

The impact of criminal records on women

Introduction

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, and campaign for changes to legislation, policies and practices of government, employers and others.

Our website provides vital information and guidance for people with criminal records, and we also have a helpline run by dedicated staff and volunteers, which deals with specific queries. People can [contact the helpline](#) in various ways, including via email, WhatsApp or our free phone line.

This briefing explores variations in data regarding the number of DBS checks carried out on women in comparison to those carried out on men. Included is a brief overview of the data and consideration of the impact this might have on women with criminal records. This data shows an upward trend in both the number of checks overall and the number of enhanced checks being conducted, as well as highlighting the fact that women are subject to a disproportionate number of enhanced checks.

It then reflects on how these disparities are linked to (and entrench) existing disproportionality and unfairness in the criminal justice system. This document identifies some specific ways that women can be disproportionately impacted negatively by the criminal records system.

Women given a custodial sentence are more likely to be given a short sentence and those prison sentences are more likely to be for non-violent offences; both of these issues present particular problems as a result of the way prison sentences impact on criminal records disclosure and the way in which custodial sentences are viewed. Similarly, the stigma faced by women with criminal records creates a significant barrier to rehabilitation. Finally, the issue of ineligible checks (carrying out DBS checks at a higher level than allowed for a role) is likely to disproportionately have a negative impact on women.

This briefing concludes with some recommendations for how to resolve these problems and make the system fairer. These recommendations concern a more proportionate approach to the impact of prison sentences on an individual's criminal record and improvements that could be made – through guidance and enforcement – to organisations' use of the DBS checks system.

Background

Over 12 million people in the UK have a criminal record. This means there is data held on them relating to a caution or conviction, generally for a recordable¹ offence, on the Police National Computer. There are complex rules about how much of this data has to be shared or disclosed and in what circumstances – taken together these rules make up the criminal record system. Part of this system covers what will be disclosed when criminal record checks are carried out by the Disclosure and Barring Service (DBS), with some key terminology summarised as follows:

- **Basic checks:** can be asked for by any organisation in any situation and includes all unspent (where the defined period of rehabilitation following the sentence has not been completed) cautions or convictions.
- **Standard checks:** can only be asked for by employers for certain professional roles, such as a taxi driver or solicitor, and includes any cautions or convictions that are not protected (whereby certain things can be ‘filtered’ off a DBS certificate after specified periods of time).
- **Enhanced checks:** can only be asked for by employers for certain regulated roles (such as nurses or therapists) and includes any cautions or convictions that are not protected as well as any relevant information the police may choose to disclose.
- **Enhanced and Barring checks:** can only be asked for by employers for certain roles which involve unsupervised work with children or vulnerable adults. These checks include any cautions or convictions that are not protected as well as any relevant information the police may choose to disclose. Additionally, this type of check discloses whether you are on the relevant barring list (for children or vulnerable adults).

Further information on types of checks can be found on the Unlock website [here](#). We will refer to Standard, Enhanced and Enhanced and Barring checks as elevated checks.

- **Ineligible checks:** carrying out a check at a higher level for a role than is legally allowed, thus giving an organisation access to criminal records information they are not entitled to hold.
- **Filtering:** rules governing the time after which certain cautions or convictions, those which are “protected”, can be removed from an elevated (Standard or Enhanced) DBS check. A conviction resulting in a prison sentence, suspended or otherwise, can never be filtered. Further information is on the Unlock website [here](#).

The Rehabilitation of Offenders Act 1974 sets out a right for rehabilitation which means that generally, once a spending period for any caution or conviction is completed, people should be treated as if said caution or conviction never happened. But employers (and others including universities in very restricted circumstances) are able to carry out elevated checks when recruiting for certain roles. There are limits on when and by whom these checks can be carried out; it can be a criminal offence if an employer conducts a more stringent check than is permitted by legislation. These ineligible checks are a problem for people applying for roles and being excluded due to information that should not be disclosed. Ineligible checks are also a

¹ A recordable offence is normally one which could engage a custodial sentence.

problem for employers, who are at risk of taking account of information that they have no legal right to hold.

It is also worth noting that, although there are some roles where a legal requirement to carry out Enhanced and Barring checks exists (to ensure people barred from working with vulnerable adults or children are appropriately excluded) this is not true for all elevated checks. Generally, a role being eligible for an elevated check does not create any requirement on an employer to carry out a check at that level (besides the example given above); if permitted by legislation, employers can make a decision what levels of check, if any, to carry out.

Unlock's work shows that people with criminal records experience negative impacts in relation to various areas of their lives – including getting a job, finding a safe home or accessing higher education. This is often due to the stigma and discrimination linked with having a criminal record. We know that these negative impacts are disproportionately experienced by certain groups, including women. In our March 2021 report *"Angels or Witches; the impact of criminal records on women"*, we surveyed 511 women with criminal records, and found that an overwhelming majority (86%) said that having a criminal record had been a barrier when seeking employment. More than half of the women surveyed felt that the negative impacts of their criminal record were exacerbated by their gender. The full report can be read on our website [here](#).

Data

Overall

Via a Freedom of Information Request, we acquired a large set of data from the Disclosure and Barring Service (DBS) regarding DBS checks completed from 2020-2022. This data could be broken down as follows:

- the number of checks completed overall
- the number of each type of DBS check conducted
- the number of checks which ultimately disclosed anything
- breakdowns by year, age and gender for each of the above

It is important to note that, although Enhanced checks and Enhanced and Barring checks are defined above as distinct types of DBS checks, the data that was supplied by DBS treated these two checks together. As such, in the data and discussion, “Enhanced” refers to both types of check.

Fig 1. Number of DBS checks being conducted annually.

| | | Total | Women | | Men | |
|------------------|--------------|-------------------|-------------------|------------------------|------------------|------------------------|
| | | | <i>Number</i> | <i>% of all checks</i> | <i>Number</i> | <i>% of all checks</i> |
| 2020 | Enhanced | 3,218,991 | 2,163,725 | 67 | 1,055,266 | 33 |
| | Standard | 314,526 | 120,226 | 38 | 194,300 | 62 |
| | Basic | 1,993,775 | 604,685 | 30 | 1,389,090 | 70 |
| | TOTAL | 5,527,292 | 2,888,636 | 52 | 2,638,656 | 48 |
| 2021 | Enhanced | 3,823,038 | 2,596,859 | 68 | 1,226,179 | 32 |
| | Standard | 385,248 | 160,680 | 42 | 224,568 | 58 |
| | Basic | 2,645,154 | 882,253 | 33 | 1,762,901 | 67 |
| | TOTAL | 6,853,440 | 3,639,792 | 53 | 3,213,648 | 47 |
| 2022 | Enhanced | 4,446,636 | 2,956,824 | 66 | 1,489,812 | 34 |
| | Standard | 388,244 | 175,257 | 45 | 212,987 | 55 |
| | Basic | 2,622,537 | 923,378 | 35 | 1,699,159 | 65 |
| | TOTAL | 7,457,417 | 4,055,459 | 54 | 3,401,958 | 46 |
| 2020-2022 | Enhanced | 11,488,665 | 7,717,408 | 67 | 3,771,257 | 33 |
| | Standard | 1,088,018 | 456,163 | 42 | 631,855 | 58 |
| | Basic | 7,261,466 | 2,410,316 | 33 | 4,851,150 | 67 |
| | TOTAL | 19,838,149 | 10,583,887 | 53 | 9,254,262 | 47 |

A key feature of the data is the 35% rise in the total number of DBS checks being conducted across the period; in 2020, over 5.5 million checks were undertaken, a figure that had risen to over 7.2 million by 2022. This rise was driven primarily by a 38% rise in enhanced checks, which in 2022 accounted for 60% (4,446,636) of all checks conducted.

It is worth noting that the figures for 2020 are slightly lower than those for 2018-19 (as reported in the DBS annual report for that year) when 5.8 million checks were conducted in total². This is

² DBS annual reports cover a financial year (hence 2018-19) where the FOI data was provided by calendar year.

likely as a result of the initial impact of the Covid-19 pandemic, and represents the only interruption to a general trend upwards.

Some key observations from the data are:

- women are subject to more checks overall
 - o across the whole period, women were subject to 53% of all checks (10,583,887)
 - o the proportion of checks to which women were subject rose annually by around one percentage point, from 52% of all checks in 2020 to 54% in 2022)

- women are subject to fewer basic and standard checks
 - o across the whole period, women were subject to 33% of the basic checks conducted (2,410,316) and 42% of the standard (456,163)
 - o this figure was, however, rising annually by over 2 percentage points a year for basic checks (from 30% to 35%) and over 3 percentage points annually for standard (38% to 45%)

- women are subject to a large majority of enhanced checks
 - o across the whole period, women were subject to 67% of the enhanced checks carried out (7,717,408)
 - o this figure was broadly stable year-on-year

Highlights

The data reveals two key points worthy of further consideration:

1. There are an increasing number of enhanced checks being conducted.
 - Most DBS checks are carried out as people enter new jobs, and the Covid-19 pandemic had a disruptive impact on the labour market in general, with more transience being felt in certain sectors (e.g. hospitality) and an increase in staff needed in others (e.g. healthcare). So it is possible that the increase in the number of Enhanced checks carried out was partly driven by changes to the labour market in response to the pandemic.
 - The increase may be due to other factors, such as possible changes in practice by employers in carrying out more elevated checks. This could be because employers have identified more roles as being eligible or because they are deciding checks are needed where they previously did not consider them to be. It is important to note that eligibility to carry out a particular level of check for a specific role does not equate (with the exception of where a barring check is required) with a requirement to conduct a check. Misunderstanding of this distinction may also contribute to the high levels of elevated checks.

2. Women are more likely to be subject to these checks.
 - Of those sectors where the Covid-19 pandemic contributed to an increase in roles triggering enhanced checks, women are disproportionately represented. Enhanced checks are most likely to take place in roles where provision of care or responsibility

for children or vulnerable adults is present. Women are traditionally over-represented in roles such as healthcare and education; for example, in 2022 88.6% of NHS nurses and health visitors and 65% of secondary school teachers were women³. This is often exacerbated by expectations that women take on more domestic caring responsibilities, leading to an increase in their need for flexibility in employment, something which is more often found in care-giving roles.

- Furthermore, women are over-represented in voluntary roles (nationally, 54% of volunteering is undertaken by women⁴); many of these roles trigger elevated DBS checks due to the fact that they often involve service provision for supporting children or vulnerable adults.

Further to the above, it is worth noting that for many roles that involve supporting people, there can be huge value provided by recruiting people with relevant lived experience. However, there is extensive evidence showing there are links between people having adverse life experiences (such as childhood trauma, domestic abuse or mental health problems) and receiving convictions; for example, in our 2021 survey, 59% of women with criminal records who responded had been a victim of domestic abuse⁵. So it is possible that support services for women miss out on invaluable peer support as a result of the prevalence of elevated checks in this sector.

Finally, whilst it is in seeking employment that the most obvious issues relating to DBS checks and gender disproportionality can be found, this is not the only area in which there are potentially negative impacts. Firstly, there are roles that involve regular checks throughout employment, not just at the point of recruitment, often for the purposes of safeguarding. Secondly, there are also some non-employment circumstances in which DBS checks are triggered, notably related to higher education courses linked to providing qualifications for roles with safeguarding implications. This is something that is seen in the calls the Unlock Helpline receives on this issue, as they are disproportionately from women.

³ [Fawcett Society, Sex and Power 2022](#)

⁴ [Community Life Survey, 2020-21](#)

⁵ [The-impact-of-criminal-records-on-women.pdf \(unlock.org.uk\)](#)

Issues

As evidenced in the data above, women are subject to a disproportionate number of enhanced DBS checks. This means that they will be disproportionately impacted by existing problems with the way elevated checks are used – for example, when ineligible checks are carried out. Existing examples in the criminal justice system of disproportionality and gender imbalances are often exacerbated by the use of elevated DBS checks in a variety of ways. Firstly, the fact that women are more likely to receive short prison sentences leaves them vulnerable to long-term negative effects due to their criminal record. Secondly, the fact that women are more likely to be convicted for a non-violent offence means that their criminal record may lead to them being disproportionately judged as result of a poor understanding of disclosure information. Thirdly, the problems of societal stigma have a negative effect on women in the context of their criminal records being interpreted. Finally, women are likely to be subject to a disproportionate number of the ineligible checks that are conducted, whereby an individual is subject to a higher level of DBS check than the situation ought to trigger. Each of these issues serves to entrench the various barriers women with criminal records face in moving on with their lives.

Women are more likely to receive short prison sentences

The current criminal records system means that short prison sentences can have a disproportionate impact in respect of elevated checks, which creates a double disadvantage for women.

There are rules about what can be removed from standard and enhanced DBS checks, referred to as filtering. These rules (see above, and about which more can be read on our [website](#)) govern the length of time after which certain offences would no longer show on such checks. Some things can never be filtered, however, such as prison sentences (including those which are suspended). All prison sentences are treated the same in respect of filtering – so even a sentence of a couple of weeks can never be filtered and must always be disclosed in all elevated checks.

These filtering rules will disproportionately impact women in two ways, as not only are they subject to a majority of enhanced checks (see data above), but they are more likely to receive short prison sentences. In 2020, 58% of women starting prison sentences had received a sentence of less than six months, with only 29% sentenced to a year or more⁶; women in custody are more likely to be there for a short period (six months or under) than a longer period.

Receiving any prison sentence has a significant impact on the long-term effect of a conviction on an individual, owing to the fact that a prison sentence means an offence can never be filtered regardless of the length of that sentence. A short sentence has, in effect, the same impact as a longer sentence insofar as it ensures a conviction will always be disclosed on elevated checks. The fact that women are more likely to receive short prison sentences means that they are disproportionately likely to have offences which remain disclosable indefinitely. This means that they will continue to face this disclosure as a potential barrier to employment and education, even if they only received a sentence of a few weeks.

⁶ [Why women 2021 briefing FINAL.pdf \(prisonreformtrust.org.uk\)](#)

This is a prime example of disproportionality in the criminal justice system. A decision taken at one point (sentencing, where a decision to hand down a prison sentence determines that a conviction can never be filtered) leads to entrenched barriers elsewhere, manifested in the DBS checks and disclosures system.

Women are more likely to receive a conviction for a non-violent offence

One concern that we have about the use of elevated checks is that they are often seen as a tick box exercise that people can 'pass' or 'fail'. If someone is on one of the barring lists, this means they are excluded from working with children or vulnerable adults, but for other elevated checks, the information about someone's criminal record should be considered in context.

There are discrepancies in the nature of offences for which women and men receive convictions; for example, 72% of prison sentences given to women in 2020 were for non-violent offences⁷. In general, women with criminal records tend to have been convicted of less serious offences than men and a larger proportion of women's offences are non-violent in nature.

This means that where women have something that resulted in a prison sentence disclosed on an elevated check, it is disproportionately more likely to be a non-violent offence. This is a particular issue when considered alongside the fact that many employers erroneously use DBS checks as a binary process to determine whether to employ someone or not. DBS checks are intended to provide information that employers or other organisations can use to make well-informed decisions. However, some employers do not give due consideration to the nature of offences committed, and simplify what they are seeing into categorising people as "offenders" or otherwise. Women are, then, more likely to have information disclosed through DBS checks that concerns non-violent offences that might generally be understood to be less serious, but be labelled as "offenders" nonetheless. This is particularly true when considering prison sentences, which are often (even sub-consciously) linked in people's minds to violent crime – so employers may be excluding women based on assumptions regarding the nature of any offence leading to a prison sentence.

Women are subject to more enhanced checks than men, and when they undergo checks they are at the mercy of employers using the DBS checks as a blunt instrument.

Women are more likely to face stigma as a result of a conviction

As outlined in our March 2021 report *"Angels or Witches; the impact of criminal records on women"*, women report feeling that their criminal record poses a particular challenge to them as a woman,. The report outlined the way in which many women with a criminal record sense they are judged differently to men with criminal records. Added to the issues outlined above regarding sentencing and the interpretation of women's criminal records, stigma faced by women and the expectations placed upon them by society form additional barriers.

⁷ [Why women 2021 briefing FINAL.pdf \(prisonreformtrust.org.uk\)](#)

Society often holds women to particular standards based on historical stereotypes. Differences in sentencing and types of convictions have been explored above, but it is worth considering how social stigma plays a role in the way women navigate a future of disclosing their criminal record. Research shows that society often still expects women to conform to stereotypes of a “good woman”⁸. The expectations of women this stereotype constructs – for example that women ought to be more caring and nurturing, particularly within a domestic environment - can lead to stigma against those with criminal records who may then be deemed to have deviated from accepted norms in a way that men with a criminal record are less likely to be seen.

It is easy to imagine how such prejudices influence decision making processes involving information disclosed on DBS checks, information which itself may already reflect disproportionality elsewhere in the criminal justice system. As such, the stigma women face exists as a form of double disadvantage. Firstly, entrenching barriers women have faced elsewhere in the criminal justice system. And secondly, it may act to discourage women from seeking out opportunities in employment or education for fear of how stigma regarding a criminal record may count against them.

Ineligible checks

As women are more likely to be subject to elevated checks, unfairness in the current criminal record system will disproportionately impact women. There are various ways that the current system is not fair or proportionate – often due to the highly complex legal framework governing the system, and a lack of understanding about criminal records more broadly. Unlock sets out these in more detail in our [Policy Manifesto](#) but one specific example worth referencing here is ineligible checks. As mentioned above, it is potentially unlawful if an employer carries out a more stringent check than permitted for a specific role (known as an ineligible check). However, it can be very difficult for an employer to find out what level of check is eligible for a role. In 2022/23, 5% of calls to our Helpline (which receives around 9,000 calls a year) concerned ineligible checks. This is likely a conservative estimate as there will be others who are not aware that they have been asked to consent to an ineligible check. We therefore know that employers carrying out ineligible checks is a significant problem, and one that is likely to affect women disproportionately.

⁸ [Being a ‘good woman’: Stigma, relationships and desistance - Natalie Rutter, Una Barr, 2021 \(sagepub.com\)](#)

Conclusion

This briefing has highlighted ways in which women experience disproportionately negative outcomes in the criminal justice system, including through disclosure of criminal records. The prevalence of gendered stigma and discrimination towards women with criminal records can discourage them from seeking opportunities (such as applying for a job). We refer to this as the 'chilling effect'. The chilling effect inhibits those with criminal records from exploring their full potential; the experience of being judged purely on the basis of one's criminal record can be demoralising and upsetting. Many understandably choose to avoid this, and miss out on opportunities as a result. When considered alongside the other issues outlined above, the chilling effect can pose a particular barrier for women with criminal records.

The system needs to be improved in order to ensure that women are only subject to enhanced DBS checks as necessary. Unlock is calling for fundamental reform of the criminal record system, to ensure it is fair, proportionate and transparent. More details are set out in the Unlock [policy manifesto](#). In the meantime, there are specific changes needed so that the criminal records system does not entrench examples of disproportionality elsewhere in the criminal justice system.

Based on the issues outlined above, we would advocate for **the impact of a prison sentence on filtering to be made more proportionate**. The fact that any prison sentence, suspended or otherwise, will always show up on an elevated check is disproportionate, failing to account for the variation in offences that prison sentences can represent. This has a greater impact on women, given they are more likely to receive short prison sentences, so progressive reform here would go some way to addressing gender disproportionalities. A more proportionate approach to short prison sentences' impact on an individual's criminal record is a central ask of the [#FairChecks](#) campaign led by Unlock and Transform Justice.

We also believe there are two issues to be addressed around the legislation concerning DBS checks, both of which require the DBS to be provided with the necessary resources to affect positive change:

- Firstly, **employers need to be provided with better guidance on the way in which DBS checks are intended to be used**. DBS checks are not intended to provide employers with a binary outcome (besides reference to the barring list for certain roles), but we know that this often happens nonetheless. This bad practice is more likely to have a negative impact on women, with convictions of limited relevance showing up on checks. DBS guidance needs to be made clearer and more accessible to ensure that employers are better able to use criminal records information appropriately.
- Secondly, **better guidance and stronger enforcement to reduce the number of ineligible checks**. In addition to providing employers with more clarity in respect of what level of checks are permitted for specific roles, there also needs to be more enforcement where ineligible checks are carried out. Currently, there is little enforcement around the misuse of DBS checks, meaning that employers who do make poor use of the system through conducting ineligible checks, deliberately or otherwise, have little to dissuade

them from doing so. The enforcement capability of the DBS requires strengthening to ensure that best practice is widespread.

There is also work that has to be done to challenge existing narratives around what a criminal record means, especially where people who have received a caution or conviction are stigmatised and discriminated against. This is particularly relevant in respect of women, where outdated assumptions about gender still lead to greater stigma for women who commit offences. This stigma persists even though women with criminal records are likely to have experienced traumatic backgrounds which are often linked to any offending behaviour. We call on policy-makers and influencers (including the media) to use more person-centred language that puts the person first. Any criminal history should only be referenced as one characteristic of many.