

Disclosure of all convictions and cautions is a breach of Article 8 rights to respect for private life

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Disclosure of all convictions and cautions is a breach of Article 8 rights to respect for private life

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The Supreme Court has held that that the blanket requirement to disclose all convictions and cautions for the purpose of criminal records checks without regard to their relevance was not compatible with the right to respect for private life under Article 8 of the European Convention of Human Rights.

T had received two warnings at the age of 11 from the police in respect of bicycle thefts. These convictions had been spent in accordance with the Rehabilitation of Offenders Act, which provides that after a certain period of time certain offences do not need to be disclosed. T applied for two jobs which involved working with children but was not offered the job after criminal record checks revealed his spent convictions. Similarly, JB had received one caution as a child for a petty theft. JB applied for a job in the care sector but was refused the job because her criminal record (consisting of a spent caution) made her an inappropriate candidate.

T and JB issued proceedings, arguing that the disclosure of their criminal records was incompatible with their right to respect for private life under article 8 of the European Convention of Human Rights.

The Human Rights Act provides that it will not be lawful for public authorities to act in a way that is incompatible with the convention. One of the remedies under the Human Rights Act is for national courts to make a 'declaration of incompatibility' which, if not rectified, would result in a referral to the European Court of Human Rights.

The Supreme Court held that the disclosure of the cautions went further than was necessary to achieve the objective of protecting employers and vulnerable persons and did not strike a fair balance between T and JB's rights and the interests of

the community. The Supreme Court found that it could not find any relationship between the minor offences of T and JB and the government's aim to protect children, in the case of T, or vulnerable adults, in the case of JB.

Since this judgment, the government has introduced two new orders which aim to rectify this incompatibility.

R (on the application of T and others) v Secretary of State for the Home Department and another [2014] UKSC 35

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