

A fresh start for criminal records

Priorities for government in 2020

Introduction

For 20 years Unlock has, as an independent charity, provided a voice and support for people who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence. We believe in a society where people can thrive and are not held back by their past. This means a fair and inclusive society that removes unnecessary barriers and supports the reintegration of law-abiding people with a criminal record. Government has an important role to play in finding solutions so that no one is left behind.

We need a fair justice system – one that gives a second chance to people who have served their time and want to make a fresh start. Helping people with convictions to secure employment, support their families and contribute to the economy is one of the best ways of making communities safer. Yet the law as it stands means people are forced to disclose convictions to employers and others for many years - sometimes for the rest of their lives. While in some cases this will be necessary to protect the public, the current approach does little to make our country safer. Instead people are locked out of jobs and opportunities, unable to contribute to society or to achieve their potential because of a criminal record that is effectively a life sentence.

There are over 11 million people with a criminal record and every year we hear from thousands of people held back unnecessarily - locked out of employment, refused home insurance, excluded from higher education and professional membership. But this moment can be one of opportunity: to radically rethink the people who have turned their backs on crime can and should have the opportunity to unleash their potential and make a positive contribution to society.

We invite the government to commit to five priorities to bring about a fresh start for law-abiding people with criminal records:

1. **Enable a fresh start** – Conduct a root and branch review of the criminal record disclosure regime
2. **Ensure a fresh start** - Mend the broken DBS filtering rules
3. **Encourage a fresh start** - Develop a legislative footing for 'ban the box'
4. **Energise a fresh start** - Incentivise employers to recruit people with convictions
5. **Embed a fresh start** - Protect people from post-sentence discrimination

1. [Enable a fresh start](#) – Conduct a root and branch review of the criminal record disclosure regime

A criminal record can affect employment, volunteering, housing and education. Sometimes, checks on people's pasts are essential, but the current disclosure regime is outdated and disproportionate.

- *Andrew, convicted of shoplifting twice aged 12, must reveal that when applying to be a traffic warden aged 55 – more than 40 years later.*
- *15-year-old Lauren pushed someone in an argument at her care home and accepted a caution for actual bodily harm – at 25, she must reveal that when applying for jobs as a youth worker.*
- *Nicole was convicted of prostitution when she was 13 – in fact she was sexually exploited but still has to reveal it 30 years later when working to support victims of the same type of abuse.*

The Conservative Manifesto committed to “improve employment opportunities for ex-offenders” but this cannot be fully achieved without conducting a root and branch review of the criminal record disclosure regime. Evidence shows that [more than half of men, and three quarters of women who receive a conviction](#), are never convicted again. Yet over 7,000 people every year receive a prison sentence of over 4 years and, under the Rehabilitation of Offenders Act 1974, this will never become ‘spent’ and so will always have to be revealed to employers when asked, no matter how long the person live a law abiding life. That is why Unlock have long campaigned for a system with proportionate, evidence-informed timeframes that enable all convictions to become ‘spent’ after a period of living crime-free. In many countries, quasi-judicial processes provide for “judicial rehabilitation”. Sealing processes of this type were advocated for by David Lammy MP in his 2017 [review of disproportionality in the criminal justice system](#).

The nation deserves a criminal record disclosure regime that is fair and gives people a real chance to move on and contribute positively to society. We call on government to conduct a root and branch review of the criminal record disclosure regime.

2. [Ensure a fresh start - Mend the broken DBS filtering rules](#)

The DBS filtering rules were designed to prevent unnecessary disclosure of old and minor offences on standard and enhanced criminal record checks. However, the current rules don't go far enough: they are blunt, restrictive and disproportionate.

Over 240,000 people every year have their employment chances hindered because of the disclosure of a criminal record that is old, minor or irrelevant to the job being sought. The 'chilling effect' of DBS checks and the shame, embarrassment and stigma of disclosing a past criminal record puts a significant – but hidden – proportion of people off even applying for roles where their criminal record will come up.

In the last 5 years, over 1 million disclosures were about offences committed more than 30 years ago when the person involved was between 10 and 25 years old. This highlights the enduring impact of youth criminal records – effectively, a life sentence. The Conservative manifesto recognised that children who enter the care system are more likely to struggle later in life. Research has found that children in care are [15 times](#) more likely to be criminalised than other children. The [Taylor Review into the youth justice system](#) and the [Law Commission](#) have criticised the current regime. The government committed to considering criminal record disclosure for children and young adults but delayed responding to the [Justice Select Committee](#) inquiry and the [Lammy recommendation](#) on sealing criminal records, until after the Supreme Court had given its judgment in P, G and W. ([2019] UKSC 3).

In January 2019, the [Supreme Court](#) found the filtering rules unlawful in two ways:

1. Youth cautions (along with reprimands and final warnings) should not be disclosed – they are intended to be rehabilitative, not punitive. The court described the inclusion of youth warnings and reprimands in the disclosure regime as a 'category error' and an 'error of principle' (para 64).
2. The "multiple conviction rule" set out at Art 2A(3c) – Rehabilitation of Offenders Act (Exceptions Order) 1975 is incompatible with Article 8 ECHR. The court described the rule for disclosing multiple convictions and its impact on individuals as 'capricious' (para 63).

The government has so far failed to act on the two aspects of the regime ruled unlawful and risk litigation from individuals who are directly affected by having either their youth cautions or multiple convictions disclosed on standard or enhanced DBS checks. Whilst the Supreme Court found the list of offences to be compatible with law, it did not comment on whether the list is the correct one. The Court acknowledged that bright line rules inevitably cause some injustice, which is all the more reason to ensure the lines are drawn in the correct place. The Law Commission's review into the list of filterable offences, found 'a lack of a principled basis for the inclusion of individual offences in the list'.

We urge the government to pass a remedial order to ensure that youth cautions, reprimands and warnings are now filtered out, and the multiple conviction rule is removed. A wider review would provide an important opportunity to consider other important aspects, such as amendments to the list of filterable offences.

3. Encourage a fresh start - Develop a legislative footing for 'Ban the Box'

In 2016, the Civil Service endorsed the [Ban the Box campaign](#) and removed the criminal record disclosure section from initial job applications for most civil service roles. Ban the Box does not oblige employers to hire people with criminal records, but it increases the chance they will consider them. Removing the box from the application process gives people the chance to get further before disclosing their criminal record. When applicants can progress to later stages in the recruitment process and meet employers, they can demonstrate their potential. Since 2013, over 130 companies have joined this movement, but there's much more to be done. In a recent survey of over 60 national companies, 75% were found to have general questions about criminal records on the application form. Employers are prohibited from asking other discriminatory questions during recruitment and selection.

In the USA, 35 states, and the District of Columbia, have implemented state-wide laws or policies on ban-the-box or fair-chance recruitment in public sector recruitment. 13 of these have extended these laws to private employers. That means 75% of the population lives in states with some form of ban the box law or policy.

We encourage the government to extend the Ban the Box commitment beyond the civil service to all public bodies. We also believe the government should follow the lead taken in the US by introducing 'fair chance hiring' practices, including a statutory requirement for all employers to delay the questions about criminal records until the pre-employment stage.

4. Energise a fresh start - Incentivise employers to recruit people with convictions

People with criminal records are an untapped talent pool that has been ignored for too long. The government has long stated that it should pay to work and increased rates of employment have enabled more people to provide for themselves and their families, reducing the burden on the state and contributing to society. We want to see that opportunity extended to people with criminal records.

Employers actively recruiting from this population report positive experiences, higher than average retention rates and less disciplinary issues. Yet many businesses remain reluctant - 75% of companies admit to discriminating against applicants who declare a criminal record. This is often because of long-standing - and inaccurate - beliefs about their reliability and the risks they may pose to staff or the company's public image. This comes at a high cost to society; around a third of people claiming job seekers allowance have a criminal record.

The government, via the [New Futures Network](#), recognises and champions businesses that employ people with convictions. Many more that need to be incentivised to change their recruitment practices, and given support to do so. This could take the form of an NIC holiday or a cash subsidy for a fixed period.

Read our briefing on [financial incentives](#).

We recommend that government pilot financial incentives for businesses who actively employ people leaving prison and those on probation.

The [Going Forward into Employment pilot](#) has shown promising signs and this needs wider buy-in from across Whitehall and local government. The Reducing Reoffending Board set up by the previous government had positive potential.

The government should develop a cross-departmental strategy to increase the employment of people with convictions within the civil service, the wider public sector and the private sector.

5. Embed a fresh start - Protect people from post-sentence discrimination

Far too often we hear from people with criminal records who have lost out on employment or been dismissed as a result of their conviction even though it is now spent and the employer has no legal right to take their spent conviction into account.

Section 4(3) of the Rehabilitation of Offenders Act 1974 (ROA) states that a spent conviction (or failure to disclose a spent conviction) "shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment". However, there is currently no provision that corresponds to section 4(3) in employment law legislation. Therefore, an employee would need to have been continuously employed for two or more years to bring a claim for normal unfair dismissal. This is particularly restrictive for people who are dismissed for having a spent conviction because in our experience this kind of dismissal often happens towards the beginning of their employment.

The Employment Rights Act 1996 (ERA) includes specific instances of automatically unfair dismissal which do not require two years' service. The ERA should therefore be amended to include failure to comply with s.4(3) of the ROA as an automatically unfair dismissal to give full practical effect to the primary legislation. This protection should apply to workers and employees, as with other forms of automatically unfair dismissal under the ERA. Additionally, s.4(3) of the ROA clearly envisages a scenario in which a prospective employer will be prevented from refusing work to a candidate because of a spent conviction. Therefore, protection should be extended to prospective employees or workers to prevent them from being refused a job because of a spent conviction, in the same way that the Equality Act 2010 provides protection against other forms of discrimination.

We urge the government to amend the Employment Rights Act 1996 and add s.4(3) of the Rehabilitation of Offenders to the list of automatically unfair dismissal claims.

After convictions become spent, information often remains available online indefinitely. This can cause people life-long anxiety and discrimination. Search engines and news organisations should operate a presumption that this information is removed rather than requiring individuals to apply for removal of every search result.

We urge the government to work with search engine providers, news organisations and the Information Commissioners Office to ensure that there is a presumption that spent convictions are not available online.

Support these priorities

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