



BAN THE BOX

**Fair recruitment of people
with criminal convictions:**
a practical guide for employers



Freshfields Bruckhaus Deringer

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Business in the Community is the Prince's Responsible Business Network. We are a business-led, issue-focused charity with more than 30 years' experience of mobilising business to build a fairer society and a more sustainable future. The Ban the Box campaign was launched in October 2013 as part of the charity's work to help people overcome disadvantage by increasing access to good, sustainable employment.

www.bitc.org.uk/banthebox

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Introduction

Mainstream recruitment practices often exclude people with criminal convictions from employment opportunities – sometimes deliberately, often inadvertently. The criminal record tick box is used on many application forms as a filtering mechanism during recruitment. It can also discourage people from applying.

The campaign

Business in the Community's Ban the Box campaign calls on employers to create fair opportunities for ex-offenders to compete for jobs by removing the tick box from application forms, and asking about criminal convictions later in the recruitment process. Ban the Box employers publicly commit to fairly assessing criminal convictions; judging candidates first and foremost on the basis of their skills and suitability for a role, rather than their past mistakes.

The issue

A large proportion of the UK's working age population has a criminal record. Employment is a crucial opportunity that reduces the likelihood that an individual will reoffend. Yet 75% of employers surveyed by Working Links stated that they would choose not to hire a candidate with a conviction if there was another suitable candidate, while 1 in 7 said that they would exclude any candidate with a criminal conviction, regardless of the offence. This is costly for society – reoffending costs the taxpayer £11bn per year, not to mention the impact on victims of crime.



10 million people in the UK have a criminal record – a significant proportion of the country's workforce.

Every employer can be a part of the solution

Objective and transparent recruitment practices give people with criminal convictions, who are skilled and able to work, the opportunity to compete fairly for roles and move on from their past mistakes. And there are business benefits too – increasing the diversity of your talent pool and reducing the unnecessary exclusion of talented individuals from your roles.

It may be that your business operates a policy of automatic exclusion for people with criminal convictions, or perhaps you don't have a tick box, but your recruiters aren't sure how to effectively assess criminal convictions. Whatever stage you're at, this guide provides a step-by-step approach to help you implement a fair and open recruitment process.



“As a responsible business, we have a duty to ensure that we’re employing the best people to deliver our services across the UK. For us, this means operating a fair recruitment process that offers equal opportunities to all, as well as providing the right training and development for people to succeed.

We welcome initiatives such as Ban the Box, which backs our ethos of equality in employment, helps to reduce unemployment and has a positive impact on the communities in which we work.”

Ian Deninson, Group HR and Communications Director, Amey

“Boots wants to help make it possible for people with criminal convictions who have reformed to get back into work. We know that employment is key to reducing re-offending – it makes it possible for people to move away from crime for good.”

Marco Pagni, Executive Vice President, Global Chief Legal and Administrative Officer, Walgreens Boots Alliance

Step 1

Understand your starting point

Before taking practical steps to Ban the Box, it's important to fully understand the current approach that your organisation takes to ask about criminal convictions during recruitment.

Your recruitment process

The following checklist has been developed to help you build a picture of your current recruitment process. You may need to check with different business units and departments to build a complete picture of your organisation's approach.

- Do you currently have a tick box on application forms asking about criminal convictions?
- Does the tick box apply to all roles or only specific roles? For example, only those for which a full criminal records check forms part of the vetting process.
- What information do you request about convictions and when?
- How are candidates treated if they have a criminal conviction? For example, rejected automatically or given the chance to discuss their convictions.
- How is this information assessed and by whom?
- Do you have a policy in place to guide recruitment decisions about criminal convictions?
- Are all the above answers consistent across your business?

If you don't have a consistent, fair approach to gathering and assessing information about convictions, identify what needs to change.

Your recruitment culture

Ban the Box is about more than just a process. You will need the support of your HR and senior leadership teams to create a recruitment culture that welcomes suitable candidates with criminal convictions.

If understanding of the case for action is low within your business, you can increase awareness of the social issue through a visit to a local community project or prison. By accessing resources, events and networks via Business in the Community, you can find out more about the business case from employers who have already banned the box.

70% of all sentences handed down by courts are fines – most people with a criminal record haven't been to prison.

Criminal records are complex, and this can result in a misunderstanding that may undermine your recruitment process. See the myth-busting section towards the end of this guide for answers to some of the most common misconceptions.

Step 1

Understand your starting point

Once you understand your starting point

The following sections of this Guide can help you to make the changes needed to create an effective process.

It may well be that the way you recruit already aligns with the culture and process called for by the Ban the Box campaign. If this is the case,

signing up to the campaign shows a commitment to maintain this, and increases awareness of your open recruitment practices. Move to Step 4 to find out how to ensure an organisation-wide commitment.

Case study

RICOH

imagine. change.

In February 2014, Phil Keoghan, Chief Executive of Ricoh, attended a Seeing is Believing visit to HMP Brixton on the invitation of Marco Pagni of Walgreens Alliance Boots, a key client of Ricoh's. Phil said:

“I found the Seeing is Believing visit extremely moving. Seeing the individuals on the day and hearing from them, first-hand, about their experiences provided for a real touch with reality.”

The visit left Phil convinced about the importance of Ban the Box, however he knew that he would need to gain the support of the leadership team and division managers. Ricoh therefore arranged a series of programmes, including their own Seeing is Believing event at HMP Sudbury, to give their managers the opportunity to meet with offenders.

All those who attended became convinced that removing the criminal conviction tick box was the right thing to do – it would bring a huge section of society into the recruitment pool, while giving a second chance to individuals seeking to move on from past mistakes.



Step 1

Understand your starting point

Case study



Adnams decided to sign up to Ban the Box as a way of publicising their existing fair recruitment practices. Instead of application forms, Adnams asks for CVs and covering letters to determine the right person for the role. As Sadie Lofthouse, Head of Human Resources at Adnams explains, this decision is just one of many that Adnams have made in order to achieve a culture of inclusivity and trust:

“At Adnams, we believe in giving all applicants a fair chance and simply want to employ the best person to do the job. We embrace diversity within our business and accept that any of us can make poor choices at some point in life. The effects of doing so shouldn’t stay with you for ever. If an applicant has the skills and experience, or the ability and the aptitude to learn them, then why wouldn’t we want them working in our business?”



Step 2

Assess legal, regulatory and contractual requirements

There may be a number of different factors to consider before you decide how criminal convictions are taken into account during your organisation's recruitment process. These depend largely on the nature of your business, as you may be subject to specific requirements, either regulatory or contractual.

Legislation defines what you're allowed to ask

The criminal record information that employers can take into account during the recruitment process is primarily defined by the Rehabilitation of Offenders Act 1974 (ROA). This Act is designed to improve the chances of offenders being fully rehabilitated into society by removing some of the barriers that they face.

The ROA defines the period of time during which all cautions and convictions must be disclosed by candidates to employers, if they are asked. Within this time period, the conviction is regarded as unspent.

When a caution or conviction has become spent, the offender is treated as rehabilitated in respect of that offence and is not obliged to declare it for most roles.

Employers are legally allowed to consider unspent convictions during the recruitment process. However, for most roles, it is illegal to make a recruitment decision based on a spent conviction.

The time it takes for a conviction to become spent – the 'rehabilitation period' – depends on the sentence given, as set out in the table below.

Remember: It's the candidate's responsibility to understand their criminal record, but bear in mind that calculating rehabilitation periods for multiple convictions can be complex.

Sentence	Rehabilitation period – under 18s	Rehabilitation period – over 18s
Prison sentence >48 months		Never spent
Prison sentence >30–48 months	3½ years from end of sentence	7 years from end of sentence
Prison >6–30 months	2 years from end of sentence	4 years from end of sentence
Prison 6 months or less	1½ years from end of sentence	2 years from end of sentence
Probation Order	N/A	12 months from end of order
Community Order	6 months from end of order	12 months from end of order
Fine (from a court, not including penalty notices)	6 months from date of conviction	1 year from date of conviction
Conditional Discharge Order	The last day on which the order has effect	
Compensation	Once compensation paid in full	
Absolute Discharge	No rehabilitation period	

Step 2

Assess legal, regulatory and contractual requirements

Regulated roles and full criminal record checks

Specific types of roles, called 'regulated roles', are exempt from the ROA. This means that employers can ask about both spent and unspent convictions, finding out about all criminal convictions, apart from a small number of minor convictions that have been 'filtered' from a candidate's record. In the majority of cases, employers will conduct a Disclosure and Barring Service (DBS) check to verify this information.

Employers are not required to exclude applicants with convictions automatically, and are in fact encouraged by the DBS to consider convictions on a case-by-case basis. The only exception to this guidance is when an applicant has been barred from working in certain roles with vulnerable adults or children.

Regulatory and industry requirements

Alongside the legal requirements of the ROA, there may be specific regulatory considerations for your business, dependent on your industry and any regulatory bodies that govern you and/or your employees.

Some regulatory bodies are involved in the registration of individuals who conduct specific roles, such as the Financial Conduct Authority or the Solicitors Regulatory Authority. These bodies are likely to either have already considered the risk and relevance of candidates' criminal records before they apply, or will work with you directly to decide whether an applicant is suitable to perform the role in question.

However, most regulatory bodies only impose regulation on the business as a whole, rather than individual employees. This means that the decision to hire remains completely with the employer. Any consideration of candidates' convictions should take into account the specific role and any potential impact that the candidate could have on your business' ability to meet regulatory requirements.

Extensive desk research by Business in the Community has not identified a single regulatory body that requires employers to have a criminal record tick box on their application form. It remains at the employer's discretion to decide when and how to ask, as long as any subsequent regulatory requirements are maintained for preferred or hired candidates.

Remember: Even in regulated industries, many roles will not be subject to DBS checks or regulatory requirements. For example, a facilities manager in a law firm can only be asked to disclose unspent convictions, and is not subject to a DBS check or any approval from the regulatory body.

Step 2

Assess legal, regulatory and contractual requirements

Contractual considerations

You may be subject to requirements imposed by your clients and the organisations for whom you deliver contracts. These contracts can sometimes stipulate the security and vetting procedures required for personnel employed on clients' sites. This shouldn't stop you from signing up to Ban the Box, as you can still enquire about candidates' criminal convictions before placing them on a site. However, it may mean that you need to implement different recruitment practices for employees on different contracts.

It is important to verify the security requirements and criminal record checks that are required by any contracts you hold, and question them with the client if necessary. If information is gathered that cannot legally be taken into account for a role, eg conducting a DBS check for a role that is not regulated, your business would be considered liable, rather than the client that made this specification in the contract.

Case study



Reducing reoffending plays a key part in the business objectives of justice services provider Sodexo, and therefore it was a natural step to ban the box. To ensure that no one should have to disclose information about criminal convictions unnecessarily, where there is a regulatory requirement to ask about criminal convictions, Sodexo takes a role-specific approach.

For example, when recruiting for a role in a hospital, Sodexo advertises that a DBS check will be required if the candidate is successful, but will only request a DBS check after an offer of employment has been made. For their roles in educational establishments, applicants are asked about criminal convictions at the interview stage, at which point any disclosures are considered on a case-by-case basis. A risk assessment is completed on all DBS certificates that contain disclosures.

Step 2

Assess legal, regulatory and contractual requirements

Case study



Interserve Support Services has established a process to ensure it can meet any contractual requirements for candidates to disclose criminal convictions, without compromising on a policy of fair recruitment:

- All staff strictly follow Interserve's sourcing strategy – 'recruit the right skills and capability for the job', and recruiters are fully trained on legal requirements and how to understand disclosures;
- HR business partners complete a full risk assessment in accordance with their recruitment policy, taking into account the role applied for and the contract involved;
- When a risk assessment results in a job offer, criminal conviction disclosure information is not shared with the line manager (unless there is a specific requirement to share it);
- If a risk assessment results in an application being declined, the feedback is given to the applicant by a trained manager or member of HR; and
- When required the company seeks legal advice from company solicitors.

Step 3

Develop your recruitment process

Not all Ban the Box recruitment processes are the same. You will need to decide how and when to gather and assess information about criminal convictions after the initial application stage in a way that works for your organisation and for applicants.

When to ask

Applicants are only required to disclose their criminal convictions if they are asked. There are various points during the recruitment process when you could ask, if you wish to, as an alternative to the application form.

The later you leave the assessment of criminal records, the more likely you are to review skills first and the less likely you are to gather information you don't need. However, you may decide it is most appropriate for your business to ask candidates about convictions earlier, particularly if they are applying for regulated roles or positions affected by contractual requirements.

Remember: You could choose to have different processes for different types of roles or contracts.

After shortlisting, before interview

Candidates selected to attend an interview can be asked to disclose their criminal record in advance. Information about their criminal record is often submitted to a relevant, trained person in the HR team in a form, which is sent to the candidates as part of the interview pack. Criminal record information is then dealt with separately to the main recruitment process, which remains focused on skills assessment.

It can also be noted relatively early on that the applicant has a conviction, but the details only discussed if they become the preferred candidate. If you choose this approach, it is important that the candidate understands how and when their information will be dealt with and shared to give them confidence that they have fair chance to compete at interview.

At interview

Asking candidates about their criminal record at interview gives the opportunity to discuss the circumstances surrounding their record without adding an extra stage to the recruitment process. Questions could be posed verbally, or candidates could be requested to bring a written statement along with them to discuss and leave behind. If you choose this approach, interviewers will need to be given guidance in order to be confident to conduct this discussion effectively. Candidates should be given prior warning so that they can prepare. They should also have the same time as those without a criminal record to answer the interview questions about their skills so that they are not at a disadvantage.

Step 3

Develop your recruitment process

After a conditional offer of employment

Leaving the assessment of criminal convictions to the end of the recruitment process means that you are most likely to choose your preferred candidate based on their skills alone. The request for criminal record information can be made as part of wider pre-employment checks, with a conditional offer of employment subject to the assessment of their criminal record. Candidates can be asked to submit information in a form and schedule an appointment to discuss their conviction, as required. If you choose this approach, you will need to be confident in your willingness to employ people with convictions, so that withdrawals of offers are limited and candidates aren't unfairly treated. Your interviewers must also be made aware of this process, and given information on how to respond should a candidate voluntarily disclose at the interview stage without being prompted to do so.

Not at all

You can also choose not to ask candidates about criminal convictions during the recruitment process for roles that are not regulated. This means that candidates are only assessed on skills and effective use of alternative management processes, such as probation periods and line management that allow you to deal with any issues should they arise. If you choose this approach, this must be a positive decision – your organisation must be comfortable not knowing, whatever the candidate's offence. Candidates should also be informed of this, so that they are not concerned about what could happen should their criminal record become known once they are in employment, and are given the option to tell their HR team or manager about their conviction if they would prefer.

Case study

RICOH

imagine. change.

In order to ban the box, Ricoh carried out a review of their recruitment practices, taking into consideration their existing security policies and a desire to recruit fairly. As a result, the company revised its security policy for each role to ensure the appropriate assessment of risk is carried out, ranging from only basic employment checks for

some roles to in-depth checks for others, according to customer requirements. Applicants are only asked about criminal convictions at the stage of being offered a job, allowing Ricoh to judge a candidate's suitability for a role before taking into account any convictions.

Step 3

Develop your recruitment process

Case study

SOUTHBANK CENTRE

The decision to ban the box was an easy one for Southbank Centre. For several years now, Southbank Centre has hosted exhibitions that have been produced and curated by, and about ex-offenders. These have provided powerful insight into the struggles of people who have experienced the criminal justice system.

While it took a matter of hours for Southbank Centre to remove the tick box from all job application forms, more time was given to ensuring staff were equipped for handling disclosures. Confident that their HR team can deal with disclosures sensitively and fairly, Southbank Centre now asks about criminal convictions after an offer of employment has been made. As Katy Dent, HR Director explains:

“Now, there are no barriers to ex-offenders applying for roles and no additional risk has been created. We have ex-offenders employed in our visitor host team and as volunteers – they are high-performing, valued members of the team.”



Step 3

Develop your recruitment process

How to ask

How you choose to ask about convictions will often depend on when you have chosen to ask.

Candidates could disclose verbally or in writing, but best practice is to use a combination of the two – asking the candidate to provide a written disclosure statement or fill in a form, as well as giving them the chance to discuss the circumstances around their criminal record verbally, as required. This provides you with a record of information provided by the candidate, as well as a chance to ask questions and delve further into any details that will help you to assess the convictions.

You may also choose to verify information by conducting a criminal record check. For regulated roles, DBS checks are usually

conducted. For other roles, employers can conduct a Basic Check (available from Disclosure Scotland for all employers across England and Wales), which only provides details of unspent criminal convictions. Whatever the type of check, it will not provide any context, so it's important that checks are not the sole method used to find out about candidates' criminal records. Applicants should also be given the chance to share wider information.

Remember: It is often hard for candidates to know exactly what will appear on these checks due to the complexity of the law. If there are discrepancies between what a candidate has disclosed and the information on the check, give them a chance to discuss this with you before making any assumptions.

What to ask

You should ask candidates clear, open questions to gather the information you need to assess their convictions fairly. It is very important to know whether the role that they are applying for is covered by the ROA – you must not ask candidates about spent convictions where it is not legal for you to do so, and you will need to make sure that your questions do not mislead candidates into providing unnecessary information.

The following suggested questions can help candidates to disclose. They can be used to structure face-to-face discussions or included in a form that candidates are asked to complete.

Ask additional questions if you don't have enough understanding of the context and circumstances surrounding the candidate's criminal record.

- **For most roles:** Can you tell me about your criminal convictions that are not yet spent under the Rehabilitation of Offenders Act?
- **For regulated roles:** Can you tell me about your cautions, convictions, reprimands or final warnings, except those that are protected and have been filtered from your criminal record as defined by the Rehabilitation of Offenders Act Exceptions Order?
- When did you commit the offence(s)?
- Why did you commit the offence(s)?
- What was going on in your life at the time, eg housing, employment, lifestyle, relationships, health, financial management? How did you feel then?
- What has changed in your life since then? How do you feel now?
- How can I be sure that you are not going to pose a risk?

Step 3

Develop your recruitment process

Assessing the information gathered

Businesses that gather the above information from candidates will need a policy and process to define how this will be assessed fairly. As the names of offences are often misleading and each experience of a conviction will be different, we do not recommend operating policies of blanket rejections for candidates with certain types of convictions. Instead, all contextual information should be taken into account and assessed against the specific role for which the candidate has applied.

Start from the position that the candidate will be suitable and unlikely to pose any risk. Then consider:

- The relevance of the conviction to the tasks and responsibilities of the role
- The seriousness of the offence
- The age of the applicant at the time of the offence(s)
- The length of time since the offence(s) occurred
- Whether the applicant has a pattern of offending behaviour
- The circumstances surrounding the offence(s) and the explanation offered
- Whether the applicant's circumstances have changed since the offending behaviour
- Whether the role they've applied for will put them at risk of reoffending

If, after this assessment, you feel that their criminal conviction is likely to put their role or your business at risk, consider whether this risk could be mitigated or managed. If not, then you are within your right to choose not to employ them.

To assist with the assessment, you could categorise your roles and only assess certain information in depth for positions that have specific requirements or responsibilities, eg access to company finances. Alternatively, you could apply a standard process for all roles. Either way, provide guidance for the people reviewing the information.

It is also important to consider who will be involved in this decision-making process. It is best practice to involve two people to minimise subjectivity and moderate any undue risk aversion. Some employers – often those that are lower-volume recruiters or only ask about convictions at offer of employment – appoint a senior, trained HR representative who reviews and guides the final recruitment decision about any applicants with criminal convictions. Others provide further guidance to recruiting managers via a helpline or legal expert where it is a complex decision to make.

Further detailed guidance into assessing the risk and relevance of a criminal record is available in Nacro's guide to Recruiting Safely and Fairly.

Step 3

Develop your recruitment process

Once the decision has been made

Once you have decided whether to recruit the candidate, you need to manage the sensitive information that you've gathered about them effectively.

If you choose not to hire: keep a record of why and make sure you provide detailed feedback, including information about why the candidate's criminal record prevented them from getting the job in order to help them in their future job search. Reassure them that their information will not be shared, in line with data protection requirements.

If you choose to hire: only those people who really need to know about your new employee's criminal record should be informed – it should not be shared widely. The applicant should be told who knows about the convictions they've disclosed. It is up to the applicant who they tell in addition, but you may also wish to provide guidance about dealing with their criminal record at work, eg letting them know that they are not obliged to tell their colleagues.

Keep the candidate in mind throughout

As you develop your recruitment process, remember that you are dealing with a person and try to make the experience as positive as possible for candidates. Put yourself in the applicants' shoes by imagining repeatedly

telling prospective employers about the worst mistake you have made. This would make anybody nervous, especially people who have been rejected countless times before having disclosed this information.



“The very first thing they know about me is that I have a conviction, not about your interest in the job, or your experience or skills, just the conviction. Once an employer sees that tick box, lots of them already rule you out.”

Step 4

Put Ban the Box into practice

Ban the Box can only work well when your colleagues and applicants are aware of the recruitment process and practices that you have chosen to implement. Whether or not you've made a significant change to how you recruit, it's important to communicate that the business is committed to valuing skills over past mistakes.

Internal communications

Everyone from front-line employees to recruiting managers to resourcing advisors will be part of your commitment to offer fair opportunities to ex-offenders. They need to know what Ban the Box means for them, as well as being equipped to manage their role in the recruitment process if this has changed.

Every organisation will be different, so think through who needs to know what and the channels you can use to reach them.

Use internal channels such as your intranet, newsletters and team briefings to let your employees know that the business has committed to Ban the Box and why. Provide people with an opportunity to ask questions – use the myth-busting section at the end of this guide to counter common misconceptions.

Guidance for recruiting managers

For those directly involved in the recruitment process, provide guidance about the policy and explain the important role that they play in upholding the organisation's commitment to Ban the Box. While you may communicate most about Ban the Box as soon as you sign up, it's important that the policy remains in place as time passes and team members change.

Make sure you inform recruiting managers, even if you have chosen not to ask about convictions, or if they won't be directly involved in the process. They need to understand what to do if candidates choose to share information about their convictions in a different way to that described in your policy.

You can embed Ban the Box into how you recruit by:

- ❑ Adding information about how you assess criminal records into your existing training for recruiting managers
- ❑ Updating forms and reference materials used in the recruitment process to include relevant references to, or details of, the process
- ❑ Including the message that you are open to recruiting suitable candidates with criminal convictions in your diversity training
- ❑ Designating an individual within HR, resourcing or your legal team that employees can contact with any questions

Step 4

Put Ban the Box into practice

Informing applicants

As noted in Step 3, it's important that applicants are aware that you are open to recruiting them based on their skills. Suitable candidates may be put off from applying if they do not know how they will be treated.

You can inform prospective applicants by:

- Adding information about how you gather and assess criminal record information to your website, application packs and forms, and by letting applicants know when and how they will be asked about their criminal record so that they can prepare
- Including information about Ban the Box as part of your diversity and equality statement, noting that having a criminal record does not result in automatic exclusion from any role
- Whenever roles are subject to additional restrictions such as DBS checks, noting this on the job description and highlighting that criminal records are still assessed on a case-by-case basis
- Completing the BITC sign up form to show your commitment to the campaign

External communications

As a minimum, Ban the Box employers commit publicly to fairly assess criminal records by signing up online at www.bitc.org.uk/BTBregistration

In addition, you may want to communicate more widely. This can help you to reach prospective applicants who may not have thought that you would be open to recruiting them. It can also strengthen your employer brand by sharing your commitment to fairness and your support for your community.

You can communicate to a broader external audience by:

- Writing a letter to your clients and suppliers
- Adding a blog or news article to your website
- Contacting your sector press to share your story
- Sharing on social media

All employers who complete the online sign up form receive a communications pack with template content and guidance to support internal and external communications.

Step 4

Put Ban the Box into practice

Case study



changing lives
reducing crime

When Nacro banned the box, they introduced a step-by-step process for both regulated and unregulated roles, to manage how and when applicants disclose a criminal record. To ensure this process was implemented consistently, Nacro invested time and resources into communicating the change to all staff, and delivered safe and fair recruitment training to their HR team responsible for dealing with disclosures.

This has allowed the HR team to understand and utilise the new system, as well as to help hiring managers to deal sensitively with disclosures. Nacro has now extended this training throughout the whole organisation to ensure that all hiring managers have the confidence and tools to recruit safely and fairly.

Case study



A spotlight on Freshfields

Since 2001, Freshfields has been offering work placements, training and coaching opportunities to people who face barriers to work. Through this activity, the firm became increasingly aware of the barriers that are faced by people with criminal convictions. Hoping to break down some of these barriers, Freshfields made the decision to Ban the Box. In doing so, they applied what they had learned from their community investment programme to change how they recruit across their UK business.

1. Understand your starting point

Through their community activity, Freshfields had developed a strong understanding of the process and culture needed to offer work placements to people with criminal convictions. They recognised that people with criminal convictions could be an asset, not an automatic risk to the firm. However, the firm was continuing to ask applicants about criminal convictions on their job application forms and was excluding people at this stage.

2. Assess legal, regulatory and contractual requirements

Around half of Freshfields roles are subject to strict checks from the Solicitors Regulation Authority (SRA). Therefore the firm had to consider how they could implement a fairer and more open recruitment process within the bounds of the regulator's requirements. The SRA does not state when and how criminal convictions are considered by recruiting firms. Therefore it was possible for Freshfields to Ban the Box from application forms for all roles – legal and non-legal.

3. Develop your recruitment process

Freshfields made the decision to ask about criminal convictions only once a job offer has been made, giving the candidates the best chance to be assessed on merit. A risk assessment process, managed alongside the existing pre-employment checks and overseen by the Global HR Director, allows the firm to assess the relevance and risk of any disclosed convictions in relation to the role for which the individual applied.

4. Put Ban the Box into practice

Led by the senior partners and leaders in their HR team, Freshfields has communicated their commitment to Ban the Box both internally and externally. Training for the HR team has been accompanied by internal communications to ensure that recruiting managers are aware and supportive of the move. Freshfields also publicised their commitment to fair recruitment externally, sharing their fairer recruitment policy on their website, and launching the move in national and legal sector press, as well as through social media. As a result, applicants with criminal convictions know how they will be assessed and other businesses have been inspired to consider banning the box.

Signing up

Once you have made the decision to Ban the Box and have implemented this across your business, sign up to be a recognised Ban the Box employer. Making your commitment known is a quick and easy but important process.

Employers that have banned the box will be listed on Business in the Community's website. No further communication of your commitment will be made without your permission.

You will be asked to provide a small amount of information about your business and your recruitment process, as well as a quote and logo for inclusion on the website.

**Register as a Ban the Box employer at:
www.bitc.org.uk/BTBRegistration**



“In opening up our recruitment opportunities to these individuals, we now have access to a wider talented, motivated and loyal talent pool that might otherwise have been disregarded because of an unrelated conviction.”

Philip Richards, Partner at Freshfields

Myth-busting

We know that not every business is confident when dealing with criminal records. The questions and answers below should help to bust some myths and support you to make the case to your colleagues.

Does Ban the Box increase risk for my business?

Ban the Box is not about removing protection from risk. Recruitment always comes with risks and challenges. But somebody with a criminal conviction does not automatically represent an exceptional risk. A tick box does not provide the necessary information for you to consider whether the conviction is relevant to the role and, as such, whether there is any risk to take into account.

By asking about convictions in more depth at a later stage in the recruitment process, risk can be assessed in relation to the role in question. Your employer brand may also be enhanced as a result of signing up.

Are we legally required to have a tick box?

Even when recruiting for regulated roles, there is no requirement to ask about criminal records at the first point of the application process. In some industries, applicants are registered with and approved by a regulatory body in advance. In other cases, a company may be required to conduct a DBS check.

But there remains no requirement to have a tick box. It is the company's decision as to when and how to ask about convictions, as long as they align with any wider legal, regulatory or contractual requirements by the time an applicant commences employment

Will we be swamped by applicants?

Regardless of your existing talent pipeline, asking about criminal convictions at the application stage could be preventing the right person from applying for a role. Asking about criminal convictions at a later stage in the recruitment process is a small change that could significantly benefit your business as well as people with a criminal record.

While people with criminal records may become aware that your company is open to recruiting them, two years into the campaign there is no evidence to show that businesses who sign up to Ban the Box have been swamped by a sudden, significant increase in applications

Myth-busting

Is it a lot more work to ask later on?

Effectively implementing Ban the Box takes some work up front to develop your recruitment process. Depending on the policy you put in place, you may need to upskill recruiting managers or create forms for candidates with criminal records, but this should not require a significant time or resource investment. Having a fair recruitment process, skilled hiring managers and an informed HR team will pay off, as you'll widen your talent pool and be more likely to hire the best people for your jobs.

Will I have to turn everyone down later if I don't ask on the application form?

There is no point in removing a tick box from your application form if you still plan to reject everybody with a criminal conviction. But if you commit to implementing an effective recruitment policy and culture that values skills first, you will not have to turn everyone down later on in the process. You may find some cases where a candidate's convictions pose a specific, relevant risk to the role they've applied for, and your business cannot mitigate this risk.

In this case, you are likely to turn them down later. However, this is unlikely to happen regularly, and you will be more likely to find suitable candidates because you are no longer rejecting them on the basis of irrelevant convictions.

Will all ex-offenders need extra support to work, anyway?

Some people with criminal convictions may need additional support to build their skills and confidence for employment – businesses can get involved in programmes to offer this support. However, other people may have just made one mistake or may have stopped offending a long time ago but still need to disclose their convictions. They could well be qualified and keen to work but excluded because they aren't being assessed on merit. Ban the Box won't result in everybody with a criminal record gaining work, but it importantly reduces the unnecessary exclusion of suitable candidates with criminal records.

Glossary

Basic check

A criminal records check that employers can request for any role if they wish to do so. It only lists unspent criminal convictions and is available from Disclosure Scotland for all employers, whether they are based in England, Scotland or Wales.

Barred list

A list of people who have been barred from working in regulated roles with vulnerable adults and children, eg as a teacher. The Disclosure and Barring Service maintains the list, with information shared on specific types of DBS checks. It is illegal for a candidate to apply for a role from which they are barred.

Caution

An alternative to prosecution for a minor offence, which is administered by the police and accepted by the individual. It appears on criminal records but is spent immediately.

Criminal conviction

An instance when an individual has been found guilty of an offence by a court.

Criminal record

A record of an individual's criminal history. It includes cautions, fines, reprimands and final warnings, as well as convictions.

Disclosure

A term often used to describe the process of telling an employer about a criminal record, providing details and contextual information.

Disclosure and Barring Service (DBS)

The Government agency that was formed when the Criminal Records Bureau (CRB) and Independent Safeguarding Agency (ISA) merged. It manages criminal record information and shares this through DBS checks.

DBS check

A check provided to employers who are recruiting for regulated roles, formerly known as a CRB check. It includes both spent and unspent convictions. Enhanced or Enhanced and Barred DBS checks can include additional information. Disclosure Scotland – the agency that conducts Basic Checks for England, Scotland and Wales.

Glossary

Exceptions Order

An additional order to the Rehabilitation of Offenders Act, which means that a small number of minor cautions and convictions are protected and no longer disclosed to employers for regulated roles or via DBS checks. The rules that define when cautions and convictions are removed from checks are strict.

Filtering

The system that removes cautions and convictions from checks as a result of the Exceptions Order.

Full criminal records check

See DBS check

Offence

An act that is punishable by law.

Regulated roles

A role that has been agreed by law to be exempt from the Rehabilitation of Offenders Act. It often includes regular unsupervised activity with children or vulnerable adults, or acting in a specific position of power. Information about regulated roles can be found on the DBS website.

Regulatory body

An organisation that monitors standards of a specific industry. It often sets requirements for employees or organisations to meet and registers information to ensure this.

Rehabilitation of Offenders Act 1974 (ROA)

Legislation that defines how long candidates have to disclose information about their criminal record, which aims to reduce barriers for offenders to be rehabilitated into society.

Rehabilitation period

The length of time, dependent on the sentence received, before a conviction or similar becomes spent.

Spent conviction

A conviction that no longer has to be disclosed to an employer for most roles. It will still be disclosed for regulated roles.

Unspent conviction

A conviction that has to be disclosed to an employer for all roles, if the candidate is asked.

Contact us

Visit www.bitc.org.uk/banthebox for further information and resources.

Business in the Community offers bespoke support to businesses, as well as opportunities to network, share and learn from best practice examples.

Contact the team to discuss the support your organisation needs.

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