

CRIMINAL OFFENCE DATA - POLICY STATEMENT

Policy Statement v15 2022-12-10

Revised by – Tony Imossi, ABI Secretariat for the ABI Governing Council www.theABI.org.uk

POLICY STATEMENT ¹

1. INTRODUCTION

- a. The Association needs to process applicants' and members' personal data for documenting and vetting membership.
- b. The vetting process includes processing criminal offence data for which the production of a Basic Disclosure certificate, no older than 12 months at the time of application for membership and every three years during membership, is crucial to this process.
- c. The ABI subcontracts its administration including the processing of all data, including personal and criminal offence data, to the **ABI Secretariat Ltd**.
- d. This Policy Statement explains:
 - i. The lawful basis on which the ABI relies to meet the principles under the UK GDPR and Data Protection Act 2018,
 - ii. The retention and erasure of criminal data, and
 - iii. Defines the degree of tolerance applicable to any entry appearing in a member or prospective member's Basic Disclosure, which when brought to the attention of the Secretariat will be referred to the appointed ABI Officer.
- e. The very nature of an investigator in the private sector's work poses potential risks to the public, if not regulated. This view led to Parliament passing **The Private Security Industry Act 2001** in which 'Private Investigation' activity was included for regulation by the Security Industry Authority (SIA).
- f. However, the Act has not been implemented for the investigation sector. Were it to be implemented the SIA would apply a test of criminality supported by Standard Disclosure.
- g. Until such time as the Act is implemented as regard investigations in the private sector the term 'Private Investigator' remains unprotected but more importantly, the activity continues to be outside the exempt occupations for the purposes of the rehabilitation of offenders' regulations. This means that Standard or Enhanced Disclosure is largely unavailable to the sector.
- h. Basic Disclosure, as provided by the Disclosure and Barring Service (DBS) and Disclosure Scotland, shows any unspent convictions and conditional cautions. It is this level of Disclosure that the ABI inspects in addition to any issues that may appear in the public domain, by way of membership vetting.

¹ This document must be read in conjunction with the ABI [Data Protection Notice & Consents](#)..

CRIMINAL OFFENCE DATA - POLICY STATEMENT

Policy Statement v15 2022-12-10

Revised by – Tony Imossi, ABI Secretariat for the ABI Governing Council www.theABI.org.uk

- i. The ABI provides a self-regulated regime by professional investigators who submit to vetting and accountability to the ABI, thus affording the public consumers and professional clients alike the safeguards and quality assurance that is otherwise absent in the United Kingdom.
- j. The production of Basic Disclosure and Consent to the processing of criminal offence data is an integral part of the ABI vetting and good practice policy.
- k. The ABI relies on the production of Basic Disclosure, and any reports in the public domain, to process criminal offence data of its members and applicants for membership. By this and other due diligence the ABI in effect seeks to meet its commitment to its partners and the public to offer in its membership a choice of vetted and accountable investigative service providers.

2. LAWFUL BASIS

Membership of the ABI is voluntary, and the ABI relies on Article 6(a) (Consent) of the UK GDPR [and the condition 29 under Schedule I Part 3 of the Data Protection Act 2018 (Consent)] as the lawful basis to enable it to process criminal offence data.

3. RETENTION & ERASURE

- a. The Basic Disclosure needs to be no older than 12 months when applying for membership, thereafter a new Basic Disclosure is inspected every three years.
- b. The Disclosure produced by an applicant for membership is inspected by the ABI through its duly contracted Processor, limited to no more than three individuals employed at the time by ABI Secretariat Limited and only where necessary (to consider any issue raised in the Disclosure or public domain) the Membership Selection Chairman and/or three-member Membership Selection Committee designated by the ABI Governing Council from the ABI Membership List of Full Members and where appropriate thereafter the ABI Governing Council in the event of an Appeal.
- c. The Disclosure produced every three years by the ABI member is inspected by the ABI Secretariat Limited, as described above or such person appointed by the ABI Governing Council from within the membership to fulfil the Secretariat duties, unless only where necessary (to consider any issue raised in the Disclosure or public domain) the Membership Selection Chairman and/or three-member Membership Selection Committee designated by the ABI Governing Council from the ABI Membership List of Full Members and where appropriate thereafter the ABI Governing Council in the event of an Appeal.

CRIMINAL OFFENCE DATA - POLICY STATEMENT

Policy Statement v15 2022-12-10

Revised by – Tony Imossi, ABI Secretariat for the ABI Governing Council www.theABI.org.uk

- d. The date of the Disclosure produced by the applicant or member is recorded in the database of members retained securely by the ABI, where after the Disclosure produced is disposed of securely.
- e. Any adverse data shown on a Disclosure produced by an applicant or member, or criminality that appears in the public domain, will be drawn to the attention of the Governing Council appointed Membership Chairman for adjudication, if necessary, as to whether such data fails the ABI criminality test as set out herein.
- f. The ABI retains records for its members for the duration of the membership and for a period of two years thereafter. An unsuccessful applicant's records are retained for two years. Thereafter records are deleted and disposed of securely unless the ABI is satisfied it has a legitimate interest for longer retention.

4. MEMBERS WITH CONVICTIONS OR CAUTIONS

- a. Any convictions or cautions recorded on a member or prospective member's Disclosure, or criminality found in the public domain, will not necessarily act as a bar to membership of the ABI. Basic Disclosure will only reveal any unspent convictions and conditional cautions and takes full account of the Rehabilitation of Offenders Act 1974.
- b. Certain unspent offences may be ignored.
- c. Due consideration will be applied to the perceived effect any issue has on the wider sector, its relevance and recency, in particular the effect on the credibility and reputation of the ABI and its obligations to its partners.
- d. Appeal Process – Membership Application
 - i. In the first instance, an issue raised for an applicant for membership will be referred to by the Secretariat to the duly appointed ABI Officer for adjudication.
 - ii. In the event of membership being denied solely on any criminal offence data issue, the applicant will be at liberty to Appeal to the Governing Council by writing to the Secretariat within 14 days of the date of notification, in which they may request a hearing before the Governing Council. The Governing Council will consider the issue at a hearing, if so requested, at its next convened meeting or within 28 days, if no hearing requested, after receipt of the written Appeal.
- e. Appeal Process – Member
 - i. In the first instance, an issue for a member will be referred to the duly appointed ABI Officer by the Secretariat for adjudication.

CRIMINAL OFFENCE DATA - POLICY STATEMENT

Policy Statement v15 2022-12-10

Revised by – Tony Ilossi, ABI Secretariat for the ABI Governing Council www.theABI.org.uk

- ii. In the event of membership being withdrawn solely on the criminal offence data issue, the member will be at liberty to Appeal to the Governing Council by writing to the Secretariat within 14 days of the date of notification, in which they may request a hearing before the Governing Council. The Governing Council will consider the issue within 14 days after receipt of the written Appeal and if it decides there exists prime facie grounds to deny membership, will give the Appeal further consideration at a hearing, if so requested, the hearing to take place at its next convened meeting.
- iii. In the event of an issue arising the member's membership status may be suspended at the discretion of the duly appointed ABI Officer, until the Governing Council so directs otherwise.

5. OFFENCES

Using the guidance published by the SIA Licensing Criteria ² the ABI will consider in the same way the impact certain convictions would have upon both the membership and the ABI's responsibility and duty of care to the public.

6. DECISIONS

When making decisions about an applicant's eligibility for membership or member's continued membership, the ABI will consider the following:

- i. A single caution, warning, absolute or conditional discharge or admonishment will be considered more leniently than other convictions if the member or prospective member has an otherwise clean record as this does not indicate a pattern of criminality and could be considered out of character.
- ii. The greater the number of cautions, warnings, absolute or conditional discharges and admonishments on a member's record, the more likely it will be that the ABI will refuse membership.
- iii. The principles applied to rehabilitation will be considered where other criminality exists.
- iv. Any mitigation in writing accompanying the application for, or renewal of membership.
- v. The ABI will consider additional factors where a member or prospective member has two or more cautions, warnings, absolute or conditional discharges or admonishments for offences in the past five years.
- vi. Higher numbers of cautions, warnings absolute or conditional discharges or admonishments for offences will increase the likelihood that membership will be refused or withdrawn.

² See 2019 "SIA Getting Licensed" relevant extract, [CLICK HERE](#)