



UNLOCK
The National Association
of Reformed Offenders

Insurance and Convictions

A detailed guide for consumers

February 2011

In association with



Association of British Insurers

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UNLOCK is an independent charity and membership organisation, set up to achieve equality for people with previous convictions. We believe in a society in which reformed offenders are able to fulfil their positive potential through equal opportunities, rights and responsibilities.

For further information, contact:

UNLOCK, the National Association of Reformed Offenders
35a High Street
Snodland
Kent
ME6 5AG
T: 01634247350
E: enquiries@unlock.org.uk
W: www.unlock.org.uk

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1. Summary

UNLOCK was set up by reformed offenders in 1998 and gained charity status in 2000. One of the first issues we tackled was the lack of insurance for people with criminal convictions and their families.

According to government figures, there are over 8 million people in the UK with criminal convictions, and one in three men has a conviction by the age of 53. However, few consumers are aware of their legal obligations with regards to convictions when taking out insurance.

Under the Rehabilitation of Offenders Act 1974 (ROA), 'spent' convictions, cautions, reprimands and final warnings do not have to be disclosed to insurers, irrespective of what questions are asked.

However, depending on sentence, convictions remain 'unspent' for many years (sometimes forever). Unspent convictions always have to be disclosed, even if an insurer does not ask about them, as do fixed penalty notices, pending prosecutions and other elements not covered by the ROA.

The ROA is very complex, making it difficult for consumers (and insurers) to know what is protected by the Act. However, there are a number of ways to establish whether a conviction is spent.

Many mainstream insurers do not offer insurance where individuals, members of their household, named drivers or others covered by a policy have unspent convictions. There is no obligation to disclose convictions during a policy (unless it is an explicit term in the contract). However, customers who do so may find their policy is cancelled immediately.

Although insurers rely on information given to them at application, when a claim is made, this information will be checked. Failure to have disclosed unspent convictions at application and renewal (known as non-disclosure) can invalidate an insurance policy and allow the insurer to avoid individual claims and entire policies.

However, in certain circumstances, consumers may be able to challenge the avoidance of a policy. Complaints which an insurer cannot settle directly can be taken to the Financial Ombudsman Service (FOS). The FOS deal with complaints in a way that takes account of both the law and industry good practice. They will consider whether the insurer asked clear questions, whether their decision to insure was influenced and whether the customer failed to disclose recklessly, deliberately, inadvertently or innocently.

Since 1999, UNLOCK has been working with brokers to develop cover for people with unspent convictions. Since then, the charity has been encouraging the entry of new suppliers into the market, aiming for greater competition and better value, as well as pushing for legal changes that would make sure consumers were treated fairly. UNLOCK publishes a list of brokers who specialise in insurance for people with unspent convictions. It has also worked to increase understanding amongst consumers and encouraged the insurance industry to consider a fairer, evidence-based, approach to unspent convictions.

This guide has been produced to help consumers purchase appropriate insurance and ensure they are treated fairly. At the same time, the ABI has published guidance for insurers to clarify their legal obligations and share industry best practice. Together, the two guides will help to ensure that consumers with unspent criminal convictions are treated fairly in the insurance market.

2. Why do I need to disclose my convictions?

2.1 The duty of good faith

Under insurance law, you must disclose all 'material facts', due to the principle of utmost good faith. This applies regardless of whether you are asked a specific question.

Under the contract law duty of utmost good faith the onus is on the proposer or policyholder (customer) to disclose material facts 'that would have an effect on the mind of the prudent insurer in assessing the risk', even if they would not necessarily 'have a decisive effect on the insurers acceptance of the risk or on the amount of premium charged'.¹

Under English insurance law, the duty of good faith has two basic elements;

- (a) a duty to refrain from making material misstatements
- (b) a duty to disclose all known material facts

Any person seeking insurance is subject to the duty of utmost good faith when presenting the risk, when negotiating the terms of cover and when renewing the policy.

The duty of good faith was first put into legislation in section 17 of the Marine Insurance Act 1906, which states that "a contract of marine insurance is based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party".² The quote from the MIA is widely-accepted as an accurate statement of the common law position on good faith, and therefore this duty applies to all insurance contracts. This applies even if the misrepresentation was made honestly and without any lack of care.

It has therefore been established that an applicant for insurance is obliged to disclose all facts that would have an effect on the mind of a prudent insurer when assessing risk.³ If the customer fails to make such disclosure, the insurer may avoid the contract,⁴ if the insurer can show that, if it had been given the information, it would not have agreed to the policy on the same terms, or not at all.

2.2 The duty of good faith and types of insurance

The duty of good faith applies to all types of insurance. A material fact could potentially impact on any type of insurance, including motor, home, commercial, life, travel and wedding insurance. It is important, therefore, to check whether something is legally classed as insurance, even if it doesn't immediately appear to be. For example, some breakdown and maintenance contracts are actually a type of insurance policy.

¹ *Pan Atlantic Insurance Co Ltd v. Pine Top Insurance Co Ltd* [1995] AC 501

² Section 17 of the Marine Insurance Act 1906

³ *Pan Atlantic Insurance Co Ltd v. Pine Top Insurance Co Ltd* [1995] AC 501

⁴ Section 18(1) of the Marine Insurance Act 1906

2.3 The duty of good faith and criminal convictions

All 'unspent' criminal convictions are considered to be material facts irrespective of the type of offence they relate to. Therefore the onus is on the customer to disclose them.

'Spent' convictions are not 'material facts'. Therefore customers do not have to disclose them and insurers cannot take them into account. Many people assume that a 'spent' conviction is simply one for which the sentence has been completed. However, convictions may not become spent until many years after the sentence and some convictions never become spent. Whether a conviction is spent or unspent is defined by the 'rehabilitation periods' set out in the Rehabilitation of Offenders Act 1974 (ROA).

3. What do I need to disclose?

3.1 The Rehabilitation of Offenders Act 1974 (ROA)

3.1.1 Rehabilitation periods

Under the ROA, all criminal convictions have a 'rehabilitation period' based upon the sentence that was applied. In the case of prison sentences, it is based on the length of the sentence, not the time served. The period always starts from the date of conviction and is usually halved if you were under 18 when convicted. The 'rehabilitation period' is often much longer than the sentence.

Sentence / Disposal	Period (18+)
Prison / YOI: More than 30 months	Forever
Prison / YOI: More than 6 months up to 30 months	10 years
Prison / YOI: 6 months or less	7 years
Community Order / Probation	5 years
Fine	5 years
Absolute Discharge	6 months
Conditional caution	3 months
Simple caution, reprimands and final warnings	Immediately

This table is only a simple guide to ROA. A more detailed guide on the ROA is available from www.unlock.org.uk, covering issues such as other sentences/disposals and further convictions. If you are still not sure whether a previous conviction is spent, you can contact the government-funded Resettlement Plus Helpline, Telephone: 020 7840 6464; Email: helpline@nacro.org.uk

3.1.2 Unspent convictions

During the rehabilitation period, the conviction is 'unspent' and must be disclosed to insurers as a material fact. Convictions resulting in a prison sentence greater than 30 months can never become spent and must therefore always be disclosed.

3.1.3 Spent convictions

Under the ROA, once the 'rehabilitation period' is completed the conviction is 'spent' and no longer needs to be disclosed when applying for insurance. For the purposes of insurance, "the broad effect of the Actis to relieve any proposer for insurance of the obligation to disclose a conviction or even the fact that he had committed the crime."⁵

In other words, the ROA allows somebody with a spent conviction to lie to any question which, if answered truthfully, would disclose a spent conviction. Section 4(3)(a) states that, "Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent

⁵ *Reynolds & Anderson v. Phoenix Assurance Co. Ltd & Others* [1978] 2 Lloyds Rep. 440

conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another's)".

The ROA does not force insurers to only ask about unspent convictions. However, it does allow an individual to interpret any question about convictions as only relating to unspent convictions. More specifically, section 4(2) of the ROA states that, *"Where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority,*

- a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent conviction, and the answer thereto may be framed accordingly; and*
- b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question."*

3.1.4 Cautions, reprimands and final warnings

Cautions, reprimands and final warnings are not criminal convictions and, until recently, were not covered by the ROA. This meant that people with cautions, reprimands or final warnings may have been under a duty to disclose them as a "material fact". However, in December 2008, legislation was passed which rectified this rather strange anomaly. Part 4 of Schedule 27 of the Criminal Justice and Immigration Act 2008 states that these sentences become spent immediately. As a result, simple cautions, reprimands and final warnings do not need to be disclosed when seeking insurance. Conditional cautions become spent after 3 months.

3.1.5 Fixed penalty notices, pending prosecutions and other elements

The ROA does not cover Fixed Penalty Notices (FPNs), pending prosecutions or other elements (such as driving penalty points and arrests). Like a caution they are not criminal convictions. However, unlike a caution, they are not mentioned in the ROA and therefore are not protected by it.

What an insurer regards as relevant depends entirely on its own underwriting guidelines. Insurers may well regard FPNs, pending prosecutions or other elements as relevant. As they are not covered by the ROA an insurer could argue they are material facts which should have been disclosed when you took out the policy. In practice, it is unlikely that an insurer will refuse to cover you based on disclosure of an FPN. However, that does not mean that you do not need to disclose it since it could affect the terms of your cover. Whether it is relevant is ultimately the decision of the insurer.

3.2 Do I only have to disclose my own convictions?

No. The requirement to disclose all material facts applies to all individuals who are covered by the policy. Therefore, in the example of a household policy, the unspent convictions of anybody normally living at the property will have to be disclosed. You cannot avoid the issue by putting the policy in somebody else's name. If somebody is covered by the policy, any unspent convictions that they have are material facts and therefore must be disclosed.

3.3 What if....?

3.3.1 What if I don't want to talk about my unspent conviction?

To be able to obtain a quote, you will need to provide an insurer with enough information to allow them to give you an accurate quote. This information will normally include the offence you were convicted of, the date of sentence and the sentence you received. Insurers may ask for additional information to explain the circumstances surrounding the offence. This may improve an insurer's ability to offer you a competitive price. If you don't want to provide it, you'll have to go elsewhere.

3.3.2 What if I am asked "do you have *any* criminal convictions?"

The Association of British Insurers (ABI) has published a good practice guide for insurers stating that "any convictions" in fact refers to "any unspent convictions". This fits with a High Court decision in 2002⁶ which stated that it was an unlawful breach of statutory duty for insurance companies to rely on endorsements relating to spent convictions in order to disadvantage a driver. The same applies to non-motor insurances also.

The Financial Ombudsman Service has also stated that if an insurer cancels the policy of a customer who has a spent conviction but whose licence is still endorsed simply because the customer did not disclose the endorsement, it would uphold the customer's complaint.

3.3.4 What if an insurer says that they need to know about spent convictions?

It is not illegal for insurers to ask about any convictions though it is industry best practice to ask questions specifically about unspent convictions. However, under the ROA, you are entitled to treat a question about 'any convictions' as if it only relates to unspent convictions. If you believe an insurer is not treating customers fairly, you can report the issue to the Financial Services Authority's Consumer Helpline, Telephone: 0845 606 1234

3.3.5 What if I accidentally disclose a spent conviction?

Even if you volunteer spent conviction information, the insurer is under a legal duty to not take this into account when deciding whether to offer cover and/or the type of cover. If you have been disadvantaged in any way because of a spent conviction, you need to try and get evidence to support this, as you may be able to complain to either the Ombudsman or the Financial Services Authority.

The ABI state that, *"It is an unlawful breach of statutory duty for firms to rely on spent convictions in order to disadvantage an applicant. In which case, even if an insurer asked for spent convictions, and details were provided, the insurer wouldn't be able to use them in their underwriting decision."*

This is based on s.4(3)(b) of the ROA which states that, *"A conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment"*

⁶ *R v DVLA & Another, ex parte Pearson* [2002] EWHC 2482 (Admin)

3.3.6 What if I am asked “have you had any criminal convictions in the last 5 years?”

If you have an unspent conviction that was obtained more than 5 years ago, but isn't yet spent, you are still legally bound to disclose it under the principle of utmost good faith. In this situation, you should either: -

- Disclose your unspent conviction and obtain written proof of disclosure (if it is their policy to only record convictions in the last 5 years, then they will not need to take into account your conviction) or;
- Secure written confirmation that you do not need to disclose any convictions from over 5 years ago even if they are unspent

3.3.7 What if an insurer only asks for details of certain types of conviction?

As highlighted above, there is a difference between what you may be asked about by an insurer, and legally what you have to disclose.

For example, if an insurer only asks about fraud or dishonest convictions, it does not overrule the principle of utmost good faith. Therefore you as the individual should disclose all unspent convictions that you have (obtaining evidence to support this) or secure written confirmation that they do not need to know.

3.3.8 What if, for motor insurance, an insurer only asks for motoring convictions?

When looking to obtain motor insurance, many insurers only ask about motoring convictions. Despite this, you are still under a duty under insurance law to disclose all material facts, which, as is explained above includes all unspent criminal convictions.

If it is the case that, after disclosure, the insurer is happy to offer you a policy, you have fulfilled your disclosure obligations and you will still be able to obtain a policy. Remember to obtain written confirmation of your disclosure.

3.3.9 What if an insurer does not ask about criminal convictions?

Just because an insurer doesn't ask about criminal convictions, it does not mean you don't have to tell them. In law, there is still a requirement to disclose all 'unspent' convictions.

If an insurer does not ask you a clear question about criminal convictions, you may find something in their terms and conditions or 'assumptions' that excludes people with convictions from obtaining cover. Even if there is no mention of criminal convictions, because of the principle of utmost good faith, you should still disclose any unspent criminal convictions and obtain written confirmation that you have done so.

If the insurer states that they do need to know, but that they are still able to insure you, obtain some form of written confirmation from them that they have made a note of this on any policy that you ultimately take out with them. Again, do not simply rely on the fact that the telephone call is recorded. Also, do not assume that because you have told them when taking out home insurance, that you do not need to tell them when taking out car insurance.

3.3.10 What if an insurer asks whether I have “ever had insurance refused or cancelled or had special terms imposed”

‘Refused’ insurance does not have an agreed definition within the insurance industry. You should ask each insurer for clarification of what they mean when using this term. However, if an insurer has simply chosen not to insure you because they do not offer cover to people with convictions, you have not been ‘refused’. This is the same as someone who is 25 seeking insurance with an insurer that only insures people over 50.

‘Cancelled’ insurance is when an insurer cancels your contract of insurance during the term of your policy, typically due to the disclosure of an additional material fact. This does not include where they inform you that they will not be offering cover following your next renewal date.

‘Special terms’ may be imposed by an insurer in order to reduce the perceived risk. This is when you are offered insurance but not on the standard terms they would normally offer. For example, they may add exclusions that would avoid them having to pay a claim in certain circumstances such as in the event of a theft, fire or a particular circumstance such as damage caused by vigilantism.

If you have a spent conviction, you do not need to disclose anything that would lead to the disclosure of that conviction. The ROA states that *“A conviction which has become spent or any circumstances ancillary thereto... shall not be a proper ground for prejudicing him in any way...”*⁷ Therefore, if you have experienced any of the above as a result of a conviction that is now spent, you can respond as if it had not happened.

If you have an unspent conviction, you have to answer any question put to you fully and honestly. Therefore, if you have had insurance refused, cancelled or had special terms imposed due to your conviction (or for any other reason) you must inform the insurer. If other insurers have simply declined to offer you a quote due to your convictions you do not have to state that you have been refused insurance. However, given that an unspent conviction is a material fact, you will still need to disclose it whether any specific questions are asked about criminal convictions.

⁷ Rehabilitation of Offenders Act 1974, Section 4(3)(b)

4. When do I need to disclose?

4.1 When you take out a policy?

You have to disclose any unspent criminal convictions when you take out an insurance policy. Failure to do so could invalidate your policy and potentially lead to prosecution.

4.2 During a policy?

4.2.1 A conviction obtained before the policy was taken out

If your conviction was unspent when you took out the policy, and you have not disclosed this, your insurance is potentially invalid.

You should decide whether you wish to either notify your current insurer, and risk your policy being cancelled, or seek alternative insurance before cancelling the policy yourself. You may find it useful to call your current insurer anonymously to ascertain what their approach would be to somebody in your situation. If your insurance company decides that they want to end your policy, they may give you a period of notice so that you have time to find insurance elsewhere. However, they are not legally obliged to do so where an unspent conviction has not been disclosed.

4.2.2 A conviction obtained during the policy

Insurers have a duty to inform you within your policy documents of your obligations in terms of disclosing any changes to your circumstances.

Unless there is an explicit condition in your policy, you do not have to disclose convictions obtained during a policy, until your next renewal.

4.2.3 A conviction that becomes spent during the policy

If you have disclosed an unspent conviction which has now become spent, you will not need to disclose it at your next renewal.

However, whether your insurer will reduce your premiums mid-contract will depend on their policy. For example, an insurer who requires mid-contract disclosure of a new conviction should also take account of a conviction that becomes spent mid-contract. However, insurers that do not require disclosure of new convictions mid-contract might not take account of the fact that a conviction becomes spent during the policy.

You should ask your current insurer for their policy on mid-contract changes.

4.3 When you make a claim?

Insurance companies normally rely on the information given by the policyholder at the start of the policy. However, when a significant claim is made, insurance companies will investigate. This may extend to requiring individuals to obtain an official record of their criminal convictions.

Although insurers have access to various databases, they are not currently able to obtain an official copy of your criminal record. Therefore, as part of the claims process, you may be asked to provide details of your criminal record. This is to ensure it matches with the information you gave when you took out the policy.

As part of the claims process, you must reasonably co-operate and, if you were to refuse to provide this information, it is possible that the insurer will refuse to pay any claim that has been made. However, this should only extend to convictions that were unspent at the time you took out the policy.

5. How do I know whether my convictions are spent?

5.1 Basic disclosure – Disclosure Scotland

To obtain a list of your unspent convictions you can apply for a basic disclosure from Disclosure Scotland (www.disclosurescotland.gov.uk). This costs £23. It is only accurate at the time you apply, cannot be backdated and will not show other convictions.

5.2 Subject Access Request

Under the Data Protection Act, you can apply for a Subject Access Request from your local police force. This costs £10, and provides all information that is held on the Police National Computer (PNC) about you, not just unspent convictions. It doesn't identify which convictions are spent and which are unspent.

5.3 Resettlement Plus Helpline

The national Resettlement Plus Helpline can advise you on whether a conviction is spent, based on the information you provide.

Telephone: 020 7840 6464

Email: helpline@nacro.org.uk

5.4 Work it out yourself

If you already have a record of your criminal convictions, you may find it helpful to consult a detailed guide to the ROA, such as the one available from the Information & Advice section of www.unlock.org.uk. This covers more complex issues such as multiple convictions and other sentences/disposals.

6. What could happen when I disclose an unspent conviction?

There are a number of possible responses which an insurer might have to an unspent conviction. This will depend on the insurers approach to convictions and the point at which you disclose.

6.1 When you're getting quotes

The insurer may:

- Not be able to offer you a quote. This does not mean you have been 'refused' insurance. It simply means you don't fit within their underwriting guidelines. For example, if SAGA chose not to offer a quote to a 25 year old, that person has not been refused insurance.
- Offer you insurance at a higher premium because they believe it is a higher risk. If the premium is more than you are happy (or able) to pay you should shop around, as not all insurers assess risk in the same way [see Section 10 – Where can I get insurance?].
- Impose special terms such as a higher excess or a more exclusions and limitations policy.

6.2 During a policy

The insurer may:

- Cancel your insurance immediately. This is more likely to happen if the conviction was obtained before you took out the policy and you did not disclose it.
- Cancel your insurance but offer you a short 'grace' period during which you can arrange insurance somewhere else e.g 7 days. This is more likely to happen if the conviction was obtained during the policy.
- Continue your insurance but advise you they won't offer you another policy at renewal. This is more likely to happen if the conviction was obtained during the policy.
- Increase your premium because they believe the risk has increased. If the premium is more than you are happy (or able) to pay you should shop around, as not all insurers assess risk in the same way [see Section 10 – Where can I get insurance?]
- Impose special terms such as a higher excess or a more restrictive policy.

6.3 When you make a claim

The insurer may:

- Avoid your policy. If your policy is 'avoided' it is as if it never existed. This means that your claim will not be paid. You should receive back any premiums you have paid to the insurer. However, the insurer may seek to recover any previous claims made under the policy.
- Refuse the claim. Insurers would usually also cancel the policy under these circumstances.
- Reduce payment. If the insurer would have insured you despite the conviction, but at a higher premium, they may reduce their pay out proportionately. For example, if your premium would have doubled, you may only be entitled to half the total claim value.

7. What could happen if I do not declare an unspent conviction?

7.1 When you're getting quotes

- Probably nothing. At quoting stage, insurers rely on the information you give them because it would be too expensive to verify everything you say.
- However, as explained below, you may not actually have insurance cover and may be acting illegally.

7.2 During a policy

- Probably nothing. During your policy insurers will rely on you to make them aware of any important changes. They will not usually check that you have done so.
- However, it is possible that your insurer may find out about your conviction by another means e.g. an anonymous phone call or a newspaper report. This could result in the avoidance or cancellation of your policy, or an increase in premium.

7.3 When you make a claim

- You will normally be asked to confirm whether the details you gave when you took out the policy are correct. Insurance companies may ask about convictions, even if they didn't ask about them at the start of the policy, because it was your responsibility to disclose them when you took out the policy. You may be required to provide evidence that you don't have any convictions. If you are unwilling or unable to provide this evidence, the insurer is unlikely to pay the claim and may cancel your policy.
- If the insurer becomes aware that you did have unspent convictions when you took out the policy, they could avoid your policy, refuse the claim, reduce any claim pay outs and you may be prosecuted.

8. How might convictions affect making a claim?

When you make a claim on your insurance, your insurer will undergo a claims validation process. As part of this process, they will either go through the details of your policy over the telephone, or send a representative to your home. As part of this, they will normally ask you to confirm that the information you gave regarding previous convictions is accurate.

8.1 Where you have disclosed all unspent convictions

If you had disclosed all unspent convictions when taking out the policy, your claim should proceed as normal.

It may be that, because of the conviction, your insurer decides to look into your claim in greater detail. Although this may be frustrating, you must be seen to be cooperating with your insurer. The presence of a conviction on a policy should have no bearing on whether the claim is paid out, so long as it was fully disclosed when the policy was taken out (or at the appropriate renewal stage).

You may be asked to provide a copy of your unspent convictions, and so as long as this matches with what you have previously provided when taking out the policy, you shouldn't have any problems.

8.2 Where you have not disclosed all unspent convictions

If you didn't disclose all unspent convictions, your insurance company may seek to 'avoid' the policy and not pay out. See section 10 on what you can do if your insurer is refusing to pay your claim due to non-disclosure.

Insurers are not able to carry out CRB checks. Therefore, it is common for insurers, when they want to receive official clarification, to require you to provide a copy of your own criminal record.

Some insurers may accept a basic disclosure, which lists online unspent convictions. However, this cannot be backdated to the date the policy was taken out, therefore a Police Subject Access Request may be requested. Either way, you will be expected to pay the cost of this check as part of cooperating with the claims process.

8.3 Where you were not asked a question about criminal convictions when taking out the policy

Even if you were not asked specifically about criminal convictions when taking out the policy, the insurer still *may* be legally entitled to 'avoid' your policy and not pay out. However, you may be able to complain to the Financial Ombudsman Service in this situation, particularly if the insurer did not ask you a clear question about convictions when you took out the policy (or when you last renewed). Section 9 explains what you can do if your insurer is refusing to pay your claim due to non-disclosure.

9. What if my insurer refuses to pay a claim due to non-disclosure or misrepresentation?

9.1 What are non-disclosure and misrepresentation?

An insurance contract is based on 'utmost good faith' [see section 2.1]. You must disclose all 'material' facts (those which would influence whether the insurer offers cover and on what terms).

'Non-disclosure' is when you fail to disclose a material fact when applying for, or renewing, insurance. An example would be if you did not disclose an unspent criminal conviction.

A related term, 'misrepresentation' is when you make an incorrect statement. An example would be if you stated that you had a conviction for theft, when it was actually a conviction for fraud or stated that you had been given a community sentence, when you were actually given a prison sentence.

9.2 What does it mean if my insurer is 'avoiding' my policy?

If a non-disclosure (or misrepresentation) has led an insurer to provide cover where it otherwise would not have done so, the insurer can legally 'avoid' the policy. This means they treat the policy as though it never existed. The insurer will not have to pay out on any claim made under the policy. Unless fraud is involved, the insurer will normally return any premiums you have paid.

9.3 How can I put an effective complaint to my insurer?

9.3.1 Industry Regulations

The *Financial Services Authority's Insurance: Conduct of Business Rules* (ICOB) were introduced on 14 January 2005. The ICOB outlines some relevant principles. For example, ICOB Rule 7.3.6 states that an insurer must not:

1. *unreasonably reject a claim made by a customer;*
2. *except where there is evidence of fraud, refuse to meet a claim made by a retail customer on the grounds:*
 - a. *of non-disclosure of a fact material to the risk that the retail customer could not reasonably be expected to have disclosed;*
 - b. *of misrepresentation of a fact material to the risk, unless the misrepresentation is negligent..."*

ICOB Rule 4.3.2(3) deals with advising and selling standards, and states that: *"In assessing the customer's demands and needs, the insurance intermediary must... explain to the customer his duty to disclose all circumstances material to the insurance and the consequences of any failure to make such a disclosure, both before the... insurance contract commences and throughout the duration of the contract; and take account of the information that the customer discloses."*

ICOB Rule 4.3 goes on to stress that: *"In relation to ICOB 4.3.2(3), an insurance intermediary should make clear to the customer what the customer needs to disclose."*

9.3.2 Industry Guidelines

The Association of British Insurers (ABI) has previously published statements of practice stating that:-

- Insurers should ask clear questions about facts they considered material
- In deciding whether to avoid a policy, insurers should rely only on the answers given or withheld
- Insurers should only avoid policies where the non-disclosure or misrepresentation was deliberate or reckless, not where it was innocent.
- Customers are required to answer questions only to the best of their knowledge and belief

9.3.3 What if the insurance company already knew the information?

If the insurer already had the information about your convictions (or if it should have realised that the information you gave was inaccurate) then they should not avoid the policy. For example, you may have advised them of your convictions at a different time or in relation to a different product.

9.3.4 What if I disclosed to an intermediary when buying my insurance?

Many people don't buy their insurance directly from the insurer. Instead they use an 'intermediary' to such as an insurance broker, financial adviser or bank.

Intermediaries are often seen as acting on your behalf because they are seeking the best cover for you from a wide range of insurers. This makes it difficult to argue that the insurance company should know the details you gave the intermediary. You may have to pursue a separate complaint against the intermediary and consider a claim against them in the civil courts.

However, if your intermediary had an arrangement to recommend your insurer, they can be seen as acting on behalf of the insurer. In this case it is difficult for the insurance company to claim that information you gave to the intermediary wasn't properly disclosed.

9.4 What should I do if I think my insurer is treating me unfairly?

In cases of non-disclosure and misrepresentation, it is widely recognised that applying the strict legal position to can sometimes result in an unfair outcome for the customer.

However, if your insurer has refused to pay a claim for either of these reasons, you can take a complaint to the Financial Ombudsman Service (FOS). The FOS is able to take account of both the law and good industry practice. This can often result in a much fairer outcome for the customer.

Before taking your complaint to the FOS you must tell your insurance company that you dispute their decision, and give them the opportunity to rectify the problem. If you remain unhappy after the insurance company has reviewed your case the FOS may be able to help. Your insurance company should provide you with a leaflet and there is more information on their website (www.financial-ombudsman.org.uk).

10. Where can I get insurance?

10.1 Do all insurers exclude people with unspent convictions?

Although what you legally have to disclose is the same for all insurers, their attitudes to convictions vary enormously. Many mainstream insurers operate a blanket policy of not providing insurance to people with unspent convictions. However, a few providers may take a more positive approach in some circumstances. For example, some are less interested in non-motoring offences when applying for motor insurance.

10.2 Can I get a quote from UNLOCK?

No. UNLOCK does not sell insurance. As a charity we have focused on increasing access to insurance for people with convictions. As a result, rather than becoming a provider ourselves, we have sought to increase provision elsewhere, driving up competition, resulting in prices being driven down. However, we do publish a list of specialist insurance brokers who can help people with unspent convictions.

10.3 What is UNLOCK's list of insurance brokers?

UNLOCK helped set up the first insurance broker specifically for reformed offenders. Now we have a comprehensive list of specialist insurance brokers, available to download from www.unlock.org.uk.

It provides a list of all of the insurance brokers that provide various types of insurance cover to people with unspent criminal convictions. Insurance brokers try to find the best cover for your needs from amongst their own panel of underwriters.

UNLOCK does not approve, endorse or recommend any of the insurers that are on the list. However, all the brokers are regulated by the FSA.

Insurance available includes: Buildings, Contents, Car, Motorbike, Caravan, Travel, Employer's Liability, Public Liability, Commercial Premises, Commercial Contents, Tradesman, Contractor, Commercial Van, Life, and Wedding.

10.4 How should I use the list?

When making your decision, we advise that in addition to comparing price, you research the companies to see what other customers' experiences are of the insurers. This will allow you to make an informed choice. You can do this online, including on the UNLOCK Members' Forum at <http://forum.unlock.org.uk>. You can also use the Forum to give your own feedback on the insurers.

If you need to make a formal complaint about a broker, you must write directly to them. If they do not reply satisfactorily, you should then contact the Financial Ombudsman Service.

10.5 Are there any other insurers which are not on the UNLOCK list?

There may be other insurers which are able to cover some people with some unspent criminal convictions. For example, some insurers may have a policy of not taking non-motoring convictions into consideration for motor insurance (even though they do for home insurance). The ability of an insurer to cover you may depend on:

- How long you have been a policy holder (if you have been with an insurer with a number of years, and have a good claims history, they may still be willing to continue cover)
- The type of conviction (certain convictions may be considered irrelevant)
- The length of time since the conviction

Remember to take extra care when seeking insurance from an insurer who does not ask questions about criminal convictions. As the law stands currently, there is a duty on you to volunteer 'material facts', which includes unspent criminal convictions. Just because an insurer doesn't ask about criminal convictions does not mean you do not need to tell them.

Ask for written documentation that either confirms you have disclosed your conviction, or evidence that the insurer does not need to know about certain criminal convictions. These will be helpful in the event of a dispute.

You should not simply rely on a telephone call being recorded, or being given the name of the adviser you have spoken to. This will not be sufficient evidence to support your claim that you were asked a question in the event of a dispute.

10.6 Is it more expensive getting insurance with a criminal conviction?

This is a very common question but there is no simple answer. Disclosure of unspent criminal convictions currently results in most insurers refusing to offer a quote. Therefore, you will have significantly less choice. It also means that standard 'mass market' policies, which may be cheap, are not available to you. As a result, it's not unusual to be faced with more expensive insurance when you get a conviction.

However, securing insurance through a broker can have price advantages. People who have stayed with the same insurance company for years may find their premiums have steadily risen. Asking a broker to secure the best price for you may result in premiums reducing, even with a conviction.

Over the last decade, as the choice of brokers has widened, prices have been driven down. Recently some brokers have begun to offer instant online quoting. By shopping around, it is often possible to match quotes obtained without criminal convictions.

The cost of insurance varies according to many factors and each insurer has a different approach. You may find that other factors (e.g your postcode or what you are trying to insure for) are more influential than your conviction. However, it remains the case that many people experience a significant increase in the cost of insurance when disclosing an unspent conviction.

11. Who can I contact for more help?

Financial Ombudsman Service

A: South Quay Plaza, 183 Marsh Wall, London, E14 9SR

T: 0845 080 1800

E: complaint.info@financial-ombudsman.org.uk

W: www.financial-ombudsman.org.uk

If you have a complaint regarding your insurance, you will need to try to resolve it with your insurer in the first instance. If you are not satisfied with their response, you can complain to the FOS.

Financial Services Authority

A: 25, The North Colonnade, Canary Wharf, London E14 5HS

T: 0845 606 1234 (Consumer Helpline) or 020 7066 1000 (Main Switchboard)

E: consumer.queries@fsa.gov.uk

W: www.fsa.gov.uk

The FSA has a dedicated Consumer Helpline offering impartial information and general guidance. It can also provide details of other helpful organisations. As an independent regulator, they cannot recommend or provide advice about specific firms or products, and do not investigate individual complaints. However, if a firm is suspected of breaching FSA rules and regulations, the Consumer Helpline will pass the information to the relevant supervisory area of the FSA.

Moneymadeclear (Consumer Financial Education Body)

T: 0300 500 5000 (Free if your call package includes free calls, even from mobiles)

W: www.moneymadeclear.org.uk

Impartial information and guidance about your money. The service will not sell you anything or recommend specific products or providers.

UNLOCK, the National Association of Reformed Offenders

A: 35a High Street, Snodland, Kent, ME6 5AG

T: 01634 247350

E: enquiries@unlock.org.uk

W: www.unlock.org.uk

UNLOCK provides information and advice for people with criminal convictions, including difficulties relating to insurance and convictions. An online Members' Forum is provided for people with convictions to share information and experiences.