

Why we need reform of the criminal records system

A criminal record can impact negatively on many aspects of life, limiting someone's access to employment, housing, insurance and travel. All of this can restrict opportunities for successful rehabilitation. A criminal record can have an inherent stigmatisation effect, exacerbating feelings of low self-worth. Besides restricting rehabilitative efforts, this also fuels mental health problems, difficulties in building positive relationships and poor wellbeing. In many cases a criminal record can act as an unintended life sentence, long beyond a time when any initial sentence has been served.

Unlock's vast experience about the criminal records system is gathered from our helpline (which provided advice and support to over 9,000 people last year), feedback from people using the advice pages on our website (which had over a million views last year) and the expertise of trustees, staff and volunteers. This experience tells us that the criminal record system is just not working as it should, either for people with criminal records or for organisations trying to negotiate it. A fundamental review of the wider criminal records system is needed, alongside a commitment to reform that is focussed on proportionality, fairness and effectiveness.

Some facts about the criminal records system in England and Wales...

- Over 12 million people in the UK have a criminal record, which has increased by a million since 2020.
- We estimate that over 700,000 people of working age have something on their criminal record that would show up on the lowest level of check, which can be requested by any employer or other institution.
- Last year, 2,657,121 of these lowest level checks (Basic) were done. This is a 60% increase from three years previously, indicating a large trend upwards.
- Over the last decade, the proportion of employers who would hypothetically employ someone with a criminal record has increased from 25% to 45%. However, research suggests that 30% of employers would still automatically reject an applicant with an unspent conviction.

Why should there be change?

1. Discrimination leads to people being unnecessarily excluded

Discrimination linked to the criminal records system leads to people facing barriers in all aspects of their life, including, but not exclusively, employment, housing and education. This is despite the fact that these factors support successful rehabilitation. Disproportionality elsewhere in the criminal justice system (whereby some groups are more likely to receive tougher sentences than others) follows through into the criminal records system, leading to double disadvantage for groups already facing discrimination. As such, minoritised communities who are under-represented in certain sectors of employment or in respect of accessing further education find a criminal record can entrench, if not exacerbate, existing challenges they face. More effective enforcement could help reduce this unnecessary exclusion, if the system not only encouraged good practice but also penalised poor practice. A reduction in discrimination would also challenge the stigma people with criminal records face, something which creates the “chilling effect” whereby individuals exclude themselves for fear of suffering discrimination.

Example: ineligible checks. This is when employers (inadvertently or otherwise) carry out more elevated checks than are lawful for a particular role. Greater clarity for employers to improve practice should be accompanied by tighter controls that lead to consequences if employers do not undertake “reasonable endeavours” (DBS) in identifying which checks are permissible.

2. Complexity making the system difficult to navigate

The complexity of the criminal records system makes it difficult to navigate without specialist support. Much of this complexity is unintentional, the result of multiple pieces of legislation governing different parts of the system and being repeatedly amended, leading to incoherence. Anyone who has to interact with the current system needs to understand these multiple pieces of legislation and amendments to understand their legal rights and/or responsibilities. A review of the system is needed to introduce greater coherence, more clarity for individuals, and to minimise the bureaucratic burden on employers.

Example: owing to the lack of clarity, individuals may over-disclose by providing employers with information that would not actually show up on the appropriate level of check for that role. Not only does this mean an individual may be excluded from a job due to information they did not need to disclose, but that the employer may have taken account of information that they legally did not have a right to process (potentially in breach of both criminal records and data protection legislation).

3. Unfair and disproportionate impacts

The complexity of the legislative framework causes unfair and disproportionate impacts. The severity of a sentence is not always logically or consistently reflected in the length of time for which that element of an individual's criminal record needs to be disclosed (either through the defined period before which the conviction becomes spent or through the filtering rules). In addition, any prison sentence will always be disclosed through stricter checks carried out for certain roles, such as those that are regulated. As such, a sentence of a few weeks has to be disclosed for as long as a sentence of ten years.

Example: if someone receives a caution for an offence like Arson, this will lead to long-term implications for disclosure, even though other cautions may be filtered off someone's record. Although Arson is a serious offence, if a decision is made that a particular incident is minor enough to only require a caution, then this should be reflected in the criminal records system.

4. Unintentional idiosyncrasies of the system

The structure of the current system with numerous amendments to the various pieces of legislation has also led to idiosyncrasies relating to the periods during which something must be disclosed. This period can be lengthened considerably by things such as an ancillary order or a driving licence disqualification, issues which do not necessarily relate to the seriousness of the offence. Although the sentence itself for an offence might be quite minor, if an ancillary order is attached to the sentence, then the offence will have to be disclosed on a basic check for the duration of the order. This often extends the disclosure period for far longer than it would be for the offence itself.

Example: if someone receives a driving ban alongside a conviction that remains disclosable until they pass their driving test again to regain their licence. However, if they do not do so for any reason (including health reasons) and remain without a driving licence indefinitely, they will always have to disclose this offence regardless of the time that has passed.

What would the impact of change be?

“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 (name changed)

The structure governing the criminal record system was put in place to ensure people have a right for their convictions to be forgotten when they are rehabilitated, while allowing people who have a legitimate need for information about a criminal record to access it (e.g. for safeguarding purposes). There have been considerable, positive changes to the legislative framework over the last five years, but wider change is needed. As such, a review of the system is required.

A reformed criminal record system would be fairer and more proportionate, as well as being effective and easier to navigate. This would have a huge impact on both the 12.3 million people who have a criminal record and all others who currently have to engage with the system, such as employers, higher education institutes, housing authorities or those with safeguarding responsibilities.

Just one specific impact of a reformed criminal records system would be to support employers in accessing the untapped potential of the estimated 25,000 people who are unemployed and have a criminal record, with wider positive implications for the labour market. This process begins with a review of the current system, leading to reform that is focussed on proportionality, fairness and effectiveness.