

Rehabilitation of Offenders Act – Exceptions for Medical Practitioners

The [Rehabilitation of Offenders Act 1974](#) usually permits people who have been convicted of criminal offences to treat their convictions as spent, after a period of time (such as five or ten years, depending on the type of the crime that has been committed). The legislation does not however apply to doctors and certain other healthcare practitioners who work in the healthcare sector, whether public or private in nature.

All medical practitioners must therefore disclose their criminal convictions when applying for jobs in healthcare in the UK. A failure to disclose criminal convictions could lead to a doctor being sacked by the employer who has taken on the doctor. The doctor may additionally be reported to the GMC for misconduct. A criminal prosecution might also follow (for example 'Obtaining a Pecuniary Advantage by Fraud', in England) or reported to the GMC. It is therefore essential that doctors be fully open about their criminal convictions where an application form or verbal question requires disclosure to be made.

All doctors now undergo Enhanced Criminal Record Bureau (ECRB/CRB) checks, arranged usually by a potential employer. A doctor would be highly likely to be found out if they had misled an employer or other person or organisation about their criminal past. Doctors, if in doubt, should always disclose criminal matters, including Police Cautions a, Reprimands, Final Warnings, and Fixed Penalties. Driving convictions should be disclosed, too, to avoid any misunderstandings, as some road traffic convictions fall into a category of seriousness that require disclosure. It is also important that doctors give accurate replies to any person

seeking clarification about a criminal conviction.

The legislation that governs the exception is the [Rehabilitation of Offenders Act 1974 \(Exceptions Order\) 1975](#).

Case Law Update

In [R \(AB\) v Chief Constable of Hampshire \(2015\)](#), (a judicial review claim), the conduct of the police, in disclosing to a local authority designated officer, information about past alleged sexual misconduct with female students, that had been found to be false, was unlawful and in breach of Article 8 rights, in circumstances where police officers had not verified the information against police records or taken sufficient steps to assess whether it was appropriate to make disclosures.

The [Police Act 1997](#) criteria concerning enhanced record certificates was held to also apply to other forms of disclosure, such as disclosure to a local authority.

Per Jeremy Baker J at para 65: *'It is now well established that both the retention and disclosure by public authorities of information concerning allegations of non-conviction misconduct by an individual will engage his/her Article 8 rights, such that it will be necessary for the public authority to be able to establish that its activities in relation to information concerning that individual are in accordance with law, necessary in a democratic society, and that a fair balance has been struck between the relevant competing ECHR rights i.e. that the decision to retain and/or disclose the information is proportionate.'*

(May 2015)

Doctors Defence Service can advise doctors in relation to CRB matters. For legal advice or legal representation, call us on:

0800 10 88 739