

Developing an employment strategy

Submission to the Ministry of Justice

Unlock is an independent award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence. Our project, [Fair Access to Employment](#), aims to ensure that employers have fair and inclusive policies and procedures that support the recruitment of people with convictions.

We very much welcome the Ministry of Justice (MoJ) developing an employment strategy. We have engaged with officials at the MoJ as part of its development. We have also hosted a survey for people with convictions, which received over 100 responses that were shared with the MoJ to help inform the policy development based on the lived experiences of people with convictions.

This paper sets out our views on what should be included in the strategy to enable people with convictions to secure meaningful employment. It is not intended to be exhaustive in its recommendations, but rather it aims to set out a number of priorities that should be built on further as part of the development of the strategy.

Summary

We know that finding meaningful employment is a significant barrier for people with criminal records, and that, despite some examples of proactive and positive employers, the overwhelming majority of employers take negative approaches towards people that disclose past offences. If people have to disclose their criminal record as soon as they apply for a job, we shouldn't be surprised when so many people leaving prison remain unemployed for many years.

The scale of the issue was underlined by a government response to a Work and Pensions Committee inquiry into "support for ex-offenders" in 2016. In its response, the government said that it had helped "at least 9,500 former prisoners into long-term employment since 2012". This shows how much work there is to do. There's over 70,000 people released from prison every year, and government figures work out to be around 2,375 people helped into employment each year – that's only 3.4%.

Our submission poses a fundamental challenge – employers have their role to play, but so does government policy. That's why we welcome the development of this employment strategy. At a time when prisons are clearly in crisis, it's tempting to see this as a 'prison' employment strategy in isolation. However, a strategy around employment has to be more than just about those in prison and preparing for release. Community Rehabilitation Companies (CRCs) and the (lack of) support they provide is also rightly under the spotlight. This strategy needs to look at how to help people once they're released, as well as recognising that less than 10% of people convicted each year go to prison, the significant numbers of people completing community sentences, and the challenges (and importance) in seeking employment for these people with a criminal record remain.

Supporting people with convictions into meaningful and long-term employment needs to be central to the government's reforms. The job market is tough at the best of times – so what incentive do employers have? Employers need to be encouraged to change their recruitment practices, and piloting a reduction in National Insurance contributions for those employers who actively employ people with convictions would be a welcome step forward. We also support taking the 'ban the box' campaign further by considering putting it on a statutory footing for all employers, as recommended by the Work and Pensions Committee in December 2016. We know that this practical change in recruitment practice, alongside other 'fair chance recruitment' measures, increases

the chances that employers will recruit people with convictions. There's no law that requires employers to ask about criminal records at application; but there should be a law that prevents it. It makes no sense to hold people back from the job market and continue to stigmatise them. That's not to say that criminal records should be abolished from the recruitment process; however, disclosure needs to be much more targeted, and at the right stage in the recruitment process, once the employer has decided whether the person is the best applicant for the role. Then, jobs in schools can check for sexual offences, or jobs in banks check for fraud. But these should be the exception, not the rule.

Given the proportion of people with a criminal record in the community, this strategy needs to be developed jointly with the Department for Work and Pensions. Crucially, it must recognise that no level of training or education in prison will overcome the negative approaches taken by employers, so supporting and challenging employers in their recruitment practices needs to be a fundamental part of this strategy.

More broadly, government needs to fundamentally reform the laws around criminal records disclosure to prevent the unnecessary and disproportionate barriers that people face long after they've served their sentence. We tell people leaving prison that they have to find work, yet our criminal records system encourages employers to use people's past as a reason to reject. Employers feel they're being responsible, but it's counter-productive for society; it simply makes it more likely that people will commit more crime in the future.

There is little point training people in prison if there are no employers willing to take them because they have a criminal record. Prisons and probation providers do little to engage with employers on the benefits of recruiting people with convictions, nor do they provide enough support to those employers interested in doing more. Government should lead from the front in encouraging employers and become an example of good practice. Fundamentally, a criminal record is the biggest barrier to employment that most people will face when leaving the criminal justice system. Regardless of the skills and experiences they have, people with convictions are routinely held back because of their criminal record. To genuinely improve the employment chances of people with a criminal record, the Ministry of Justice must seriously question the criminal records regime and look to reform it so that it does not act as the lifelong anchor to people who have turned their lives around.

Top priorities

1. Supporting business – Pilot tax incentives to encourage employers to recruit people leaving prison and people on probation

Many businesses are fearful of hiring people with a criminal record. 75% of companies admit to discriminating and not offering an applicant a job on the basis of them declaring a criminal record. This is often because of long-standing beliefs about their reliability and the risks they think they pose to a company's public image. This comes at a cost to society; around a third of people claiming job seekers allowance have a criminal record.

The government should recognise and champion those employers that are already employing people with convictions. Yet there are many more companies that need to be encouraged to change their recruitment practices to take on people with criminal convictions, and they need to be given the support to do so. So we would like to see the government pilot the use of financial incentives for those employers who actively employ people leaving prison and those on probation.

2. Challenging business – Put 'ban the box' on a legislative footing

Last year the civil service endorsed the Ban the Box campaign and removed the criminal record disclosure section from initial job applications for the majority of civil service roles. Ban the Box does not oblige employers to hire people with criminal records, but it increases the chance that they will consider them. When applicants

are able to progress to later stages in the recruitment process and meet employers, they have the opportunity to show their potential. Removing this tick-box from the application process gives people with convictions the chance to get further into the application stage before disclosing their criminal record. Since 2013, 78 have companies 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 no longer ask other discriminatory questions during recruitment and selection.

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.

3. Fix a broken DBS filtering system

Over 240,000 every year have their employment chances hindered because of the disclosure of a criminal record that is often old, minor or irrelevant to the job being sought. The Court of Appeal ruled in May 2017 that the current system of disclosing old and minor criminal records is unlawful and disproportionate.

We believe the government should accept the judgment and take immediate steps to respond to establish a proportionate framework that removes the unnecessary disclosure of old, minor and irrelevant records. This would mean expanding the filtering rules so that more cautions and convictions come off DBS disclosures automatically. It would also include establishing a distinct system that deals with criminal records acquired in childhood and taking a more nuanced approach to those that commit offences as young adults. We also encourage the government to introduce a discretionary filtering system, overseen by chief police officers, and extend the role of the Independent Monitor to review these decisions where appropriate.

4. Fundamentally review the criminal record disclosure system

The last full review of the Rehabilitation of Offenders Act 1974 (in 2002, when the CRB was introduced) made a number of recommendations that were not implemented. Significant changes to sentencing, technology and employer practices, alongside increasing evidence of abuse and ineffectiveness, means there is a need for a fundamental and independent review of the aims and effectiveness of the ROA and criminal record checking processes.

With policy responsibility for criminal record disclosure legislation straddling the Home Office and the Ministry of Justice, we believe the government needs to undertake a comprehensive independent cross-departmental review of the current system, looking at how to effectively protect people with criminal records from discrimination when they are law-abiding members of society looking to get on in life.

There's a lot more that the government needs to do to ensure that people with criminal records are not being unnecessarily held back from getting on in life. This includes stopping employers from conducting illegal criminal record checks, scrapping the 'disqualification by association' regulations in primary schools, enabling people with convictions to become senior managers and trustees in charities, and promoting fair admissions in universities. But taking forward the priorities above would set the government off in the right direction towards a fairer and more equal society where people with criminal records are not unnecessarily anchored to their past and prevented from getting on in life.

More detailed recommendations

The important of language

1. People are people first - Remove the 'offender' and 'ex-offender' labels

- a. Stigmatising, negative-focused language has long-term effects on peoples' attitudes. Language is powerful. When we talk about people who come into contact with the criminal justice system and refer to them as "offenders," "prisoners" or "ex-offenders", we cause these people's offences to linger long after they've paid their debt to society. Such labelling is both dehumanising and stigmatizing, judging people based on actions that arguably represent the worst days of their lives rather than who they are now.
- b. The MoJ should be striving to use language that doesn't stigmatise and that recognises that people are people first.

Support and challenge employers

2. Implement 'ban the box' and put it on a statutory footing

- a. The 'ban the box' campaign particularly benefits people with unspent convictions, as it enables them to get a foot in the door of employers that might otherwise reject them at application stage.
- b. The commitment by David Cameron for the civil service to sign up was positive, yet implementation has stalled. The MoJ should ensure swift and full implementation of this across the civil service.
- c. However, the voluntary-led campaign has only scratched the surface in terms of influencing employer practice. Although the numbers signed up is positive, research we did in 2016 showed that 75% of the national employers we reviewed still had tick boxes on their initial application.
- d. The MoJ has a role as a commissioner to include 'ban the box' in selecting preferred suppliers, sending a clear message that Ban the Box is a minimum requirement.
- e. The MoJ should work closely with DWP to take forward the recommendation by the Work and Pensions Committee and consider a statutory requirement on all employers.

3. Work with national companies on their policies and practices and provide practical support

- a. The Ministry of Justice need to have a strong focus on national companies and work with them as businesses to address structural policies and practices that get in the way of them recruiting people with convictions.
- b. Companies with a national coverage and an interest in increasing their activity in training and recruiting people with convictions currently have to manage multiple relationships across different prisons, CRCs and regions. This often leads to confusion, duplication and missed opportunities. To maximise the contribution from these large employers, there needs to be a national infrastructure that supports engagement from national employers in prisons and CRCs in a way that hasn't been on offer in recent years. This should include a combination of (a) nationally-coordinated structures that work across a number of thematic issues, (b) regional and local structures that link employers to prisons and probation providers, and (c) engagement efforts that involve senior executives of companies to visit prisons and probation providers to help inspire them in a way that other employers have been in the past.
- c. The prison industries structure, ONE3ONE solutions, has a network of business development managers. These haven't done enough to ensure that the employers they work with demonstrate how they recruit people with convictions in the community. This is a missed opportunity. Employers that offer training and voluntary opportunities/places in prisons should be made to demonstrate how their broader recruitment practice is fair towards people with convictions and how they recruit people with criminal records in the community. This should be a condition before providing 'real work' in prison.
- d. We would support the idea of reducing the costs to employers for carrying out work in prisons, but this should not be at the cost of the wages paid to serving prisoners, and needs to go hand in hand with those employers recruiting people with convictions in the community. Prisons should strive to be places of real, meaningful work that result in real, meaningful pay.

- e. There is a lack of practical support to employers. In 2016, Unlock launched a website for employers, Recruit!, which provides free guidance and tools in developing fair recruitment practices. However, employers need tailored support and guidance to apply to their organisation.
- f. The MoJ needs to provide practical support for national employers, funded and led by the MoJ and HMPSS. This should be integrated into a provision of prisons and probation providers, rather than contracted out.
- g. Companies often highlight how a significant barrier to engagement with prisons and CRCs is the lack of clarity about contacts at either a local or national level. We recommend that each resettlement prison and CRC area should have a dedicated central point of contact for employers looking to recruit people still serving a sentence or keen to offer training and voluntary opportunities.

4. Engage with employers and support networks to provide peer support

- a. There needs to be a long-term strategy which includes a national-led campaign to involve more employers. Although the *See Potential* campaign has been helpful, there has not been any specific MoJ mandate to target the issue of criminal records, and there needs to be specific work that has its own identity given the specific misconceptions and practical barriers that need to be addressed.
- b. The Employers Forum for Reducing Reoffending (EFFRR) has provided a valuable contribution. Work like this needs to be increased, funded from the centre to cover prisons and CRCs nationally, and have clear aims and objectives that are based on outcomes around employers and opportunities. There needs to be an engagement strategy that includes work with employers at various levels; locally (individual prisons), regionally (via CRCs) and nationally (via HMPPS and EFFRR).
- c. It's important to have a strong group of national employers promoting the employment of people with convictions, not just those from in prison (or shortly after release from prison), but more generally from the community. The EFFRR network has made good progress towards this from a prison perspective, and we are keen to work with the MoJ to build on this and strengthen the voice of national employers promoting and advocating for the employment of people with convictions.
- d. Support provision should include engaging employers at a local and regional level to encourage employers to take on people with a criminal record. To what extent they are the sole responsibility of any one service provider is unclear. There are risks in conceptualising this as a 'prison' or 'probation' problem – it should be seen as a broad concern across CRCs, Jobcentre Plus, Work Programme and careers provision, but needs to sit alongside clear areas of responsibility and accountability.

5. Celebrate employers that are actively recruiting people with convictions

- a. Positive recognition can be an influential way of encouraging other employers, as well as demonstrating achievements of particular organisations. This can be helpful if part of a long-term national campaign with a clear strategy.
- b. Kitemarking methods tend to be successful where there is a long-term strategy and a clear ask of employers. We are keen to explore with the MoJ an independent kite-marking of employers that recruit people with convictions. There have been various attempts to do this in the past, and the small number of existing schemes would, we believe, benefit from a clear national approach.
- c. There are a number of existing 'awards' schemes. For example, BITC has their Responsible Business Awards, where their Outstanding Employment Award recognises businesses that are improving access to good quality employment for young people and excluded groups. However, much like a kitemarking scheme, we support the concept of awards run by the MoJ where it is part of a clear, long-term strategy by the MoJ.
- d. However, many employers are very committed to employing people with convictions but are not interested, for various reasons, in achieving high-profile recognition, meaning that awards need to be seen within this context.

6. Pilot tax incentives to encourage employers to recruit people from prison and those on probation

- a. We believe there are merits in incentivising employers to look beyond the 'offender' label.
- b. We support the idea of piloting a programme on reduced national insurance contributions. Put another way, we struggle to find a reason why it's not a good idea. Employers are motivated to get more for less.

Managed correctly, it could act as the right sort of driver to encourage employers that are not already supportive on employing people with convictions on the current business case. It could also further encourage those businesses already active to increase their activity. It would need to encourage long-term sustainable employment, not successive short-term contracts for a single post to maximise financial benefit.

- c. Careful consideration would need to be given as to the people that would fall under this type of initiative, to avoid an unintended consequence of more employers asking applicants for details of their criminal record. We would support incentives in employing people released from prison, where engagement has been made with individuals prior to release.
- d. We are cautiously optimistic about this policy proposal – there are some potential unintended consequences, but that’s why we think it’s important that this is taken forward as a pilot, with the aim of encouraging employers to not only actively employ people with convictions, but also to demonstrate improvements to their recruitment practices and the removal of barriers towards criminal records.

7. Abolish the up-front ‘self-disclosure’ of criminal records

- a. A significant amount of employers ask individuals to self-disclose their criminal record. They ask these questions in variously complex and technical ways, and a high proportion of individuals are unable to disclose accurately because of the complex and intricate nature of the current rules. For example, many employers ask people to answer a question such as “have you ever been convicted”. Given the current disclosure rules, employers are not legally prevented from asking such a question, and it’s up to the individual to know their rights and be aware that, for most jobs, they don’t have to disclose once it’s spent.
- b. We recommend the issue of ‘self-disclosure’ (where an individual is required to disclose the facts of their criminal record) is looked at to see whether this an effective part of the recruitment process. Individuals struggle to understand the precise details of their criminal record – they are never given any official record to keep as part of their exit from the criminal justice system – any many employers rely on the technical details provided by applicants.
- c. Furthermore, many employers simply rely on self-disclosure, and do no formal criminal record checks. For employers that are genuinely asking about criminal records because of their belief that it’s an important part of the recruitment process, to simply rely on those individuals that are honest about their past creates two problems; first, it often penalises the ones that are truthful, and second, it misses the ones that might seek to hide their past, who are perhaps the ones that are to be most concerned about.
- d. Instead of up-front self-disclosure, and as a further development of the ban the box campaign, employers that wanted to still find out about an applicants’ criminal record would be able to do an official criminal record check and then be able to have a conversation with the applicant to understand the relevance of any information disclosed on the official check.

Prisons and CRCs need clear roles and responsibilities

8. Look at how this fits with governor autonomy

- a. The recommendations made in this submission demonstrate how this strategy is a good opportunity to look at how to encourage employers to develop relationships with local prisons and governors. Historically, prisons have not provided a good level of support and engagement with employers.

9. Set performance metrics and outcomes

- a. Prisons and CRCs need performance objectives around resettlement and employer engagement.
- b. This should include an employment measure for people leaving prison (once people, and after, say, 3 months) and those serving a sentence in the community. This should mobilise CRCs to be more active in providing support to secure employment.

10. Increase the numbers working outside of the prison

- a. Release on Temporary Licence is the gold-standard when it comes to the employment of people leaving prison. However, the current restrictions and local disparity in the way that it operates results in administrative burdens and logistical delays that can be a barrier to successfully engaging employers in recruiting from prison.

11. Review the Prisoners Earnings Act as a barrier for engaging with external employers

- a. For people in prison, once deductions are made, they are earning very little and are not able to save for their release. For employers, it acts as a disincentive to employing people while in prison.
- b. People earning in prison should pay tax and NI rather than 40% to victims. People would then be able to save for release or use it to support their families.
- c. If someone is working for an employer and doing the standard of job expected of a normal employee, they should receive the equivalent pay for it.
- d. A review of the Prisoners Earnings Act and understanding of how this is being used in practice is needed. This should look at how governors are exercising the flexibility they have and what barriers it is causing in engaging with external employers to provide real work opportunities.

12. Improve support with disclosure

- a. Current practice in prisons and by probation providers to support individuals to prepare for disclosing their criminal record to employers is broadly poor and good practice is patchy.
- b. The law is complex and intricate – yet the contractual requirements for CRCs means that ‘disclosure’ is over-simplified and often no more than a 30-minute session as part of a wider training day, with the output being a very basic ‘disclosure letter’ that is often derived from a template, when good practice suggests the need for support to produce tailored self-disclosure statements that help to prepare individuals for a number of different stages at which they might be prepared to disclose.
- c. We provide a range of training courses to practitioners – our most popular being a one-day ‘Advising with Conviction’ course, focused at improving the confidence of probation officers, careers advisors and education providers in giving advice and support on criminal record matters. However, this is funded by individual providers, take-up is sporadic, and rarely is this type of training embedded within core training.
- d. HMPSS should develop a clear set of standards, in consultation with experts in the field, that they expect prisons and CRCs to achieve. This would include ensuring that the support that is provided is a combination of group work and one-to-one work.
- e. Prisons and CRCs should be held to account against these standards, which should encourage the development of coordinated strategies where there are clear responsibilities between the different delivery agencies.

Government

13. MoJ and government should lead from the front as an employer and recruiter of people with convictions

- a. The MoJ should lead from the front and be much more positive, vocal and visible in employing people with convictions directly. It should be a beacon of good practice for the rest of the civil service to follow.
- b. The MoJ should use tendering and supply chain management processes to encourage and stimulate increased employment of people with convictions through these routes too. Often, businesses find that it is government contracts they present the greatest obstacles to implementing fairer recruitment practices. MoJ should review and revise these contracts to ensure that they are not limiting companies from taking on people with convictions unnecessarily.
- c. We are keen to work with the MoJ to see the department lead from the front in its own recruitment practice and approach to people with convictions. President Obama¹ ‘banned the box’ from federal jobs

¹ <http://www.msnbc.com/msnbc/obama-bans-the-box>

in the US. We believe there is a similar role for the UK government and its departments, promoting a positive standard for other employers to follow.

14. There should be a joint strategy with DWP

- a. Given the vast majority of people with convictions are in the community (including those completing a community order and those on licence), the MoJ needs to develop a coherent strategy for improving the employment outcomes of people in this situation. This should be a strategy produced jointly with the Department for Work and Pensions (DWP).
- b. In short, the MoJ and DWP should implement all of the recommendations made by the Work and Pensions Committee in December 2016.
- c. In particular, work needs to be done to look at the role of work coaches in job centres, focusing on the skills, knowledge and capacity they have to provide tailored support to people with convictions in the community.

15. Review the criminal record disclosure rules

- a. The Rehabilitation of Offenders Act 1974 (ROA) effectively acts as an additional punishment for people recently released from prison. Only helps people once conviction is spent.
- b. As we've set out in our priorities above, we strongly believe in the need for reform.
- c. The question the MoJ needs to ask itself, as it holds policy responsibility for the ROA, is what it can do to mitigate the impact of criminal records through reform of the rules. We believe there is a strong case for reductions in the disclosure periods, as well as building on David Lammy's recommendation for a process of 'sealing' criminal records.

16. Remove unnecessary barriers to employment through the way that criminal record checks work

- a. We are working with the MoJ, Home Office and Disclosure and Barring Service (DBS) on the ways that criminal record checks work and their impact on people with convictions seeking employment.
- b. One practical barrier is the inability for an individual applying for work that involves a standard or enhanced DBS check for them to apply to get their own check before applying for work. That means that, given the current recruitment practice of many employers is to ask for up-front disclosure, it makes it difficult to disclose accurately. In lieu of abolishing such up-front disclosure (see point 7 above), individuals should be able to apply to the DBS for a copy of what cautions and convictions will be included on a standard or enhanced check.

Issues linked to employment

17. Review the prisoner bank account scheme and ensure this is operating fully to ensure people are released with a bank account

- a. Access to a basic bank account is a fundamental necessity. If people don't have a bank account, they cannot secure employment and they will struggle to receive their benefits promptly.
- b. There is increasing evidence that the progress that Unlock made in partnership with NOMS has been going backwards since the work ended in 2014.
- c. MoJ should commission a full review of the current situation, identify areas of need and ensure these are properly resourced. This should include identifying whether CRCs and other providers in prisons (where appropriate) are providing the appropriate support to people in opening a bank account before release, and whether MoJ/HMPPS is sufficiently resourcing their oversight role of the scheme.

18. Develop a specific employment strategy for people convicted of sexual offences

- a. The numbers of people being convicted for sexual offences is on the increase. Employers' attitudes towards employing with sexual offences are very negative, with most of the major companies involved in this space having exclusions towards people with this offence type. We encourage the MoJ to recognise these two increasing trends which, when looked at together, make it important that a strategy is devised to deal with the challenge.

19. Work on access to insurance as a key barrier to employment

- a. It is important to making sure people are aware of the challenges in getting insurance with unspent convictions and the importance of knowing where to go for help.
- b. From the moment somebody leaves prison, any insurance covering the house they live in is under threat. The problem extends to motoring insurance too, which can seriously hamper employment opportunities.
- c. We have independent, practical self-help information and advice on insurance for people with convictions, including a list of insurance brokers, a list of motor insurers and guidance. We have been developing access to fair insurance for people with convictions since 2000. Since then, we've worked hard to make it easier for people with convictions to get genuine cover at a fair price.
- d. However, it remains the case that all mainstream insurers reject outright people who disclose an unspent conviction for house insurance. Not only does this affect people leaving prison when moved into their own accommodation, it has a multiplier effect as it similarly impacts on families and friends that welcome people with unspent convictions into their own home.
- e. Awareness of the issues surrounding insurance is low amongst people leaving prison, people who receive community sentences and people getting criminal convictions at court, where they are left with an unspent conviction that they may need to disclose to an insurance company. Prison staff, resettlement teams, probation officers and others supporting people with convictions in prison, on probation or in the community are generally unaware.
- f. There is a clear link between employment on release from prison and the need for car insurance for a large number of employment positions.
- g. We are keen to work with the MoJ to ensure that people with unspent convictions (those leaving prison, those on probation, and those convicted at court) are aware of the potential issue and understand what steps they should take.
- h. Insurance is also a (often perceived) barrier to employers. As part of a wider infrastructure of support for employers as recommended in this submission, the issue of any real (or perceived) insurance barriers for employers should be explored.

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