



# A fairer future

A toolkit for local authorities to develop fair and inclusive recruitment of people with criminal records

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## Summary

Local authorities face a difficult future and will need a resilient and adaptable workforce while dealing with skills shortages and the need to better address employment inequality. People with criminal records have a diverse range of skills and experiences to offer that employers can no longer afford to ignore – but these candidates need a fair chance to compete.

Over 11 million people in the UK have a criminal record. People with criminal records are often discouraged from applying for jobs that ask about them on the application form, fearing they won't get a fair chance to show their skills and abilities before being rejected for a past they can't change.

This fear is well-founded: 75% of employers admit to discriminating against applicants on the basis of a criminal [record](#). Around a third of people claiming Job Seekers Allowance have received a criminal record in the last [10 years](#). Research [published by Unlock in October 2018](#) showed more than 70% of employers ask about criminal records at application stage.

Fair chance recruitment means an approach that:

- Considers applicants on their skills and abilities first, asking questions about criminal records only when necessary (for example, after offer)
- Considers a criminal record in context, taking into account the circumstances, relevance, the time that has passed and what a candidate has done since
- Complies with data protection law

The first step to fair chance recruitment is removing the tick box about convictions from application forms – otherwise known as 'banning the box'. Employers who ask on application often exclude people who tick the box, so people with convictions are put off applying for jobs where they're asked to disclose on application. This means employers miss out on skilled and talented candidates and it could lead to discrimination.

Building a truly diverse workforce means thinking differently about people with criminal records and finding ways to offer them a fair chance. Removing the tick box about criminal convictions from application forms is the right place to start.

This toolkit is designed to help local authorities understand the benefits of fair chance recruitment and offers practical steps to implement it, alongside examples of public sector employers whose recruitment practices offer a fair chance to applicants with criminal records.

## Introduction

Every employer wants to recruit the best person for the job and local authorities will want to make sure the workforce represents the community it serves. But the handling of criminal records can create an unintentional barrier or even indirectly discriminate against some sections of the community.

If your organisation:

- asks about criminal records on the application form
- excludes people with criminal records from your inclusion and diversity strategy
- expects recruiting managers to deal with criminal records information without training or guidance

then you are probably excluding qualified and capable people with criminal records.

### Ban the Box

The [Ban the Box](#) campaign calls on employers to remove the tick box and ask any necessary questions about criminal convictions later in the process. The campaign began in the US in the 1990s and, as of September 2020, 36 states have adopted a ban the box or a fair chance policy and federal agencies will have to remove the box by December 2021. The UK campaign is led by the charity Business in the Community (BITC) and there are now more than 140 employers signed up across the private, public and charity sector. You can view the full list on the [BITC website](#). Unlock was a founder member of the campaign in the UK in 2013, and we promote and support the campaign as part of our work to encourage fair chance recruitment practices by employers in the UK.

### What's wrong with the box?

- People are put off applying, so you'll miss out on potential applicants
- There's no opportunity to contextualise or to explain convictions disclosed
- It's used a screening tool which can lead to indirect discrimination
- No employer legally has to ask about criminal records on application – and asking at this stage may be unlawful

Removing questions about criminal records from application forms is the first step towards fair and inclusive recruitment and a skilled workforce that truly represents the community it serves.

### The law on collecting criminal records information

The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 mean employers must identify a [lawful basis and schedule condition](#) before processing criminal records data. In most cases, only necessary information can lawfully be processed.

Most applicants will not be shortlisted so asking about criminal records at this stage is usually unnecessary – and therefore unlikely to comply with the law. Penalties for non-compliance can include [an enforcement notice, or a fine of up to €20 million, or 4% of annual revenue](#).

## Benefits of banning the box

In 2017 Unison declared its support for Ban the Box and called on all branches to campaign for employers to [‘adopt a position of supporting Ban the Box’](#). There are a number of benefits to doing so.

### A wider pool of talent

Recruitment and retention has been a longstanding issue for many local authorities. A study of local authorities’ recruitment found that [a third of councils were unsure that they had enough staff. 44% reported finding recruitment “difficult”](#).

In local government, staff shortages were a smaller but growing problem, particularly when recruiting for specific, skilled professional roles. All councils reported difficulties in finding skilled or specialist staff and 69% said they “sometimes” have to recruit people with less skills and experience. Almost two thirds of councils said they were using agency/ temporary staff “a lot or a little” and a quarter of them expected the use of agency staff to increase in future.

The social care sector in particular faces [significant recruitment and retention challenges](#), and these are likely to increase when the new immigration rules come into force in January 2021. The Migration Advisory Committee (MAC) recommended [nursing auxiliaries and assistants; residential, day and domiciliary care managers and proprietors; senior care workers and social workers be included on the Shortage Occupation List](#) for the UK. In addition, housing officers were recommended for the list in Scotland. These occupations are those that would benefit from recruiting migrant workers, but proposed immigration rules will make it difficult for employers to meet demand via this route. Local authorities will need to think about how to recruit from the widest pool of talent – and that should include people with convictions.

### A diverse workforce

Removing the tick box is part of an inclusive recruitment strategy. [People from black and some other minority ethnic groups](#), [care experienced people](#) and [people with neurodiversities](#) are all over-represented in the criminal justice system and therefore more likely to suffer from discriminatory recruitment practices. Like other candidates with convictions, they are likely to be deterred from applying for roles that ask them to tick the box.

It’s not a substitute for understanding biases - studies in the US have found that [some employers discriminate against black and Hispanic applicants because they can no longer ask about criminal records](#) – but banning the box lets applicants know that your organisation is committed to recruiting the best candidate whatever their background.

### Safer communities

[Employment is a key factor in reducing reoffending](#), preventing more victims and making communities safer. Employers who remove unnecessary barriers are contributing to a safer society where people with criminal records have a fair chance to take care of themselves and their families and contribute to society.

## Understanding applicants with criminal records

People with criminal records are a broad and varied group - there are [over 11 million people in the UK with a criminal record](#). Research shows that [one in three men have a criminal record](#). Of those men with a criminal record, just [over half of these had been convicted on only one occasion, and 85% were convicted before they were 30 years old](#).

Less than 10% of people that receive a criminal record go to prison – nearly 70% of all sentences handed down are fines. In the [12 months to June 2018, 69% of people serving a prison sentence had committed a non-violent crime. 46% were serving a sentence of six months or less](#). People of all backgrounds can find themselves on the wrong side of the law – from managing directors to nurses, plumbers to solicitors. A criminal record, on its own, doesn't tell you whether a person has the skills and abilities needed to do a great job.

The concern that everyone with a criminal record will go on to commit further crime is unfounded. In general, [risk of reconviction decreases over time for most offences and in most cases will eventually become statistically lower than for people who have never been convicted of a crime before](#). People who [have served longer sentences for more serious crimes are the least likely to reoffend](#). Those who have developed some stake in society since their crime – for example, by gaining qualifications and working - are less likely to commit further crime.

[Most sentences – including prison sentences – will become spent and no longer disclosable](#). However, this takes time. Under current law, a fine remains unspent for a year. A community order is unspent for a year after completion. A prison sentence of less than 12 months will be unspent until 4 years after it is completed. Many employers still discriminate against applicants with convictions so, even when their conviction becomes spent, people can have a large gap in their work history that is difficult to explain.

## How applicants benefit from ban the box

Applicants with criminal records can be discouraged from applying for jobs where they are asked to tick the box on application. Paul and Daphne's stories illustrate how delaying questions about criminal records can help local authorities recruit from the widest pool of talent.

### *Paul*

Paul has a conviction from more than 20 years ago. As the law stands, this conviction will never become spent and he will always have to declare it if asked. Since completing his sentence, Paul has graduated from university and raised a family. He has always been in employment but questions about criminal records have become the norm in recent years and he has found it more difficult.

Recently, I came across a job where the company didn't ask on their form – although they did say they would ask for a disclosure from whoever was successful. I knew I would be a strong applicant, so this gave me the confidence to apply. When I was offered the job, I was told it was dependent on a few things, including if I had a criminal record. I sat down and spoke with them. They went away, came back and said they were happy to still employ me. 6 months on, I'm loving my job and so thankful that they took such an inclusive approach. I wouldn't have applied otherwise.

### *Daphne*

Daphne's conviction will be unspent for two more years. After that she will no longer need to disclose it but she can't afford to wait – she needs to support herself and her children, and a gap on her CV will still need explaining.

My offence happened because of complicated personal circumstances and there's never space to explain on an application form. I have applied for so many jobs and never heard back. I know my qualifications are good so I know that it's because I've had to tick the box.

When I applied for my current job I really appreciated the fact that I was not asked about criminal convictions straight away – I was judged on my merits, skills and experience first. In fact, they didn't ask until I was offered the job. They seemed shocked that I could have a criminal record and be good enough to do the job and I felt that if I had ticked the box I would have never got the chance to explain. They decided that it didn't affect my ability to do the job and I'm very happy there.

We encourage all employers to look at the person, not their past. Banning the box helps you to make sure you judge an application on its merits first – and sets the tone for a positive and trusting relationship between you and the person you will eventually employ.

## Assessing criminal records

Banning the box is the first step to becoming an inclusive employer. You should still consider whether you need to ask at all and, if you do, when that should take place. We recommend asking after a conditional offer. Criminal record information can be requested at the same time as wider pre-employment checks such as references, with a conditional offer of employment being made subject to the assessment of their criminal record. Leaving the assessment of criminal records to this stage means that you should have chosen your preferred candidate based on their skills and experience.

Before advertising a role, consider how you will assess old and minor criminal records, or offences that have no relevance to the role. Having a clear job description that sets out the duties and responsibilities of the role will help identify areas of risk and ways to mitigate it. This is good practice in any case – safe working practices, fraud prevention and safeguarding are essential and provide better protection than simply checking criminal records.

You could consider developing a framework of offences and/or timeframes after which convictions can be disregarded. If there are specific convictions that would bar an individual from entry to the profession, this should be communicated to applicants in a timely way, saving your time and theirs.

### Jobs covered by the Rehabilitation of Offenders Act 1974

Most jobs are covered by the Rehabilitation of Offenders Act 1974 and employers have no legal obligation to ask about criminal records at all. For these jobs, employers are only entitled to ask about unspent convictions. The fact that a conviction is unspent does not necessarily mean it's relevant. The time it takes for a conviction to become spent is defined in law, and depends on the sentence rather than the offence.

Most criminal records will eventually become spent. The focus should be on whether there are restrictions in place that might prevent an applicant from safely and effectively carrying out the role.

### Jobs that require DBS checks

Some jobs are exempt from the Rehabilitation of Offenders Act 1974 – for example social work or care, teaching. Candidates for these roles will need to undergo enhanced DBS (and sometimes barring) checks before taking up the post. Although it is a legal requirement for an employer to carry out DBS checks for exempt roles, there is no requirement to ask about criminal convictions on application.

For these jobs recruiters can consider cautions and spent convictions that are not yet filtered. Bear in mind that enhanced checks can disclose very old and minor offences that may have no relevance to the job. [Unlock's report on youth criminal records showed that significant numbers of people have convictions or cautions from decades ago.](#)

## Examples

### Bristol City Council

In 2018, Bristol City Council became the first local authority to sign up to Ban the Box. Their online [job adverts](#) let applicants know whether a DBS check is required and to what level. Since then, Bristol has encouraged other employers in the city to sign up to the campaign.

Bristol's Mayor, Marvin Rees:

Bristol is a place where the opportunities to share in the city's success are not evenly distributed and barriers exist that prevent some from fulfilling their potential. Our aim is to remove one of those barriers and send a message that we're interested in getting to know the person applying for the job first and begin our conversation there.

### Redbridge Council

The London Borough of Redbridge became the second local authority to ban the box, in 2019.

Councillor Ann Sachs:

Applicants with convictions will be able to get through the first stage - they get the chance to make a good first impression without having to disclose information which disproportionately overshadows their good points. Let's give these applicants a chance to turn the corner - a future worth resisting crime for.

### West Midlands Police and Crime Commissioner's Office (OPCC)

In 2019, the OPCC became the first public sector employer in the West Midlands to ban the box.

PCC David Jamieson:

We know that having a prior conviction can be of great worry to individuals when seeking employment and there is still too much stigma attached to those ex-offenders, even if they have turned their lives around. I am pleased that my office is the first public sector organisation in the West Midlands to ban the box and now I want to see other PCC's, companies and local councils to do the same.

For examples of [other employers](#) who have implemented fair chance recruitment, [see our website](#).



## Next steps

If you think you're ready to remove the box, or you want help to develop your recruitment process, you can [contact us directly](#). You can also [contact BITC](#), who can offer support.

For more guidance see our website for employers – Recruit! The information and resources there are designed to support employers to recruit people with convictions and deal with criminal records fairly.

You'll find practical guidance and tools to help you

- [Develop a policy on applicants with criminal convictions](#)
- [Understand the law on criminal records disclosure](#)
- [Comply with the GDPR and data protection law](#)
- [Identify the right level of DBS check for roles advertised](#)

## About Unlock

[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.

Recruit! is managed by Unlock.