

Guidance Developed by Occupational Therapists for Anyone Supporting Individuals with Criminal Convictions and Mental Health Conditions/Learning Disabilities into Work, Volunteering or Education

Review Completed May 2023

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as such. Anyone in doubt should seek their own legal advice.

Guidance Development

This document was co-developed by Occupational Therapists and the Scottish Government. It is intended to support individuals with criminal convictions and mental health conditions / learning disabilities into work, volunteering or education. Those that were involved in the development of the document include:

- Moira Paterson Lead Occupational Therapist, NHS Greater Glasgow and Clyde
- Christine Breslin, Team Lead Occupational Therapist, NHS Ayrshire and Arran
- Stuart Bennett, Forensic Occupational Therapist, NHS Fife
- Susan Cairns, Advanced Practitioner Occupational Therapist, NHS Lanarkshire
- Fiona Reid, Occupational Therapist Clinical Specialist, NHS Forth Valley
- Lisa Moen, Occupational Therapist, NHS Lanarkshire
- Susan Bradford, Specialist Occupational Therapist/Certified Disability Management Professional, NHS Lothian.
- Catherine Totten, AHP Professional Advisor Mental Health, Scottish Government
- Danielle McLeary, Policy Officer, Forensic Mental Health Reform Team, Scottish Government

Please see [Annex D](#) for more information on the original membership of the group.

This document has been reviewed for accuracy in May 2023. The guidance is due to be reviewed again May 2025.

It is thought that at the time of publication the content of this document is accurate. No responsibility can be taken by the group for any inaccuracies as there may be changes in legislation which may impact on the document. Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as such. Anyone in doubt should seek their own legal advice.

Ministerial Foreword



In March 2019, former Minister for Mental Health, Clare Haughey, commissioned an Independent Review into the delivery of Forensic Mental Health Services (“the Review”) chaired by Derek Barron, Director of Care at Erskine. One of the findings from the final report identified the need for guidance on how to understand the legislative requirements around disclosure when supporting people with a forensic mental health background.

The Scottish Government made a commitment to re-engage with Allied Health Professionals to finalise their draft guidance aimed at supporting people with criminal convictions and mental health conditions into work, volunteering or education.

This publication is the result of years of work from individuals working in Allied Health Professions, third sector and the Scottish Government. The voices of those with lived experience can be heard through the case studies included in the document. I know that this work has been in development for some time therefore I would like to take this opportunity to thank all of those involved over the years for their time and dedication.

Throughout Scotland there has always been an emphasis on vocational rehabilitation within mental health and I believe that placements, work, volunteering and education are extremely important in the recovery and rehabilitation of a person.

I very much welcome this guidance, it is clear, concise and highlights the collaborative working that has brought services together to best support patients, professionals, third sector organisations and the public. It will be a great source of support in helping improve employment, volunteering and educational outcomes for people within the forensic mental health system.

Maree Todd MSP
Minister for Social Care, Mental Wellbeing and Sport

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1 Introduction



“Not everyone wants to be employed, but almost all want to “work”, that is to be engaged in some kind of valued activity that uses their skills and facilitates social inclusion.” National Social Inclusion Programme (2006)

This document is one which I endorse, and I hope will guide its users through the challenging landscape to make work, volunteering or education happen. We all recognise the challenge of entering these destinations for those within forensic mental health services. It can be complex, requiring knowledge of the Rehabilitation of Offenders Act (1974), The Equality Act (2010), the Protection of Vulnerable Adults (PVG) Scheme, the Police Act (1997) as well as the relevant parts of the Data Protection Act (2018).

Therefore, to help negotiate possible barriers this publication provides clear information with suggestions for practical application and illustrative case examples.

Why? Because making these destinations happen is important. As we know being in work is a major protective factor for health outcomes, for quality of life and in reducing reoffending. All of which contributes to meeting Scotland’s public health priorities.

I take great pleasure that this document was written by Occupational Therapists. It demonstrates that Allied Health Professionals are uniquely skilled to lead and respond on these issues and others as set out in our [Scottish Allied Health Professions Public Health Strategic Framework Implementation Plan: 2022 to 2027](#).

I want to thank all those who worked hard to review this document which will undoubtedly have application and be a useful resource not only for those working in forensic mental health services but in other areas of health, justice, and those involved in employability. I’m sure it will be a welcome addition to the toolkit of practitioners across a range of services.

Professor Carolyn McDonald
Chief Allied Health Professions Officer
Scottish Government

2 Roles And Responsibilities

*Sheppard and Frost*¹ stated that vocational rehabilitation is becoming an increasingly common area for Occupational Therapists, helping people to identify physical, social, psychological, behavioural and cognitive strengths and potential barriers to entering or resuming work. Using their understanding of an individual's functional abilities and the work task requirements, Occupational Therapists are able to provide job matching, skill development and individualised environmental support². Occupational Therapists use many assessment tools such as the occupational performance history interview³, occupational self-assessment⁴, the volitional questionnaire⁵, worker role interview⁶, the work environment impact scale⁷ and work behaviour inventory⁸.

2.1 Occupational Therapy Role

The Occupational Therapist will work collaboratively with an individual, using their expertise in assessing the impact of their mental health condition / learning disability on function. This process supports the individual to understand their rights and how this may affect their ability to achieve their employment goals with their existing disabilities. Occupational Therapists have relevant core skills and can access relevant guidance to assess barriers to working, agree vocational goals in partnership with the patient and multi-disciplinary team (MDT).

Occupational Therapists will use assessment tools to identify strengths and barriers to employment. Supportive interventions can then be planned collaboratively with the client. Interventions can range from minimal guidance to those requiring more intensive interventions, specialist services, supported employment or vocational rehabilitation.

*Machingura and Lloyd*⁹ suggest some of the aims and goals of interventions may be to introduce activities relevant to the skills and abilities required to engage in work such as improving social skills, time management and interview skills. Other interventions may include increasing participation in activities, developing coping strategies to anticipate and manage actual and potential barriers for day to day living and establishing work related routines.

It is important to note that it is not only the Occupational Therapist that will carry out the roles described in this document. Anyone supporting individuals with criminal convictions and mental health conditions/learning disabilities into work, volunteering or education should find this document of use.

¹ Sheppard and Frost, 2016
² Machingura and Lloyd, 2017
³ Kielhofner, 2001
⁴ Kielhofner et al., 2010
⁵ Chern et al., 1996
⁶ Fenger and Kramer, 2007
⁷ Ekbladh et al, 2014
⁸ Bryson et al., 1997
⁹ Machingura and Lloyd, 2017

2.2 Occupational Therapist role in considering reasonable adjustments

Occupational Therapists can support the employer and employee to consider the impact of their illness on work and how any impact can be managed and overcome through reasonable adjustments to the workplace. Using a holistic approach Occupational Therapists are able to suggest adjustments to existing equipment and environmental circumstances as well as recommending specialist equipment based on individual needs. Occupational Therapists can also liaise with employers to explain the client/employee's perspective to the employer, but also, by seeking to understand the business situation, can assist in understanding what recommendations may or may not be feasible¹⁰.

3 Disclosure Of Offences

3.1 Rehabilitation of Offenders Act 1974

In Scotland, the Management of Offenders (Scotland) Act 2019 ("the 2019 Act") was passed in 2019. The provisions contained in Part 2 of the 2019 Act (which were mainly commenced in November 2020) amended the [Rehabilitation of Offenders Act 1974](#) ("the 1974 Act") in Scotland. Part 2 of the 2019 Act, amongst other things, reduced the period of disclosure for the majority of sentences. For example, the disclosure period for an admonishment was reduced from 5 years to zero (i.e. spent immediately) and the disclosure period for a fine was reduced from 5 years to 12 months (6 months if under 18 at the date of conviction).

The changes also mean anyone who has been convicted of a criminal offence and sentenced to prison for no longer than 48 months can be regarded as a 'protected person' after a specified period, provided they receive no further convictions. After the specified disclosure period has passed the conviction is considered to be '**spent**' and the individual is not obliged to reveal it and cannot be prejudiced by it.

At present, anyone receiving a custodial sentence of over 48 months is unable to become a 'protected person' under the terms of the 1974 Act because it is classed as an 'excluded' sentence. As such, they will be required to disclose this conviction indefinitely. Please see the [disclosure periods tables](#) for more information. The 1974 Act exists to balance the need to ensure public protection by allowing employers and potential employers to access to relevant information about a person's criminal background with the separate need to help those convicted move on from their previous offending and become a 'protected person'. Detailed [guidance](#) on the reforms to the 1974 Act can be found on the Scottish Government's webpage.

3.1.1 Spent and Unspent Convictions

A conviction is considered spent after the disclosure period for the conviction or Alternative to Prosecution (AtP) has expired, the length of which will depend on the sentence, or non-court disposal in the case of an AtP, imposed for that offence (see [section 3.1.3](#) for tables outlining disclosure periods). Once a conviction is spent it is generally not required to be

¹⁰ Frost et al, 2014

disclosed. However there are some categories of employment and proceedings where disclosure of spent convictions is required. This is explained further in the next section.

An unspent conviction is a conviction in which the period of disclosure has not ended and as such, the legal protections not to disclose under the 1974 Act do not apply. Different periods of disclosure apply depending on the sentence received (e.g. a court fine becomes spent after 12 months or 6 months if under 18 at the date of conviction). An individual must declare, when asked, all unspent convictions to an employer or potential employer.

The rehabilitation periods in England and Wales have been amended under the [Legal Aid, Sentencing & Punishment of Offenders Act 2012](#), (“the 2012 Act”). This means there are different periods of disclosure under the 1974 Act north and south of the border. For those individuals residing or looking for employment in Scotland then Scots law and not the 2012 Act will apply.

It is important to note that nothing in the 1974 Act prohibits anyone from obtaining employment. What the Act does is provide a legal framework within which information is permitted either to be given or not given to employers/potential employers to help inform their decisions about employing individuals.

3.1.2 Exceptions

There are some categories of employment and proceedings to which the 1974 Act does not apply, such as when it is considered appropriate that access to a person’s relevant previous criminal convictions are necessary for the purposes of public protection. In these specified employment categories disclosure of relevant spent convictions is required. This is because relevant spent convictions should be taken account of when employers are making recruitment decisions for jobs that involve a particular level of trust. This is to ensure adequate protection for children and vulnerable people in particular and to ensure public confidence is maintained in our police and judiciary by allowing specific employers to be informed about the background of potential/actual employees even when the relevant conviction has become spent.

Examples of positions which are exempt include:

- Financial sector
- Child care services
- Care services
- Health professions
- Law enforcement
- Licensing work (i.e. security)
- Teaching profession

Schedule 4 of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)(Scotland) Order 2013, as amended (“the 2013 Order”) sets out the excepted professions, offices, employment and occupations where spent conviction information is required to be disclosed.

The system of self-disclosure under the 2013 Order has been updated a number of times over the past few years. These changes mean that for the majority of circumstances set out under the 2013 Order there is less self-disclosure of spent convictions. This is because as a result of these changes not all spent convictions are now required to be automatically self-disclosed (i.e. when they become a protected conviction).

Determining when the rules of self-disclosure apply can be complex. It will depend on the particular offence and on the circumstances of the question being asked. In some cases **all** unspent and spent convictions require to be disclosed. In other cases certain spent convictions do not have to be disclosed. The decision about whether or not a spent conviction should be self-disclosed is now determined, in part, by whether the offence for which the person was convicted is a listed offence and if so, what list the offence is attached to. That is, whether it is a schedule A1 offence (offences which must be disclosed subject to exceptions), a schedule B1 offence, (offences which are to be disclosed subject to rules) or an offence not on either schedule.

Decisions about whether or not a relevant spent conviction should be disclosed is managed by [Disclosure Scotland](#). More on this can be found in [section 4](#) of this document. This is helpful to know as, if someone has relevant spent convictions, these can be disclosed in the Protection of Vulnerable Groups (PVG) scheme record and a standard or enhanced disclosure under the Police Act 1997. It may be that the individual would wish to consider the disclosure process prior to applying for such jobs.

It is an offence under the [Data Protection Act](#) 2018 (unless specific conditions apply¹¹) and section 9 of the 1974 Act for anyone to procure the disclosure of personal data to another person without the consent of the controller, this includes those with access to criminal records disclosing spent convictions unless authorised to do so. There are also offences under sections 123 and 124 of the [Police Act](#) 1997 and sections 65 to 67 of the [Protection of Vulnerable Groups \(Scotland\) Act](#) 2007 about the handling and use of information provided by Disclosure Scotland; making false statements in connection with disclosure applications; and falsifying disclosure certificates and records.

3.1.3 Disclosure Periods

The disclosure period (the length of time before an AtP or conviction becomes spent) is determined by the type of disposal given or the length of the sentence imposed. It is **calculated from the date of conviction** or date the AtP is given (or accepted).

Where a single sentence has been received

The disclosure periods for particular sentences are set out under section 5, Table A (in section 5A), and Table B (in section 5B) of the [Rehabilitation of Offenders Act 1974](#). It should be noted that Table A provides that if any other disclosable sentence is given which is currently not otherwise mentioned in Table A, or in Table B or sections 5(2D), 5C to 5J then the default disclosure period for that conviction is 12 months or 6 months if under 18 at the date of conviction.

¹¹ See [section 170 \(2&3\)](#) of the Data Protection Act 2018 for details on the exemptions to this offence.

Where more than one sentence has been received

[Section 6](#) of the 1974 Act sets out the rules which determine the length of the disclosure period of a conviction. The disclosure period applicable to a conviction depends principally on the disclosure period applicable to the sentence imposed for that conviction. However, the rules as to when a conviction becomes spent get more complicated when more than one sentence is imposed for a conviction or if a person is convicted of further offences before their existing convictions are spent.

If more than one sentence is imposed in respect of a conviction, whether or not in the same proceedings and none are 'excluded sentences', (for example, a fine and a non-harassment order), and the 2 sentences have a different disclosure period attributable to them, the conviction requires to be disclosed in accordance with the longer or longest of these periods.

Example

If a 25 year old person gets convicted of an offence and is fined (12 month disclosure period) and is also given a 5 year non-harassment order (5 year disclosure period) then the disclosure period for that conviction will be 5 years.

This is because the disclosure period applicable to the conviction is the same as the disclosure period applicable to the non-harassment order, which has the longer of the 2 disclosure periods for the 2 sentences.

If someone gets convicted of a further offence, in solemn proceedings, before the end of the disclosure period applicable to the first conviction, then whichever of the 2 disclosure periods would end earlier is extended so as to end at the same time as the other disclosure period.

Example

A person aged 25 gets convicted of an offence and given a court fine. The disclosure period for that sentence is 12 months. As no other sentences are imposed the disclosure period applicable to that conviction is 12 months and the conviction would otherwise become spent after 12 months.

However, 6 months later the person is convicted of a further offence, in solemn proceedings, and given a 2 year custodial sentence. The disclosure period for that sentence will be 6 years. As no other sentences are imposed the disclosure period applicable to the conviction is 6 years.

The disclosure period for the first conviction is 12 months. The disclosure period for the second conviction is 6 years.

As the disclosure period for the second conviction is greater, the disclosure period for the first conviction is extended so that it will end at the same time as the disclosure period for the second conviction.

That is, both disclosure periods will end 6 years from the date of the second conviction for the offence which resulted in the custodial sentence. This means that both convictions may become spent 6 years following the date of conviction of the second offence (provided no further offences are committed in which the person is convicted in solemn proceedings).

However, there are 3 exceptions to this rule set out in the 1974 Act:

- 1) section 6(4A) to 6(4C): (Adjournment and deferral)
- 2) section 6(5) to 6(5B): (Ancillary orders)
- 3) section 6(6): (Summary proceedings, service proceedings and convictions outside a Scottish court)

Section 6(4A) – 6(4C) of the 1974 Act rule: Adjournment and deferral

This rule is necessary to ensure the rule to extend disclosure periods under section 6(4) will not apply to situations where a case was adjourned or deferred, the person gets a further conviction during that period, and they are then given a sentence with no disclosure period for the first offence. For instance, an absolute discharge or an admonition. In such circumstances the second conviction will not impact on when the first conviction become spent.

Example

A person is convicted of an offence and sentencing is deferred for 6 months. During this period the person is convicted in solemn proceedings of a further offence and given a fine of £1,000. The disclosure period applicable to the fine is 12 months from the date of conviction.

After the 6 months deferral for sentencing in the first conviction the person is admonished for that first conviction.

The rule in section 6(4) could have meant that the disclosure period applicable to the first conviction was extended to be the same as that of the second conviction (because that is longer). However, because an admonishment was given for that first conviction the rule in section 6(4B) applies and the disclosure period applicable to the first conviction is not extended. That means that the first conviction becomes spent.

Section 6(5) to 6(5B) rule: Ancillary orders

The rule in section 6(4) of the 1974 Act does not apply to extend the disclosure period applicable to a conviction when the only sentence imposed for the other conviction is an ancillary order.

An ancillary order is one mentioned in section 5(2D) of the 1974 Act. This exception to the rule is set out in section 6(5).

Where, in addition to the ancillary order another sentence is imposed for a conviction, in determining whether the disclosure period applicable to another conviction is extended by

the rule in section 6(4), the disclosure period applicable to the ancillary order is to be disregarded. This exception to the rule is set out in section 6(5A) and (5B).

Example

Section 6(5): A person aged 25 is convicted of an offence (conviction 1) and is given a 5 year non-harassment order (but no other sentence). This will have a disclosure period of 5 years. One year later the person is convicted again (conviction 2) and is given a fine. The disclosure period applicable to conviction 2 is 12 months. This is not extended to match the 5 year disclosure period applicable to conviction 1.

Example

Section 6(5A) and (5B): In a variation to the circumstances in the example immediately above, in addition to the non-harassment order given for conviction 1 the person also received a custodial sentence of 12 months.

The disclosure period applicable to the non-harassment order is 5 years and the disclosure period applicable to the custodial sentence is 3 years.

This means the disclosure period applicable to conviction 1 is 5 years. However, section 6(4) applies (if the second conviction occurred in solemn proceedings) and the disclosure period for conviction 2 is extended, because of the custodial sentence given.

By virtue of section 6(5A) and (5B), the disclosure period applicable to conviction 2 is only extended until the disclosure period applicable to the custodial sentence imposed for conviction 1 has expired. The disclosure period for the non-harassment order is ignored in determining the length of the extension.

Applying this rule, the disclosure period applicable to conviction 2 will last 2 years instead of 1 year. This is because the disclosure period for the custodial sentence for conviction 1 is 3 years but 1 year has already elapsed between convictions 1 and 2, leaving 2 years remaining.

The disclosure period applicable to conviction 1 will remain 5 years owing to the non-harassment order.

Section 6(6) rule: Summary proceedings, service proceedings and convictions outside a Scottish court

The rule under section 6(4) of the 1974 Act does not apply if the subsequent conviction was one heard before a criminal court in summary proceedings. In such cases, each conviction becomes spent in accordance with the disclosure period for that conviction only and neither extends the other.

Example

A person aged 25 is fined for a summary offence (conviction 1). The disclosure period is 12 months. Six months later the person is fined again for a further summary offence (conviction 2). In such a case, the disclosure period for the conviction 1 will be 12 months from the date of that conviction and the disclosure period for conviction 2 will be 12 months

from the date of that conviction. Therefore, disclosure of the conviction 1 will end 6 months before disclosure for conviction 2.

The rule under section 6(4) also does not apply to service disciplinary proceedings for an offence listed in schedule 1 of the 1974 Act or to any conviction by or before a court outside Scotland of an offence in respect of conduct which, if it had taken place in Scotland, would not have constituted an offence under the law in force in Scotland.

Excluded sentences

Certain convictions are not capable of becoming spent. This is where an "excluded sentence" is imposed in respect of that conviction. These excluded sentences are listed in [section 5\(1\)](#) of the 1974 Act. Excluded sentences have no effect on the disclosure periods for previous or subsequent convictions. This means the disclosure period for the first conviction will not change.

Example

An individual over 18 is convicted of an offence and fined £500 (conviction 1). The disclosure period for this sentence is 12 months from the date of conviction. Six months later the person is convicted of supplying class A drugs and given a 5 year custodial sentence (conviction 2) in solemn proceedings. This is an excluded sentence under section 5(1) of the 1974 Act.

The disclosure period applicable to conviction 1 remains 12 months and will not be affected by conviction 2.

This can be a complex matter and further information on the rules under section 6 can be found in [Part 3](#) of the published Scottish Government's guidance on the 1974 Act.

Overview:

- An individual must declare, when asked, **all unspent** convictions to an employer
- The Rehabilitation of Offenders Act ("the 1974 Act") outlines the disclosure period for a conviction, determining whether a conviction can be considered '**spent**'
- A spent conviction does not have to be revealed at interview or on a job application, subject to the disclosure requirements of relevant spent convictions under the 2013 Order.
- Persons should not be prejudiced by spent convictions if they are subsequently revealed on a [higher level disclosure](#) following a determination by a sheriff.
- Employers are entitled to ask only about unspent convictions during recruitment and cannot use a failure to disclose a spent conviction subsequently disclosed following a sheriff's determination as the basis for excluding or dismissing a person from employment.

3.2 Disclosure Periods

Information in this section can be found on the Scottish Government [website](#).

Please use this link for full details on disclosure periods for custodial sentences. A summary of the information can be found in Table A below.

Table A - Disclosure Periods For Custodial Sentences

Sentence length	18 or over on date of conviction	18 or over on date of conviction
Up to (and including) 12 months	Length of sentence plus 2 years	Length of sentence plus 1 year
Over 12 months & up to (and including) 30 months	Length of sentence plus 4 years	Length of sentence plus 2 years
Over 30 months & up to (and including) 48 months	Length of sentence plus 6 years	Length of sentence plus 3 years
Over 48 months	This is an excluded sentence and the conviction will not become spent after a specific amount of time	This is an excluded sentence and the conviction will not become spent after a specific amount of time.

Offending committed by those under the age of 18

Where a person under the age of 18 is convicted in a criminal court, the protections given to spent convictions under the 1974 Act apply. For certain sentences, (as in Table A above) the disclosure period is halved.

Example

A 6 month custodial sentence given to a person under 18 at date of conviction may become spent after 1½ years from the date of conviction (i.e. the disclosure period is the period of the sentence plus a further "buffer period" of 1 year, giving a total of 1½ years).

A 12 month custodial sentence given to a person under 18 at date of conviction may become spent after 2 years from the date of conviction (i.e. the disclosure period is the period of the sentence plus a further "buffer period" of 1 year, giving a total of 2 years).

Table B - Disclosure Periods For Non-Custodial Sentences

Disposal	18 or over on date of conviction	Under 18 on date of conviction
Absolute discharge	Zero	Zero
Admonishment	Zero	Zero

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as such. Anyone in doubt should seek their own legal advice.

Bond of caution	6 months, or length of caution period, whichever is the longer	3 months, or length of caution period, whichever is the longer
A fine or compensation order	1 year	6 months
Community Payback Order, Drug Treatment & Testing Order and Restriction of Liberty Order	12 months or length of order, whichever is the longer	6 months or length of order, whichever is the longer
Adjournment/Deferral after conviction	Until relevant sentence ¹² given	Until relevant sentence given
An order under section 61 of the Children and Young Persons (Scotland) Act 1937	N/A	12 months
Ancillary Orders	Length of order ¹³	Length of order
An endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988	5 years	2½ years
Any other sentence not mentioned in sections 5 to 5J of the 1974 Act	1 year	6 months

Table C – Disclosure Periods For Non-Custodial Sentences Cont. Mental Health Orders

Disposal	18 or over on date of conviction	Under 18 on date of conviction
Hospital Direction	Not a sentence under the 1974 Act (not included in a disclosure certificate)	All have same disclosure periods as someone 18 or over at date of conviction
Guardianship Order	Zero ¹⁴	
Assessment/Treatment Order	Until final disposal given	
Interim Compulsion Order	Until final disposal given	
Compulsion Order (CO)	Length of order. After 12 months an application can be made to the MHTS ¹⁵ under section 164A of the	

¹² A "relevant sentence" is any sentence other than an adjournment or deferral, (or, where applicable, a further adjournment or deferral) imposed on the person in respect of the conviction.

¹³ See section [5G of the 1974 Act](#) and pages 22-23 of the [Guidance for the self-disclosure of previous convictions & alternatives to prosecution in Scotland under the Rehabilitation of Offenders Act 1974](#) .

¹⁴ See section [5J\(1\)\(c\) of the 1974 Act](#)

¹⁵ The Mental Health Tribunal for Scotland

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	MH 2003 Act ¹⁶ for disclosure to end	
Compulsion Order with Restriction Order (CORO)	Length of order. If the restriction order ends and the CO remains, an application can be made to the MHTS for disclosure of the CO to end 12 months after the restriction order ends	

3.3 Service Disciplinary Proceedings

Section 2 of the 1974 Act applies to any person who is dealt with in service disciplinary proceedings. Any finding of guilt in such proceedings is treated as a conviction and any punishment awarded is treated as a sentence for the purposes of the 1974 Act.

Section 2 sets out the types of proceedings that are to be regarded as “service disciplinary proceedings” for the purposes of the 1974 Act.

Unless specifically set out under sections 5B and 5I of the 1974 Act, the same rehabilitation periods will apply to sentences which are imposed in the service justice system as are imposed by the civilian justice system (e.g. a fine imposed by a Sheriff Court and a fine imposed by a Court Martial, would each have the same rehabilitation period).

4 Types Of Disclosure

4.1 Disclosure Documents

Requests for criminal record disclosures are managed by [Disclosure Scotland](#). The disclosure document can contain information held by the police and government bodies which can be used by employers to inform safer recruitment decisions.

The information included in the disclosure will depend on the type of disclosure applied for. Disclosure information could include:

- Details of criminal records
- Information about a person’s inclusion on children's or adults' lists
- Other relevant information provided by police forces
- Or state that there is no information

4.2 Different Types of Disclosure

There are [4 types of checks](#) provided by Disclosure Scotland and the type of disclosure document required depends on the voluntary or paid work being conducted. The types are:

- Basic Disclosure

¹⁶ The Mental Health (Care and Treatment) (Scotland) Act 2003

- Standard Disclosure
- Enhanced Disclosure
- Protecting [Vulnerable Groups Scheme](#) record

4.2.1 Basic Disclosure

A basic disclosure certificate is the most common type of disclosure available. A basic disclosure is a criminal record check. A basic disclosure certificate shows any 'unspent' criminal convictions an individual may have. Unspent means it needs to be declared. Applications for basic disclosure will be processed according to the Scottish rules under the [Rehabilitation periods for particular sentences](#) section of the [Rehabilitation of Offenders Act 1974](#) . Most people [apply online for a basic disclosure](#) for themselves.

Spent convictions are not disclosed on basic disclosures. However, some spent convictions have to be disclosed on higher level disclosures. [Standard disclosure](#), [enhanced disclosure](#) and [PVG scheme](#) disclosures are known as higher level disclosures.

If you have a higher level disclosure*, your certificate will show: all unspent convictions, spent convictions for [offences that are disclosed according to rules](#) and [offences that must be disclosed](#). You can apply to have certain spent convictions removed. If you have a spent conviction for an offence that is disclosed according to rules, or for an offence that must be disclosed (and the necessary time has passed), you can apply to have it removed.

In the event you feel the information on any certificate issued is incorrect this can also be reviewed as part of the current [Disclosure Scotland dispute procedure](#).

***The conviction information shown on higher level disclosure certificates is decided by law. This law is the Police Act 1997, Schedules 8A and 8B. These were updated on 19 December 2022**

4.2.2 Higher Level Disclosure

Standard & Enhanced and the PVG scheme record (see 4.2.3 below)

Higher level disclosures, namely Standard and Enhanced, are for people doing certain types of work or looking to adopt and they are applied for by a registered body (this may be the employer).

- Standard Disclosure is for roles such as solicitors and accountants
- Enhanced Disclosure applies to specific roles such as checking people are suitable for adoption, or gambling licences

On higher level disclosures the certificate will show:

- All unspent convictions;
- Certain spent convictions that must always be disclosed;
- Other spent convictions disclosed subject to rules;
- A spent conviction for an offence that is not on either the list of offences that must always be disclosed or offences which are disclosed subject to rules, will not usually be disclosed on a higher level disclosure; and

- Whether the applicant is required to register under the Sexual Offences Act 2003.

The enhanced disclosure and the PVG scheme record can also contain Other Relevant Information (ORI).

4.2.3 Protecting Vulnerable Groups (PVG) Scheme

The [Protecting Vulnerable Groups \(PVG\) Scheme](#) was established by the Protection of Vulnerable Groups (Scotland) Act 2007 and is for people doing regulated work with children and protected adults. Vulnerable groups are defined as:

- **Children** – an individual under 18 years of age.
- **Protected adults** – an individual aged 16 or over in receipt of 1 of 4 prescribed services i.e. registered care service, health care, community care service or welfare services.

The PVG scheme which delivers on the provision outlined in the Protection of Vulnerable Groups (Scotland) Act 2007 is intended to:

- Help to ensure that those who do paid or unpaid regulated work with children and protected adults, do not have a known history of harmful behaviour.
- Reduce the need for PVG scheme members to complete a detailed application form every time a disclosure check is required.
- Strike a balance between proportionate protection and robust regulation and make it easier for employers to determine who should be checked to protect their client group.
- Create a portal for the individual, essentially for life. Records remain 'live' and employers will be notified if a scheme member's status changes, that is, if the person is either barred from doing regulated work or placed under formal consideration for listing. An employer will not be advised of changes to a scheme member's record, for example, a new conviction, if that change has no effect on the person's status.

In most cases, an organisation offering [regulated work](#) must apply on an individual's behalf for membership to the PVG scheme. The scheme membership statement is available to those offering personal employment and for the self-employed. It allows employers to satisfy themselves that an individual to whom they are offering regulated work is not barred from doing that type of work. PVG scheme membership is available if the individual will have responsibility for caring, teaching, instructing, providing guidance or assistance to protected adults or children. If PVG scheme membership is appropriate for the job it should be stated at the time of advertising, as the individual would be committing an offence by applying for regulated work from which they are already barred. It is unlawful for an application for PVG scheme membership to be used for posts that do not involve doing regulated work with protected adults or children. There is currently no legal requirement to be a part of the PVG scheme. This is subject to full implementation of the Disclosure (Scotland) Act 2020.

PVG members are continuously monitored and if new vetting information is found which may indicate they are unsuitable to undertake regulated work, Disclosure Scotland will tell their employer.

Outcomes of the PVG Scheme

- **If an individual is barred from doing regulated work with children and/or protected adults** - They will be refused PVG Scheme Membership. This means they cannot work with the workforce they are barred with i.e. children or/and protected adults. It is an offence for a barred individual to do, or seek or agree to do regulated work from which they are barred.
- **If an individual is not barred from doing regulated work with children and/or protected adults** - A search will be carried out to check for vetting information (e.g. convictions, cautions, children's hearing findings, and other relevant information from the police).
- **If there is no vetting information or it does not have a bearing on the individual's suitability to do regulated work** - The PVG Scheme Membership certificate will be issued once an individual is a PVG Scheme Member. All PVG Scheme Members are subject to ongoing monitoring (continuous updating). This means that PVG Scheme Members' vetting information is kept up-to-date and if there is new information this will be assessed to determine if the Member is unsuitable to do regulated work with children and/or protected adults.

4.3 Disclosure of Spent Convictions

The decision about whether or not a spent conviction should be disclosed is determined by a two-stage process. Two lists of offences have been developed:

- [Offences that must always be disclosed](#) – if an offence is included on this list it will always be disclosed no matter how old the conviction is. The individual can make an application to a sheriff after a specified period of time to have the conviction removed. An application for removal of a conviction for an offence on this list can only be made once 15 years have passed from the date of the conviction if the person was 18 or over when convicted (or 7.5 years if the person was under 18 at the time of conviction).
- [Offences that are disclosed according to rules](#) – if an offence is on this list (and the conviction is spent) consideration will be given to the age of the conviction and the age of the person at the time of the conviction prior to disclosure.

4.3.1 Offences which are Disclosed Subject to Rules

For offences on the list [offences that are disclosed according to rules](#), the age of the conviction will be taken into account, subject to the periods in the table below:

Age at Conviction	Period of Disclosure
18 Years or Older	15 years (no disclosure after 15 years)
Younger than 18 years	7 ½ years (no disclosure after 7 ½ years)

Where a spent conviction for an offence on this “subject to rules” list is still within the period of disclosure (15 years or 7 ½ years), then the disposal will also be taken into account. Convictions that result in no punishment or intervention will not be disclosed, that is any conviction from which the court imposes a sentence of admonishment or absolute discharge, or absolute discharge from a children’s hearing. Spent cautions issued by the Police in Scotland, England, Wales and Northern Ireland will also not be disclosed.

If multiple offences form part of 1 conviction due to the way the offences were charged and recorded, the rules will apply to each offence and details related to each offence may be disclosed. Where an applicant for a higher level disclosure has multiple convictions on their record, the appropriate rehabilitation rules will be applied to establish what will be disclosed.

4.3.2 Applications for Removal of Offences

Individuals have the right to apply to a sheriff to seek to have spent convictions removed from the disclosure document or PVG scheme record in relation to offences that are spent and being disclosed in relation to both the ‘offences which must always be disclosed’ and the ‘[offences that are disclosed according to rules](#)’ list.

Summary Offence: normally carry a maximum sentence of 6 months’ imprisonment, although certain offences such as vehicle interference have a lower maximum sentence of 3 months. Examples include: most motoring offences, minor criminal damage and common assault.

Indictable Offence: the most serious criminal offences. Examples include: murder, manslaughter, robbery and rape.

When a disclosure document highlights spent convictions listed on the offences which must always be disclosed list, in some cases these will be sent straight to the applicant and the counter signatory. However if a certain amount of time has passed, the disclosure document will be sent to the applicant but the copy for the counter signatory (employer) will be retained by Disclosure Scotland for 10 working days from the date on the disclosure document (working days are Monday-Friday).

These time period are: 15 years, if 18 or over at the date of conviction, or 7 years and 6 months if under 18 at the date of conviction.

When a disclosure document highlights spent convictions listed on the offences subject to rules list, the disclosure document will be sent to the applicant but the copy for the counter signatory (employer) will be retained by Disclosure Scotland for 10 working days from the date on the disclosure document (Email: HLC.Appeal@disclosurescotland.gov.scot working days are Monday-Friday).

Please also see [Applying to have spent convictions removed - mygov.scot](#)

If the applicant **does not** contact Disclosure Scotland within the 10 working days to advise that they intend to submit an application to a Sheriff for an order to have the spent conviction information removed, then Disclosure Scotland will send out the counter

signatory copy at the end of this 10 day period (no sooner than 11 working days after the date on the disclosure document). If the applicant contacts Disclosure Scotland during this 10 day period to make them aware that they intend to apply to a Sheriff, the application must then be made to the Sheriff within 3 months of that notification to Disclosure Scotland (or a new disclosure application will need to be made at this point and the process restarted).

If an application is made to a Sheriff then when the case is decided Disclosure Scotland will issue a new disclosure to the applicant taking into account whether or not the Sheriff has ordered the information to be removed. The Sheriff's decision on an application is final. The Sheriff can order information to be removed only when he or she thinks that the conviction information is not relevant to the purpose for which the disclosure was requested.

If the applicant is satisfied with the content of the disclosure document and decides not to apply to the Sheriff, then they can request that Disclosure Scotland send the copy to the counter signatory before the end of those 10 working days by emailing:

HLC.Appeal@disclosurescotland.gov.scot

A disclosure contains sensitive personal information and there are rules governing how individuals and organisations must use disclosures. It's a criminal offence to misuse a disclosure. The offences which may be committed in connection with disclosures include: using another person's disclosure as if it's your own, forging or altering a disclosure, getting a disclosure under false pretences and sharing disclosure information improperly.

Who can apply for disclosure?

Anyone can apply for a basic disclosure in their own name for their own purpose. This can be requested for any reason, for example a new job, or volunteer work which is not eligible for higher disclosure levels, or to support a visa application, etc. Please see the [types of PVG disclosure](#) page which includes reference to whom/when you can apply for a Scheme Membership Statement.

Standard or Enhanced disclosures are applied for by an employer or a registered body (this can be the employer) representing the individual.

For Standard, Enhanced and PVG scheme record, individuals cannot apply for these on their own. These must be undertaken via the employer or organisation offering the regulated work. Individuals can, however apply for a [PVG Scheme Membership Statement](#) without requiring a countersignature.

Disclosure Scotland training and further support can be found in [Annex B](#).

Overview:

- There are 4 types of disclosure:

Basic – contains unspent convictions

Higher (Standard & Enhanced and PVG scheme record) – contains unspent conviction, spent convictions on the “Offences which must always be disclosed” list, and possibly offences that are on the “Offences which are disclosed subject to rules” list

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as such. Anyone in doubt should seek their own legal advice.

Protecting Vulnerable Groups Scheme – disclosure for people doing regulated work with children and protected adults

Whether the applicant is required to register under the Sexual Offences Act 2003 (the ‘sex offenders register’)

Enhanced disclosure and the PVG scheme record can also contain Other Relevant Information

- Spent convictions on the ‘[Offences that Must Always be Disclosed](#)’ list must always be disclosed.
- Spent Convictions on the ‘[Offences that are Disclosed According to Rules](#)’ list are disclosed subject to consideration of the age of the conviction (not disclosed if over 15 years ago or 7 ½ years if 18 or under at time of conviction). They are also not disclosed if there was no punishment or intervention resulting from the conviction.
- Individuals can apply to have spent convictions removed from disclosure. This applies both to spent convictions on the “Offences which must always be disclosed” list and to those on the “Offences which are disclosed subject to rules” list. Applications must be to the Sheriff within 3 months of the date of the disclosure document.
- The Sheriff can only order information to be removed if the conviction information is not relevant to the disclosure request.

5 Subject Access Requests

Individuals can obtain a copy of their full criminal record information by submitting a Subject Access Request (SAR) on the [Police Scotland website](#) or [via post](#).

There is no fee for this service. This information cannot be used for employment purposes, and merely provides an accessible way for an individual to check what is held on their criminal record. Empowering people with knowledge of what information is held about them helps them make an informed decision regarding information sharing, and how to move forward with their employment related plans.

A SAR has to be requested by the individual themselves, who may use it to enable work preparation by obtaining information about what may become apparent in disclosure checks.

6 Disclosure Of Mental Health Conditions, Learning Disabilities Or Learning Difficulties

There is no legislation which states that individuals are required to disclose any information about their mental health, or any learning disability or learning difficulty they experience, to employers. However, if individuals do decide to disclose there can be advantages in terms of the protections provided by the [Equality Act 2010](#).

6.1 The Equality Act 2010

The Equality Act 2010 protects certain groups from harassment, direct discrimination, indirect discrimination and/or victimisation from the outset of employment, education or if they are in receipt of a service. There are certain positive rights and benefits people can obtain by bringing themselves under the Equality Act by disclosing a mental illness.

6.1.1 Protected Groups

It is against the law to discriminate against anyone based on the following characteristics (known as “protected characteristics”): sex, marriage/civil partnership, race/colour/nationality or ethnic origin, pregnancy/maternity, gender reassignment, sexual orientation, religion/belief, age, and disability (including mental health). For the purposes of disability, to be afforded protections under the act, the individual must meet the definition of disability outlined in the Act and explained below.

Example

The Equality Act 2010 does not make specific provision protecting those with spent convictions from discrimination. Section 4 of the Rehabilitation of Offenders Act 1974 means that in many cases job applicants do not need to tell an employer about criminal convictions that are spent. If the applicant has any of the protected characteristics i.e. disability due to a mental health condition, the Equality Act 2010 is relevant in the context of that characteristic.

For paid employment, employees or potential employees would be protected within the recruitment stage of the employment process. Volunteering is not generally covered by the Equality Act 2010 however, some volunteer opportunities may be covered by the Act, for example vocational training opportunities, or situations in which an organisation uses volunteering as a way to assess an individual’s suitability for employment. Independent legal advice should be sought in individual cases. For further information on volunteering and the law, the Volunteer Scotland [Website](#) holds useful information.

6.2 Disability under the Equality Act 2010

For the applicant to be afforded rights under the Act, it needs to be demonstrated that the person is defined as disabled under the Act. There is no definitive tool which can identify if someone has a disability. In the case of any dispute, a tribunal would make the final decision. There are definitive tools which assist in the assessment and identification of Learning Disability and Health Boards will use a variety of these. Individuals may have a learning disability, a mental illness and criminal offences making their need for input from AHPs, Registered Nurses Learning Disabilities (RNLDs) and third sector organisations all the more paramount.

6.2.1 Definition of ‘Disability’ under the Equality Act (2010)

Disability is defined as: A mental or physical impairment that has a substantial and long term adverse effect on a person’s ability to carry out normal day to day activities ([Equality Act, 2010](#)).

Definition of disability as used in Scotland: A learning disability is significant and lifelong. It starts before adulthood and affects a person’s development. This means that a person with

a learning disability will be likely to need help to understand information, learn skills and live a fulfilling life. Some people with learning disabilities will also have healthcare needs and require support to communicate. Please see the [Scottish Government The Key's to Life Policy](#) for more information.

Substantial Adverse Effect is defined as someone having difficulties beyond what you think is normal. "Substantial" means more than minor or trivial. Consider the time taken to carry out an activity, the way in which it is carried out and any alterations or any cumulative effects. For example, the individual can manage one task but cumulative tasks can be difficult. Consider tasks they avoid or have stopped due to the impairment. If it seems unreasonable in comparison to others, it could be argued they come under the definition of disability.

Long Term Adverse Effect is defined as an effect which has lasted at least 12 months or where the total period of which the disability lasts is likely to be 12 months (this does not have to be consistent for 12 months but the cumulative total should be 12 months at least). If someone has been in hospital for 1 year you could argue the problem is long term but this is dependent on why they have been in hospital. The substantial and long term adverse effect is assessed by removing the impact of treatment. Therefore, consider if there would be a disability if the treatment was removed? Treatment includes medication, psychological therapies, occupational therapy etc.

It is also worth noting several key terms under the disability section of the Act that affect what is and isn't included under this section:

- **Progressive Conditions:** individuals with progressive conditions which increase in severity over time are regarded as having an impairment with a substantial adverse effect as soon as there is some adverse effect on their ability to carry out normal day-to-day activities, provided that in the future the adverse effect is likely to be substantial.
- **Impairment caused by medication:** can also bring the individual under the definition of disability.
- **Entitled Conditions:** Some conditions bring a person within the definition of disability immediately and are therefore covered by the Act from the point of diagnosis, without there being a need to clarify or further provide evidence of impairment with a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities. These conditions are as follows:
 - Cancer
 - HIV
 - Multiple sclerosis
 - Blindness or sight impairment (although not impairment that can be corrected by glasses or contact lenses)

- **Unconfirmed Diagnosis:** For an unconfirmed diagnosis, or where it is unclear, the description of the effect of impairment can bring an individual under the definition of disability.
- **Excluded Conditions:** Substance misuse and criminal behaviours are excluded conditions, even when they are a manifestation of the impairment. But if an individual has the above and a mental illness and meets the definition of disability, they will be afforded protection under the Act due to their mental illness.
- **Previous Disabilities:** A person who previously had a disability but no longer has it, is still afforded protections under the Act as a person with a past disability. In order for a past condition to count as a disability, its effects may be viewed as long-term if they lasted 12 months or more after the first occurrence, or if a recurrence happened or continued until more than 12 months after the first occurrence.

6.3 Protections Provided by the Equality Act 2010

If an individual is defined as disabled under the Act, or has one of the other protected characteristics specified in the Act and informs the employer of this, they will be afforded protection in relation to that characteristic from:

- Direct Discrimination
- Indirect Discrimination
- Harassment
- Victimisation

Direct Discrimination: Treating a worker less favourably than another worker due to a protected characteristic. For example, an employer withdrawing a job offer due to the individual revealing that they have a bipolar diagnosis in response to a health questionnaire. A less experienced individual is promoted instead of a more experienced individual, after it became known following sickness absence that the more experienced individual has schizophrenia. Disciplining someone for poor time keeping which is inconsistent with their usual performance due to deterioration in their health condition or change in medication related to their disability.

Indirect Discrimination: The employer imposes a rule or system which applies to all workers but which has a discriminatory impact on a group with a protected characteristic, putting that group at a particular disadvantage compared to others. For example, an employer has a practice of regularly requiring staff to work late or skip breaks if something urgent happens. This may disadvantage disproportionately someone with a mental health condition that requires careful management in terms of routine/ work life balance/ suitable breaks etc.

Harassment: Subjecting a worker to unwanted conduct for reasons related to a protected characteristic, which has the purpose or effect of violating that person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. This includes harassment from the employer or from a third party. In the case of a third

party harassing an employee, the employer has a responsibility to take action but the individual harassed must ensure that the harassment is reported to the employer.

Victimisation: When an employee is subject to negative circumstances because she/ he has previously complained about discrimination or harassment in some way on their own behalf or on behalf of others. If an employee feels they have been discriminated against and it cannot be resolved informally, they would have to raise a grievance in writing with the employer and pursue the matter via the employment tribunal. In this case a complaint should be raised with the tribunal within 3 months less one day from the last act of discrimination.

6.4 Pre-employment Health Screening (Section 60 of the Equality Act 2010)

Section 60 of the [Equality Act 2010](#) gives guidance on the way employers can seek information about an applicant's health prior to making a decision to offer them a job.

It is unlawful for an employer to ask any job applicant about their health or disabilities during the short listing and interview process. Likewise, there is no obligation for an employee to disclose to an employer if they have a disability or mental health condition until they have been offered a job.

However, there are occasions where disclosure may happen for example:

- An individual has to answer a question posed by employer in good faith which leads to disclosure
- There may be times it is necessary for reasons connected to the intrinsic requirements of the job. i.e. the duties an individual requires to undertake involve driving heavy machinery and the medication the individual is prescribed does not permit this.
- It is advisable or necessary to disclose for example, to obtain benefits under the Equality Act 2010.

This process aims to clarify if the withdrawal of a job offer is due to health issues. If there is no other explanation for the withdrawal and it was due to disclosure of a disability then the withdrawal will amount to direct discrimination. If an offer is withdrawn on grounds of sickness absence that is disability or health-related this also amounts to discrimination. If the employer has other reasons then these may be investigated.

Therefore employers should not:

- Ask about health / history of health / disability or sickness record at or before interview via discussion or health questionnaire prior to a job offer.
- Ask questions on an application form asking about a prospective employee's health, history re health/ disability, sickness absence record or declaring health conditions. (Note that questions about disability and health can be asked separately for purposes of monitoring the diversity of applicants.)
- Ask questions on any of the above at interview.
- Request that an employee speak with occupational health prior to interview and job offer.

- Seek references in advance of interview with requests for information re health and sickness.
- Once a job is offered, or a pool of people are identified, then enquiries can be made about health issues.
- An offer can be conditional or unconditional for example, after completion of references/ health questionnaires, but there should be no discrimination on the basis of the information supplied.
- The employer has a responsibility to consider reasonable adjustments before withdrawing a job offer.

This does not preclude potential employees providing information to the interviewer about illness but the employer should limit the discussion on the basis that any exploration at this stage is unlawful from the employer's perspective unless it relates to an intrinsic function of the job. Occupational Therapists may wish to encourage clients to anticipate an employer's response and plan for this.

For frequently asked questions on Disclosure of Mental Health Conditions / Learning Disabilities please see [Annex A](#).

6.5 Reasonable Adjustments

Reasonable adjustments can be a key tool for removing barriers that might prevent someone from carrying out their job as compared with an employee without a disability. For an individual covered by the Equality Act, if they make the employer aware of their disability, it is the duty of the employer to make reasonable adjustments should they be offered the job. This is one of the key benefits to disclosing a disability. The protection does not arise unless the employer knows the situation.

It is the duty of the employer not to treat people with disabilities unfavourably because of something connected with their disability. Therefore if the individual's offence was in the context of illness you could request this be considered through a [covering letter](#) or [personal statement](#) which can help to highlight disclosure positively.

6.5.1 What is considered to be reasonable?

In deciding if an adjustment is reasonable, consideration should be given to how effective the adjustment would be in removing the disadvantage related to disability, how practicable adjustments would be, costs, length of time to make adjustments and how disruptive adjustments would be to others. Reasonable adjustments are specific to an individual person. What is considered reasonable may vary according to the circumstances of the employer. Adjustments should be reviewed within agreed timescales.

Examples of reasonable adjustments include:

- A transfer to an existing vacancy including any need for re-training
- Altering work hours
- Redeployment or relocation to a different place of work which is accessible or arranging home working
- Allowing absences for rehabilitation, assessment or treatment

- Arranging training or mentoring
- Acquiring or modifying equipment
- Moving a work station nearer a toilet or away from something i.e. noise, light heat etc.
- Changes to start and finish times
- Increased supervision or support
- Changes to role
- Phased return to work
- Allowing a period of disability leave. If the individual discloses a disability, the employer could make reasonable adjustments to not count these periods of illness in their sick leave total, in cases where a certain number of absences trigger a referral to occupational health. It is important to note that there are different ways in which employers approach disability leave. Appropriate measures and adjustments should be made to accommodate such leave.

Adjustments can be short and long term, are often small and uncomplicated and may not cost a lot. They should be reviewed as often as deemed appropriate.

Please see the FAQ in [Annex A](#) for more information on the Occupational Therapist's role in considering reasonable adjustments.

Overview:

Summary of Process

1. Discuss benefits of positive disclosure of health conditions and criminal convictions with person.
2. Create evidence to demonstrate individual meets criteria of a protected group. E.g. assessing impact of mental health on function report from occupational therapist and letter from psychiatrist confirming diagnosis.
3. Support person to raise grievance if unsatisfactory outcome and person wishes to pursue.
4. Make a request in writing with recommendations of reasonable adjustments including timescales.
5. Support person to raise grievance if unsatisfactory outcome and person wishes to pursue.

7 Disclosure And Data Protection Legislation

The disclosure of a mental illness, a learning disability or a history of offending to an employer is a sensitive matter, which is regulated by data protection legislation (the [UK General Data Protection Regulation \(UKGDPR\)](#), and the [Data Protection Act 2018](#) (DPA 2018)).

Information relating to an individual's health status would be considered 'special category data' under current data protection legislation. A full definition can be found [here](#).

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as such. Anyone in doubt should seek their own legal advice.

Information relating to an individual's criminal activity, including allegations, investigations and criminal proceedings, is defined as '[criminal offence data](#)' in data protection legislation.

Because of the sensitivity and the impact that data can have on individuals, it is subject to more additional rules and safeguards than non-sensitive data. Information should be kept confidential and should not become a matter of general workplace knowledge. Employers should have procedures for how they deal with this information and restrict those who have access to it, and they should ensure that their use of this data is proportionate and lawful.

It is an offence under the Data Protection Act 2018 and section 9 of the [Rehabilitation of Offenders Act 1974](#) for anyone with access to personal data (including criminal records) to disclose spent convictions unless authorised to do so. There are also offences under sections 123 and 124 of [The Police Act 1997](#) and sections 65 to 67 of the [Protection of Vulnerable Groups \(Scotland\) Act 2007](#) about the handling and use of information provided by [Disclosure Scotland](#), making false statements in connection with disclosure applications, and falsifying disclosure certificates and records.

Key considerations include:

- Is the individual interested in paid work, voluntary work or education?
- How does the type of work/opportunity relate to the individual's functional capacity, mental health condition and/or offence history. Consider referral to an Occupational Therapist for assessment of the issues supporting and hindering ability in a work role and identifying triggers to relapse and/or potential risks?
- Is the individual a Restricted Patient? If yes, consider and discuss with the individual the implications this will have on information sharing, disclosure of offences and the role that you and the multi-disciplinary team will play?
- What type of disclosure should be applied for?
- Are the individual's convictions likely to be spent or unspent and what will this mean in relation to disclosure?
- Does the type of work fall within the scope of the Police Act standard or enhanced disclosure?
- Does the type of work fall under the definition of regulated work i.e. does it require PVG scheme membership. If so, could the matters disclosed raise a concern with the employer or Scottish Ministers about the individual's suitability for regulated work?
- Would the disclosure or sharing of data be proportionate and lawful?

7.1 To Share or Not to Share

Managing sensitive information across complex partnerships or with third parties requires careful consideration. The legal requirements on all organisations that hold personal information on individuals are specific, uncompromising and absolute.

All personal information, whether held in paper or electronic form should be kept securely and accessed solely by persons who are entitled to view it, as defined in legislation. It is not sufficient for people to have authority to access systems; they must have a legitimate reason to see the specific information they view. All data management systems whether paper or electronic must include safeguards that prevent inappropriate access.

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as such. Anyone in doubt should seek their own legal advice.

Where information is required to be shared with employers or other third parties, careful thought should be given to how that information is handled. To comply with the data protection legislation, all organisations must be able to demonstrate that they are holding information for a useful purpose and also have clear reasons as to why it is shared.

The Information Commissioner's Office has published a Code of Practice on data sharing, which provides further guidance on this topic: [Data sharing: a code of practice | ICO](#). This includes a [data sharing checklist](#), which will be useful to organisations who are unsure whether they can share data in certain circumstances:

- What is the sharing meant to achieve?
- Have you assessed the potential benefits and risks to individuals and/or society of sharing or not sharing?
- Is it fair to share data in this way?
- Is the sharing necessary and proportionate to the issue you are addressing?
- What is the minimum data you can share to achieve the aim - could the objective be achieved without sharing personal data, or by sharing less?
- What safeguards can you put in place to minimise the risks or potential adverse effects of the sharing?
- Is there an applicable exemption in the DPA 2018?

It may be necessary to seek independent legal advice on data sharing.

8 Employer Support

The needs of the employer are equally important in supporting individuals with criminal histories or mental ill health or learning disabilities into work. Those with health conditions can be a valuable and underutilised labour resource. One advantage is that many individuals with a diagnosed mental health condition have access to a supportive team who can work with the individual and employer to enhance success. In addition, some employers who are positive about recruiting those with criminal convictions have reported reduced staff turn-over, as these individuals tend to stay with the employer meaning that their business incurs less recruitment and staff training costs.

Sharing of personal information is subject to data protection law and confidentiality should be maintained. Only a very limited number of people within a workforce should be aware of sensitive information, as is judged to be necessary.

9 Disclosure And Different Groups

9.1 Restricted Patients

Restricted Patients are persons detained under a Compulsion Order with a Restriction Order (CORO), a Hospital Direction or a Transfer for Treatment Direction. Individuals subject to a CORO have usually committed an offence punishable by imprisonment but as a result of their mental disorder are not imprisoned but detained for hospital treatment. A

Restriction Order is added to the Compulsion Order if it is necessary for the protection of the public from serious harm (sections 57A and 59 of the Criminal Procedure (Scotland) Act 1995). The mental health tribunal has responsibility for the discharge of Restricted Patients from hospital.

Restricted Patients also include patients subject to Transfer for Treatment Directions (made under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003) and patients subject to a Hospital Direction (made under section 59A of the Criminal Procedure (Scotland) Act 1995). These allow a prisoner who becomes unwell or is unwell during trial proceedings to be sent to hospital for treatment before returning to prison once well. A small proportion of these patients will, as a result of their severe and enduring mental illness, be rehabilitated through the mental health system. Whilst within the hospital system they are subject to similar restrictions, including rehabilitation planning as those on a CORO. Scottish Ministers have responsibility for the oversight and scrutiny of day-to-day management of the individuals. Individuals are often subject to specific conditions and restrictions. The Scottish Government [website](#) contains further information on Restricted Patients.

9.1.1 Memorandum of Procedure

Scottish Ministers have a statutory role in relation to Restricted Patients which is outlined in the [Memorandum of Procedure \(MOP\)](#) published by the Scottish Government (2010). The MOP (Scottish Government, 2010) outlines the roles of professionals in relation to Suspension of Detention (SUS) adding an extra layer of scrutiny for the protection and security of the public from those patients who are considered to pose a serious risk. For patients identified as Restricted Patients specific permission is required before patients can undertake work placements deemed suitable by the clinical team. The Memorandum of Procedure is an essential reference document for those who are involved with the management and care of Restricted Patients. These are patients who are subject to a Compulsion Order with Restriction Order, a Hospital Direction or a Transfer for Treatment Direction.

The Memorandum also sets out information in relation to certain patients subject to other types of mental health orders, such as interim Compulsion Orders, Assessment Orders and Treatment Orders, in relation to whom Scottish Ministers also have a statutory role although they are not "Restricted Patients". The procedures it describes should be closely noted and observed by all those involved in the care and management of Restricted Patients, and other patients in relation to whom the Scottish Ministers have a statutory role, both within hospitals and in the community.

Where employment or a work placement has been identified a SUS request should be completed using the appropriate paper work as soon as possible. This should include information on the exact location of the job or placement, travel arrangements, frequency and length of time. If an urgent response is required due to for example a specific start date this should be flagged up to the Restricted Patient team with a covering letter sent with the SUS request or an advance phone call. This will enable consideration of the request as a matter of urgency.

9.1.2 Acquittal on the Grounds of Mental Disorder

Individuals subject to restrictions may have been given a disposal of acquittal on the grounds of mental disorder. If the offence has been recorded as a conviction then the disclosure rules outlined in section 4 would apply. That is, the individual **must** disclose any offence that was unspent and spent convictions on the '[Offences Which Must Always be Disclosed](#)' list. Any '[Offences Which are Disclosed Subject to Rules](#)' may also be disclosed subject to the guidelines outlined in section 4 of this document and the individual is only liable to self-disclose when these are listed on a certificate issued by Disclosure Scotland.

Should the offence be recorded as a non-conviction disposal it would not be subject to the same disclosure rules. However, on an enhanced disclosure or a PVG Scheme there is a section for Other Relevant Information and legislation ([Protection of Vulnerable Groups Scotland Act, 2007](#) and The [Police Act, 1997](#)) which states that non-conviction information held locally by the Police can be disclosed at the discretion of the Chief Officer of the Police Force concerned. This type of disclosure would depend on the position being applied for and there is no requirement for a finding of guilt before the information is disclosed. The individual is not required to self-disclose any non-conviction information to an employer.

The Restricted Patient team in the Scottish Government or Procurator Fiscal may be able to provide detail regarding the wording of the conviction and charge which will assist in deciding if the offence requires to be disclosed. Individuals can obtain a copy of their full criminal record information by submitting a Subject Access Request (SAR) on the Police Scotland website or via post as detailed in [Section 5](#).

9.2 Individuals subject to Multi Agency Public Protection Arrangements (MAPPA)

[Multi Agency Public Protection Arrangements \(MAPPA\)](#) is the process through which the Police, Probation and Prison Services work together with other agencies to manage the risks posed by individuals convicted of violent or sexual offences living in the community in order to protect the public. MAPPA ensures that all information is shared between people who need to have it and effective risk management plans are agreed.

MAPPA is not a statutory body or organisation, it is a set of arrangements which the police service, local authority, prison service, health service and others are obliged to operate on a multiagency basis. It is a mechanism through which agencies can discharge their statutory responsibilities and protect the public in a co-ordinated manner. Individual agencies still retain their responsibilities and obligations.

There [are 3 levels of MAPPA](#) management that are mainly based upon the level of multi-agency co-operation required, with higher risk cases tending to be managed at the higher levels. The decision to disclose any information about an individual to a third party is discussed at MAPPA meetings and must be necessary and proportionate in order to protect victims, potential victims, staff and the community. It may be discussed at MAPPA meetings what and to whom information should be disclosed and also determine the disclosing agency and whether it would be appropriate to involve other agencies in a disclosure.

For individuals subject to MAPPA restrictions there may be requirements of disclosure for such individuals.

- The Scottish Government Website contains useful information on MAPPA:
- [Multi-Agency Public Protection Arrangements \(MAPPA\): national guidance - gov.scot \(www.gov.scot\)](http://www.gov.scot) The MAPPA Guidance May 2022 is available to download here - [MAPPA Guidance May 22 - Multi-Agency Public Protection Arrangements - MAPPA \(justice.gov.uk\)](http://justice.gov.uk)

9.3 The Care Programme Approach (CPA)

[The Care Programme Approach \(CPA\)](#) is a way that services are assessed, planned, co-ordinated and reviewed for someone with mental health problems or a range of related complex needs.

MAPPA and the CPA have a common purpose of maximising public safety and the reduction of serious harm. Although the same underlying principles of gathering and sharing of relevant information in relation to risk apply, CPA focuses on the care and treatment likely to minimise the risk posed, whilst MAPPA focuses on multi agency management of risk. Within the MAPPA framework, the CPA process will remain the vehicle for planning a person's care and treatment and for risk assessment and management planning.

9.3.1 Enhanced Care Programme Approach

Extension to this working model introduced the Enhanced Care Programme Approach to manage the care of Restricted Patients in Scotland, ensuring consistency through the use of standardised processes and documentation in care planning and risk management plans.

9.4 Individuals Convicted of a Sexual Offence

Individuals who have been [convicted of a sexual offence](#) are amongst the most difficult group to place in terms of employment. This may be for a range of reasons including: the emotive nature of the offences, the potential reaction of other employees, and the possible or perceived risks to customers and other staff posed. Research indicates that unemployment is one of the biggest factors that can serve to increase the risk of re-offending from this particular group¹⁷. A small number of offences will lead to automatic listing, barring the individual from regulated work with children or adults, if the person has been convicted on indictment since February 2011. These offences are set out in the [Protection of Vulnerable Groups \(Scotland\) Act 2007](#)) and include: murder of a child, rape, sodomy, and a number of sexual offences against children and people with mental health issues. Individuals convicted of an offence which has not been specified as one which results in automatic listing but which is a "relevant offence" in terms of section 32 of the Protection of Vulnerable Groups (Scotland) Act 2007, will be referred to the Scottish Ministers by the court for consideration for listing. These relevant offences are set out in Schedule One of the [PVG \(Scotland\) Act \(2007\)](#).

¹⁷ Kruttschnitt, Uggen & Shelton, 2000

Anyone convicted of a sexual offence will be subject to MAPPA restrictions and decisions around disclosure should be agreed at these meetings.

10 Positive Disclosure

The disclosure process must be individualised. Information provided in relation to PVG, disclosures or dates of employment via an application form will only provide factual information about offences, illness, dates and gaps in employment and it will not put them in context. The use of written personal statements, letters, pre-rehearsed phrases are all useful to set offences in context and/or explain gaps in employment history. Agencies should look to safeguarding the personal information shared.

10.1 Personal Information Plan

This form can be worked on collaboratively by the individual and therapist, and then adapted into a letter of disclosure to be used for interview preparation, applications, referrals, supporting statements etc.

The plan should include:

- Name
- Placement interested in (if known)
- Strengths and skills
- Identifying sensitive information
- Identifying what is needed to stay well

Please see [Annex C](#) for Personal Information Plan Template.

10.2 Personal Statement overview

A personal statement or letter to supplement the interview or application can be helpful to address areas the person feels might disadvantage them and can be helpful to promote their skills. A supporting letter from the client ensures the applicant is in control of how information is released, what is communicated, how they want to disclose and to whom. For example, it may include:

- Transferable and job specific skills
- Address employers concerns regarding the applicant:
 - Fitting into the workforce
 - Being reliable

Within such documents:

- Avoid the word disclosure and use 'information sharing' or 'personal information' instead.
- Keep as short as possible.
- Be able to be communicate verbally if requested at interview.

- Use a strengths based approach, highlighting positive strengths and skills, personal attributes and interests.
 - Focus on characteristics an employer may value
 - Focus on functional abilities in relation to the job, including relevant experience to the post and relevant knowledge and skills.
 - Discuss mental health issues / learning disability rather than diagnosis.
 - Any mention of an offence should be put in context of past and current lifestyle

10.3 Covering Letter

A covering letter for an application form can serve the same purpose if the applicant has concerns that their mental health / learning disability or offending history will be a barrier at the application stage.

10.4 Written Character References

A written character reference in the form of a supporting letter from an individual known to the applicant can be useful to highlight strengths, achievements and transferable skills.

10.5 Portfolio of achievement

A portfolio of achievement can be another means of sharing relevant experience and skills. It can also be used to enable applicants to discuss in an open and positive way, issues around their mental health and offending history. The portfolio of achievement can include evidence of work experience, formal and informal learning, supported by personal statements, CV and testimonials from staff who have observed their progress. Evidence of commitment to a leisure activity, building structure and routines and any certificates obtained can also be used. The portfolio of achievement can be used as a basis for interview preparation.

10.6 Disclosure In Action – Case Studies

The below case studies are based off real life scenarios which individuals have consented to being used. For data protection purposes, these have been edited and anonymised so that there is no identifiable information present.

10.6.1 Person 1's Story

Person 1 is an individual who is managed under a CORO (Compulsion Order with Restriction Order), with a history of violent offences, currently living in the community. Person 1 is keen to undertake a college course, however, due to their status as a Restricted Patient, history of violence, prior convictions and severe mental health issues, some consideration is required regarding the sharing of personal information.

Key points considered in their care;

- Assessment and documentation of risks through MAPPA
- Consideration of what needs to be disclosed and to whom
- Potential triggers of mental health relapse

- Liaison with education provider
- Key phrases for Person 1 to use when managing personal information

10.6.2 Information Sharing

The Occupational Therapy Service had previously established a single point of contact with this College through the safeguarding liaison officer who works with students and external agencies to safeguard students and the public. Initial contact was made through this established route with Person 1's consent.

Discussions held during Person 1's recent MAPPA meeting concluded that there were minimal risks to public safety associated with Person 1's previous conviction and accessing community facilities. The college requested a letter from Patient 1's Responsible Medical Officer (RMO) confirming this and the decision was taken by the college and clinical team that there was no further need to disclose specific details relating to Patient 1's offences. It was agreed however by all parties, including Person 1, that information sharing would be beneficial around potential triggers, which may increase the risk of mental health relapse. It had been identified that the college environment in itself may be a trigger.

Person 1 and their Occupational Therapist discussed the benefits and purpose of meeting with college staff to share such information and discussed how and what information would be shared. A meeting was then arranged with Person 1, the Occupational Therapist, the safeguarding liaison officer and the sector lead for the course. Person 1 took the lead in this information sharing meeting presenting information on early warning signs and trigger factors. A written crisis management plan which had previously been devised by the multi-disciplinary team and Person 1, for use by staff, third party carers and friends involved with Person 1 was shared. This set out guidance on early warning signs, potential trigger factors, how to respond and who to contact should concerns be noted.

This meeting served to reassure college staff who reported it was helpful to know what was important to feedback and allowed them to ensure a thorough risk assessment of Person 1 and the safety of those attending the course.

Through meeting with the college and sharing such information, Person 1 and the Occupational Therapist were able to have a deeper understanding of aspects of the course which could cause relapse. Person 1 was then supported by their Occupational Therapist to prepare for such scenarios. One example is that Person 1's offending history could easily be found online with the potential for fellow students to access this information. Through discussing such scenarios and supporting Person 1 to prepare responses and coping strategies they became more confident in managing their personal information should the need arise.

10.6.3 Person 2's Story

Person 2 was an inpatient within a secure hospital when they were asked about their aspirations for work. During their time as inpatient, Person 2 worked in the patient cafe undertaking back of house duties initially such as washing the dishes and preparing the

salad before progressing to serving customers. Person 2 has numerous convictions and a long standing history of severe health issues linked to a long-term severe mental illness. Since leaving hospital Person 2 has shown interest in hospitality work and enquires about a post advertised in the window of a local restaurant. Through their work with the employment specialist and community Occupational Therapist they have chosen to apply for positions that do not require them to work early in the morning and do not require PVG registration.

Key points considered in this case

- Use of time limited voluntary work
- Early preparation i.e. CV, Portfolio of achievement
- Use of Subject Access Request (SAR)
- Patient empowered to manage their personal information
- Pre-rehearsed phrase to put convictions into context
- Use of a letter to the employer

Staff in the restaurant ask Person 2 to come back with their CV and to meet with the manager and restaurant owner. Person 2 and their Occupational Therapist previously applied for a SAR which detailed the information the police currently hold about their convictions. Although Person 2 knows they do not need to reveal their criminal convictions (this job does not fall under the category of regulated work) they would be required to reveal convictions if employers ask. Person 2 is anxious about what they should do. Person 2 plans to apply for work are discussed and supported by the mental health team treating them in the community. The Occupational Therapist and Person 2 review Person 2's CV and quickly prepare for them for meeting with the restaurant owner. Person 2 has references from voluntary work and portfolio of achievement complete with photographs of food they prepared in the cafe.

Following Person 2's meeting they are offered the job on a 3 month trial basis and is keen to prove themselves. The employer did not ask about their criminal convictions or severe mental health condition and Person 2 reported that they had simply mentioned they had some health issues previously though these were no longer an issue. Person 2 therefore has a dilemma on whether to disclose or not. Legally Person 2 is not required to disclose either the mental health condition or convictions. Person 2 chooses only to disclose their mental health condition to the manager in a letter following their 3 month trial. Person 2 writes about how their voluntary work at the cafe helped in their mental health recovery and what this job has meant to them personally. Although Person 2 has not disclosed their criminal convictions, they have been supported to rehearse a personal statement putting their offences into context and highlighting how they have progressed to enable Person 2 to be better prepared for future questions.

10.6.4 Person 3's Story

Person 3 was being supported by the forensic community learning disability service when they were asked about their vocational goals. An occupational therapy vocational assessment was completed with Person 3 where they identified an aspiration to undertake a volunteer role. The Occupational Therapist and Person 3 identified their strengths as being friendly, enjoys meeting new people, follows verbal instructions well. Person 3 and their Occupational Therapist attended a local volunteer open day where they could explore

options for volunteer roles. Person 3 identified that they would like to work in a charity shop. Person 3 was tasked with visiting a local charity shop to obtain an application form. Due to Person 3 being illiterate, the Occupational Therapist completed the form on their behalf. A time was agreed for Person 3 and the Occupational Therapist to meet with the shop manager to discuss potential roles for Person 3 within the shop. In advance of the meeting, Person 3 and the Occupational Therapist met to create a summary of information to pass on to the shop manager. This included that Person 3 has a learning disability and is supported by a team of healthcare professionals. It detailed potential roles which would meet Person 3's needs and ways they would like information relayed to them i.e. verbal instructions with Person 3 repeating back, visual demonstration of new tasks. Contact details of the Occupational Therapist were included so that any issues could be raised by the manager. This information was agreed by Person 3 and the clinical team before being shared with the shop manager. No PVG was required for this role.

Person 3 has difficulty tolerating behaviours such as lateness and can take dislikes to people. Person 3 met regularly with their Occupational Therapist to review this volunteer placement and any issues which arose. A review period of 4 weeks was agreed with Person 3 and the shop manager to ensure that the expectations of Person 3 and the shop manager were being met.

Key points considered in this case

- Clear instructions re role expectations
- Documentation of best ways to communicate
- Use of a letter to the service manager
- Regular review of the volunteer placement.

10.6.5 Person 4's Story

Person 4 was a nursing student when they were convicted of a serious driving offence. They received a fine and a suspended sentence. They knew they would be unable to practise as a nurse because of their criminal record. They were devastated by this realisation. They were now unemployed, and began to lose contact with their friends, many of whom were now practising as nurses. Person 4 was diagnosed with a severe mental health condition and spent long periods of time alone. Although in general their concentration was poor, they found reading was one of the only things they were interested in, finding it a form of escapism.

Key points considered in this case

- Use of self-employment
- Patient empowered to manage their personal information
- Pre-rehearsed phrase to put convictions into context
- Use of a letter to the employer

Person 4 was prescribed a course of medication which helped to some extent but were still spending the majority of their time alone and began to relapse. With their negative thoughts re-emerging, Person 4 was referred to an Occupational Therapist where they discussed how they were spending their time. They were asked about their aspirations for the future

which included discussions about work. Person 4 shared their passion for reading and literature.

The Occupational Therapist asked if this was an area that they could see themselves working in. Person 4 agreed that their interest lay in this area and with support began to apply for jobs. They passed an online test with a freelance proof reading company and began to take on assignments. As Person 4 was self-employed, they were not required to disclose their convictions or their mental health condition. Person 4 then decided to apply for positions with national newspapers, a marketing firm and copy editors. When completing application forms they were supported to explain in a covering letter the nature of their offence, about their regret and subsequent journey. They began to be offered interviews and were eventually offered a job within a small marketing company. Person 4 described the process as challenging with a few set-backs along the way but the employers were sympathetic to Person 4's explanation of the offence and welcomed the opportunity to prepare in advance. As 5 years have now passed, the offence is now considered spent, however Person 4's driving licence will be endorsed for 11 years. They decided to apply for a SAR as a means to confirm the date of their driving conviction, confirmed with reference to the rehabilitation period. Person 4 also wished to share the fact that they are now no longer on any anti-depressants and feel hopeful for the future.

10.6.6 Case Example Of Personal Information Plan And Covering Letter

Employers assert that covering letters have more impact when the content is individualised by the applicant, written in their own words, reflecting their experiences and personal responsibility for their circumstances.

Detailed below is an example of a personal information plan (PIP) that was completed early in Person 5's recovery journey whilst an in-patient in a medium secure setting.

The PIP was then used and adapted by the person to develop a covering letter when they applied for a post in the community. Person 5 coped well with managing their sensitive personal information effectively and benefitted from preparing for this early on in their recovery journey. The Occupational Therapist and Community Occupational Therapist supported this person to consider the process throughout. They were considering their future work role. They worked alongside the Occupational Therapist to consider sensitive personal information and how best to convey this. At this point the person was considering this in a broad sense, thinking around how they would answer questions at interview or from people they knew regarding their history. They then used this preparatory work to assist them in answering questions at interview for courses and projects.

The PIP is detailed below:

“Due to a difficult period in my life I fell mentally ill and resorted to drugs and drink to cope. This led to an offence and I was then admitted to hospital for several years. Since then I have turned my life around. I have now recovered from mental illness and have not touched drugs or alcohol in over six years. I am now looking to further my recovery through education and work. I now have a positive view for the future”.

Covering Letter

The person was discharged from hospital and worked alongside the Community Occupational Therapist to further develop their work role. At this time the person had engaged in a variety of skill development courses and projects and was looking to apply for food related jobs. The person adapted the PIP into a personal letter which accompanied application. The covering letter is detailed below:

To whom it may concern,

I am really interested in the position within your restaurant. I have relevant experience in a similar post and would welcome to opportunity to meet with you and share my skills.

Due to a period of ill health I spent some time in hospital, hence the gap in my CV. I'm now in good health and keen to get back to work. I am keen to continue turning my life around and give something back to society and the community.

I have a passion for cooking and believe I am good at it. I have been working voluntary at the a café keeping my skills up to date and am now looking to move into paid work.

Thank you for reading this letter and considering me for the post. I hope we can work together in the future.

Yours sincerely,
Mr Anonymous

10.6.7 When things don't go so well

Person 6 has a history of severe mental illness, substance misuse and offending behaviour. They are living in the community supported by the Forensic Community Mental Health Team following several years as an in-patient. They have been supported by their Occupational Therapist to apply for a new volunteer post (non-clinical) within a local hospice. Person 6 was supported to produce a CV and personal statement which highlighted their extensive work experience including their present post in a hospice shop, as well as gaps in employment. Person 6 was supported by their Occupational Therapist to disclose their offending history giving the background of severe mental illness and substance misuse. Within occupational therapy sessions, Person 6 practiced scenarios to prepare themselves for interview. They attended the interview, where they disclosed some of their offences and severe mental health diagnosis. They asserted their work goals as essential in their recovery from mental ill health. Person 6 was offered this post which they held for several months.

Person 6 benefitted from this experience and wished to gain further work experience. They applied for a post involving direct patient contact which required enhanced disclosure. The Occupational Therapist explained the process and reality of their offence history being revealed. Person expressed their wish to continue with the application. The enhanced disclosure highlighted in detail Person 6's extensive offending. The hospice chose to decline the application and terminate their current roles within the hospice. With Person 6's

permission, the Occupational Therapist attempted to meet with the hospice manager to give background to Person 6's journey and the positive progress they have made. This offer was declined.

10.7 Service users' personal experiences of the disclosure process

"For me the process of giving over disclosure and dealing with the situation has been more comfortable than I imagined it would have. I have done it on 3 separate occasions, twice out with the hospital with mainstream opportunities and on all occasions, I have been treated with respect, understanding and acceptance. For me, my index offence was very serious so giving disclosure initially felt very daunting, with fear of the experience being completely negative and catastrophising about the scenario, but thankfully so far each occasion has gone well, with one person commenting when asking me about my disclosure that she believed in second chances and wished me one also."

"At first I was nervous about giving my personal information to the employer. But once I did and got accepted I felt relieved and now I feel more confident about having a job in the future."

11 Glossary Of Terms

AHP	Allied Health Professions
AtP	Alternative to Prosecution
CORO	Compulsion Order with Restriction Order
CPA	Care Programme Approach
HNC	Higher National Certificate
LOD	Letter of Disclosure
MAPPA	Multi Agency Public Protection Arrangements
MHTS	Mental Health Tribunal for Scotland
MDT	Multi-disciplinary Team
MOP	Memorandum of Procedures
ORI	Other Relevant Information
PIP	Personal Information Plan
PVG	Protection of Vulnerable Groups
RMO	Responsible Medical Officer
RNLDs	Registered Nurses Learning Disabilities
ROA	The Rehabilitation of Offenders Act
SAR	Subject Access Report
SUS	Suspension Of Detention from hospital (granted under section 224 of the Mental Health (Care and Treatment) (Scotland) Act 2003 for restricted patients)
TTD	Transfer for Treatment Direction

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13 Annex A- Frequently Asked Questions

Disclosure Of Mental Health Conditions

When it is lawful to ask questions about health and disability?

Employers can ask questions:

- To establish if the applicant needs reasonable adjustments for any aspect of the interview or assessment process;
- If it is part of the equal opportunities monitoring process;
- If it is to allow the applicant to benefit from a positive action measure e.g. access to guaranteed interview scheme if they meet essential criteria;
- To vet applicants for purposes of national security;
- If the question relates to a function that is intrinsic to that job – this includes a question asking whether the person can carry out the job with reasonable adjustments;
- To establish reasonable adjustments needed to carry out functions intrinsic to job.

What should the employer do if disclosure raises issues about capacity to do the job?

The employer should consider whether the applicant has a disability in terms of the Equality Act. They should then identify in what way they think the condition may impact on the ability of the applicant to do the job. If there is no impact then there are no grounds for withdrawing the offer without this being discrimination.

The employer should consider reasonable adjustments which can be made to alleviate barriers if they think the employee cannot carry out parts of the job. Adjustments should be explored and agreed.

What can be done if the employer is in breach of Section 60?

If a job was not offered after a disclosure was made, the reasons for the rejection could be investigated further. The individual can make a request for written reasons/ feedback as to why they were not successful. If there is sufficient evidence of discrimination then the client could seek independent legal advice as to whether to pursue a claim via an employment tribunal.

To note: the tribunal cannot consider complaints relating to disability or health enquiries under section 60(1) of the Equality Act 2010, where an employer makes health or disability-related enquiry falling out with the permitted situations; only the Equality and Human Rights Commission can enforce such a breach of the law via, in Scotland, the sheriff court.

The Employment Tribunal can, however, hear a complaint where an individual is not offered a job *as a result of* responding to an impermissible question about health or disability. In this case a person must bring a claim within 3 months from the date of alleged discrimination. The tribunal has the right to admit late claims if it is believed to be “just and equitable” in the circumstances. If a job offer is withdrawn because of disclosure the individual can write and ask for justification as to why.

14 Annex B - Useful Resources

Disclosure Scotland Training and Further Support

- Disclosure Scotland runs free sessions for employers, those who handle disclosure information or those who may benefit from further advice or guidance on the role of Disclosure Scotland in the wider recruitment process. Whilst they offer a more standard product aimed at employers additional support, advice/guidance or training can be tailored to suit.
To find out more email dsworkshop@disclosurescotland.gov.scot
- There's [guidance to help you](#) ,as an individual, if you have convictions and you're applying for a job. There's also [guidance for employers](#) to help them consider disclosures fairly, including free training.
- [Website](#) containing useful resources on Disclosure.
- PVG Scheme Telephone Helpline: 08706096006

Scotland Works For You

- [Scotland Works For You](#) is a guide to evaluating the meaning of someone's criminal record to a job or opportunity they've applied for. It's also for people with convictions to help them make positive applications for employment. Professionals supporting people with convictions in seeking employment or other opportunities may also find it helpful.

Making your past pay

- This is a video which helps with disclosing previous convictions to employers'.
Accessible from: https://youtu.be/DO-B0ZxVi_s

Recruit with Conviction

- Recruit With Conviction promotes safe, suitable and sustainable employment for people with convictions. Website: <http://www.recruitwithconviction.org.uk/>

Redkite Training DVD

- *'Tell. Don't Tell'*. Accessible from: [Red Kite Learning - Tell. Don't Tell. on Vimeo](#)

Scottish Recovery Network

Website contains a range of resources to support people to have [conversations about recovery](#), [share recovery stories](#) and [develop peer support](#).

The Record

- An online magazine for people with convictions. Accessible from: <http://www.the-record.org.uk/category/unlock-people-with-convictions-your-views/>

Volunteer Scotland

- Volunteer Scotland is the national centre for volunteering. See [website](#) for more information.

15 Annex C – Personal Information Plan

The plan should include:

Name:

Placement interested in (if known):

Strengths and skills (paragraph 1):

These are some ideas to use with the applicant when considering strengths and skills:

- *The applicant's own views*
- *Work matters*
- *Career Scotland website*
- *Personal affirmation exercises*
- *Worker role interview*
- *Work skills checklist*

Identifying sensitive information (paragraph 2):

This should be written in the applicant's own words, but the following can be used to guide the process.

- *Legally, the applicant does not need to give details of formal diagnosis however, it may be helpful to summarise by making a general statement e.g. 'I'm recovering from mental health challenges/difficulty/ have a learning disability' (in the person's words).*
- *Mention reason for disclosure in the letter*
- *Describe circumstances around the offence e.g. life events, unwell, use of alcohol or drugs etc.*

If the post is covered by the PVG Scheme or a Police Act disclosure it is best practice to be honest about:

- *Any previous offence as appropriate to the disclosure check to be carried out.*
- *Demonstrating commitment to a pro-social lifestyle e.g. describe feelings in relation to the offence, what has changed etc. When wording this, ensure it does not sound defensive and clearly demonstrates personal responsibility.*
- *Highlighting the positives, how things have changed.*
- *The letter is unique to the applicant and very personal. Take time over it. Be honest and be prepared to discuss content at interview. It may be useful to practise this in order to prepare.*

Identifying what is needed to stay well (paragraph 3):

(Only include this section if mental illness / learning disability is being disclosed)

Assist the applicant to visualise being in the placement and what they would like or need from others to have a positive experience:

- *Management of the pace/expectations e.g. breaks*
- *Receiving clear written /visual instructions*
- *Methods of offering support, providing feedback or supervision*

16 Annex D – Membership Of The Group

Original Membership Of The Group

The original working group created the first draft of the document in November 2014 and reconvened in 2019 to review the guidance. Membership of the working group included Occupational Therapists, representatives from voluntary, third sector and Scottish Government.

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- AHP Leads Group
- Recruit with Conviction colleagues
- Previous working group members



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