



## 1. Introduction

UNLOCK, the National Association of Reformed Offenders, is an independent charity and membership organisation set up to achieve equality for reformed offenders. Driven by the needs of reformed offenders, UNLOCK works to reduce crime by helping them overcome the social exclusion and discrimination that prevents them from successfully reintegrating into society.

Stable employment is known to be the most important factor in reducing the risk of re-offending, and giving people a fair opportunity to find and keep work should be central to all policies that relate to people with convictions. UNLOCK's Information & Advice service receives telephone calls, emails, letters and online submissions from individuals who are experiencing difficulties as a result of CRB checks, ISA decisions, and general disclosure issues.

UNLOCK therefore welcomes this review, as well as the broader review into the criminal records regime and the disclosure of criminal records. The vetting and barring scheme (VBS), as part of its current operations, incorporates the role of CRB checks and the role of the Police, and so this paper touches on some of these issues also.

This document draws on the views that have been obtained from our members, who are reformed offenders. It builds on a paper published in March 2010,<sup>1</sup> reflecting the specific nature of this review and the published terms of reference. Many of the issues that discussed relate to those raised in a briefing paper on the Criminal Records Bureau, published February 2010.<sup>2</sup>

## 2. The scope of the VBS

2.1 *Ensure that the definition of 'regulated activity' covers only those roles which need to be exempt from the Rehabilitation of Offenders Act 1974 (ROA)*

2.1.1 Fundamentally review all positions currently exempt from the ROA (and defined as 'prescribed positions' under Police Act regulations), with a view to reducing the number of positions eligible for standard or enhanced checks. Given the Home Secretary's announcement in June 2010, the Government accepts that the definition of 'regulated activity' is still too wide, even after the review conducted by Sir Roger Singleton in December 2009.

<sup>1</sup> Available to download at <http://www.unlock.org.uk/userfiles/file/VBS%20-%20Issues%20raised%20by%20reformed%20offenders%20-%20UNLOCK%20-%20March%202010.pdf>

<sup>2</sup> Available to download at <http://www.unlock.org.uk/userfiles/file/disclosure/UNLOCK%20Briefing%20Paper%20on%20the%20Criminal%20Records%20Bureau.pdf>

- 2.1.2 The term 'regulated activity' should be specific to roles that primarily involve sole responsibility for, or supervision of, children and vulnerable adults, and not those roles where 'contact with' these groups is either secondary or ancillary to the role.
  - 2.1.3 There should be a clear process established which ascertains which roles need to be exempt from the ROA (and defined as a 'prescribed position' under Police Act regulations), clearly identifying those roles where potential risks are present. This includes clearly defining the terms children and vulnerable adult, as well as the type, level and amount of contact that is required, before that role is regarded as 'regulated activity'
  - 2.1.4 Ensure that only those roles which meet these requirements, including the principle of frequency or intensity (under the current SVGA), are entitled to an enhanced CRB check, and that those roles which don't fall into an exemption are only able to require a basic check
  - 2.1.5 Review the definition of vulnerable adult, to only encompass those who are truly vulnerable *in a specific instance*
- 2.2 *Ensure that the definition of 'regulated activity' is clearly defined and that both employees and employers are clear about what constitutes regulated activity*
- 2.2.1 Establish a clear, workable definition of 'regulated activity'
  - 2.2.2 Align the 'prescribed positions' under Police Act regulations with the definition of 'regulated activity' so that enhanced CRB checks can only be obtained for positions defined as 'regulated activity' – this will bring clarity to a current situation where a role could potentially not constitute 'regulated activity' but still carry out an enhanced CRB check
  - 2.2.3 Establish an effective process by which individuals and employers may seek official clarification as to whether a specific position constitutes 'regulated activity' without recourse to specialist legal advice.
  - 2.2.4 Clear guidance for individuals on the types of roles which can require a CRB check.
  - 2.2.5 Clear guidance for employers on what roles they are able to require a CRB check for.
- 2.3 *Replace a positive registration scheme (which was due to cover between 9 and 11 million people) with a scheme which combines the role of the ISA in making independent barring decisions, with the role of a portable CRB regime which provides employers with details about whether an individual is barred from working with children and/or vulnerable adults.*
- 2.3.1 Retain the role of the barred lists in barring people from working with certain groups
  - 2.3.2 Introduce a portable CRB certificate which is owned by the individual
  - 2.3.3 Include on the certificate information as to whether that individual is barred from working with either children or vulnerable adults
  - 2.3.4 CRB checks should not be compulsory for any role, but rather be a decision for the employer (within the legislative confines of which roles *are eligible* to require such disclosures)
  - 2.3.5 Introduce the ability for an employer, where a full risk assessment has taken place, to employ a barred person in a role which is defined as regulated activity, where the employer is aware of the potential risks and has taken steps to mitigate this risk

- 2.4 *Ensure that steps are taken to prevent individuals being required by employers to undertake a CRB check (or having their details checked online) for roles that are not regulated activity under the SVGA or exempt from the ROA in any other way*
- 2.4.1 Clear communication of the criminal penalties for making a false declaration with regard to a position being one of regulated activity or falling under another exception to the ROA.
  - 2.4.2 Develop and implement effective processes to ensure that CRB checks are only available where a role genuinely involves regulated activity, including meeting the frequency/intensity element.
  - 2.4.3 Establishment of an effective process by which individuals may raise concerns about an employer requiring a CRB check for positions that do not meet the definition of regulated activity, for example through the CRB helpline
  - 2.4.4 Provision of training on the definition of regulated activity for all Registered / Umbrella bodies to improve their ability to identify illegal applications.
  - 2.4.5 Review of the CRB process, focusing on how to prevent illegal checks.

### **3. The role of the ISA**

- 3.1 *Continue making independent barring decisions on the suitability of people to work with children and/or vulnerable adults*
- 3.1.1 The ISA should be made aware when an individual seeks to work in regulated activity, and this should be checked against the barred lists, with the result being disclosed on the face of a CRB check
  - 3.1.2 The ISA to be responsible for 'managing' the use of non-conviction information. Under the current system, after an independent decision has been made on non-conviction information, individuals effectively find themselves barred after the police, using a lower 'relevancy' test, decide to disclose this information on a CRB disclosure.
- 3.2 *Ensure that people with convictions are clear about what impact their convictions will have on whether the ISA will bar them*
- 3.2.1 The ISA decision-making process (DMP) should be detailed in legislation so that the way that the ISA make their decisions can subject to Parliamentary scrutiny.
  - 3.2.2 Production of 'user-friendly' information on the DMP to allow members of the public to make an assessment as to whether they are likely to register them.
  - 3.2.3 The ISA to publish a list of convictions which will be regarded as 'not initially relevant'.
  - 3.2.4 The ISA to produce clear guidance on the relevance/impact of convictions, aimed at the estimated 8 million people who have previous convictions in the UK.
  - 3.2.5 The ISA to indicate likely barring decisions for key case studies to provide greater clarity on the treatment of convictions.
  - 3.2.6 The ISA to make clear, using plain language, which offences are subject to auto-barring.

### 3.3 *Ensure that people with convictions are not barred by the ISA unfairly or unnecessarily*

- 3.3.1 Amendment to the SVGA to remove auto-bar without representation. All those subject to a potential bar should have the opportunity to make representations. At present, anybody cautioned or convicted for any offence on the auto-bar without presentation list can *never* work with children or vulnerable adults. We do not feel this properly balances the need to safeguard with the recognition that risk can decrease over time and that individuals can reform.
- 3.3.2 Consider the potential for variations in CPS decision making to create unfair disparities depending on the offence and individual is convicted of, mitigating against this via guidance for the CPS and an ability to exercise discretion in individual cases.

When notified by the ISA that you are barred subject to representations, individuals are placed in a difficult situation. UNLOCK have supported a number of individuals who have found themselves provisionally barred by the ISA in making representations. However, this has led to some losing their job in the meantime. Furthermore, many are unable to make substantive representations in writing, for a number of reasons, and many question whether there is any point.

- 3.3.3 Amend the SVGA, which currently requires the ISA to automatically bar somebody before allowing them to make representations, to give the ISA the discretion to immediately bar, if they feel it is necessary, or for them to suggest an alternative course of action, such as a change in role, pending a decision.
- 3.3.4 The fairness of the representation process to be reviewed, including:
  - a. publication of a “representation pack” providing guidance on submissions
  - b. funding of an advocacy service to support people making representations
  - c. introducing face-to-face representations before barring decisions are made, at a convenient location.
- 3.3.5 Establish a full right to appeal consistent with the spirit of Article 6 of the Human Rights Act, including legal representation funded by legal aid.
- 3.3.6 The opportunity to have a barring decision reviewed after a certain period of time.
- 3.3.7 Regularly publish statistics on the number of people barred during a particular period (for example, per quarter), detailing the number of cases which received representations, and the number of cases successfully challenged.

## 4. The role of the CRB

- 4.1 *The CRB to provide CRB checks to the level which is most appropriate for why it is being obtained*
- 4.1.1 Provide basic checks for positions covered by the ROA, disclosing only unspent convictions, subject to reductions in the ROA disclosure periods.
- 4.1.2 Provide standard checks for positions exempt from the ROA, disclosing both unspent and spent convictions (which have not been subject to filtering).
- 4.1.3 Provide enhanced checks for positions classed as a “prescribed position” under Police Act regulations (which would, as recommended above, be confined to the definition of regulated activity), disclosing both unspent and spent convictions (which have not been subject to filtering), and whether the individual is barred, but not disclosing non-conviction information, which will have been disclosed to the ISA.

- 4.1.4 Introduce the ability for an employer, where a full risk assessment has taken place, to employ a barred person in a role which is defined as regulated activity, where the employer is aware of the potential risks and has taken steps to mitigate this risk.
- 4.2 *To end the disclosure of 'other relevant information' on the face of the disclosure*
- 4.2.1 Once the ISA becomes fully operational, there will no longer be any reasonable justification for the police disclosing non-conviction information on the face of a CRB check. Such information should be considered by the ISA in their decision-making. The police currently invest a lot of time and resources in *trying to* manage the disclosure of such information, but in the face of huge police cut-backs, this is an activity which the police are not best placed to be responsible for. The decisions that the police make regarding whether to disclose are often based on either too much information that they simply cannot take into account, or insufficient information. The consequence of disclosure – being that the individual will lose (or not get) their job – renders this process wholly inadequate.
- 4.3 *The CRB to act on recommendations UNLOCK made in a paper, Briefing Paper on the Criminal Records Bureau, February 2010, which addressed:*
- Roles/positions eligible for CRB checks
  - Clarity on what jobs are eligible for CRB checks
  - The legal framework designed to prevent illegal CRB checks
  - Mechanisms to prevent illegal CRB checks
  - What information is disclosed (convictions, cautions and non-conviction information)
  - Basic disclosures

## 5. The role of others

- 5.1 *The police to be no longer responsible for either disclosing criminal records, or disclosing 'other relevant information'*
- 5.1.1 A separate independent body should be responsible for maintaining and disclosing criminal records for the purposes of vetting.
- 5.1.2 The ISA to take into account 'other relevant information' as part of their barring process.

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