

Date: 21/02/2024
Reference: Queries regarding ROA

Mr Simon CORDELL
Sent via email: lorraine32@blueyonder.co.uk

Queries regarding spent conviction and the Rehabilitation of Offenders Act 1974 (ROA)

Dear Mr CORDELL,

Thank you very much for your letter received by email on the 20th February 2024.

Please see the below responses to your questions.

1. The accuracy of the information outlined above concerning the rehabilitation periods under the ROA, taking into account the recent legislative changes.

Yes, the Rehabilitation Periods outlined in the ROA are determined by the sentence or disposal issued to the individual (e.g. a prison sentence, fine or caution). It will also depend upon the age of the offender at the time that they were convicted or issued a caution.

You are correct in respect of your understanding regarding the recent legislative changes which, has resulted in some updates to the rehabilitation periods. These changes came into effect from 28 October 2023. Before this no custodial sentence of more than four years could become spent.

There are certain convictions which are excluded from rehabilitation such as those which result in life sentences or, sentences of over four years for sexual or violent offences.

In addition to this, the gov.uk website advises the following:

If you have a conviction that is excluded from rehabilitation, then previous convictions that were unspent at the time would also never be spent.

Any further convictions after the conviction which is excluded for rehabilitation however can become spent once the normal rehabilitation periods have passed.

Everything you need to know about the ROA including the recent changes can be found here: [\[Title\] \(publishing.service.gov.uk\)](#)

2. The process for applying to ACRO or the Disclosure and Barring Service (DBS) for the removal of spent convictions, including relevant application details, fees, and supporting documentation requirements.

The ROA only impacts upon the *disclosure* of information.

The DBS has their own framework in place for determining the *disclosure* of information from the Police National Computer (PNC) which are known as the DBS Filtering Rules. Further information on this Home Office owned model can be found here:

[DBS filtering guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/db-filtering-guide)

You cannot apply to the DBS for the removal of convictions from a disclosure, the DBS filtering rules applied will determine what gets disclosed and for how long. The DBS also has a list of specified offences which will never filter from a DBS certificate:

[List of offences that will never be filtered from a DBS certificate - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/list-of-offences-that-will-never-be-filtered-from-a-dbs-certificate)

The ROA and the DBS Filtering Rules do not impact upon the *retention* of the information held on the Police National Computer (PNC). The current retention policy for records held on the PNC is that they will be retained until an individual is deemed to have reached 100 years of age.

Court convictions are not eligible for deletion from the PNC. Therefore, in answer to your question there is no process in place for the removal of convictions (from PNC) irrespective of whether they are spent or not under the ROA.

Information relating to court convictions held on a Police Force's local system is held in accordance with the Management of Police Information (MoPI) framework:

[Review, retention and disposal | College of Policing](#)

Cautions and other disposals, with the exception of court convictions, are eligible for review for deletion from PNC. I have given advice on this process on Page 6 of this response.

3. Clarification regarding the exceptions to the removal of spent convictions, particularly in relation to professions and roles that may require individuals to disclose such convictions.

As above, spent convictions or unspent convictions do not get deleted from the PNC.

However the *disclosure* of that information from PNC for the purposes of employment must be managed lawfully in accordance with the ROA and DBS filtering rules. For any other purpose, data protection legislation must be complied with.

As outlined in the Guidance document linked above, *“there are certain exceptions where someone may be asked to disclose their caution or conviction even if it is considered spent under the 1974 Act. The provision for this is set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, (the “Exceptions Order”). This is in recognition that there are certain activities for which fuller disclosure of a person’s criminal record history is relevant, for example, working with children and other vulnerable groups, in vulnerable circumstances or some other particularly sensitive area of work.”*

Page 21 of this guidance document provides a table on which cautions and convictions needs to be disclosed under the Exceptions Order: [\[Title\] \(publishing.service.gov.uk\)](#)

4. The importance of removing spent convictions from an ACRO report and its impact on individuals seeking employment, housing, or visas, with respect to the principles of rehabilitation and reintegration into society.

When you refer to an ‘ACRO report’, I am assuming that you are referring to the disclosure you would receive from the PNC following a Subject Access Request application ([Subject Access \(acro.police.uk\)](#))

This process enables an individual to make a request which, in turn will provide that individual with a copy of the arrests and disposals recorded about them by the Police on the PNC.

ACRO carry out this service on behalf of Police Forces however, we are a Processor as defined in the Data Protection Act 2018. ACRO are not the Controllers of the information recorded about a person on the PNC which has been added by a Police Force.

A PNC disclosure provided under this service would include all the arrests and disposals recorded about the person on that system as it’s an individual right for that individual to have access to a copy of their personal data.

We would not remove any conviction information from such a disclosure as a Subject Access Request is for personal use.

It should not be used by an individual for employment purposes as it could disclose more information than an employer is entitled to (e.g. No Further Action disposals) but this is why the DBS exists because they specifically issue criminal record certificates for employment purposes and so, certain information would get filtered from such a certificate in accordance with the DBS Filtering Rules.

It is an offence under section 184 of Data Protection Act 2018 **‘Prohibition of requirement to produce relevant records’** for a person to require another person to provide them with a relevant record in connection with— (a) the recruitment of an employee by P1, (b) the continued employment of a person.

5. Information regarding provisions in the law for the sealing or becoming spent of records related to offenses committed by individuals under the age of 18 based on the severity of the offense.

I'm not aware of there being any provisions in law in the UK with regards to the "sealing" of criminal records, this is not something that comes under the remit of ACRO.

With regards to records becoming spent for offences committed by individuals under the age of 18, the ROA would be applied accordingly depending on the disposal. For sentences of life imprisonment and youth custody for over 4 years for [schedule 18](#) offences, these will never become spent.

6. The treatment of cases marked as "NFA" (No Further Action) or "Not Guilty" in regards to their removal from the ACRO report.

As above, a PNC disclosure provided under the Subject Access Request service would include *all* the arrests and disposals recorded about the person on that system and so, that would include No Further Action and Not Guilty disposals.

The ROA does not get applied to disclosures provided under the Subject Access Request service because this document is intended for an individual's personal use e.g. for those individuals wishing to confirm what is held about them on the PNC.

The disclosure ACRO provides should not be used for employment purposes.

In respect of the DBS whose certificates are specifically for employment purposes, such disposals do not get disclosed on a basic or standard disclosure. However, they may be subject to disclosure on an enhanced certificate but, such information goes through a very rigorous decision making process at force level for the Chief Officer to decide whether there is non-conviction information held locally which, is relevant to the job that is being applied for and ought to be disclosed.

This is in accordance with Part of the Police Act 1997 (113 B (4): [Police Act 1997 \(legislation.gov.uk\)](#)

7. The removal of associated convictions from the ACRO report in cases where an individual has received a pardon or a royal prerogative of mercy.

If a conviction were removed from PNC as a result of a pardon or royal prerogative mercy then, this would not be present on PNC and therefore would not be disclosed.

The deletion of such information would be actioned by the Controller (the Police Force responsible for the conviction record on PNC) and so, once that information was deleted from

PNC then it would not be there to form any future disclosures applied for by the individual through ACRO.

The Home Office also oversee a process called Disregarding Certain Convictions. Only certain offences can be applied for under this process:

[How to apply to remove a conviction for decriminalised sex offences - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/how-to-apply-to-remove-a-conviction-for-decriminalised-sex-offences)

8. Eligibility criteria for the removal of cases that, if retained, would infringe upon an individual's human rights or potentially lead to unjust discrimination.

Court convictions are not eligible for removal from the PNC.

The [National Police Records \(Recordable Offences\) Regulations 2000](#) permits the following:

3.—(1) There may be recorded in national police records—

(a) convictions for; and

(b) cautions, reprimands and warnings given in respect of,

any offence punishable with imprisonment and any offence specified in the Schedule to these Regulations.

If an individual felt that the continued retention of a court conviction was infringing upon their human rights then the individual has the right to raise a Judicial Review: [Judicial review - Courts and Tribunals Judiciary](#)

9. Any additional guidance or relevant provisions under the UK's Data Protection Act and General Data Protection Regulation (GDPR), allowing for the erasure of personal data, including the removal of old or irrelevant criminal records.

The current stance in England and Wales is that court convictions are not deleted from the PNC. This position is outlined in 1.5.5 of the NPCC Guidance 'Deletion of Records From National Police Systems (PNC/NDNAD/IDENT1)': [Microfiche Library \(publishing.service.gov.uk\)](#)

If you have certain non-conviction information held about you on the PNC then you may be eligible to apply under the Record Deletion Process which, is the process outlined in the aforementioned guidance.

Please be advised that all requests for record deletion under the 'Record Deletion Process' (RDP) should be submitted on the necessary application form, please find enclosed a blank form and some application form guidance for your convenience.

Cautions/warnings/reprimands and non-convictions are eligible for consideration and review under this process however, court convictions and conditional / absolute discharges are not.

Please be aware that submitting an application does not automatically mean that a record will be deleted, it simply gives applicants the opportunity to put forward a request for the owning police force to review and to make a decision as to whether they will retain or delete the record.

Furthermore, this process only covers requests for the removal of records from national police systems, namely, IDENT1 (National Fingerprint Database), NDNAD (National DNA Database) and the PNC (Police National Computer). Requests for the deletion of records held locally by police forces are not covered under this process and are held in accordance with the [Authorised Professional Practice on Information Management](#). Any queries with regards to such records should be directed straight to the force who own them.

On the application form, please select the ground(s) that you applying under and provide detailed evidence to support each ground selected e.g. what happened in the run up to the event and why you feel your case for deletion falls under the ground(s) that you have ticked.

You will also need to provide a copy of a proof of identity (e.g. passport / driving licence) and a copy of a proof of current address dated within the last 6 months (e.g. utility bill / bank statement).

Upon receipt of an eligible record deletion application, we will refer this to the owning force for them to review and make a decision upon. The decision will be communicated back to you via this office.

Please note that ACRO do not make the decision on record deletion, we are a conduit for this process.

10. Any future plans or potential legislation concerning the expungement or removal of specific types of convictions.

ACRO is not responsible for legislation and so, you may wish to raise this query with the Home Office.

11. Specific criteria regarding the removal of certain convictions from an individual's PVG Scheme record within Scotland.

ACRO have no involvement in this process and therefore, you may wish to contact Disclosure Scotland to query this: [How to contact Disclosure Scotland - mygov.scot](#)

12. Also, can you explain if you feel any data is wrong that you hold on me what is the process to deal with this as there are errors on my record.

ACRO are not the Controllers of information recorded about a person by the Police whether that be on the PNC or, on a police force's local system(s).

Therefore, if you have concerns about the accuracy of information held about you by the police then you are able to raise a Right to Rectification request directly with the police force(s) concerned.

Details on exercising your Subject Right of Rectification with a specific police force can be found on the website for that force.

I hope the above is of assistance but please do not hesitate to contact me if you have any further questions.

Yours sincerely,

A handwritten signature in cursive script that reads "Jess Mullins".

Jess Mullins
Public Access Supervisor