

IES Consultation: Commission on the Future of Employment Support

1. The role of employment support

How can employment support better help people who want jobs to find the jobs that want people? Some groups are disadvantaged in the labour market. This includes disabled people and those with health conditions; ethnic minority groups; older workers and younger people; single parents; refugees and migrants; and those with low qualifications.

The view from Unlock:

We think that to provide effective support for people who want jobs, people with criminal records should be recognised as a distinct group with specific needs. Two main themes from our work as an advice service and from wider research are relevant here. Firstly, people with criminal records face huge disadvantage in finding jobs; challenges include employer bias, complicated legal systems and a lack of access to specialist support. Secondly, the existing disproportionality in the criminal justice system (CJS) means that many of the groups referenced in the question are more likely to be negatively impacted by a criminal record.

- People with criminal records are disadvantaged in the labour market. This disadvantage takes various forms, and can be obvious or hidden.
 - Disadvantaged groups can face disproportionately negative outcomes within the CJS. The challenges a criminal record poses to employment can be exacerbated by existing inequalities. Measures to improve labour market outcomes for these groups will be less effective if challenges relating to criminal records are unresolved.
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There are over 12 million people in the UK with a criminal record, who face disadvantage of various kinds within the UK labour market. Criminal record checks are widespread; nearly three quarters of large employers ask about criminal records at application stage¹. People with criminal records are often sifted automatically from recruitment, before having an opportunity to demonstrate their skills and suitability for a role. Recent research by Working Chance showed that nearly 30% of employers would automatically exclude a candidate with an unspent criminal record². Our report on youth criminal records showed that significant numbers of people have

¹ Unlock (2018) [A question of fairness: Research into employers asking about criminal records at application stage](#)

² Working Chance (2022) [Progress and prejudice – shifts in UK employer attitudes to hiring people with convictions](#)

convictions or cautions from decades ago³. Yet these records play a disproportionate role in many employers' decision-making.

It is well-evidenced that people from certain minoritised backgrounds or groups face a higher likelihood of criminalisation, and can face more punitive sentencing as a result. For example, a custodial sentence is more likely for Black Caribbean young males than all young males from other ethnic groups, and people from a Chinese ethnic group are 41% more likely to receive a custodial sentence than those from a White British group (even accounting for legal factors that may impact these outcomes)⁴. So minoritised people can face cumulative disadvantage; faced with a higher likelihood of receiving a criminal record, for that criminal record to include more serious punishments, and later challenged with how this impedes their access to employment.

By automatically rejecting applicants with criminal records, many employers are indirectly discriminating against skilled candidates who face intersecting disadvantage as a result of systemic inequality. Improved policy and practice towards applicants with criminal records is therefore likely to correlate with more diverse, experienced teams. Labour market outcomes for some of the groups referenced in the question would be improved if services recognise and take action that considers the disproportionality present in many areas of the CJS.

A major challenge for people who live with a criminal record is that the system is governed by complex, overlapping rules. 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 has to be disclosed in different checks. Unclear or non-existent guidance from employers on what and when something should be disclosed during recruitment can mean that individuals share more sensitive personal data than is required, and employers collect data they are not legally entitled to. We also know that employers often use the disclosure process to assess an applicant's 'honesty', which is misguided and ineffective, considering the complexity of the system.

Ambiguity, as well as direct discrimination, poses a less visible barrier for people with criminal records seeking employment. The experience of being scrutinised on the basis of a criminal record can be demoralising and invasive; many applicants understandably prefer to avoid this. As a result, even where employers are not explicitly discriminatory, job seekers avoid applying for roles in an act of self-preservation. Over half of people with a criminal record would not apply for a job where they need to disclose their criminal record; this is known as the 'chilling effect'.

The cumulative impact of these poor employer practices and the wider chilling effect is relevant to large numbers of job seekers. A data sharing project between the DWP and the MOJ revealed that one third of people receiving Job Seeker's allowance had received a criminal record

³ Unlock (2018) [A life sentence for young people – A report into the impact of criminal records acquired in childhood and early adulthood](#)

⁴ Action for Race Equality, EQUAL (2023) [Ethnic Inequalities in the Criminal Justice System](#)

in the previous ten years⁵. Both the people who want jobs and the jobs that want people lose opportunities in this way.

What needs to be done to improve labour market outcomes for these groups?

- Systemic change (of the criminal records disclosure system) is essential, but services within the existing system should be doing more to help individuals.
 - Employment services should develop specialist understanding of the issues faced by people with criminal records. Without this, individuals navigate a complicated system alone.
 - Services that understand this issue will be better placed to advocate for more substantial change; highlighting the need for reform to industry leaders and government.
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Unlock's [manifesto](#) calls for greater clarity across the system. The legislation relevant to disclosure of criminal records should be decluttered. Individuals should have simple routes to access their data. The purpose of the system should be clearer for employers and other users. Based on the information outlined above, this would have a positive impact on minoritised cohorts within the labour market.

Employment support agencies should have a robust understanding of the criminal records disclosure regime, offering tailored advice to those whom they support. This should cover the specifics of what and how to disclose. Professional support is essential to counter the chilling effect, so that those with criminal records feel confident navigating a complicated system. It is especially valuable to support individual applicants to know what they *don't* have to disclose, and how to identify and challenge an unlawful criminal records question.

Services that understand what good practice looks like for recruitment of people with criminal records will be better able to identify bad practice, and advocate for change. There is a compelling business case⁶ for improving recruitment of people with criminal records; employment support services can highlight the wealth of skilled and capable candidates that employers often arbitrarily exclude.

To improve labour market outcomes, people with criminal records should be recognised as having distinct needs. Services should recognise the potential presence of multiple, intersecting areas of disadvantage for the people they support. Services should view work to improve outcomes for people with criminal records as integral to wider work to challenge unfairness in other areas. There should be specific, targeted support for individuals with criminal records and those looking to recruit them.

⁵ Ministry of Justice and Department for Work and Pensions (2011) [Offending, employment and benefits – emerging findings from the data linkage project](#)

⁶ New Futures Network (2020) [Employer Guide – further information on recruitment from prisons](#)

2. How well does the current system work with employers?

The view from Unlock:

The current system for people with criminal records seeking employment is unnecessarily complex, opaque and unfair. Individuals lose opportunities for finding work and employers lose opportunities for great employees as a result. We are therefore calling for fundamental reform, but there is plenty that can be done to improve employment services in the meantime.

- Employers should be encouraged to assess people by their skills and suitability for a role first, before exploring the relevance of any criminal record.
 - Support for employers should include guidance on the relevant legal frameworks, internal policy design and what fair practice can look like.
 - Blanket criminal record questions pose barriers to applicants. Well-developed policies and processes relating to criminal records are often a far more effective recruitment tool, for employers and those they are hoping to recruit. Employers need specialist support to develop these.
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What support do employers want and need, and how should this be delivered? How could services work better across sectors, and/ or within places?

Employers need a clearer criminal records disclosure system. Recent evidence suggests that employer attitudes are becoming more positive towards applicants with criminal records⁷. This means that fewer employers are inclined to automatically exclude someone on the basis of their criminal record. The complexity of the criminal records system, however, makes it harder for these changing attitudes to be translated into better practice. Even those employers who recognise that blanket refusals of applicants with criminal records is ineffective are generally unaware of the other ways in which their policies and practices can inadvertently exclude candidates.

Employers report feeling uncertain about what level of checks they can request, how to request relevant information regarding criminal records, and what their duties are for using that information as part of any necessary risk assessments. This means that applicants remain vulnerable to discriminatory practice and ineligible checks, and employers miss out on excellent candidates. It is important to remember that in 2022, 86% of employers who had previously recruited someone with a criminal record reported that they had a good experience doing so⁷.

How well do you feel that employers understand the support and services that may be available to them?

^{7 7} Working Chance (2022) [Progress and prejudice – shifts in UK employer attitudes to hiring people with convictions](#)

Many employers we speak to are aware that they could be accessing greater numbers of applicants if they didn't (either intentionally or inadvertently) exclude people with criminal records for recruitment. The same employers are rarely aware, however, that there are government and third sector services available to support this.

Employers with whom we have worked have found the opportunity to review their policies and procedures with specialist guidance indispensable. When employers feel well-prepared from a data protection, public relations and HR perspective, they are better able to make assured and informed decisions about applicants with criminal records.

Is there a role for employment services in supporting employer investment in skills? What would good practice look like?

The role for services to support employer investment in skills is clear when considering applicants with criminal records. When an employment service has a positive relationship with an employer, some of the stigma and myths regarding individuals with criminal records can be challenged, making space for more constructive conversations about what skills are needed and what training might be relevant.

When supporting employer skills investment, it's important that services recognise that there are some gaps in existing provisions. Many back-to-work programmes in the community focus on individuals who have recently left prison. In fact, less than 10% of people with a criminal record have spent time in custody. It is important, therefore, to ensure that people who aren't prison leavers are also supported into work. The 'collateral' impact of a criminal record can persist for a much longer period than the initial sentence that an individual receives, affecting many aspects of their life (e.g. access to housing, education and financial services). Ongoing support is needed, rather than focusing solely on the time immediately following someone's sentence.

Many people with criminal records will not need additional support in the workplace - they just need an opportunity to demonstrate their suitability for a role (rather than being automatically excluded). For other candidates, some extra guidance and encouragement is advantageous. Some employers report feeling unprepared to support recruits with criminal records in this way (e.g. are there anxieties relating to keeping their criminal record private? Will they need support with visas?). Employment services should therefore advertise programmes of in-work support that look beyond the initial matching of candidates to employers. Support should cover retention and progression once an individual is in post.

What can good practice look like?

Unlock were approached by a national charity who had received an application from a person with a criminal record. This application alerted them to the fact that they had no relevant internal policies for applicants with criminal records. The organisation had a handful of concerns

about how the individual's criminal record might interact with some aspects of the role. Unlock supported the organisation to identify practical solutions to their concerns and develop appropriate and fair policies.

Separately, Unlock supported the applicant with advice and support for navigating the recruitment process. The employer reported feeling relief that the applicant could access our service on their own terms. Having never previously explored recruitment of people with criminal records, the employer had worried that they couldn't provide accurate advice or relevant support to the individual; knowing that we could offer this relieved some pressure.

Considering the recruitment journey of the specific applicant enabled the employer to explore how this would apply to other candidates, as well as existing staff. Once the recruitment process and associated policies were established, the employer had additional concerns about how the public might view their recruitment of a person with a criminal record. Unlock and the organisation collaborated to design a press and PR strategy that covered any potential challenges.

The applicant was ultimately successful and was recruited. They reported feeling respected throughout, and were grateful for the help they received. The employer felt confident in recruitment, having been afforded an opportunity to explore all of their concerns in confidence. The employer was pleased to be able to welcome the applicant's considerable relevant experience and skills. Crucially, the organisation had developed its policies such that all applicants with criminal records could now expect to be treated fairly.

The employer interpreted our recommendations and applied them in line with their organisational values. They reported that they would not have felt confident applying these changes without the specialist knowledge and ongoing support of an organisation like Unlock. Unlock will continue to offer guidance for the employer to support any progression that the individual pursues now that they are in post.
