



Unlocking change

Policy manifesto

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About Unlock

Unlock is a national independent advocacy charity that supports, speaks up and campaigns for people facing stigma, prejudice and discrimination because of their criminal record.

Our mission is to advocate for people with criminal records to be able to move on positively in their lives. We:

- Support people with criminal records to navigate their way through challenging times
- Research and raise awareness of the systemic issues that people are facing
- Campaign for changes to legislation, policies and practices of government, employers and others

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Introduction

Unlock has been providing help and support to people who face challenges because they have a criminal record for over twenty years. While we started out offering one to one support, over the years we heard about the same problems coming up again and again, so we knew we needed to start trying change the system itself. The policies that we advocate for are all informed by the thousands of calls and emails we receive each year, and we know they will have a real impact in reducing the harm experienced by our clients.

Unlock's goal is simple: a fair and inclusive society where people with criminal records are free from stigma, prejudice and discrimination. The system governing disclosure and the ongoing impact of criminal records should be fair, clear and maximise its effectiveness by discouraging bad and encouraging good practice.

Almost 12 million people in the UK have a criminal record. Even years later when someone has moved on, the system will keep dragging their past back up. Some people with a criminal record received cautions without ever ending up in court, and people can even have a criminal record without being charged with an offence. You may not even know what is included on your criminal record, especially if you haven't needed to apply for the most stringent DBS check.

Currently, all cautions and convictions stay on the police record – and individual police forces may also hold additional information on people, including arrests or accusations that didn't lead to convictions. But everyone's right to rehabilitate has been established. The law says that once a certain length of time has passed, if people have completed their sentence, they have a right to be treated just like any other citizen.

However, even once that time period has passed and cautions or convictions become spent, there are complicated rules requiring different details to be disclosed in different circumstances. For example, any details on someone's police record can be shared with an employer if the most stringent check is required for a job. Of course, there will be situations where it is necessary for information to be disclosed for safeguarding reasons, but the current system of disclosure is disproportionate, complicated and leads to poor outcomes, with people being unjustly penalised for no purpose.

One in six people in the UK have a record. If we are lucky enough not to have a criminal record ourselves, we will all know friends, family, co-workers or neighbours who do. And they can find that long after completing any punishment set by a court, they are still being affected by their record. They face stigma, discrimination and can be excluded from work, education or safe and secure housing (including getting a mortgage or rental agreement).

A person is more than their criminal record. They should be allowed to move on instead of ongoing impacts following them around until the day they die. We believe the system should support rehabilitation rather than working against it. In order to turn their lives around, people need things like a job and somewhere safe to live; unnecessary restrictions make it much harder to move on. All the evidence shows that stigmatising people with criminal records makes reoffending more likely, not less.

In addition, because the current system puts unnecessary checks in place, we are all impacted as employers are missing out on great candidates who have a lot to offer. People who could be working and contributing to society.

Unlock are calling for the current system governing disclosure to be reformed to ensure it is fair, effective and easy to understand:

- A **fair and proportionate system** means that someone's right to rehabilitate is only restricted when necessary to minimise identified risks
- An **effective system** means a framework that encourages good practice that leads to the right outcomes
- A **clear and transparent system** means requirements to disclose details of convictions are clearly set out and easily understood

“My conviction will never be spent; I’ll have to tell employers about it forever. I’ve got nearly 40 years of working life ahead of me – when will I get the chance to move on?”

Amir*

1. Fair and proportionate system

Everyone has a right to rehabilitate, which means there should be no requirement to disclose details of a criminal record unless it is necessary to minimise a specific risk. In order for the system governing disclosure to be fair, any restrictions on someone's rights should be proportionate, not just to the seriousness of any conviction and their personal characteristics (such as age) at the time of the offence, but also linked to any ongoing risk.

No lifelong impacts without an opportunity to review and appeal decisions

Measures that last 'for life' are the harshest and most impactful that can ever be imposed on a person. In other areas of the justice system where lifelong measures can be imposed, they require individual consideration of the case and there are mechanisms in place to review decisions that the restrictions are still necessary. For example, for almost all life sentences, prisoners are eligible for parole after serving their minimum term.

Only criminal records allow for 'life' to be imposed by default with no possibility of appeal. This goes completely against the principles of proportionality and rehabilitation that are supposedly embedded into our justice system. Serious crimes should mean more serious consequences but there should be a real prospect that anyone can eventually return to a normal life.

This means that all definite sentences should become spent, so they do not need to be disclosed in most circumstances. Anyone who gets a life sentence should be allowed an opportunity to apply for it to become spent at a certain point after their release from prison, when they no longer pose any risk. In addition, details of a criminal record should only continue to be disclosed on more stringent checks where there is a clear safeguarding risk. Everybody should have the right to challenge decisions about ongoing disclosure, so they have the chance to show they are rehabilitated.

Recommendations

- Every sentence must have the potential to become spent during a person's lifetime.
- Only more serious offences and those that present a clear safeguarding risk can be allowed to remain on standard and enhanced DBS checks for life.
- Everyone who has a criminal record should be able to make their case that they have moved on, with the potential to have their record declared spent or filtered by impartial adjudicators.

Impacts should be proportionate to the offence and severity of sentence imposed

It is only fair that the most serious offences lead to the longest impacts in respect of disclosing criminal records. However, the current system has certain anomalies that mean some less serious convictions have to be disclosed for longer periods. These cases are often an unintended consequence of complex legislation. In addition, there are other idiosyncrasies that mean minor offences have to be disclosed for extended periods when they are linked to other offences.

Disproportionate impact of additional orders

For example, any motoring offences that lead to endorsements on your licence have to be disclosed when applying to most jobs for five years, even if it was only a minor offence that led to a fine. But this is longer than the disclosure period for prison sentences of under a year. This is even though there is already a parallel system for checking endorsements without requesting a criminal record check so if it is necessary for a job to know about someone's recent history of motoring offences, there is a way to do that specific check.

Other disposals, such as relevant orders, imposed to restrict specific behaviour, can have a similarly disproportionate impact.

For example: someone convicted of being drunk and disorderly at a football match may receive an ancillary order banning them from attending games in addition to a fine. They would then have to disclose their relatively minor offence while the ban is active – which could be up to ten years. It means there are situations where a short prison sentence becomes spent sooner than a three-year ancillary order for a less serious offence. Few employers would consider the less serious offence to be more relevant, but applicants still have to disclose it for longer and so face discrimination.

Unfair impact of multiple offences

A central principle of our criminal records disclosure system is that the severity of the sentence you receive correlates with how long you will be required to disclose your criminal record. However, this is not universally the case. If a person is convicted of another offence before the first one becomes spent, the earlier offence is prevented from becoming spent until the later one's disclosure period is also complete. The courts already consider repeat offending in their sentencing, which means someone will receive a harsher sentence for the second offence, so allowing it to also affect the disclosure period of the first offence is effectively punishing someone twice.

The system has to be reformed so that such examples of unfairness are identified and rectified. A less severe sentence or punishment should lead to a shorter period during which a criminal record has to be disclosed.

Recommendations

- Endorsements and ancillary orders should not extend the period of disclosure.
- Each offence should become spent on its own terms, in a way that is proportional and consistent.

Impact of criminal records should reflect someone's age and maturity

Any conviction from the age of ten remains on the police computer, and therefore is part of someone's criminal record. The process regarding disclosure is very similar regardless of whether you were a child or adult at the time of conviction – with the main difference being that the period you have to disclose any convictions is reduced for childhood criminal records. There is a distinct youth justice system for dealing with children, which includes separate courts, rules and sentencing options, as well as different guidance on how the police or prosecution should respond to offending. This is because children are still developing into adults, and we expect their behaviour to reflect their age and maturity. With the right support, children are usually able to 'grow out' of poor behaviour. As a society, we therefore accept that children should be given a fair chance to move on from their mistakes.

However, the criminal record disclosure system does not allow children to change, instead leading to ongoing stigma, discrimination and exclusion. This then makes it harder for children to move away from offending. It should also be noted that certain vulnerable or marginalised groups are currently disproportionately represented in the youth justice system. For example, looked after children and children from minoritised communities are more likely to receive harsher sentences. As this and other examples of discrimination will increase the impact of criminal records, it is even more important that these impacts do not follow them unnecessarily into adulthood.

Unique system for children

A distinct approach should be introduced for any cautions or convictions received as a child, allowing them the best chance of rehabilitation. This could include a presumption that criminal records should be sealed when someone turns 18, and a process allowing for applications to be made to wipe the records completely.

There is also an intrinsic unfairness in the way the current system works – as disclosure periods relate to the age of someone at the point of conviction, not when they committed an offence. This means that if a 17-year-old child turns 18 between the offence and when they are convicted, they will be subject to the adult disclosure rules, instead of the reduced periods for children. Ongoing delays in criminal cases being dealt with can therefore have unfair impacts if a child turns 18 while waiting for a court date. Delays were already a problem before Covid, but they have become even more of an issue since, which makes it even more important that the system is changed so that someone who is a child at the time of any offence is treated as such in relation to their criminal record.

Reflect maturity appropriately

Another issue relating to maturity is that young people do not suddenly become adults when they turn 18, but continue to develop physically, psychologically and emotionally. There is extensive evidence showing that brains do not fully develop until someone is in their early 20s, and psychological development also continues over a similar timeframe. This means that young adults often have less impulse control and may be less rational in respect of decision making. Other aspects of the justice system recognise this and allow for a person's maturity to be taken into account when deciding an appropriate punishment. But the disclosure system makes no distinction between young adults who are still developing maturity and adults over the age of 25. It has also been shown that young adults (18 to 25 years old) are most likely to move away from offending behaviour but due to ongoing disclosure, they are excluded from things like education and employment, limiting opportunities to change. A more nuanced system would allow for young adults to more successfully rehabilitate.

Recommendations

- There should be a distinct, child-specific process for dealing with criminal records received before the age of 18
- Disclosure periods should correspond with age at time of the offence not conviction
- Maturity should be reflected in the disclosure system

“Every role I’ve applied for always starts with embarrassment. I have a great interview and go through all of my experience and then have to disclose that I have a conviction for assault from when I was in school as a 14-year-old child.”

Rhys*

2. An effective system in practice

The effectiveness of the system governing criminal records can be improved by encouraging good practice and penalising bad practice. The legal framework (including legislation and guidance) should be used to limit illegal behaviour, limit practice that leads to poor outcomes and incentivise good practice. The criminal record process is in place to ensure a person's right to privacy is only infringed when absolutely necessary to minimise a specific risk. Therefore, if someone's right is being breached where it is not linked to this purpose, it is a poor outcome.

Providing legal protection against unnecessary or inappropriate disclosure

The legal framework governing disclosure of criminal records should protect people by providing penalties for any failure to comply with existing law, as well as ensuring there are processes in place for any such failures to be identified and punished. Together, the system should effectively reduce examples of unfair discrimination where people with a criminal record are excluded unnecessarily.

Penalties for disallowed discrimination

Currently, a spent conviction is not a proper ground for dismissing or rejecting someone for employment. However, there are no penalties for employers who fail to comply with this. We propose that protection be extended to prospective employees or workers to prevent them from being refused a job because of a spent conviction, in the same way that the Equality Act 2010 provides protection against other specific forms of discrimination.

Require clear questions about criminal records

Another issue relating to how employers deal with spent convictions during a recruitment process is when they ask applicants to disclose details of **any** cautions or convictions. This leaves people having to decide whether they are legally required to provide the information – and it can be very unclear. Applicants obviously want to be honest, and may disclose when they don't have to, in an attempt to be open and make sure they are not inadvertently withholding information they should be providing. They then face potential discrimination if employers allow details of a criminal record to affect decisions about whether to give them the job. Unlock suggests the onus should be on employers to make sure they are not asking unclear questions or inadvertently collecting information they have no right to hold. It would be preferable if employers were only allowed to ask about spent convictions when legally necessary in situations set out as exceptional in legislation.

Effective review and appeal processes

In order to be effective in practice, not just in law, there must be clear processes which allow people to know when an organisation has been taking account of their criminal record when they should not be, and for them to be penalised. This should include being able to identify when an ineligible check has been carried out. In addition, there should be repercussions where a university (for example) inadvertently takes account of a spent conviction, following an applicant disclosing unnecessary information. One part of this is providing greater clarity about the rules, so it is clear to everyone what needs to be disclosed and when (see below). But there must also be robust appeals processes and tribunals which are easy for people to access, and that have the capacity to punish any transgressions.

Recommendations

- Amend the Employment Rights Act 1996 to provide penalties for either refusing to give someone a job or sacking them due to a spent conviction
- It should be an offence to ask about spent convictions unless authorised to do so – for example when recruiting for regulated activity roles
- Ensure processes to identify and then punish illegal behaviour

Encourage good practice

Stigmatising and discriminating against people with criminal records not only makes reoffending more likely but it is usually due to unconscious stereotypical and biased thinking. Most people who receive a criminal record do not reoffend and pose no risk to employers, insurers or landlords. And there is no evidence that excluding people who disclose their record improves safety at all. However, if asked about any unspent convictions, people must disclose details, even though this can leave them vulnerable to discrimination. Everyone deserves a safe place to live, and opportunities to take up education or get a job. But having to disclose details of a criminal record can limit access to these necessities which makes it impossible for people to move on with their lives.

While employers typically claim that they would only discriminate against a person with a criminal record if it was truly relevant to the job, the statistics do not bear this out. According to DWP research, around 15% of employers will refuse to take on someone who discloses a speeding fine for a role that does not involve driving.¹ Another study shows around 50% of employers will discriminate against an applicant who discloses any criminal history at all.² The DWP study's authors point to employers being able to convince themselves that just about any offence is relevant, citing concerns about character or trustworthiness. This attitude makes a criminal record check a fishing expedition to see what comes up, not a targeted safety measure only concerned with specific types of crime.

Only allow criminal history to be considered when necessary

There are some situations where criminal history must be seriously considered. These might be where vulnerable people are involved or where a role involves a higher level of trust and responsibility. However, in these cases the focus must always be on tangible risk, not on prejudice.

Unlock believes that people shouldn't be asked about unspent convictions unless necessary and, where it is necessary, at the right time. For example, a decision on whether to give someone an offer

¹ DWP (2001) [Barriers to employment for offenders and ex-offenders: Parts 1 & 2, Part One Barriers to employment for offenders and ex-offenders and Part Two: A review of the literature \(insidetime.org\)](#)

² [YG-Archive-160126-DWPwaves.pdf \(d25d2506sfb94s.cloudfront.net\)](#)

to study at university should be based on eligibility, not unfounded concerns about unspent convictions. Once someone has been accepted, it may then be appropriate to ask about certain relevant convictions when deciding where someone should be accommodated. If courses are for regulated professions, and the university need to do checks, their policy governing this should be clearly set out. To prevent information being used unfairly, organisations should be banned from asking for upfront disclosure of unspent convictions.

Government contracts to require good practice

There are other ways that organisations can be encouraged to follow good practice, including regulators setting standards and providing sector-specific guidance. The government can lead the way by implementing positive recruitment processes.

For example: government should remove the requirement for people to routinely disclose their criminal records in respect of both their own recruitment practices as well as those of their contractors and suppliers.

As a large, high-profile employer whose work is seen as both responsible and sensitive, other employers pay attention to the processes used by the government in recruitment and tendering. Also, requirements set on contractors to tender will continue to apply across the contractors' other areas of business. In addition, the government making a public statement that upfront self-disclosure adds no value to recruitment would send a strong message and could result in employers adapting their processes to be more inclusive of people with criminal records.

Incentivise good practice

Lastly, employers can be encouraged to take on people with criminal records via financial incentives. This not only protects individual rights and offers people opportunities to move on positively with their lives but can benefit organisations themselves as they are able to realise the value of the untapped potential that they are currently missing out on.

Recommendations

- Employers should only ask for information about unspent convictions when absolutely necessary and relevant to the job; they should also be transparent about what their policies are in relation to criminal record disclosure
- The government should require all contractors and suppliers to remove criminal record self-disclosure from their recruitment processes
- Financial incentives can be used to encourage organisations to employ people with a criminal record

3. Clear and transparent system

A major challenge for people who live with a criminal record is that the system is governed by complex, overlapping rules that have grown up over the last fifty years. Over the decades, different governments have tried to use the system in different ways and, in doing so, have only made it harder to understand. This has created a situation where there is general confusion as to what a criminal record is, what details are included and when they have to be disclosed. This lack of clarity means people will often not know what their own criminal record includes or what will be disclosed in different checks, and can struggle to find out.

Clarity about what is part of a criminal record and when it has to be disclosed

Everyone should be able to understand what a criminal record is and how disclosing a record works.

Self-explanatory names for checks

The social stigma associated with having a criminal record leads to real and long-lasting impacts but is often driven by a lack of understanding and misperceptions about what it means to have a criminal record. To the general public, a criminal record check is a binary check to see if someone is a 'criminal'. However, a criminal record doesn't tell you much about someone and certainly doesn't mean that they will commit further crimes. Terms like 'criminal record check' carry a lot of weight but don't provide much information about what is being sought, and why. Use of language can be key in challenging stigma but can also be useful in providing greater clarity about the criminal record disclosure system.

For example: there are currently four different tiers of criminal record checks: basic, standard, enhanced and enhanced with barred lists. But this doesn't provide any useful information about what those checks include or when they should be used.

Streamline legislative framework

The complexity of the disclosure system presents challenges to both those asking about someone's criminal record, and anyone being asked to disclose their own record. The legal framework governing disclosure is set out in multiple different pieces of legislation, and to fully understand the legal requirements it is often necessary to cross-reference additional laws and regulations. For example, once a conviction is spent, disclosure can only be required in certain circumstances including for roles requiring safeguarding checks, where specific offences or those that led to any prison sentences continue to show on a check. However, there isn't one list of those circumstances readily available to all. This means that employers may be asking for disclosure that they are not entitled to or inadvertently taking account of offences that they are legally barred from considering, if someone discloses information unnecessarily. The system should be streamlined, so the rules are as clear and straightforward as possible, and are accessible for all to find and understand.

Explain system to people accused of crime

In addition, to ensure people are aware of their rights to withhold spent convictions, everyone convicted of a criminal offence should be given clear, accurate information and guidance about the rules governing disclosure. It is also important that people suspected of a crime understand the impact of a criminal record, if they admit guilt. It should therefore be good practice to explain to suspects how long a caution or conviction will be disclosable, before they agree to accept a caution or plead guilty.

Recommendations

- Each tier of criminal record check should be renamed in line with their official purpose, rather than the information they disclose
- The legislation and rules should be streamlined, explained using simple and straightforward language and set out somewhere accessible to all
- Anyone convicted or given a caution should be given clear information and guidance about what they are required to disclose and when

Transparency so people can see their own criminal record

Everyone must always have the right to know what will be disclosed on their own criminal record check and for how long (for example automatic spending and filtering periods). People are asked to self-disclose their criminal record much more often today, but there is no immediate way for a person to check their own certificate. Getting a basic check costs time as well as money, and only employers and organisations can ask for standard or enhanced checks. This makes it unnecessarily difficult for people with criminal records to give the right information when asked to disclose any relevant convictions.

Recommendations

- Everyone must have the right to see their own certificate at any time, free of charge
- Everyone should be able to ask what would be disclosed for different level checks at a certain date