



UNLOCK
The National Association
of Reformed Offenders

UNLOCK Member Submissions to the Independent Review of Policy on Retaining and Disclosing Records held on the Police National Computer (PNC)

UNLOCKing Employment

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UNLOCK is an independent charity and membership organisation, set up to achieve equality for people with previous convictions. We believe in a society in which reformed offenders are able to fulfil their positive potential through equal opportunities, rights and responsibilities.

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Background

The review was announced by the Home Secretary, Alan Johnson, in July 2009. The review began its work in September 2009 and reports on the 26th February 2010.

UNLOCK wrote to the Home Secretary in October 2009, asking what steps the review was taking to account for the impact on people with past convictions. The review held a roundtable discussion in February 2010, which UNLOCK took part in. These submissions were collated from UNLOCK members, through our monthly e-newsletter, to provide evidence to the review on the current issues relating to retention and disclosure.

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Submission One

I have worked for many years within the public sector, specifically public health. I am now working in Environmental Health and am training to be an Environmental Health Officer. I have never had a CRB check, having worked for the same organisation for many years. Nor have I ever had to voluntarily declare this information. Potentially, however, following successful training it is likely that I will apply for jobs elsewhere, at which point I will be subject to an enhanced CRB disclosure. It is also likely, that however brilliantly I shine at interview, that I will be refused all positions under current rules (current rules being as per guidance November 2009, which permit disclosure of absolutely everything to prospective employers).

This is because, in 1986, I was arrested for having a small amount of 'weed' upon me. This resulted in a fine for approximately £230. The irony is that at the time I was in an abusive relationship and found it preferable to go to Court and commit perjury rather than being beaten up, little knowing that this decision would, some 24 years later potentially ruin the rest of my working life. (In the end I saw sense and left, having had to get an injunction against the individual concerned). Under 'step down' procedure my understanding is that this would have been stepped down either automatically or via my request.

As I understand it now, an event 24 years ago can be held against me to the point of ensuring unemployability. Is it right that I should be penalised for the rest of my life? I truly do not think so. The view of the Chief Constables would appear to be 'once convicted, always a criminal.' They are entitled to their views. But their view should not become a mandatory operating framework for the CRB. As the situation is now, government might as well make the whole PNC totally public on Google, because the information disclosed will have exactly the same effect as via disclosure - devastating ruin of a life.

This is ridiculous. It makes a mockery of Sentencing Guidelines and Rehabilitation of Offenders Act. In fact it makes a mockery of the whole justice system. My understanding was that punishment should be meted out proportionally to the offence committed, so, for example, community work, fine, custodial sentence. The inference being that the offender is punished for a particular offence(s). We do not, so far as I am aware, operate a system of justice that only offers life sentences, which is in effect what the Court of Appeal judgement confers on anybody with anything on the PNC.

In my opinion the TOR for the review on retention and disclosure of records goes right to the heart of our judicial system. Data on the PNC is for police operational purposes only. The original objective of the CRB check was for those staff working with vulnerable persons, particularly children. These are two different objectives which seek to use the same information system to extract data. Urgent separation of the two is required. What is the relevancy of a conviction 24 years ago to today? How can my private life 24 years ago have any bearing whatsoever on what I do for a job now?

CRB checks have already become nothing more than a routine tool used to exclude potential employees by employers. The majority of organisations now undertake Enhanced CRB disclosures on prospective employees, irrespective of role. Indeed, public sector organisations demand that temporary secretaries be able to produce their own disclosures otherwise they cannot work within the public sector.

The Data Protection Act and privacy law has been severely eroded by this judgement. It brings us closer to closing down the CRB and giving direct access to major employers, e.g. NHS, local authorities, civil service - because now the CRB will give exactly the same information as that on the PNC, so why bother funding the CRB? The Data Protection Act already permits the exchange of data in the interests of crime prevention and detection.

My opinion, for what it is worth, is that

- (i) An automatic step down procedure be implemented
- (ii) Legislation should be amended to prevent the current abuse of demanding Enhanced CRB disclosures as standard by employers
- (iii) Rehabilitation of Offenders Act be amended. Depending on the outcome of the review, either repealed completely because a single transgression will amount to a life sentence so ROA will be redundant, or amended to reflect what I truly hope will be a positive outcome from the Review.

Furthermore, we urgently need increased positive media attention on this. Also education in schools - sadly I suspect that the majority of young people who find their antics criminalised have no idea that this is in effect currently a life sentence.

Personally, it makes me feel ill to think that all my hard work will now probably be for nothing and that I can expect dismissal at some point and poverty in old age.

Submission Two

The points regarding retention are as follows:

1. The value of this data

The information is only valuable to the Police if there is high proportion of individuals who re-offend 30 years after the original offence without any offence in the 30 year period since the original conviction. Or put another way there is no evidence / support for the value of the data.

2. Relative value

The damage of disclosure upon an individual would be catastrophic for me as an individual and my family, disclosure would ruin my career. Importantly I do a role that is not exempt from the rehabilitation act, yet integrity is vital to the role. The slightest mark would effectively terminate my career and impact the financial futures of my entire family. Yet the offense was nearly 30 years ago and minor. It is the complete disproportionate nature of this situation value of data Vs impact upon the individual that suggests that any reasonable view would suggest retention has no grounds.

3. Retention over access

There is a world of difference between retaining DNA and records, due to the impact of disclosure. In the first case there is no negative impact on the individual of disclosure (unless the parties receiving the data uses it in an illegal manner), in the second case there is life ruining consequences. To state that records must be retained because of the relative cases of DNA Vs CR retention is in my view a false argument.

4. Retrospective application of rule changes

In my case the record was stepped down in 2008, in fact the record ought to have been weeded out before 2006 as the offense was in 1981. The ruling effectively stepped up my record after stepping down in 2008. This is retrospective, a rule is changed and its effective date is back dated. This is unheard of in the legal systems, if the tariff is changed on an offense is it applied to all people who have previously been convicted of this offense. Added to this is the continued broadening of the group able to potentially access the records.

5. Second chance

This eliminates the principle of rehabilitation. I do not understand how this can be justified as morally fair.

6. Minor offenses and time

These arguments are particularly strong in the case of minor crimes committed many years ago. The punishment of retention for those trying to rehabilitate is far greater than the punishment given to those who have no intention of rehabilitation.

I hope these points in some way help the cause.

Good luck for your meeting and thank you for your commitment to fight for people like me.

Submission Three

Part A

I have included a copy of a mail I have sent the Home Secretary via his website. I have never heard back from anyone in his department. Needless to say I was not expecting to, but I was hoping to find a way to raise the issue I face as I am sure there are many more people in my situation.

As I mentioned, I wanted to understand the reasoning behind the suspension of the Step Down process. I am in a situation where I have resigned from one job only to find my new employer chooses not to hire people where they have records which have not been "expunged or stepped down". This leaves me with a huge dilemma since the decision by the Court of Appeal which has led to this process being terminated.

I would request it be considered that the Step-Down process be re-implemented until such time that the Home Secretary is able to re-evaluate the entire process of record retention and disclosure.

"Dear Alan Johnson,

I would like to understand the process and plans this government has in place to review the recent decision by the Court of Appeal in Oct 2009 against the Information Commissioner and Tribunal on retention and disclosure of PNC records.

This decision is causing untold levels of distress to individuals like me as it clearly sends the message there is essentially no form of Rehabilitation of Offenders for minor offences in the UK.

A little background to my situation which seems to be mirrored across the Internet is given below.

I have a PNC record for shoplifting dating back 12 years. I have written to over 10 people at the Met including the Data Controller and the Exceptional Cases Unit to try and see if they can remove/restrict access to this record. They have all advised I would be allowed to have my record stepped down eventually. My record was eligible for "Step Down" in 2010 prior to the decision by the Court of Appeal in Oct 2009. This would have meant that the record would be kept for Policing purposes, but the record would not be disclosed under a Standard CRB disclosure.

I obviously sincerely regret the stupid indiscretion from my past which occurred when I was 19 and dealing with horrific family circumstances. I realise this is not an excuse, but needless to say I have never re-offended and have been an honest law abiding citizen.

A Standard CRB Disclosure is required for many roles and my job in particular in the Financial Services. Fortunately I have disclosed my record to my employer, but as you can imagine disclosing this information is never easy. I applied for a new job and my new employer does not seem to recruit individuals unless their records have been either "stepped down or expunged". This makes it virtually impossible for me to obtain a new job despite my willingness to disclose and accept my mistake from my past. I accept many jobs should demand the need to re-disclose all convictions, but this minor indiscretion from my past is severely limiting my future and causing disproportionate levels of distress despite the fact I have never re-offended and studied/worked in a role for the last 12 years without any questions surrounding my character.

Surely in a society where the aim is to rehabilitate and offer individuals a second chance we should have laws/rules which follow these principles. I fully appreciate the need for the Police to retain ALL

records, but I strongly feel there needs to be some level of restriction for the Police to release this data past a particular point in time to agencies like the CRB.

I look forward to hearing from you and kindly thank you for your consideration."

Part B

I have researched materials on the subject and I feel it needs to be one of the key considerations in the review currently being conducted by Sunita Mason for the Home Secretary. In my quest to try and solve my own problem I have spoken to many people both at the Metropolitan Police and ACRO and found great sympathy from employees who are regularly taking calls from people facing obstacles since the suspension of the "Step Down process".

For your information I have contacted my prospective employer and their HR department has confirmed once again they will not under any circumstances extend an offer of employment unless this is "expunged/Stepped down". They have confirmed this policy is not related to insurance reasons as previously suspected and whilst the Financial regulator (The FSA) has/will approve people with a single old offences like myself, as a Company they reserve the right not to employ individuals they feel are unsuitable..

The line manager I would work for has been very sympathetic and advised me to re-contact him as and when I have any progress in having my record "Stepped Down".

Submission Four

I'm quite disgusted that the police have scrapped the step down procedure. How can they expect people to move on in life if they do not continue with the step down model? I personally have a criminal record and according to the model would have the conviction only released on an enhanced CRB check. Since my conviction I have moved on dramatically in life; I've gained a first class degree in biology and actually got a job with a well respected mobile phone company with an unspent conviction, while at university. My conviction is now spent, so I have deemed my life to have moved forward. After reading the article on the ceasing of the step down model it just makes me wonder if the government actually care about people like me who whole heartedly want to move on. What is the point in the ROA? I would like my views expressed in your next meeting if possible. I think it's a complete outrage against honest people who want move on. How many criminals are out there that don't get caught? It's ironic, because I know I will never make a silly mistake again in my life. Therefore, my details on the PNC are useless to the police. I'd like to just stand up for what I believe in. People can make mistakes, the decent ones realise this and vow never to make a mistake again.

I don't mind that my details will be retained on the PNC for 100 years, but for the details to keep being released even after 20 years is ridiculous. Maybe they should realise that good, hard working people make mistakes. The step down model was a good if not lengthy process that could help people like me. P.s my crime was for possessing a very small amount of cocaine on a night out. Go figure.

Submission Five

In 1980 I was convicted of indecent exposure and received a fine of £75. This stupid behaviour was a 'one off' and I have since worked for 30 since in public service as a community.....officer and manager. Most of these posts involved working with vulnerable adults / children to some extent but didn't require a disclosure at the time. I also coached my son's junior football team for 4 years in the 90's. I have clearly not been a risk to children or vulnerable adults for over 30 years.

In October 2009 I was made redundant and, looking for other work/volunteering opportunities, queried what would be disclosed and learnt about the step down procedure. I was advised that this conviction would be stepped down, would not show on a standard disclosure, and, given the length of time etc would not be likely to be deemed 'relevant' on an enhanced check.

I have gained permanent employment as deputy managing director at a subsidiary and the company policy is to carry out a check on all employees. I am not sure whether this is standard or enhance but the reinstatement of step down offences mean this will be revealed on either.

It now looks like I lied on my disclosure form (I did not disclose this stepped down offence) in December and may lose this job – which I have been doing successfully on a temporary basis for 7 months. I am devastated and extremely anxious about the results of the check.

Submission Six

In 2006 I lost the offer of a job because of convictions for theft disclosed on my CRB Check. I appealed to the Information Commissioner that these convictions occurred as a school boy more than 30 years ago and that I have not reoffended or been in any trouble with the police since. He authorized the Police to step down the convictions from the record and I was subsequently issued with an SIA license because I work in the Security Industry. I have recently been informed that the Police have applied to reinstate the convictions, following the October 09 Court decision. It was back in the 1970's when I was originally convicted in Juvenile Court, now 35 years ago and once again these convictions have come back to haunt me, as I require another CRB Check and the convictions will once again be on it.

What about my Human Rights or the Data Protection Act?

Submission Seven

I have just come across your article on <http://www.unlock.org.uk/staticpage.aspx?pid=76> and I would like to express my concerns.

An issue of cautions/reprimands. I remember when I received a reprimand for a minor offence in my teens, the officer basically said take this and it will be off your record in 5 years. The incentive to take a Reprimand as opposed to going to court was more attractive, partly because the evidence against me was inconclusive and that I just wanted to get out of the police station. What I am saying is that I was wrongly convicted partly because of my immaturity and the fear of being with the police. From that how many people have been told just to accept a caution to avoid a more fearful event of going to court. In addition, how many people have accepted a caution because the police said it will be off your record in 5 years. There is plenty of anecdotal evidence for the latter (internet blogs).

Moreover, does the equal opportunities act have coverage of CRBs. I have noticed a number of employers do not disclose amount of people employed with a caution. I have also observed that recruitment practices are not the same for all employers regarding CRB checks. In the general, I feel that it is at the discretion of the employer. However, how can that judgement be made in an impartial way and if the content is a sensitive issue for the individual how can society expect individuals to disclose this in an interview situation which is already stressful enough.

To remove possible discrimination for individuals who have minor convictions over a set period of time that are considered to be spent why don't employers consider the disclosure of records after an offer of employment has been made that way an accurate decision to employ an individual is based on their skills, experience and interview performance. Not the records.

My reprimand is 9 years old and yet two years ago in an interview situation and employer said we have to calculate the risk of you repeating the crime. I assured them that the risk was low. However, the risk is actually just the same as anyone else in society if they were in the same circumstance as I.

Have you an awareness of the Fairer access to the professions document. If so, you may notice that they haven't factored in people with criminal records. My theory is that those with a criminal record may belong to poorer communities and as a result of having a life long record they no longer strive to break social barriers and remain as they are. With records as they are what motivation is there for individuals to not re-offend because of the barrier to employment where CRB checks are likely.

Furthermore, jobs that are and aren't checked. Is it true that a self employed plumber would not need a CRB check to work independently possibly in an environment of vulnerable people?

The Stepped Down procedure has caused me a large degree of anxiety. In August the reprimand was confirmed to be stepped down. However, in December because of the procedure being withdrawn details were disclosed as a result I was called to a police hearing panel with the possible threat of losing my place on a University course that leads to professional accreditation. Even though with the course almost finished I still have to contend this issue every time I apply for a job.

I am being criminalised twice for my actions over 9 years ago. I only committed a minor crime at a young age where I have probably learnt more from than someone who never got 'caught'. The law to disclose all information is unfair and I believe to be damaging to society.

Submission Eight

I came across your great page on the 19th Oct ruling by the Court of Appeal and just wanted to share my experience with you.

I am now 40 and a professional with a great career. As an 18 year old I committed a minor theft and received a conditional discharge.

Clearly having learnt from this foolish mistake, I was able to have thus stepped down a few years back.

In September 09, I had a promotion into a more senior position where there was a high chance I would have to gain approved status by a regulated body would require a standard CRB. Then I read about 19th October and realised the implications....

Since then, I have felt like that foolish teenager again, and have become so stressed waiting for the time I am asked to do it that I have become quite ill and completely ruined my career through poor performance and inferiority. It is almost like I am self consciously trying to be managed out through bad performance to prevent the inevitable humiliating conversation.

As it stands now, I am trying to deal with it positively by searching for a new job in a different industry, and keeping up with outcomes following thus ruling. I have set myself 2 months before I resign as I cannot live looking over my shoulder again.

It seems ridiculous that my flourishing career has suddenly ended in this way, and the hurt and disappointment my family felt 21 years ago is back again for all to feel.

I still remain in the role at this time as it is only if my role requires a particular responsibility that the check is needed and so far, I have managed to steer my role in a different direction, however as you can imagine, my fear is that at some point, I will be forced into a direction that requires this. In addition, i feel not only deceitful against my employers but also as though this is now colouring everything i do, decision i make etc. I can only describe my current situation as living on a knife edge, and when I am with my peer group in meetings, I am constantly battling with a feeling of inadequacy, as though I am a fraud and a criminal waiting to be unearthed. Yet of course, I have done nothing wrong as i have acted within the rights of the R of O Act and to be honest, the horrible incident in the past has made me completely fearful of breaking the law and extremely law abiding.

I should add that I am absolutely intent on resigning because of this. I have an interview for a fulltime course tomorrow which I desperately hope will result in a place which will allow me to resign and retrain, and take me into a direction where I hope I can forget about my past. If I don't get a place, I intend to leave by summer, as I know that I would rather end my current career with good references, and on my own accord. My other hope is the review addresses this and allows me to finally lay this demon to rest.