spent. In most other cases, spent convictions do not have to be disclosed by you and should not be disclosed by the police, to an employer. However, in certain jobs or voluntary positions, such as working with children, all convictions are exempt, including spent convictions and must be disclosed. This includes convictions for consenting sexual acts which are no longer offences such as buggery. Galop believes this is unfair and is working to challenge this. Please contact us for more details.

CRB Checks

CRB checks enable an employer (or similar) to find out whether a potential employee or volunteer has a current criminal conviction or in some cases previous criminal convictions that might be relevant to the job/position they are applying for.

There are three types of check available, a *Basic Disclosure*, a *Standard Disclosure* and an *Enhanced Disclosure*.

A *Basic Disclosure* will reveal any unspent criminal convictions. Any employer has the right to apply for a basic disclosure to check if a potential employee or volunteer has a current unspent criminal conviction. However, if you have a spent conviction, you do not have to declare it when asked whether you have any current criminal convictions.

If you apply for certain jobs including teaching, care work and positions in the NHS (including voluntary work) where you may have contact with children or vulnerable adults, your prospective employer is required to check whether you have a current or spent criminal conviction. They will either apply for a standard disclosure or more usually an enhanced disclosure. You have to declare both spent and unspent convictions if your employer is applying for a standard or enhanced disclosure. The employer requesting a standard or enhanced disclosure has to apply through an organisation that is registered with the CRB to process applications for these types of disclosure. The registered body is charged with ensuring that the job/role warrants the level of disclosure requested and that the requesting organisation understands their responsibilities for using any information revealed fairly and keeping it confidential.

A *standard disclosure* will make the same checks as the basic disclosure but will show both unspent and spent convictions, which will include any police cautions, reprimands and warnings.

challenging homophobic & transphobic hate crime

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PREVIOUS CONVICTIONS AND CRB CHECKS

HOMOPHOBIC TRANSPHOBIC ABUSE?

TELL US ABOUT IT

020 7704 2040
www.galop.org.uk

Homophobia and transphobia are crimes. Report them by calling or texting our helpline or online at our website.

Galop is part of the LGBT community. You do not have to give your name and we will treat what you tell us in confidence.

An *enhanced disclosure* will reveal any spent and unspent convictions. The police may also choose to disclose other relevant information held locally by the police, such as a police warning or notes made by the police following an allegation. For more information on charges see Galop's fact sheet on Arrest, Stop & Search.

If you feel that information held about you has been misused or information about you has not been kept confidential you should contact the registering body or CRB. Alternatively, contact Galop to discuss your case.

Changes in the law on sexual offences

Since 2003, a number of activities which were previously illegal are now legal. Adult men having sex in public can no longer be charged with gross indecency, though it is still illegal to have sex in a public toilet, and in certain circumstances in public places. Buggery is also no longer an offence. The age of consent for sex between men is 16. These changes to the law on sexual offences were made following the Sexual Offences Act 2003 and apply retrospectively, which means that the new law applies to convictions for offences that were illegal before the law was changed. For more information on cottaging and cruising today, see Galop's fact sheet *Cottaging, Cruising and the Law*.

Although the above are no longer sexual offences, you may have a past conviction for:

- Gross indecency
- Buggery
- Consensual sex with a male between the age 16 and 21

A record of these offences will be held on the police national computer (PNC) even if they are spent and would be disclosed following a standard or enhanced Criminal Records Bureau check.

Stepping down offences – changes in the law

Until October 2009 it was possible to have the above convictions 'stepped down' from your records so they were no longer disclosed by the police to your employer. This means that the police would not have disclosed these convictions in a CRB check because they are no longer offences. Although a previous conviction would always stay on police records they would not have been disclosed in a CRB check.

However, on the 19th October 2009 a judgement by the Court of Appeal in London supported the retention of all criminal convictions on the PNC. In particular the police are obliged to provide disclosure services to the CRB with access to all convictions held on the PNC. In effect the police currently say that they are no longer allowed by law to 'step down' any conviction, even if it is spent or no longer a criminal offence.

It is important to note that the above ruling applies retrospectively. If you have previously been told by the police that a previous conviction has been stepped down this conviction may now appear on a current CRB check.

What is Galop doing to challenge this ruling?

Galop is currently working with a solicitor to get the police and Home Office to change the above ruling. Galop believes that it is unjust for sexual offences which are no longer illegal (and are spent convictions) to be retained by the police and disclosed on an enhanced criminal records bureau check. Galop feels this ruling discriminates against gay and bisexual men with previous convictions for consensual sexual acts: they are forced to reveal convictions that only applied to homosexual offences between men and disclosing such offences effectively 'outs' these to their employers or others.

If this situation affects you, please let us know, as it may be possible for you to join any legal action against the police.

What if you were recently convicted of an offence?

If you have recently been given a police caution or have a criminal conviction for an offence such as having sex in a public toilet, this charge is likely to be disclosed following a CRB check because it is still a sexual offence. A penalty notice (a fine) or a police warning would not normally be disclosed by the police. However, the police may record the warning on a local police database. This warning could potentially be disclosed in an enhanced CRB check, though it is unlikely the police would do so for minor offences. Galop is currently working with a solicitor to get the police and Home Office to change the above ruling. Galop believes that it is unjust for sexual offences which are no longer illegal (and are spent convictions) to be retained by the police and disclosed on an enhanced criminal records bureau check. Galop feels this ruling discriminates against gay and bisexual men with previous convictions for consensual sexual acts: they are forced to reveal convictions that only applied to homosexual offences between men and disclosing such offences effectively 'outs' these to their employers or others.

Should such as disclosure affect my job?

Having a caution or criminal conviction for an offence such as buggery or for cottaging doesn't give an employer (or similar) the right to exclude you from working with any particular group, such as young people. However, if a current or potential employer finds out that you do have a previous or current conviction, there is the potential that they could discriminate against you. If you experience problems relating to employment or discrimination you should consider talking to your trade union, or getting legal advice.

Should such as disclosure affect my job?

If you are unsure whether you have any previous convictions you can find out what information the police hold on you. However, it should be noted that the police may not disclose 'soft intelligence' held about you, as it would not appear on the PCN. The Data Protection Act 1998 gives you the right to ask in writing whether there is any personal data that the police holds or has processed about you. This is the right of Subject Access. For a fee of £10 and proof of your identity you can request this information by going into a local police station or police operations centre asking for the relevant form (form 3019). You should complete this form and hand it back to your local police station. Alternatively you can send your completed application with fee and proof of identity to:

MPS Public Access Office
PO Box 57192
LONDON SW6 1SF

If you live outside of the Metropolitan Police Service area, you must apply to your local police force. You should be given a receipt for your application and the police are required to process this information within 40 days of it being received.

More information

For more information contact Galop on 020 7704 2040 or visit our website www.galop.org.uk

You might also find the following organisations useful:

Criminal Records Bureau provides information regarding applying for CRB checks: 0870 9090 811
www.crb.gov.uk

NACRO provide specialist information on dealing with CRB applications and disclosures.
www.nacrodisclosures.org.uk

The Apex Trust provides information and advice for ex-offenders, including the job check helpline:
Tel 0870 6084567. Email jobcheck@apextrust.com

Always dial 999 if it is an emergency and you think you are in immediate danger.