

Unlock evidence to UN Special Rapporteur investigation, April 2024

Introduction

Unlock is a national independent advocacy charity working in England and Wales that supports, speaks up and campaigns for people facing stigma, prejudice and discrimination because of their criminal record. A core mission for Unlock is to provide advice and help for people in respect of their criminal record and any consequential barriers. Our website provides vital information and guidance, but we also have a helpline provided by dedicated staff and volunteers, which deals with specific queries. People can [contact the helpline](#) via email, WhatsApp or our free phone line.

This document constitutes our evidence to an investigation of the UN Special Rapporteur on contemporary forms of slavery into issues “affecting currently and formerly incarcerated people”. Further information on the investigation can be found online [here](#).¹ Our expertise in relation to this topic lies in the issues facing people as a consequence of their criminal record, and our responses focus on that.

We have referred to “people with criminal records” where it has been most relevant to highlight issues that impact not only those who have been to prison, and “people who have served custodial sentences” where comments relate specifically to “formerly incarcerated individuals”.

Unlock’s policy work focuses on translating the experiences we hear via our helpline into campaigning and advocacy for structural change to reduce barriers for people with criminal records. At present, the regime governing criminal records in England and Wales is excessively complicated and disproportionately punitive, with implications for individuals lasting an unnecessarily long time. This is a significant impediment for people with criminal records moving on with their lives. For further information on why reform of the criminal records system is required, see our 2023 briefing [here](#).²

Before providing further comment on the issues at hand, it may be useful to lay out a little about the nature of the criminal records regime in England and Wales. All convictions and cautions come with a spending period, ranging from “immediately spent” to “never spent”. Most custodial sentences have spending periods of between one and seven years. Spending periods begin upon

¹ <https://www.ohchr.org/en/calls-for-input/2024/call-input-contemporary-forms-slavery-affecting-currently-and-formerly>

² <https://unlock.org.uk/wp-content/uploads/2023/02/Why-we-need-reform-of-the-criminal-records-system.-Unlock-briefing-February-2023.pdf>

completion of the sentence. Further information about spending periods (following changes in 2023) can be found on our [website](#).³

There are various levels of criminal records checks:

- **Basic checks:** can be asked for by any organisation in any situation and includes all unspent cautions or convictions.
- **Standard checks:** can only be used for certain professional roles (such as solicitors) and shows any cautions or convictions that are not protected (see “filtering” below).
- **Enhanced checks:** can only be used for certain regulated roles (such as nurses) 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 used for certain roles which involve unsupervised work with children or vulnerable adults, known as “regulated activity”. In addition to enhanced check information, this 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 our website [here](#).⁴ Some further definitions that provide useful context for considering barriers to opportunity for people with criminal records include:

- **Ineligible checks:** an organisation carrying out a check at a higher level for a role than is legally allowed, thus giving them access to excessive criminal records information.
- **Filtering:** rules governing the time after which certain cautions or convictions, those which are “protected”, can be removed from standard or enhanced DBS checks. A conviction resulting in a prison sentence, suspended or otherwise, can never be filtered.

Issues

10. What are ongoing challenges in promoting successful economic and social reintegration of formally incarcerated individuals in your country, which may include discrimination (including intersecting forms based on age, gender identity/sexual orientation, race, ethnicity, indigenous, migration, socio-economic and other status), corruption, lack of opportunities and support?

Economic and social reintegration is extremely challenging for people with criminal records generally, with some of the barriers being particularly significant for those who have served a custodial sentence. These barriers can persist long after a sentence is completed – in many cases the impact is life-long. Much of this is down to societal stigma, with [research](#) suggesting that 30% of employers would still automatically reject an applicant with an unspent conviction.⁵ This is likely to be a particular barrier to those who have served a custodial sentence, as their

³ <https://unlock.org.uk/advice/police-crime-sentencing-and-court-bill-pcsc-what-does-it-mean-for-you/>

⁴ <https://unlock.org.uk/guide/criminal-record-checks-for-employment/>

⁵ https://workingchance.ams3.cdn.digitaloceanspaces.com/media/documents/Progress_Prejudice_Shifts_in_UK_employer_attitudes_to_hiring_people_with_convictions.pdf

convictions are less likely to become spent and, therefore, more likely to remain visible on a basic DBS check to any employer. We know that employers are often guilty of using criminal records checks as a 'pass-fail' exercise rather than treating the information they disclose in a nuanced and proportionate way. For many people, therefore, any kind of criminal record can have substantial consequences. Barriers to employment are a significant challenge for people with criminal records and much remains to be done to tackle the associated stigma.

Further challenges to economic and social reintegration relate to housing, finance and education. In many cases, there are specific rules disqualifying people with unspent convictions from access to these services. Access to housing, in particular, is crucial to effective rehabilitation, especially for those recently released from prison. Stable housing is, for example, crucial in finding sustainable employment and accessing vital support services, so the fact that a criminal record (particularly one showing time spent in prison) can act as a barrier to housing poses particular problems to promoting successful economic and social reintegration.

We know also that social issues are problematic for some people with criminal records. Relationships can be harmed, particularly if housing is limited and someone has to move to a different area to find accommodation. People can also experience blanket bans in respect of getting travel visas to certain countries. This embeds the social marginalisation of people with criminal records.

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. Furthermore, the way the system operates is frequently disproportionate. The severity of a custodial 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). This severity in relation to custodial sentences means that challenges in promoting successful economic and social reintegration of formally incarcerated individuals are particularly significant.

The issues outlined here do not affect all parts of society equally. There is significant evidence of disproportionality in the criminal justice system, which is embedded by the criminal records system. For example, the 2017 Lammy Review noted that people from ethnic minority backgrounds were vastly overrepresented in the prison population (25% of prisoners compared to only 14% of the overall population).⁶ More recently, research commissioned by the Crown Prosecution Services (CPS) in 2023 found that charging decisions showed evidence of disproportionality, with white British people charged at the lowest rate.⁷ As such, racially minoritised people are disproportionately more likely to have a criminal record and, therefore, face the associated barriers. Recent research even suggests that employers are sometimes guilty of using assumptions based on race to infer information about criminal records when such

⁶ <https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>

⁷ <https://www.cps.gov.uk/publication/cps-charging-decisions-examining-demographic-disparities-outcomes-our-decision-making>

information is not explicitly disclosed, which highlights the extent to which stigmas around criminal records intersects with those around race.⁸

A further example of disproportionality concerns gender. 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. 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, with society often judging women more harshly for having committed offences. We also know that women are disproportionately subject to the highest levels of DBS checks (67% of enhanced checks in the period 2020-2022, for example), meaning their criminal record remains more 'on view' for longer. For further information on this, please see our briefing on this subject on our [website](#).⁹

All of the above contributes to what is known as the chilling effect. The stigma that exists in society against those with criminal records, which is then given practical manifestation by barriers people face when seeking employment, creates an expectation amongst people with criminal records that their long-term options for the future are limited. It is unsurprising, then, that many people in this situation remove themselves from opportunities for fear of how they will be judged, preferring to do this rather than risking the rejection and further stigmatisation that they can experience. As such, there is a vicious circle of impacts with regards to economic and social reintegration, as people often choose to avoid trying to fully reintegrate owing to legitimate fears about how they might be treated.

11. What recommendations would you make to overcome the existing obstacles and prevent formally incarcerated individuals from being subjected to labour and sexual exploitation?

There are various steps that could be taken to support people with criminal records to overcome barriers to employment and other forms of social and economic reintegration which put them at risk of exploitation. The first step in doing this would be for the government to conduct a wholesale review of the criminal records regime in England and Wales. This would allow evidence to be gathered from people with criminal records, employers and other groups (such as Unlock) to determine where the system could be improved.

There needs to be greater focus on proportionality within the system. The idiosyncrasies and examples of disproportionality need to be addressed to allow for people with criminal records to move on with their lives. Changes made under the Police, Crime, Sentencing and Courts Act 2022 (implemented in October 2023) were positive as they served to reduce spending periods for many and introduced for the first time the ability for custodial sentences of over four years to become spent.¹⁰ This will allow far more people to move on with their lives more quickly after

⁸ <https://unlock.org.uk/new-research-highlights-discrimination-against-people-with-criminal-records-in-labour-market/>

⁹ <https://unlock.org.uk/wp-content/uploads/2023/06/Women-and-DBS-checks-2023.pdf>

¹⁰ We published a briefing on these changes at the time which can be read here:

<https://unlock.org.uk/wp-content/uploads/2023/10/PCSC-implementation-October-2023.pdf>.

completing their sentence, but is only a good start rather than the wholesale reform that is needed.

As part of the [#FairChecks](#), we have some specific suggestions that would improve outcomes for people with criminal records and would have a positive impact on society more generally.

1. Cautions should not be automatically disclosed on any DBS checks.
2. There should be a more proportionate approach to the disclosure of short prison sentences on DBS checks. It would be helpful if prison sentences could be eligible for filtering from elevated checks.
3. There should be a distinct criminal record system for childhood offences. This should allow for people to have offences committed in childhood removed from checks, so that offences from childhood do not continue to hamper someone's opportunities throughout their life.

It is also vital to challenge the stigma experienced by people with a criminal record by better informing wider society about the issues that drag people into criminal behaviour and what effective rehabilitation looks like.

Conclusion

In conclusion, we know that people with criminal records face many long-term barriers related to being able to move forward with their lives. These barriers are often magnified for those who have served a custodial sentence, with societal stigma fuelling practical barriers. However, there are steps that could be taken to improve the opportunities for people with criminal records, and this is the focus of our policy work at Unlock.

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