

Home Office white paper on proposals for responding to drug possession¹

About Unlock

Unlock is a national, independent advocacy charity for people facing obstacles, stigma and discrimination because of their criminal record. Every year we hear from thousands of people who are unnecessarily held back in life because of their criminal record. We work at policy level to address systemic and structural issues. We listen to and consult with people with criminal records, undertake research and produce evidence-based reports to inform policy makers and the public

Summary

A system that escalates criminal interventions, without taking into account the individual circumstances of the offence or the person committing the offence, risks increasing the people who end up with a criminal record. It is therefore concerning that the government's strategy into how to respond to drug possession proposes a generic, single approach for all, rather than reflecting specific circumstances. For example, automatic escalation even if a second relevant offence is much less serious or someone has strong mitigation risks leading to unnecessarily severe penalties, which will then impact on someone's criminal record.

Someone having to disclose what is on their criminal record not only affects the chances of that person successfully moving on with their life, but can hang over someone their whole life, twenty or thirty years after any criminal behaviour. It is now understood that getting a job and having a safe home are key factors in reducing reoffending, and yet, the fact that people can be discriminated against due to their criminal record when applying for jobs or rental agreements limits those opportunities for rehabilitation. Even years after the initial offence, details of a criminal record can still be disclosed in certain situations, meaning that people can never really leave the past behind. That is why it is so important to reform the current system to make sure it is fair and proportionate.

We are also concerned that this less nuanced strategy could increase disproportionality: for example, those people who cannot afford to pay for the course or fines being penalised more punitively.

One of the stated principles in the strategy is to provide a swift and certain punishment, and we would argue that any certainty has to include understanding how that punishment will be reflected on your criminal record and what impact that might have in the future. Unfortunately we feel the proposals around the use of a Drug Enforcement Notice as they relate to criminal

¹ [Swift, Certain, Tough: New Consequences for Drug Possession' white paper - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/swift-certain-tough-new-consequences-for-drug-possession)

records could increase the complexity and lack of clarity around what individuals have to disclose and what will show up in different DBS checks. A particular concern is around the fact that for many people, doing a subject access request about what information is held about them on the Police National Computer is the only way they can be sure what may show up on their criminal record. If details of a Drug Enforcement Notice showed up on such a request, this could lead to over-disclosure by people when asked to tell employers or others about their criminal record, which would negate the reasoning behind keeping a Drug Enforcement Notice from being included in someone's basic or standard DBS check. We already believe the current system is too complex and opaque, and this could just add to existing problems.

Another concern relating to criminal records is the proposal for a new Drug Reduction Order, which could include imposing various infringements on an individual as well as any penalty given as a sentence. It is not clear why a new order is required, as the suggested infringements are all available to courts when necessary and appropriate, for example, as part of a Community Order. One of the impacts of these orders being used is that they may elongate the length of time somebody has to disclose a criminal record, as ancillary orders can affect someone's rehabilitation period. This leads to impacts disproportionate to the sentence given, and therefore the courts assessment of the seriousness of the incident.