

# Checked out?

Ineligible criminal record checks and how to prevent them

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# Summary

In 2019/20, the DBS carried out [5.9 million criminal record checks](#) – 3.86m enhanced, 326,000 standard, and 1.7m basic checks. Basic checks disclose unspent convictions and are available to any employer (provided they set out their lawful basis for checking). Higher level checks - standard and enhanced - are available roles excepted from the [Rehabilitation of Offenders Act 1974](#) and disclose spent and unspent criminal records that are not [filtered](#).

This report explains why ineligible checks happen, why they matter and what can be done to prevent them. We make recommendations for government, the Disclosure and Barring Service (DBS) and employers.

## What is an ineligible check?

An 'ineligible check' is one carried out at a higher level than permitted in law. This could mean an enhanced check where only a standard is permitted, or a standard or enhanced check where only a basic is permitted. The latter is more common, and has a greater impact, as higher level checks disclose cautions and spent convictions that an applicant is legally entitled to withhold and which would not be disclosed on a basic check.

- Knowingly requesting a higher level of check than appropriate is a criminal offence.<sup>1</sup>
- Using information unlawfully obtained is a breach of the DBS code.<sup>2</sup>
- Using information in breach of the law is a data protection violation.<sup>3</sup>
- Individuals can claim damages if their information rights are infringed.<sup>4</sup>

## Why do ineligible checks matter?

The Rehabilitation of Offenders Act 1974 provides the right for some criminal records to become spent after a fixed period. Spent criminal records are non-disclosable for most jobs – with exceptions for sensitive roles or those working with children or vulnerable adults.

Applicants are not obliged to self-disclose spent criminal records for non-excepted roles but they will appear on higher level certificates. Employers who request ineligible checks will often use the information disclosed to exclude applicants from the workplace. We estimate that around 2,000 people each year have to deal with the consequences of a caution or conviction unlawfully disclosed to an employer. There is no legal protection for people with spent criminal records and no penalty for the use of spent convictions. This has a detrimental impact on applicants with spent criminal records and a knock-on effect on their families, communities and the economy.

## What can be done about them?

The report makes practical recommendations to government, the DBS and employers, summarised below.

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<sup>1</sup> Section 123 of the Police Act 1997 states: "a person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this Part."

<sup>2</sup> The Code of Practice sets out obligations regarding use of information obtained via checks. Failure to comply with and performing ineligible checks could be a breach of data protection law.

<sup>3</sup> Obtaining information about cautions and spent convictions for non-exempt roles is a breach of the Rehabilitation of Offenders Act 1974 (ROA) and a breach of the Police Act 1997. Data protection principles (a) requires that processing must be fair and not in breach of other laws and that processing is limited to what is necessary.

<sup>4</sup> Individuals have the right, under Articles 79 and 82 of the GDPR, to seek damages for infringement of their data subject rights.

# Recommendations

## Government should:

1. provide a legal remedy where spent convictions are unlawfully collected.
2. amend the Police Act so employers are liable for 'knowingly or recklessly' carrying out ineligible checks
3. amend legislation to ensure the DBS share responsibility for ineligible checks.
4. work with the DBS to identify a mechanism for individuals to view higher level certificates before self-disclosing to an employer.
5. communicate with employers and relevant agencies to ensure awareness of data protection legislation and the limited role of criminal records information in safeguarding.
6. work with the DBS and employers to enact the 2011 recommendations.

## The Disclosure and Barring Service should:

7. clarify their eligibility guidance and, where possible, tailor it to specific sectors.
8. amend the Code of Practice so it explicitly requires employers to ensure applicants are notified of any requirement for a DBS check and to make clear what level is required.
9. develop a process whereby employers that request ineligible checks are required to provide more detailed information for future higher level checks.
10. regularly publish data on eligibility queries and outcomes.
11. recognise people with convictions as stakeholders and consider their needs when designing systems and measuring performance.
12. urgently review the systems for investigating and stopping ineligible checks, identifying possible safeguards, and publish their findings.
13. provide practical information to individuals on how to raise eligibility queries.

## Employers should:

14. ensure recruiters receive training on relevant legislation and guidance so they identify the appropriate level of check for each role.
15. consider how applicants could question eligibility anonymously.
16. ensure a clear policy on asking about criminal records, compliant with the GDPR, ROA and DBS Code of Practice is accessible to applicants at an early stage.

# Background

The legislation covering criminal records disclosure is complex. The [Rehabilitation of Offenders Act 1974](#) (ROA) gives people the right to withhold information about their criminal record after a 'rehabilitation period'. The time periods are fixed in law and, once convictions become 'spent', they no longer need to be disclosed in most cases.

Rehabilitation periods are determined by sentence, rather than offence, and currently prison sentences of more than four years can never become spent. In July 2019, the then Lord Chancellor David Gauke announced the Ministry of Justice's research into plans to [amend the ROA](#), enabling more sentences to become spent, and sooner, in line with evidence. Unlock have campaigned for these changes and we await consultation and further details.

Schedule 1 of the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975](#) ("the Exceptions Order") provides that spent convictions can be taken into account for certain sensitive employments and activities and therefore fall to be disclosed. Since May 2013, certain cautions and convictions can become protected, subject to guidelines set out in Article 2A(1) and (2) of the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(Amendment\) \(England and Wales\) Order 2013](#) ("the Amendment Order"). Protected cautions and convictions no longer need to be disclosed as set out by Article 3ZA of the Amendment Order.

The Disclosure and Barring Service (DBS) provides criminal record checks and barring information to employers and other organisations in England and Wales<sup>5</sup> to assist in employment and licensing decisions. The DBS also determines inclusion on the children's and adults' barred lists. It is an offence for a person on the barred list to take up a role that involves regulated activity and an offence for an employer to allow them to. With the exception of the barring lists, the DBS does not determine who can or cannot take up employment. The decision rests entirely with the employer.

[Part V of the Police Act 1997](#) authorises employers recruiting for exempt positions to obtain either a standard or enhanced criminal records certificate, depending on the role. Issued by the DBS, these certificates disclose all convictions, cautions, warnings and reprimands that are held on the Police National Computer (PNC) unless they have become 'protected'. At police discretion, enhanced certificates may include non-conviction information, including allegations and acquittals. Disclosure of non-conviction information is subject to a relevancy test introduced in September 2012.

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<sup>5</sup> The DBS also provides barring information in Northern Ireland.

# Levels of check

There are three types of higher level check: standard, enhanced and enhanced with barring list.

## Standard checks

A standard check discloses cautions, unspent and spent convictions, unless they are '[protected](#)'. A standard check is requested from the DBS via a [registered body](#) (RB) or [umbrella body](#) (UB).

Roles eligible for standard checks are listed in the [Rehabilitation of Offenders Act \(Exceptions\) Order](#). They include:

- Security industry licensees
- Solicitors, barristers and chartered/certified accountants (on entry to profession)
- Financial Conduct Authority '[approved person](#)' roles

## Enhanced checks

An enhanced check discloses the same information as a standard check, and can include non-conviction information if relevant. An enhanced check is requested from the DBS via an RB or UB.

Roles eligible for an enhanced check are listed in the [Rehabilitation of Offenders Act \(Exceptions\) Order](#) and the [Police Act](#). They include:

- Driving instructor
- Librarian (if involved in supervised teaching, training or instruction of children)
- Lifeguard

## Enhanced with barring list checks

In addition to the information described above, this includes a check of the children's or adults' barred list (or both) to see if the applicant is barred from regulated activity.

Roles that are eligible for an enhanced with barred list check are those classed as [regulated activity](#) – for example:

- Health or social care
- Teaching under 18s
- School bus driver

## Basic checks

Since 2018 the DBS basic checks have been available to any employer provided they comply with [GDPR requirements](#) and identify the purpose, lawful basis and condition for processing the data. A basic check discloses unspent convictions only. Basic checks are requested from the DBS; both applicants (directly) and employers (via a Responsible Organisation) can make the request.

# The impact of ineligible checks

## Scale of the problem

The DBS does not routinely publish data on eligibility queries so the full extent of ineligible checks is unknown. Where concerns are raised, these are often validated. Between March 2012 and February 2014, the DBS wrote to employers on [3,311 occasions](#) 1,385 - 42% - of those applications were not completed, suggesting they were ineligible.

[Unlock's helpline](#) regularly receives information on employers carrying out higher levels of check that do not meet the eligibility requirements. Since 2018 the number of calls about ineligible checks has increased by 25%. Based on our contact with individuals we estimate that around 1% of checks each year are ineligible.

People with spent convictions and cautions that would not be filtered are most impacted by ineligible checks - as their criminal record will show on a standard or enhanced check but not on a basic one. We have used information the DBS publishes to estimate the number of people who have information unlawfully disclosed if 1% of checks are ineligible.

In 2019/20 237,790 standard or enhanced checks disclosed conviction information<sup>6</sup>. DBS data on basic checks suggests that about 9% of applicants with a criminal record have unspent convictions. Applying this figure to the number of standard and enhanced checks, 21,401 of the 237,790 would have contained unspent convictions. If 1% of the remaining checks (216,389) are ineligible, 2,163 people each year have to deal with the consequences of a caution or conviction unlawfully disclosed to an employer.

## Impact on individuals

Ineligible checks have a profound impact on individuals. Applicants or employees may be deselected or dismissed on the basis of information the employer should not have accessed - which is both unfair and potentially unlawful. People with spent convictions are excluded from employment they are permitted and qualified to do. Further, applicants with spent convictions can be put off applying for jobs that advertise higher levels of check than legally permitted.

Employers who carry out ineligible checks are contributing to the ongoing marginalisation of people with criminal records. The collection of old and minor criminal records – now legally spent – is a significant barrier to employment. Employment contributes to reducing reoffending and helps break the intergenerational cycle of offending. The unemployment – and underemployment – of people with convictions is an economic drain that our nation cannot afford.

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<sup>6</sup> DBS dataset 1: [Disclosure Progress, Update Service and DBS Basics Information](#), May 11 2020

# Risk to employers

For employers, requesting an ineligible check carries legal, regulatory and reputational risks. However, these are rarely enforced, for reasons set out in this report.

## 1. Violating the Rehabilitation of Offenders Act and the Police Act

An employer is potentially liable if they do a higher level check that is not permitted by law. Obtaining information about cautions and spent convictions for non-expected roles is a breach of the Rehabilitation of Offenders Act 1974, and knowingly requesting a higher level of check than permitted is a criminal offence under the Police Act.

[Section 123\(2\)](#) of the Police Act states:

*123(2) A person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this Part.*

The maximum penalty on conviction is six months' imprisonment, or a fine, or both.

## 2. Breach of data protection law

Using information in breach of the law is, in itself, a data protection violation. Obtaining an ineligible check is a breach of the Rehabilitation of Offenders Act as well as the Police Act, so processing of this information would be unlawful. Employers found to be in breach of the GDPR and/or Data Protection Act 2018 can be subject to enforcement action or financial penalties.

In addition, data protection principle (c) requires organisations to ensure that the personal data they are processing is adequate, relevant and limited to what is necessary. Where a role is covered by the Rehabilitation of Offenders Act, processing data on cautions and spent convictions is neither proportionate nor necessary.

## 3. Breach of an individual's data subject rights

Where an ineligible check is carried out, an individual has the right, under [Articles 79 and 82](#) of the GDPR, to claim damages if they believe their information rights have been infringed.

## 4. Breach of the DBS code

The DBS Code of Practice sets out employers' obligations in respect of the use of information obtained through standard and enhanced checks. A failure to comply with these provisions and performing ineligible checks beyond the scope of the Exceptions Order could lead to de-registration of registered bodies.



# Why do ineligible checks happen?

Ineligible checks can occur for a number of reasons, some of which are set out below.

## Difficulty defining eligibility

Although the DBS provide written [guidance](#) and [tools](#) for checking eligibility, employers can sometimes make mistakes. Client groups can sometimes be over-zealously identified as vulnerable and employers tend to err on the side of caution, believing that it's better to have a higher level check than not.

Roles that are often wrongly identified as eligible for higher level checks include:

- Jobs that involve entering homes – electricians, meter readers, plumbers are eligible for basic checks.
- University lecturers: Lecturers are not routinely eligible for higher level checks unless teaching on a regulated course – for example, social work or medicine.
- Office workers: Employers may provide services to vulnerable groups but eligibility depends on the duties and responsibilities of the role rather than the vulnerability of the client group.
- Financial roles – Jobs covered by the 'approved person' scheme overseen by the Financial Conduct Authority are eligible for standard checks, but most jobs in banks and financial services are not 'approved person' roles.

This is a 2019 advert from a large national employer.

£ £31,500 per annum      Enfield, Middlesex

🕒 Permanent, full-time

**IT Analyst**  
Ref: req79492

BE AN ESSENTIAL PART OF EVERYDAY LIFE

**Position:** IT Analyst  
**Location:** London - Enfield  
**Customer:** Hospital Services  
**Grade/Salary:** RCS N - £31,500 (depending on experience)  
**Contract Type:** Permanent (Full-Time)  
**Closing Date for Applications:** 29th July 2019

**Please be advised, in order for your application to be successful you will need to be able to pass Enhanced Disclosure and Barring Service (DBS) checks.**

The advert advises applicants that a higher level check is required but nothing in the advert indicates why. The advert says applicants will need to 'pass' a check, which suggests the recruiter will use information provided by the DBS to screen out applicants with criminal records – a possible breach of the DBS Code. The advert provides no way for applicants to check the eligibility or to discuss it before making an application, no links to their policy and there was no

policy anywhere on their website or any way of contacting HR. We have redacted the name of the employer – a large, multi-national company who could reasonably be expected to understand their obligations.

Contrast this advert with the example below.

Information technology manager

Dale manages the work of the IT team located at New-Town NHS Foundation Trust. He has oversight and responsibility for all internal and external electronic communication networks, including wide area networks (WAN) and local area networks (LAN) that link systems in healthcare organisations, including Wi-Fi, hardware (e.g. desktop computers, printers, laptops, tablets and smartphones), email, and other application systems, such as patient records.

Dale's responsibilities are concerned with the maintenance of IT systems in the trust. As part of his role, he may have access to patient identifiable data and other sensitive information but will not be required to work in areas of the hospital where patients are likely to be located. This role is not eligible for a standard or enhanced check.

Employers may wish to consider whether the responsibilities of any such role would require a basic disclosure.

NHS Employers provides [scenario based guidance](#) to help employers determine the correct level of check for ambiguous roles. That guidance suggests that an IT role would not be eligible for a higher level check since it will involve limited or no patient contact.

The DBS should clarify their eligibility guidance and, where possible, tailor it to specific sectors

Employers should ensure recruiters receive training on relevant legislation and guidance so they identify the appropriate level of check for each role.

## Lack of clarity during the recruitment process

Employers are not legally obliged to state whether they will carry out a criminal record check or what level they will apply for, nor is it standard practice to do so. Employers often fail to make this clear, perhaps because they think the majority of applicants won't be affected.

Most employers will never recruit for posts eligible for higher level checks, and the DBS [Code of Practice](#) is not explicit about their responsibilities. Applicants with a criminal record can feel uncomfortable asking the question as they think it will identify them before they have even submitted an application. As part of our work to [support employers](#) we encourage recruiters to have a clear and accessible policy that sets out the steps they will take – from asking to checking. This will help employers demonstrate compliance with their [GDPR responsibilities](#). These include transparency, individuals' right to be informed and processing of information within their reasonable expectations. There is a requirement for appropriate policy documents to be in place for certain schedule conditions but this is different from a policy on recruiting individuals with criminal records.

The DBS should amend the Code of Practice so it explicitly requires employers to ensure applicants are notified of any requirement for a DBS check and to make clear what level is required.

## Reputation and reliance on ‘safeguarding’

Basic checks were introduced in 2018 and their use has increased rapidly. However, sometimes employers use enhanced checking as a way of differentiating their business – for example, a records management company who do enhanced checks on all their staff to appear more security conscious than competitors or an agency who promise to provide clients with staff who have been ‘DBS checked to the highest level’.<sup>7</sup> There is little risk to employers who attempt to carry out higher level checks: most applicants will be unaware that the check is ineligible, and those who are aware will often be reluctant to raise it with an employer for fear of identifying themselves as a person with a conviction.

Employers who serve the public or provide services to vulnerable people can sometimes use criminal records checks as a [safety blanket](#) – carrying out higher level checks on all employees regardless of their role. A DBS certificate can be a part of good safeguarding practice but it is not a panacea.

Government should communicate with employers and relevant agencies to ensure awareness of data protection legislation and the limited role of criminal records information in safeguarding.

## The checking industry

The system of Registered and Umbrella Bodies - many of which are profit-making companies - encourages a culture of checking. Employers carrying out more than 100 checks a year can apply to become a Registered Body (RB). Registered Body are responsible for determining eligibility for a criminal records check and must adhere to the Conditions of Registration set out in regulations made under the Police Act 1997, as supported by the statutory Code of Practice.

If an RB is found to have carried out an ineligible check, they could be deregistered. A Freedom of Information request from [Unlock in 2017](#) revealed that no Registered Body had been deregistered as a result of submitting ineligible applications in the previous 3 years.

RBs can apply to become Umbrella Bodies (UBs) and can then carry out checks – usually for a fee - on behalf of other organisations. Umbrella Bodies can encourage employers to carry out higher level checks – which are costed at a higher rate – even where eligibility is unclear. For example, by implying that charities should always opt for an [enhanced check](#). While a number of charity roles could involve enhanced checks, they would not be required in every case.

The responsibility for making eligible requests ultimately rests with the counter signatory – whether they are the employer or the UB. A counter signatory at an RB is unlikely to question a request from within their own organisation. If a UB refuses to carry out a higher level check the employer can simply go to another. If the employer provides a suitable job description (even if not accurate) a counter signatory at either an RB or a UB is unlikely to refuse.

<sup>7</sup> Although these are real examples, we have chosen not to identify these employers in this report.

The DBS should develop a process whereby employers that request ineligible checks are required to provide more detailed information for future higher level checks.

Government should provide a legal remedy where spent convictions are unlawfully collected.

# Preventing ineligible checks

As described above, the impact of an ineligible check - and the responsibility for challenging it – weighs heavily on applicants. Individuals can challenge eligibility in a specific circumstance, although they are rarely in a position to do so. The DBS [advice to applicants](#) explains that ‘In many cases we may not be able to advise whether the role is eligible for that level of check and you may need to discuss this with your employer or seek your own legal advice.’ Discussing this with an employer will be difficult for many applicants with a criminal record, and legal advice will usually be out of reach. Even if an applicant obtained legal advice that a check was ineligible, their only recourse is to raise their concerns with the employer.

People can be reluctant to question a check for fear of identifying themselves as a person with a conviction, albeit spent. There is no way of flagging a check to the DBS until it has been submitted. Increasing efficiency in despatching certificates has meant some employers have received information before a query has been actioned by the DBS.

The DBS measures [performance](#) in terms of timeliness and accuracy - important measures but with limited relevance to ineligibility. While timeliness is a concern for employers it can mean an applicant has no time to raise a concern before an employer is alerted to the existence of information. There are no safeguards within the existing framework and the number of ineligible checks submitted, stopped or subsequently challenged is not measured.

DBS [eligibility guidance](#) states that employers – not the DBS – are responsible for the legality of checks. [Section 123](#) of the Police Act 1997 makes it an offence for a person to knowingly make a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate. The maximum penalty is six months in prison or an unlimited fine. This offence could only be committed by an employer requesting the check but the test – ‘knowingly making a false statement’ – is almost impossible to prove. In the 23 years since the Police Act was introduced, there has not been a single prosecution. Amending the wording to ensure that employers must demonstrate sufficient care when determining eligibility could reduce the number of ineligible checks.

Using spent convictions as a way of excluding applicants from non-expected roles is a breach of the Rehabilitation of Offenders Act 1974 and a breach of data protection law. The distribution of responsibility away from statutory bodies and towards individuals means ineligible checks have continued unfettered. Without a clear measure we have no way of knowing how often an ineligible check has been carried out, or how many applicants with convictions have been deterred from applying.

Government should amend the Police Act so employers are liable for ‘knowingly or recklessly’ carrying out ineligible checks.

Government should amend legislation to ensure the DBS share responsibility for ineligible checks.

The DBS should regularly publish data on eligibility queries and outcomes.

# The difficulties of challenging eligibility

## Not knowing what will be disclosed

There is no way for individuals to know for certain what will be disclosed on a higher level certificate. Since May 2013 the DBS have applied 'filtering' rules which removes some convictions and cautions. In its first year of operation, this process 'removed' convictions from 29,000 checks. This represents only 15% of the 188,000 applicants that have a conviction, meaning over 159,000 checks disclosed at least one caution or conviction.<sup>8</sup>

Many individuals will not know for sure what will or won't be disclosed. With the criminal records regime regularly changing, and further changes afoot, following the Supreme Court's ruling on [P, G and W](#) in January 2019, access to one's own DBS is of paramount importance.

Government should work with the DBS to identify a mechanism for individuals to view higher level certificates before self-disclosing to an employer.

## The process itself

A check can only be carried out with the consent of the individual, yet they cannot challenge a check until it has been submitted to the DBS. This creates a dilemma, as the individual must consent to a check that they believe is unlawful and then attempt to stop it afterwards. In 2013 Unlock, in collaboration with the DBS, published detailed guidance on challenging the eligibility 'mid-process'. We have produced a [simple guide](#) for individuals to challenge a check.

Applicants must contact the DBS by email after submitting the form, including their details along with the position applied for, the organisation name, the Registered Body number and the DBS form reference, along with the reasons the check is believed to be ineligible.

On receipt, the DBS place the application on hold and contact the Registered Body for more information. If the application has not yet reached the printing stage, the DBS will:

- Confirm the applicant's consent to contact the registered body
- Contact the registered body to establish eligibility
- Correspond with the RB to make an assessment of eligibility
- If the DBS decide it is ineligible, the application is stopped and the organisation notified.

Often, applicants are asked to self-disclose before consenting to a check. Where the applicant believes the check is ineligible, we advise applicants to disclose unspent convictions only as they are entitled to withhold cautions and spent convictions. However, if the check does turn out to be eligible, the applicant is then in the difficult position of having to explain why they did not disclose. In our experience, employers tend to treat discrepancies as deliberate deception and will withdraw an offer at this point.

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<sup>8</sup> Unlock (2014) DBS Eligibility Issues: Submission to the ICO

In 2017 Unlock published case studies highlighting problems with the current process.<sup>9</sup> These include the DBS continuing to process ineligible checks for roles where an earlier applicant has raised an eligibility concern.

The DBS should urgently review the systems for investigating and stopping ineligible checks, identifying possible safeguards, and publish their findings.

The DBS should provide practical information to individuals on how to raise eligibility queries

## Lack of recognition of individuals as stakeholders

The wording of the Police Act 1997 makes clear that criminal record checks are intended for employers. The DBS' customer focus is therefore on employers and they have, historically, failed to recognise people with convictions as stakeholders. Yet individuals experience significant difficulty in the event of an ineligible certificate being issued – delays as they challenge it, denied or dismissed from employment, or being wrongly referred to the barring process.

The DBS should recognise people with convictions as stakeholders and consider their needs when designing systems and measuring performance.

Employers should consider how applicants could question eligibility anonymously

Employers should ensure a clear policy on asking about criminal records, compliant with the GDPR, ROA and DBS Code of Practice is accessible to applicants at an early stage.

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<sup>9</sup> Unlock (2017) Stopping ineligible DBS checks: the DBS processes for investigating and stopping ineligible checks

# Improving compliance

The [Criminal Records Review](#) was commissioned in 2010 by Theresa May, then Home Secretary. The review, led by the Independent Advisor for Criminality Information, Sunita Mason, considered whether the existing criminal records disclosure regime struck the right balance between upholding civil liberties and maintaining effective, efficient and sustainable public protection arrangements.

The review comprised two phases. Firstly, employers access to criminality information in recruitment, especially for roles involving work with children and/or vulnerable adults. Secondly, wider issues concerning criminal records, including definition, management, access and international information exchange.

Reports on Phase 1 and 2 were published in 2011, and both included a series of recommendations for improvements across criminal records regime. The Government [accepted, unconditionally or in principle](#), the majority of recommendations and set out details of how it intended to take forward each recommendation.

To date, the most significant recommendations in relation to ineligible checks has not been enacted. In particular:

- Where employers knowingly make unlawful criminal records disclosure applications the penalties and sanctions are rigorously enforced (Recommendation 8).

The report included specific actions in relation to '[Inappropriate requests for disclosure](#)' – what we refer to in this report as ineligible checks:

- where the CRB (sic) reasonably believe that an ineligible application has knowingly been made, the case should be immediately referred to the Information Commissioners Office. Notice should also be provided to the Ministry of Justice to consider whether a breach of the ROA has occurred.
- the CRB should set up and fund a web-portal that allows individuals to report any potential or actual incidents where employers are seeking to make ineligible checks.

These recommendations were accepted in 2011. To date, there has not been a single prosecution for breach of the Police Act, there is no mechanism for ineligible checks to be referred to the Information Commissioner's Office, nor for notifying the Ministry of Justice. There is no remedy for breach of the ROA, in any case.

Government should work with the DBS and employers to enact the 2011 recommendations.



# About Unlock

Unlock is an independent award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.

This report was produced as part of our [Fair Access to Employment project](#), supported by the Esmée Fairbairn Foundation. Our objectives include:

- Employers will have significantly fairer and more inclusive policies and practices on recruitment of people with convictions
- The number of unlawful checks being carried out by the DBS will be reduced
- Government will give greater attention to improving employment of people with convictions reflected in policy and practice.

We provide practical guidance and free resources via [Recruit!](#) – our website providing advice and support for employers on recruiting people with convictions and dealing with criminal records fairly.

For further advice about fair and more inclusive recruitment policies, please contact us: [recruit@unlock.org.uk](mailto:recruit@unlock.org.uk).

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