



The Prince's
Responsible
Business Network



BAN THE BOX

October 2020

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





This toolkit is an updated version of our original employer's guide.

Business in the Community is the UK's oldest and largest business-led membership organisation dedicated to responsible business. We inspire, engage and challenge members and we mobilise that collective strength as a force for good in society to

- Create a skilled, inclusive workforce today and for the future
- Build thriving communities in which to live and work
- Innovate to repair and sustain our planet.

The Ban the Box campaign was launched by Business in the Community in October 2013 to support charity Unlock's work to help people overcome disadvantage by increasing access to good, sustainable employment.



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INTRODUCTION

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

Ban the Box urges UK employers to give people with criminal records a fair chance to work by removing tick box questions about criminal convictions from their application processes.

More than 11.9 million people in the UK have a criminal record.¹

Employment can help people with a criminal record to break the cycle of reoffending. While many organisations still discriminate against people with criminal records, Ban the Box employers look at people's skills and abilities first. This helps to create fairer, more diverse workplaces, creating opportunities for those who are overrepresented in the criminal justice system, including some BAME groups and care leavers.

Black people are over three times more likely than White people to be arrested in England and Wales².

Less than 1% of under 18s enter local authority care each year, yet care leavers are estimated to represent between 24% and 27% of the adult prison population.³

The issue

Employment reduces the likelihood that an individual will re-offend. This is costly for society – re-offending costs the taxpayer £18.1bn per year

¹ Freedom of Information Request, Home Office, 2020

² Ministry of Justice (2019) [Statistics on Race and the Criminal Justice System 2018](#)

³ Care Leavers in Prison and Probation, [Gov.uk](#), 2019

and can also impact negatively on victims of crime.⁴

Every employer can be a part of the solution – by offering fair access to work

Objective and transparent recruitment practices give people with criminal convictions the opportunity to compete fairly for roles and move forward in life. There are business benefits too – increasing the diversity of your talent pool and reducing the unnecessary exclusion of talented individuals from your roles.

81% of employers agree that employing ex-offenders has helped their business⁵

This toolkit provides a step-by-step approach to help you implement a fair and inclusive recruitment process

“Being a Ban the Box employer means giving our business the best chance to find the right person for the role, while reducing reoffending for the good of society. As an early supporter of Ban the Box, it has been brilliant to see other businesses discover the benefits of taking a fair approach to the employment of people with criminal convictions.”

Marco Pagni, Group Legal Counsel and Chief Administrative Officer, Walgreens Boots Alliance

⁴ The Economic and Social Costs of Reoffending, Ministry of Justice, 2016

⁵ YouGov 2019, for Ministry of Justice



STEP ONE: UNDERSTAND YOUR STARTING POINT

Recruitment process checklist

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? E.g. 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? E.g. are they 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 considering criminal convictions?
- ✓ Are all the above answers consistent across your business?

Your recruitment culture

You will need the support of your HR and senior leadership teams to create a recruitment culture that welcomes suitable candidates with criminal convictions.

You can increase awareness of the need for inclusive recruitment through a visit to a local community project or prison. Create your bespoke business case for action, emphasising the benefits for recruitment and diversity.

78% of all sentences handed down by courts are fines – most people with a criminal record have not been to prison.

Criminal records are complex, and this can cause misunderstanding that may undermine your recruitment processes. See the 'myth busting' section towards the end of this guide for answers to some of the most common misconceptions.

IMPACT STORY – RICOH UK

Ricoh UK signed up to the Ban the Box campaign in 2014 and have continued to be a strong business champion for ex-offenders. Since then, they have developed relationships with prisons and offered placements to prisoners on temporary release. James Knox, Community Investment Manager at Ricoh UK says that the key to creating an inclusive environment for ex-offenders is exposure. "There is a cultural change that needs to happen" he says. "Far too often people are surprised when they learn that someone here has a conviction, because their previous perceptions of ex-offenders is entirely negative".

These perceptions have changed as more employees – including senior leaders – have volunteered to support with the employability workshops which Ricoh UK continue to run. As well as building exposure with people with convictions through volunteering, Ricoh UK have helped to improve perceptions by employing ex-offenders. Whilst they do not ask about criminal convictions of job applicants at the point of application, they are clear that employees with offending backgrounds are empowered to disclose their past to colleagues without judgement.

IMPACT STORY – BRISTOL CITY COUNCIL

Bristol City Council's decision to Ban the Box was driven by Mayor Marvin Rees. Mayor Rees says:

“Everyone applying for a job at the Council should be given the same encouragement and opportunity irrespective of their background. 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.”

Gaining buy-in

A small team of cabinet members with a collective remit for neighbourhoods, diversity, and HR were tasked with producing a report on Ban the Box to present to the HR Committee in September 2016. The report, which gave a background to the campaign and a risk assessment, was accepted and endorsed unanimously by the committee. It was agreed that the Council should progress with the change, consulting with HR officers to determine how to manage regulated roles.

Consulting with unions

As with any proposed changes to HR procedures, the Council consulted with senior managers and trade unions to inform their move towards Ban the Box and address any concerns about risk. The response was overwhelmingly positive.

Deciding when to ask

The Council felt it was important to manage disclosures of criminal convictions on a case-by-case basis, and therefore needed to identify a suitable point in the recruitment process to ask for disclosure. The decision was made to delay disclosure until the conditional job offer for all non-DBS roles, allowing applicants the best possible chance to demonstrate their aptitude for a role, and ensuring applicants are only asked about criminal convictions if they are successful.

STEP TWO: MAKE CHANGES TO YOUR RECRUITMENT PROCESS

Sentence	Rehabilitation period – under 18s	Rehabilitation period – over 18s
Prison sentence: > 48 months	Never spent	
Prison sentence: 30-48 months	3 ½ years from end of sentence	7 years from end of sentence
Prison sentence: 6-30 months	2 years from end of sentence	4 years from end of sentence
Prison sentence: < 6 months	1 ½ 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	

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.

Legislation defines what you're allowed to ask

The criminal record information that employers can consider during the recruitment process is defined by the Rehabilitation of Offenders Act 1974 (ROA). The ROA defines the time period during which all cautions and convictions must be

disclosed by candidates to employers if they are asked. Within this 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.

It is the candidate’s responsibility to understand

Depending on the nature of your business, you may be subject to regulatory or contractual requirements which will affect how criminal convictions are considered in your recruitment process. For more information about these requirements see Appendix 2.

When and how 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.

Remember: you could choose to have different processes for different types of roles or contracts. For more information read Appendix one.

Recommended approach:

[Deal with disclosures and candidate assessment separately](#)

We recommend criminal record disclosures are dealt with separately to candidate assessment. This ensures that candidates have the best chance to be hired on their suitability for the role.

Candidates should submit information about their criminal record to a relevant, trained person in the HR team in a form sent to the candidates as part of the interview pack.

This information can be requested after shortlisting, or as part of wider pre-employment checks, with a conditional offer of employment. The important thing is to ensure the assessment of the candidate and the assessment of any risk

their criminal record. However, it can be complex for jobseekers to know whether their rehabilitation period is complete, particularly if they have more than one conviction. Employers can provide guidance and be sensitive to this complexity. Issues posed by any convictions are dealt with separately.

Candidates can be asked to submit information in a form and schedule an appointment to discuss their conviction as required. 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.

For more guidance on this approach see [Recruiting safely and fairly A practical guide to employing ex-offenders from Nacro.](#)

IMPACT STORY – RICOH UK

In order to Ban the Box, Ricoh UK 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 UK to judge a candidate's suitability for a role before taking into account any convictions.

Alternative approaches

Ban the Box employers adopt a range of approaches to asking about convictions depending on the nature of their business:

Asking 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 asked during the interview, or candidates could be requested to bring a written statement along with them to discuss and leave behind. If you choose this approach, interviewers should be given guidance to conduct this discussion effectively. Candidates should be given 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.

Not asking at all

You can 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 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 given the option to tell their HR team or manager about their conviction if they would prefer.

DBS checks

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 Scotland, England, and Wales), which only provides details of unspent criminal convictions.

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

We recommend using Nacro's [Criminal Record Disclosure Form](#). Should you need more

information, you may wish to ask the following questions:

- When did you commit the offence(s)?
- Why did you commit the offence(s)?
- What was going on in your life at the time e.g. housing, employment, lifestyle, relationships, health, financial management?
- What has changed in your life since then?
- How can I be sure that you are not going to pose a risk?

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 considered 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 have applied for will put them at risk of re-offending

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.

IMPACT STORY – SOUTHBANK CENTRE

The decision to Ban the Box was an easy one for Southbank Centre. For several years, the arts centre has hosted exhibitions produced, curated and about ex-offenders, which provide 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.

IMPACT STORY – TIDEWAY

Tideway has committed to supporting people with criminal convictions into sustainable jobs and has set a target to have at least one ex-offender per 100 full time employees. Since 2015, the Tideway project has employed 34 people with convictions for at least six months on their workforce and has achieved a positive return on investment of £6.86 worth of societal benefits per £1 spent.

Since 2016, Tideway has been a 'Ban the Box' organisation and has removed the criminal convictions question from their applications forms. This ensures a fair and equal opportunity for anyone who applies for a job at the company. The Ban the Box ethos is being applied across the supply chain and in most cases a DBS check is not required, so the number of people with convictions on the workforce is likely to be much higher. For those who enter the workforce through a local partner referral, formal and informal mentoring is offered to support their transition to the workforce.

Tideway has established strategic relationships around the rehabilitation of those with convictions, which include charities like Bounce Back (as well as networks such as BITC) to foster shared learning among organisations. These relationships, together with staff volunteering inside prisons such as HMP Brixton are contributing to an overall culture change and practice around the recruitment of people with criminal convictions, which will ultimately have a positive impact on the beneficiaries and the wider society.

To assist with the assessment, you could categorise roles and only assess certain information in depth for positions that have specific requirements or responsibilities e.g. access to company finances. Alternatively, you could apply a standard process for all roles.

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. You may also wish to appoint a senior, trained HR representative who reviews and guides final recruitment decisions about any applicants with criminal convictions. Alternatively, you could provide further guidance to recruiting managers via a helpline or legal expert where it is a complex decision to make.

Once the decision has been made

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 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 have 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 e.g. 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. 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.

STEP 3: PUT BAN THE BOX INTO PRACTICE

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.

Use internal channels such as internal webinars, intranet, newsletters, and team briefings to let your employees know why and how you have committed to Ban the Box. 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 their role. Embed this guidance in your standard training for employees involved in hiring decisions to ensure it is understood by new recruits.

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 details
- 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 to whom employees can ask questions.

Informing applicants

It's important that applicants are aware that you are open to recruiting them based on their skills. Suitable candidates may be discouraged from applying if they do not know how they will be assessed.

You can inform prospective applicants by:

- Adding information about how you gather and assess criminal record information to your website, application packs and forms – let applicants know when and how they will be asked about their criminal record so 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 requirements such as DBS checks, noting this on the job description and highlighting that criminal records are still assessed on a case-by-case basis



- Signing up 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: <https://www.bitc.org.uk/ban-the-box-sign-up-form/>

We recommend you communicate to a broader external audience by:

- Adding the Ban the Box logo and explanation of your approach to your recruitment site
- 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 and influencing your supply chain

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

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 an 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:

<https://www.bitc.org.uk/ban-the-box-sign-up-form/>

View existing Ban the Box employers at:

<https://www.bitc.org.uk/fact-sheet/employers-that-have-banned-the-box/>

Growing your support for ex-offenders

Ban the Box should be one part of your business strategy to support people with criminal convictions to gain employment. Once you have banned the box, you may want to consider:

- Partnering with prisons to set up training and employment opportunities
- Taking prisoners on ROTL (release on temporary license)
- Providing work placements to people with criminal convictions
- Working with recruitment agencies to reach a more diverse talent pool

ORGANISATIONS TO HELP YOU GO FURTHER

Advice and training to improve your recruitment process

Unlock

A charity that provides a voice and support for people who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence. Through its 'Fair Chance' project, Unlock supports employers to make changes to their recruitment processes and identify candidates with criminal convictions.

<https://recruit.unlock.org.uk/>

Nacro

Nacro supports people to overcome barriers presented by their criminal records and to move on from previous mistakes, as well as providing training to employers to improve their recruitment process.

<https://www.nacro.org.uk/>

Support to set up prison partnerships

New Futures Network

The New Futures Network (NFN) is a specialist part of the prison service that brokers partnerships between prisons and employers. It will help you to identify the best option for your organisation and find out more from other businesses.

<https://offenderemployment.campaign.gov.uk/>

Other ways to publicise your inclusive approach

Clean Sheet

Clean Sheet offers people with convictions the hope of a better future by finding sustainable employment. Businesses can register as Clean Sheet employers to publicise their commitment to inclusive employment and make vacancies accessible to Clean Sheet members looking for

employment.

<https://cleansheet.org.uk/>

Help to identify candidates with criminal convictions

Offploy

A social enterprise formed by ex-prisoners to help those with convictions secure employment. Offploy can support your business to find candidates.

<https://www.offploy.org/>

IMPACT STORY - COSTAIN

For James York, Corporate Responsibility Director at Costain, which signed up to Ban the Box in August 2017, businesses are losing out on the opportunity to tap into a pool of committed people, some highly skilled, who want a chance to train, progress and have a fresh start.

“They have something to contribute to society, and they’re being unfairly prevented from a second chance. It isn’t just our civic duty to give ex-offenders a fair chance of finding work, it makes total business sense for us and the wider UK economy.”

Costain has developed tailored approaches to directly recruit ex-offenders from prisons and through third sector partners. Costain works in partnership with various organisations and its supply chain to support employment outcomes for roles such as community engagement, health and safety and quantity surveying, as well as apprenticeships. About half of these recruits are educated to degree level with industry-specific qualifications or transferable skills. The scheme is also helping to increase gender diversity with women making up half of new recruits.

APPENDIX ONE: MYTH BUSTING

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. 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 if 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. Whilst 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.

Is it a lot more work to ask later?

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 will widen your talent pool and be more likely to hire the best people.

Will I have to turn everyone down later if I do not 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 in the process. You may find some cases where a candidate's convictions pose a specific, relevant risk to the role they have 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 based on 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 importantly reduces the unnecessary exclusion of suitable candidates with criminal records.



APPENDIX 2: REGULATED ROLES AND CONTRACTUAL OBLIGATIONS

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 most 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 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

There may be specific regulatory considerations for your business, dependent on your industry regulatory bodies.

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 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, rather than individual employees. This means that the decision to hire remains completely with the employer. You should consider any convictions in light of 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 providing 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.

Contractual considerations

You may be subject to requirements imposed by your clients and the organisations for whom you deliver contracts. 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 e.g. 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.

APPENDIX 3: 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 e.g. 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 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 which 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 which conducts Basic Checks in Scotland, England, and Wales.

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 which removes cautions and convictions from checks because of the Exceptions Order.

Full criminal records check – see DBS check.

Offence – an act that is punishable by law.
Regulated roles – a role which 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 which 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 must 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 must be disclosed to an employer for all roles if the candidate is asked.

CONTACT US

Visit www.bitc.org.uk/employment 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.

banthebox@bitc.org.uk



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