

Fair chance recruitment

There are over 12 million people in the UK with a criminal record – who are you missing out on?

Fair Chance Recruitment

- ✓ Doesn't discourage applicants with a criminal record.
- ✓ Recognises the limited value of criminal records and questions their inclusion in recruitment decisions.
- ✓ "Bans the box" from application forms and delays questions about convictions until later in the recruitment process.
- ✓ Supports employers that need to use criminal record information by actively developing their company policy and practice to become fairer and more inclusive towards people with criminal records.

Principles of Fair Chance Recruitment

These principles have been developed in collaboration with employers and are intended to support fair chance recruitment of people with criminal records.

Principle 1 – Consider whether you need to ask

For most jobs, employers are not legally obliged to ask about criminal records. Disclosure laws mean that people can still be legally required to disclose old and/or minor convictions – if asked - which may not be relevant to the role. Do you really need to collect old and irrelevant information? Being clear about your purpose will help you to assess whether it is really necessary and if so, what specific information you need.

Principle 2 – Follow rehabilitation & data protection legislation

There are specific legal requirements relating to asking about criminal records and for processing any data collected as a result; there are distinct, additional protections relating to this data. So, before you ask about criminal records, you need to be sure you are complying with the law. Key legislation includes:

- The Rehabilitation of Offenders Act 1974 (ROA) provides for some criminal records to become spent after a period of time. For most jobs, you are not allowed to consider convictions that are [spent](#).
- Collection of all personal data, including criminal records information, is covered by the [General Data Protection Regulation \(GDPR\) and Data Protection Act \(DPA\) 2018](#). This means identifying a lawful basis and condition of processing and letting applicants know how you will uphold their data subject rights. There are [additional protections](#) in place for criminal

record information as set out in Schedule 1 of the DPA. Failing to comply with the GDPR can result in [significant fines](#).

- If you plan to carry out criminal record checks you will need to ensure the job is eligible for the level of check requested. Knowingly requesting a higher level check for an ineligible role is a criminal offence under the [Police Act 1997](#).

Principle 3 – Consider the right time to ask

Collecting information only when it is necessary is a key part of complying with data protection legislation. It is highly unlikely that you will need to collect criminal records data from all applicants. Most will not be shortlisted and you will then have a lot of sensitive data that you are legally responsible for managing. This could be considered [excessive data collection](#).

We recommend removing questions about criminal records from your application form and waiting until you have made a conditional offer to request this information. Join the growing list of employers who have [banned the box](#).

Principle 4 – Ask clear questions and provide guidance

You will need to ask [clear questions](#) to make sure applicants provide information you need. The law around criminal records disclosure is complex and providing guidance to applicants will help ensure you don't collect information you don't need or shouldn't have. You can do this by linking to appropriate resources (gov.uk, Unlock or NACRO websites, for example).

Principle 5 – Have a clear, accessible policy that you review

Individuals have a legal right to know how their data will be used so having an ['Applicants with a criminal record' policy](#) is essential. You may be legally required to have a policy either under the DPA 2018 or in respect of information obtained from the DBS. It is good practice for the policy to include whether you ask about criminal records, and, if so, when that information is sought, as well the legal basis for collecting the data. The policy should be publicly available, and included in recruitment adverts so potential applicants can read it before deciding whether to apply. Keep your policy under regular review to ensure it's up to date with changes in the law.

Principle 6 – Consider context and relevance

Written information about a criminal record, whether official or provided by an individual, can be difficult to put into context. Give applicants an [opportunity to explain](#) the circumstances of their record in their own words and address any concerns you might have.

Principle 7 – Document your decision-making

Keep a record of the process you go through and the considerations you give. This enables you to explain your decision-making and make confident recruitment decisions. Applicants have the right to request information held on them and having appropriate documentation will help demonstrate that you have followed your policy.

Principle 8 – Be confident in your process and practice

Make sure that those involved in recruitment are knowledgeable and confident in dealing with criminal records. Consider specific training for those regularly involved in talking to applicants about their criminal record and making judgements based on information disclosed.

Next steps for your organisation

- Understanding criminal records
 - Do you understand the legal framework on criminal records?
 - Do you have a policy on dealing with criminal records?
 - Do you have robust processes for managing and deleting sensitive personal data relating to criminal records?
- Recruiting
 - Is your policy and approach on criminal records publicly available? Does it explain what will be asked, when and why?
 - Are you assessing applicants for their skills and suitability before considering criminal record information?
 - Are you offering an opportunity for candidates to discuss their criminal record in their own words? E.g. via a disclosure statement, or in-person with hiring managers?
 - Are decision-makers trained appropriately?

Unlock is a national independent advocacy charity that supports, speaks up and campaigns for people facing stigma, prejudice and discrimination because of their criminal record.

Questions? Go to our [Recruit website](#) or contact recruit@unlock.org.uk