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1. Background [Back to top](#)

This is a submission made by UNLOCK to the Criminal Records Review – Phase 1 as part of the charity's UNLOCKing Employment campaign.¹

UNLOCK is an independent charity and membership organisation which represents reformed offenders. Views and proposals expressed here have been arrived at as result of our case work with individuals and submissions received by our members.

Having had the opportunity to have direct input to the Criminal Records Review by meeting with both Sunita Mason and her supporting officials within the Home Office, and also through our membership of the Independent Advisory Panel on the Disclosure of Criminal Records (IAPDCR), this

¹ See <http://www.unlock.org.uk/staticpage.aspx?pid=17> for more information, and previously published documents

document now sets out UNLOCK's current position on the areas covered by the review's terms of reference. It also incorporates views expressed by UNLOCK members directly to Sunita in a consultation meeting she held as part of her work.

It is intentionally focused on making a number of practical recommendations which, if implemented, would significantly improve the criminal records regime. It is not idealistic; it is recognised that there are little funds to support wholesale reform, and that the motives behind this review are more focused on civil libertarian and proportionality arguments. Nevertheless, many of the areas discussed in this paper will complement both of these areas, as well as addressing the issues within the criminal records regime which have a specific and significant impact on people with convictions.

This submission refers specifically to Phase 1 of the review.

2. Review Terms of Reference [Back to top](#)

The terms of reference of the review published by the Home Secretary are outlined below. We will refer specifically to these during the document, but will also look to discuss issues directly relevant to this review but which lie outside of these specific terms.

In phase 1:

1. Could the balance between civil liberties and public protection be improved by scaling back the employment vetting systems which involve the Criminal Records Bureau (CRB)?
2. Where Ministers decide such systems are necessary, could they be made more proportionate and less burdensome?
3. Should police intelligence form part of CRB disclosures?

3. Main aspects of the current criminal record regime [Back to top](#)

This section discusses the main aspects of the current criminal record regime as it applies to people with convictions, highlighting areas where there is clear evidence for reform, as well as making practical recommendations to implement these.

3.1 Rehabilitation of Offenders Act 1974 (ROA) [Back to top](#)

There has been a strong case for some time now to reform the Rehabilitation of Offenders Act (ROA),² in both reducing the time periods that pertain to disclosing convictions and the number of exceptions to the Act. Our views on how the ROA should be reformed are contained in our briefing paper for the second reading the Rehabilitation of Offenders (Amendment) Bill 2009.³

The purpose of the ROA is to “rehabilitate offenders who have not been reconvicted of any serious offence for periods of years”, essentially by allowing them to wipe the slate clean. However, the disclosure periods are too long, the act does not cover enough people (such as those sentenced to over 30 months, IPP sentenced prisoners and lifers), and is premised on people having to lie to open-ended questions, as opposed to only allowing certain information to be asked for.

Recommendation - Reduce the periods of time that must elapse before convictions do not have to be disclosed to employers (and others).

Reform of the ROA sits with the Ministry of Justice, and is currently included as part of a consultation on reform of the Criminal Justice System, *Breaking the Cycle*.⁴ However, considering the role of the ROA (Exceptions) Order 1975 (as amended) in terms of exempting certain roles/positions from the provisions the ROA and therefore being eligible for CRB checks, it is difficult to see how this element of the ROA cannot be looked at when looking to scale back the vetting systems which involve the CRB.

Furthermore, in terms of going forward, having the ROA (which determines disclosure periods for criminal convictions) and the Police Act (which outlines the main legislative provisions for CRB checks) sitting with two different government departments appears to be contradictory given that they are inextricably linked, and are essentially different sides of the same coin. This situation appears to date back to when the Home Office were responsible for prisons and probation, before the Ministry of Justice was created.

Recommendation - Policy responsibility for the ROA, the ROA (Exceptions) Order and the Police Act 1997 should sit with the same government department

Recommendation - The Home Office to consider reforms to the ROA as an integral part of the criminal records regime, and to see it as unequivocally linked to the Police Act and the mechanisms of CRB checks

We will be submitting these views to the Ministry of Justice as part of the *Breaking the Cycle* consultation.

² Visit <http://www.unlock.org.uk/staticpage.aspx?pid=69> for a summary of the case for reform

³ Available to download at <http://www.unlock.org.uk/userfiles/file/roa/UNLOCK%20Briefing%20Paper%20-%20Rehabilitation%20of%20Offenders%20Amendment%20Bill.pdf>

⁴ *Breaking the Cycle*, published 7th December 2010

3.2 Roles/positions eligible for standard and enhanced CRB checks [Back to top](#)

The increasing number of exceptions to the ROA has undermined its original purpose, as exempt roles and professions are able to carry out either standard or enhanced CRB checks which, rather than enabling individuals to wiping the slate clean, reveals *all* criminal convictions, leaving many reformed offenders unfairly excluded from large proportions of the labour market.

3.2.1 Positions exempt from the ROA [Back to top](#)

The Ministry of Justice do not currently have a clear decision making process in place which critically assesses the purposes for why certain roles/professions should be exempt from the ROA. This has led to an ever-increasing list of exceptions, which serves to undermine the purpose of the ROA.

Furthermore, whilst the ‘Eligible posts’ information on the CRB website⁵ provides a list of roles/positions that are currently eligible for CRB checks, this information doesn’t differentiate between standard or enhanced checks, which makes it unclear what roles/positions are entitled to a standard check and which ones are eligible for an enhanced check.

Recommendation - The MoJ to undertake a full review of current exceptions. Exceptions to be granted on the basis of an individual job role, not the whole employer, industry or profession, giving consideration to the role of basic disclosures and the ISA in employment vetting.

Recommendation - The MoJ to review the current application and decision-making process for deciding whether a position should be excepted from the ROA.

Recommendation - The MoJ to make the above process publicly available.

3.2.2 Positions eligible for enhanced checks [Back to top](#)

This section will look at both positions which should be eligible for enhanced CRB checks, and roles which should be subject to the Vetting & Barring Scheme, as we feel the two should be synonymous.

Enhanced checks are primarily for posts involving work in regulated activity. In general, the type of work will involve regularly caring for, supervising, training or being in sole charge of children or vulnerable adults. Examples include a teacher, Scout or Guide leader. Enhanced checks are also issued for certain statutory purposes such as gaming and lottery licences.

Whilst there is a long list of eligible posts on the CRB website, a large proportion of enhanced CRB checks are made under the ‘regulated activity’ definition. Furthermore, a number of these also fall within the definition of ‘regulated activity’, which is itself an eligible post. This means that some roles potentially fall under a number of different categories, resulting in unnecessary confusion and complications.

The Safeguarding Vulnerable Groups Act 2006 (SVGA) definition of regulated activity significantly increased the number of roles eligible to warrant CRB checks, from approximately 4 million to 11.3 million (since revised down to 9 million). It is this legislation that needs to be critically reviewed when looking to scale back positions which are liable to CRB checks.

⁵ Visit http://www.crb.homeoffice.gov.uk/guidance/rb_guidance/eligible_posts.aspx

The definition of regulated activity under the SVGA was complicated, and led to a number of job roles for which employers believed they were entitled, or even required to carry out an enhanced CRB checks under the Act, which was not the original intention, including general bus drivers, barge operators, office administrators, personal assistants, supermarket workers, rubbish collectors. These positions should not require such a CRB check to be carried out either by request or demand. Unfortunately, the definition of regulated activity is open to interpretation to employers, and has led to many, often unintentionally, believing that they must legally (or illegally, to cover their own backs) carry out a CRB check, for positions that involve little or no direct contact with children or vulnerable adults. Pretty much any role or position could involve some level of ‘contact with’ these groups. However, for the purpose of CRB checks they 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.

Recommendation – Align the definition of ‘prescribed position’ under the Police Act with the definition of regulated activity under the SVGA so as to allow enhanced CRB checks for all positions that involve regularly caring for, supervising, training or being in sole charge of children or vulnerable adults have enhanced CRB checks, subject to an amended definition of ‘regulated activity’ (see below).

Recommendation - Ensure that the definition of ‘regulated activity’ covers only those roles which need to undertake an enhanced CRB check.

- i. *The term ‘regulated activity’ should be specific to roles that primarily involve sole responsibility for, or supervision of, children and vulnerable adults, so as to ensure that only those positions that have a sustained level of contact with these groups are eligible for a CRB check and not those roles where ‘contact with’ these groups is either secondary or ancillary to the role.*
- ii. *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 adults’, as well as the type, level and amount of contact that is required, before that role is regarded as ‘regulated activity’.*
- iii. *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.*
- iv. *Review the definition of vulnerable adult, to only encompass those who are truly vulnerable in a specific instance.*

Recommendation - Ensure that the definition of ‘regulated activity’ is clearly defined and that both employees and employers are clear about what constitutes regulated activity.

- i. *Establish a clear, workable definition of ‘regulated activity’.*
- ii. *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*
- iii. *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.*
- iv. *Provide clear guidance for individuals on the types of roles which can require a CRB check.*

- v. *Provide clear guidance for employers on what roles they are able to require a CRB check for.*

Recommendation - 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.

- i. *Ensure 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.*
- ii. *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.*
- iii. *Establish 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*
- iv. *Provide training resources on the definition of regulated activity for all Registered / Umbrella bodies to improve their ability to identify illegal applications.*
- v. *Review of the CRB process, focusing on how to prevent illegal checks.*

3.3 Establishing which roles can undertake CRB checks [Back to top](#)

3.3.1 Legal checks [Back to top](#)

It is not currently clear, through the various exceptions to the ROA, including the definition of 'regulated activity' under the Safeguarding Vulnerable Groups Act 2006, which roles/positions are eligible for CRB checks and which ones aren't. Many employers, particularly local authorities, simply treat *all* positions in their organisation as exempt from the ROA, and therefore apply for a CRB check, without any assessment as to the level of contact required with children or vulnerable adults, or without assessing how else the positions meets the definition of a position detailed in the Exceptions Order 1975.

Recommendation: Ensure clarity on what jobs are eligible for CRB checks

- i. The MoJ to produce an official consolidated version of the 1975 Exceptions Order, removing any duplications.*
- ii. The MoJ/CRB to provide clear guidance, based on an official consolidated list, on what positions and roles are eligible for checks and at what level they can be carried out, with particular focus on the level of contact needed to warrant a CRB check.*
- iii. The CRB to have a formal mechanism in place which enables an individual to give detailed information of a particular role and receive an official response as to whether a CRB check is allowed.*
- iv. Basic disclosures should be introduced in conjunction with wider reform of legislation surrounding disclosure of criminal records, most notably the reduction of 'rehabilitation' periods as those proposed by the Rehabilitation of Offenders (Amendment) Bill 2009.*

3.3.2 Illegal checks [Back to top](#)

Nobody has even been prosecuted for carrying out an unlawful CRB check. However, there is a wealth of evidence, including case studies that ourselves and Nacro have raised, as well as incidents brought to the attention of the CRB direct, which suggest that many employers are submitting ineligible applications for CRB checks, which if done knowingly is a criminal offence under the Police Act. This legislation is not being currently enforced by the CRB, who simply advise individuals to refer such matters to the Police.

Recommendation - Establish a legal framework as well as practical mechanisms which, together, prevent potential unlawful CRB checks and take action against illegal CRB checks.

- i. The CRB to establish a process by which individuals can report employers who in practice do not follow their written statement, backed by potential sanctions against the employer.*
- ii. The CRB to put in place a system whereby an individual or employer is able to establish whether a CRB check can be undertaken for a specific role.*
- iii. The CRB to put in place a system whereby an individual can query the actions of an employer/RB who attempts to, or does, carry out an illegal CRB check. The CRB to act to prevent the illegal check from taking place where it hasn't already, or be proactive in taking action under s. 123(1) of the Police Act where it has.*
- iv. The CRB to support the publication of guidance for people with past convictions, outlining the CRB process, the positions that are eligible for CRB checks, and how individuals can address issues such as employers undertaking illegal CRB checks.*

- v. *Employers/RB's must be legally required to state clearly in job descriptions and on job application forms what element of the job makes it eligible for a CRB check.*
- vi. *The CRB to place a mandatory requirement on an employer/RB to clearly state on a CRB application under what exception they are entitled to undertake a CRB check and why. For example, making DACC's a mandatory part of the CRB form, and including a mandatory section describing the role and/or level of contact which justifies a CRB check at that level.*
- vii. *Improved guidance to RB's as to what positions are eligible for CRB checks, including what level of contact is necessary and the potential criminal penalties for undertaking illegal checks.*
- viii. *Stronger CRB screening processes to prevent illegal checks.*
- ix. *The CRB to take legal action against employers/RB's who undertake illegal checks.*
- x. *The CRB to refer cases of where employers conduct repeat illegal check to the Information Commissioners Office*

3.4 The operation of CRB checks [Back to top](#)

3.4.1 Portable CRB checks [Back to top](#)

As part of the Government Spending Review announced on 20 October 2010, the CRB has been looking to implement an idea suggested by the public through the Spending Challenge process, namely making it possible for employers to share CRB checks, reducing the need for multiple checks.

It is understood that the intention is to introduce a process by which individuals to 'own' their CRB check, and provide it to employers on request.

3.4.1.1 Benefits [Back to top](#)

1. It would minimise the risk of inaccurate information being disclosed to a third-party, as it would be the individual who is responsible for providing the certificate, and they would be able to take steps (through a representation process) to challenge both inaccurate and disproportionate information
2. It would allow the individual to be aware of information that they need to disclose to their employer, and take control of the disclosure process (i.e. identifying the best time to disclose, and to who)
3. It would prevent over-disclosure, as the check would not disclose filtered information

3.4.1.2 Concerns [Back to top](#)

1. The responsibility for covering the cost of the CRB will shift to the individual, whereas at present it is normally covered by the employer
2. It potentially allows *any* employer to require an applicant to provide a copy of a standard or enhanced CRB check, without the position allowing such a check, without actually committing an offence under the Police Act 1997
3. The responsibility for the disclosure of criminal conviction information will shift from the State to the individual – whilst in terms of inaccurate information, this is an advantage, it may result in criminal conviction information becoming integrated more and more as part of the ordinary recruitment process
4. There is the potential for the point at which point a CRB disclosure is requested to move to being made much earlier in the recruitment process. Currently, as employers usually cover the cost of the check, they only do it after selection, whereas this may move towards using it as a pre-selection tool, therefore resulting in a disproportionate impact on people with convictions. This needs to be mitigated against by processes which require checks only after selection.
5. Whilst potentially this allows individuals to control when they disclose any convictions they have, this may not be possible if employers integrate viewing a CRB check as part of their application process, as opposed to at the recruitment stage.
6. There is also an issue regarding how the disclosure of non-conviction information would operate (see below), given that the CRB would have to be sector-based (i.e. applying to working with either children or vulnerable adults, or both) and so could potentially lead to much more non-conviction information being disclosed (as information could be more readily seen as being relevant) as the decision has to cover such a broad range of positions.

3.4.1.3 Questions which remain [Back to top](#)

1. As there would likely be a regular fee to maintain the online check-service, it is unclear who would be expected to pay for this. It would be difficult to see how employers would meet this cost, as the idea is for several employers to potentially use one check, whereas presumably only one fee would need to be paid.
2. As there is currently three levels of CRB check, would an individual be required to have three different checks?
3. What would the role of the Registered Body network be? Would such a complicated network be still required?
4. There needs to be a link between the ROA and Part V of the Police Act to ensure that the system is not open to abuse by employers not entitled to certain levels of checks
5. What safeguards are there to prevent employers from requesting CRB checks for positions which are not exempt from the ROA.
6. Is there still a need for a paper CRB form to be produced? If the technology exists for an online checking regime to be in place, could the CRB process be operated entirely online similar to how individuals apply to view their credit report online. Employers would be able to undergo a similar process, having been provided with an individual's unique reference, as well as other personally-unique information, along with their consent. This would result in the employer still having to make a positive declaration online that the position the check pertains to is eligible for the check (having undergone some online tool, so as to ensure that any declaration made is done so knowingly)

Recommendation - Amend the Police Act to make it offence for an employer to ask an individual to produce a CRB check for a position that is not entitled to that level of check.

Recommendation – Review the role of the Registered Body/Umbrella Network in the context of the 'One certificate' proposal.

Recommendation – Remove the paper CRB form, and allow only online access (by both individuals and employers) where an employer would have to provide the individual's unique reference, as well as other personally-unique information, along with their consent.

Recommendation - Ensure that individuals are able to find out who has checked their online status.

Recommendation – Enable individuals to have recourse to legislative provisions making it unlawful for an employer to check their criminal record for a position which isn't eligible for that information

Any process which notifies an employer that an individual has received their CRB check, must account for a disputes process, so that where an individual is looking to challenge any inaccurate information on their CRB check, the employer isn't aware of any potential dispute, as this alone could jeopardise their employment chances.

Recommendation - Introduce a process which means that, where a dispute is in process, the employer is simply informed that the check is still in process

3.4.2 Other CRB issues [Back to top](#)

Basic disclosures are not currently available in England and Wales. They must be obtained from either Disclosure Scotland or Access NI. This causes a number of issues:

1. There are some legislative discrepancies which mean that those issued under Scottish or Northern Irish law are not 100% accurate as they pertain to English law, resulting in inaccurate disclosures.
2. Any employer in England & Wales who wants an official disclosure issued under English law must either justify the position as being eligible for either a standard or enhanced check (which undoubtedly results in thousands of potentially unlawful checks every year) or force individuals to obtain a copy of their subject access request from the Police which, whilst yet to be implemented, is unlawful under s.56 of the Data Protection Act 1998.
3. Any voluntary opportunity in England & Wales, which theoretically should be entitled to a free CRB check, currently only has the option of either a standard or enhanced CRB (as basic disclosures from Disclosure Scotland or Access NI are only free for voluntary positions in those countries) resulting in many voluntary opportunities 'up-tariffing' their positions which are not eligible for such checks to being so purely for financial reasons

Recommendation - Basic disclosures should only be introduced in conjunction with wider reform of legislation surrounding disclosure of criminal records, most notably the reduction of 'rehabilitation' periods as those proposed by the Rehabilitation of Offenders (Amendment) Bill 2009.

Recommendation – It should be free for voluntary organisations to check the status of volunteers, including for basic level checks for positions covered by the ROA.

Recommendation - A basic disclosure should be capable of being backdated to a particular date so as to ascertain an individual's unspent convictions on a given date to assist in employment and insurance disputes.

Currently, section 56 of the Data Protection Act 1998 has not yet been implemented. It is understood that until basic disclosures are provided by the CRB, this section will not be introduced. Implementing section 56 of the Data Protection Act 1998 would prevent employers and others who are outside of the Exceptions Order from circumventing the protection of the Rehabilitation of Offenders Act 1974 (ROA) by requiring individuals to undertake an enforced subject access request.

Recommendation - Implement section 56 of the Data Protection Act 1998.

Recommendation – Remove the ability of direct police checks (for example, when considering welfare of a child in various domestic and matrimonial proceedings, or where a local authority is proposing to return a child who has been in care to their parent, or in proceedings involving guardianship or wardship orders, for the purpose of welfare reports on children, by probation officers or social workers, where currently a direct police check is undertaken) and instead use CRB checks as the only mechanisms by which criminal conviction information can be legitimately obtained.

3.5 Filtering old/minor convictions from standard and enhanced CRB checks

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UNLOCK is contributing to the Independent Advisory Panel on the Disclosure of Criminal Records (IAPDCR) which is looking to make recommendations to Government on this issue. Our submission, UNLOCK's Proposed Filtering Approach,⁶ sets out our views as to how old/minor convictions should be 'filtered' for the purposes of standard and enhanced CRB checks.

In short, we believe that a filtering system should be one which:

1. **establishes a clear difference between information held on the PNC and information used for disclosure purposes** - distinguishing between PNC data for 'policing purposes' and data for disclosure to ensure that old/minor/irrelevant information is not disclosed. This could be achieved by providing a full PNC extract to the CRB whose staff then apply the filtering rules to the CRB disclosure certificate, but still provide the full extract to the ISA for Vetting & Barring purposes.
2. **is as simple as possible** - making it cheap to implement and easy to understand.
3. **strikes the right balance** - between the provision of safeguarding information and allowing reformed offenders to optimise their contribution to the economy.
4. **automatically 'filters' old/minor conviction information after fixed periods of time** - using a simpler process of 'filtering' which is principled, doesn't create arbitrary categories, and limits inconsistencies. Gary Linton's paper is very useful in setting out why a process was needed and attempting to explain how the categorisation of offences might be useful. However, there is little evidence on the crucial element of how the categories of offences or time periods were arrived at.
5. **ascertains 'seriousness' by reference to the sentence imposed by the court** - which is the most accurate and reliable way to categorise the seriousness of an offence.
6. **only apply to 'clear periods'** – so that the public have confidence in the system
7. **covers all job positions and all types of disclosure** – so that no employers are able to access information once it is filtered. Though it would still be provided to the Independent Safeguarding Authority, the information would only be visible to the ISA and applicant, not the employer.
8. **removes discretion from the police to disclose filtered information** – to avoid rendering the system meaningless for individuals due to the remaining possibility of disclosure.
9. **makes the necessary changes the Police Act 1997 and the Rehabilitation of Offenders Act 1974** – in order to set out the legislative basis for not disclosing certain information held on the PNC, so that individuals have clarity on what they do / do not need to disclose and so that they can be afforded legislative protection where necessary.
10. **is accompanied by clear information & advice regarding retention and disclosure of information on the Police National Computer** - targeting different groups (agencies and individuals at whom each of the publications is aimed should be involved in its drafting) including:
 - Statutory agencies working in the CJS (eg Police, CPS and the Judiciary)
 - Agencies in the CJS (third sector/voluntary organisations, private organisations)
 - Individuals prior to receiving a disposal (particularly out-of-court, e.g. cautions)
 - Individuals with information currently held on the PNC

⁶ Available to download at

<http://www.unlock.org.uk/userfiles/file/employment/UNLOCK's%20Proposed%20Filtering%20Approach%201102010.pdf>

Recommendation - Introduce a process which automatically filters old/minor convictions after a certain period of time conviction-free (dependent on the sentence received for the conviction) so that they are not disclosed as part of a basic, standard or enhanced check, therefore not requiring them to be disclosed to employers and others.

3.6 Including police intelligence on the face of a disclosure [Back to top](#)

Police intelligence can be crucial when making a decision as to whether somebody is suitable to work with either children or vulnerable adults. That is why, subject to the outcome of the current internal vetting & barring scheme review, it is of paramount importance that this is made available to an independent body, currently the ISA, for them to make a decision as to whether this impacts on an individual's suitability to work with either children or vulnerable adults.

However, given that police intelligence has not been subjected to any form of checks and balances to determine its accuracy, reliability or truthfulness, it is important that this information is only disclosed to those who are in a position to professionally decide how much weight should be attached to it. This does not include employers. The English criminal justice system prides itself on the principal of innocent until proven guilty, and any movement away from this must only be taken in exceptional circumstances. Whilst it is acknowledged that the lawfulness of the disclosure of such information direct to employers has been upheld, this alone doesn't justify such disclosure.

Recommendation – Make available to the ISA any non-conviction information, but do not disclose this direct to employers

Nevertheless, given the practical nature of this submission, we feel it is necessary, whilst starting from the position of being opposed to the disclosure of such information, to recommend a number of reforms to the current process of disclosure so as to move towards a more proportionate and well-balanced process.

Recommendation - Include the police decision-making process in primary legislation, so that it is subject to parliamentary scrutiny and can be legitimately challenged.

Recommendation - Centralise the decision-making process so that it is easier to challenge.

Recommendation - Introduce a higher threshold that must be met before the police can justify the disclosure of non-conviction information.

Recommendation - Introduce a standardised representations process, by which individuals are given the ability to challenge the disclosure of any non-conviction information before it is disclosed, in line with the case of *L*⁷.

Recommendation - Remove the ability for the police to disclose information direct to employers without the knowledge of the individual.

Recommendation - Introduce an independent complaints process for individuals to use when they have an issue with the criminal records regime, including inaccurate PNC information, disproportionate disclosure (particularly relating to non-conviction information), potential illegal CRB checks, abuses of the CRB Code of Practice etcetera. This process should ensure that steps are taken to address the specific issue in question, but also to ensure that it doesn't occur again.

Part of the issue regarding the disclosure of non-conviction information is that it is difficult for the police to know enough about the role to allow them to accurately assess what information is relevant, simply from a job title on the CRB application form. Any 'sector-based' disclosure decision, where the decision to disclose non-conviction was made for a particular 'sector', rather than a

⁷ R (on the application of L) v Commissioner of Police of the Metropolis [2009] UKSC 3

specific role (which would be the case if CRB checks were to be portable), may result in more information being disclosed to more 'eyes'.

For example, if the police previously decide that the disclosure of an allegation is necessary for working as a teacher of children at a school, but not when volunteering at a local scouts group, this information would only be made available to the school. However, were CRB checks to become portable for specific sectors, it may be that the decision to disclose this information, because it may be relevant to a particular role in that sector, would lead it to being disclosed to the scouts group also.

UNLOCK therefore believe that the principle of disclosing non-conviction information with portable CRB checks are currently incompatible, and that only if CRB checks didn't disclose non-conviction information would a system of portability be fair and proportionate.

3.7 Vetting & Barring Scheme [Back to top](#)

Recommendations to the internal Vetting & Barring Scheme review have been made separately to this submission.⁸ However, as the Terms of Reference of this review touch on a number of issues that pertain to the VBS, some of these are discussed below.

3.7.1 The scope of the VBS [Back to top](#)

The scope of the VBS is discussed in the section related to enhanced CRB checks (above).

3.7.2 The role of the ISA [Back to top](#)

Recommendation - Continue making independent barring decisions on the suitability of people to work with children and/or vulnerable adults

- i. *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*
- ii. *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.*

3.7.3 The role of others [Back to top](#)

Recommendation - The police to be no longer responsible for either disclosing criminal records, or disclosing 'other relevant information'

- i. *A separate independent body should be responsible for maintaining and disclosing criminal records for the purposes of vetting.*
- ii. *The ISA to take into account 'other relevant information' as part of their barring process.*

⁸ Available to download at

<http://www.unlock.org.uk/userfiles/file/employment/Recommendations%20to%20the%20Vetting%20&%20Barring%20Scheme%20Review%20November%202010.pdf>

4. Recommended system of disclosure for standard and enhanced CRB checks [Back to top](#)

