

Unlock submission to the Times Crime and Justice Commission

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. We work in England and Wales. 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, and we 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. The lived experiences we hear through our helpline provide a major foundation for our policy and advocacy work.

This document is for the Times Crime and Justice Commission.¹ We are experts on the issues facing people as a result of their criminal record, and we have confined our comments here to those issues. Of the ten topics covered by the commission, those where our expertise is likely to be most useful and relevant are “prison, probation and rehabilitation” and “causes of crime”. This is because, at present, the regime governing criminal records in England and Wales is excessively complicated and disproportionately punitive. As such, implications for individuals can last an unnecessarily long time, acting as a significant impediment for people with criminal records seeking to move on with their lives. This hampers effective rehabilitation and, in some cases, can even fuel further offending as people pushed to the margins of society and risk being dragged into a vicious cycle of criminalisation and vulnerability. For further information on why reform of the criminal records system is required, see our [2023 briefing here](#).²

We use the term “people with criminal records”, rather than more stigmatising or value-loaded terms such as “ex-offender”. Similarly, we tend to avoid terms such as “people with convictions”. Firstly, this would play into certain stigmatising terminology, for example “cons”. However, a focus on convictions also excludes people whose criminal record does not relate to a conviction, but rather a caution or other disposal. Such data is held on the Police National Computer or local police force files, and can still be revealed later through DBS checks.

Background

The legislation governing criminal records in England and Wales is complex. It is based on an act, the Rehabilitation of Offenders Act (ROA), passed in 1974 and amended via secondary legislation

¹ Further information on the investigation can be found online [here](https://www.thetimes.co.uk/article/crime-justice-commission-explained-what-aims-b9p8gnj6b):
<https://www.thetimes.co.uk/article/crime-justice-commission-explained-what-aims-b9p8gnj6b>

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

numerous times since. This is in addition to the ROA Exceptions Order 1975 and the Police Act 1997, both crucial to the regime of criminal records checks (DBS checks), as well as data protection legislation. It is challenging both for people with criminal records and for those handling criminal records information to understand the complex system of rights and obligations this piecemeal legislation creates, -challenging both for people with criminal records and for those handling criminal records information unfair. Many of the people who contact our helpline require advice precisely because of this complex and idiosyncratic regime. Any wide-ranging review and reform of the criminal records system in England and Wales should start by examining where this complexity can be addressed.

The ROA enables people with spent convictions the right to withhold details of their criminal record in certain situations. All disposals have a ‘rehabilitation period’, during which the conviction is considered ‘unspent’. Although cautions, and some convictions, can become spent as soon as the sentence is completed, for more serious offences the rehabilitation period begins only once a sentence has been completed. Once this period has passed and the person has received no further convictions, then it will become ‘spent’. A spent record is then only disclosable in specific circumstances, such as when consenting to an appropriate elevated level of DBS check when applying for specific types of work (see below). Further information about spending periods following changes in 2023 under the Police, Crime, Sentencing and Courts Act 2022 (PCSC) 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.

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/>

Discussion: issues and solutions

Barriers created by a criminal record

A criminal record creates numerous barriers for individuals. Review and reform of the system is needed to make it more proportionate and allow people with criminal records to move on with their lives positively.

The criminal records regime inhibits the ability of people to engage in effective rehabilitation. At worst, the barriers people with criminal records face can perpetuate a cycle of offending. People with criminal records can be marginalised within society, increasing their vulnerability and contributing to a greater likelihood of reoffending. Although the ROA allows for people to have their criminal records forgotten, there are a number of reasons why the system does not work as effectively as it should. This means the building blocks of effective rehabilitation are undermined by the barriers created by criminal records.

A criminal record is carried forward as a social stigma, especially if it includes a custodial sentence. Employers often view any criminal record negatively, harming the chances for people with criminal records to get a job. A criminal record can harm someone's ability to access housing or financial services, damage personal relationships and have a catastrophic impact on self-esteem creating a chilling effect, whereby people dismiss opportunities to fulfil their potential for fear of being rejected.

The challenges of a criminal record are particularly significant for those who have served a custodial sentence or certain offence types. 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 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. This is of particular concern related to custodial sentences due to the additional stigma they carry. 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 rehabilitation 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.⁶ Stable housing also supports other pillars of rehabilitation, for example finding sustainable employment and accessing vital support services. As such, the fact that a criminal record (particularly one showing time spent in prison) can act as a barrier to

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

⁶ For example, see here: <https://www.justiceinspectorates.gov.uk/hmiprobation/research/the-evidence-base-probation/specific-areas-of-delivery/accommodation/>

housing is especially problematic. There are also implications regarding insurance. This can impact not only the person with a criminal record, themselves but also anyone living with them, as insurers often ask about criminal records on a 'household' basis.

We know also that social issues are significant 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 all embeds the social marginalisation of people with criminal records, further harming rehabilitation and potentially increasingly the likelihood of reoffending.

The complexity of the criminal records system makes it incoherent and 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 (often via secondary legislation). The way the legislation works means that a prison sentence can never be filtered from enhanced or standard DBS checks and suspended prison sentences are treated exactly the same as prison sentences served for criminal records purposes. This means the impact is life-long regardless of whether any time was actually served in prison.

Though cautions are often immediately spent, they can have a long-lasting impact if they have ancillary orders attached, as these can be outstanding indefinitely. Clearly, the system operates disproportionately, with the severity of a sentence not always logically or consistently reflected in the length of its required disclosure.

Disproportionality

The issues outlined here do not affect all parts of society equally. As such, review and reform of the issues with the criminal records regime is a social justice issue, something that would contribute to improvements across society.

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).⁷ 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.⁸ As such, people who are racially minoritised 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

⁷ <https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>

⁸ <https://www.cps.gov.uk/publication/cps-charging-decisions-examining-demographic-disparities-outcomes-our-decision-making>

criminal records when such information is not explicitly disclosed, which highlights the extent to which stigmas around criminal records intersects with those around race.⁹

A further example of disproportionality concerns gender. Women given a custodial sentence are more likely to be given a short sentence of less than 6 months. Such prison sentences are more likely to be for non-violent offences for women than they are for men. These sentencing patterns can pose particular challenges, due to the impact of a custodial sentence on a criminal record, and the public perception of prison sentences. Similarly, the stigma faced by women with criminal records can create 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 'on view' for longer. For further information on the impact of criminal records checks on women, please see our [briefing](#) on this subject.¹⁰

A chilling effect

All of the above contributes to a chilling effect. Stigmatisation of people with criminal records, manifested in the barriers outlined above, creates an expectation amongst those affected 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, rather than risking further rejection and disappointment, which itself deepens stigmatisation. As such, there is a vicious cycle of impacts with regards to rehabilitation, as people avoid trying to fully reintegrate owing to legitimate fears about how they might be treated. This marginalisation of millions of members of society must be addressed through reform of the criminal records system.

A better future

There are various steps that could be taken to support people with criminal records, facilitate rehabilitation and reduce reoffending. The first step would be wholesale government review and reform of the legislation governing criminal records regime in England and Wales. Evidence from people with criminal records, employers and sector experts would help determine the improvements that are needed.

However, wider reform will inevitably take time and there are some changes that could be achieved with greater urgency. Specifically, we believe that there is a need for a distinct system for childhood offences. Children have distinct legal rights with regards to justice. In basic terms, this is reflected in the fact that there is a distinct youth justice system with distinct underpinning principles. Yet childhood offences are handled by the same criminal records regime as for adults, albeit with typically shorter spending periods. As such, the criminal records system hampers the aims of the youth justice system, unhelpfully acting as an additional layer of punishment.

⁹ <https://unlock.org.uk/new-research-highlights-discrimination-against-people-with-criminal-records-in-labour-market/>

¹⁰ <https://unlock.org.uk/wp-content/uploads/2023/06/Women-and-DBS-checks-2023.pdf>

There needs to be greater focus on proportionality within the criminal records regime. Numerous idiosyncrasies 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. This legislation also introduced for the first time the ability for custodial sentences of over four years to become spent.¹¹ This allows far more people to move on with their lives more quickly after completing their sentence. These changes stand out as unusually progressive in a system that requires much more fundamental reform.

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

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

It is also vital to challenge the stigma experienced by people with criminal records. Both systems change and better public understanding of the criminal justice system support this. A society informed about the complexities of criminalisation, with an understanding of effective rehabilitation, may be slower to judge people with criminal records. Myths such as the misunderstanding that everyone with a criminal record has spent time in prison, or that everyone with a criminal record is inherently dangerous, contribute to the stigma. This increases the exclusion people with criminal records face. Change is needed.

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 work at Unlock.

For more information, please contact Brendan Shepherd via policy@unlock.org.uk.

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¹¹ 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>.