Embargoed Press Release: New research shows that almost three-quarters of national companies continue to ask about criminal records at job application stage

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Almost three-quarters of national companies continue to ask about criminal records at job application stage, new research shows

Unlock, the national charity for people with convictions, has today published new research that shows the vast majority of national companies continuing to have criminal record declarations as a core part of their initial job application forms.

Marking the 5-year anniversary of the Ban the Box campaign, the findings reveal the extent to which national employers have failed to recognise the negative consequences of criminal record tick-boxes on application forms.

Commenting on the report, A question of fairness, Christopher Stacey, co-director of Unlock, said:

“We’re proud to have co-founded the Ban the Box campaign and it’s really positive that over 110 companies – including Barclays, Boots, the Civil Service, and Virgin Trains – have signed up so far, but this new research shows that it remains the case that asking about criminal records at application stage is the default approach for almost three-quarters of national, big name companies. It’s also worrying that around 1 in 5 of them are asking for information they are not legally entitled to.

“These findings are unsurprising – employers are asking about criminal records at application stage as a way of deselecting applicants. We know this approach has a chilling effect on talented applicants with a criminal record, many of whom never apply because they think they don’t stand a chance. In fact, evidence from employers who do recruit people with criminal records shows that they make reliable, hardworking and loyal employees. Employers who are open about their inclusive recruitment practices report a positive impact on their reputation.

“Yet the numbers of employers removing criminal record questions from their application forms is not increasing fast enough. Earlier this month Unlock published new guidance for employers which showed that collecting criminal records data at the job application stage is unlikely to be compliant with the GDPR and data protection legislation. Government, business and charities need to seriously consider how to accelerate the changes in employer behaviour that Ban the Box encourages. Unless significant progress is made, increasingly it seems that the only way to make sure employers remove the tick-box is by looking to put Ban the Box on a statutory footing.”

Responding to the findings, Jessica Rose, Ban the Box campaign manager at Business in the Community, said:

“Unlock’s work to unearth the recruitment practices of some of the country’s biggest private sector employers paints a stark picture of confusion and inconsistency when it comes to managing risk around criminal convictions. This results in people being unfairly excluded from work and many more believing that no one is willing to give them a chance. Employers need to grasp the nettle and implement Ban the Box, not just because it’s the right thing to do but because it will benefit their businesses and their communities.

“Some of the employers cited in this report already work with Business in the Community and other charities to support individuals into employment. This should give them the positive evidence they need to make the business case for changing their mainstream practices. We want to work with these businesses, alongside Unlock, to support them to put robust, fair and inclusive practices into place."

Key findings of the research are that:

1. We surveyed 80 large, national employers across eight sectors – Supermarkets, Retail, Hotels, Food and Drink, Construction, Car Manufacturing, Utilities and Communications.

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2. 77 out of 80 employers had online application forms.
3. Of those 77, 54 employers (70%) asked about criminal records on their application form.
4. 80% of employers who asked about criminal records provided no guidance to applicants
5. 22% of employers asked about criminal records in a way that was either potentially unlawful or misleading.
6. Collecting criminal records data at application stage is unlikely to be compliant with data protection legislation
7. None of the employers surveyed provided information to applicants on why they collect criminal records data, or for how long it will be retained. Under the GDPR, employers who fail to provide this information are likely to be in breach of the law.
8. None of the construction companies, and around half the car manufacturers, surveyed asked about criminal records at application stage.

The report makes a number of recommendations to government, including:

1. Setting out how the government plans to accelerate the number of employers removing questions about criminal records from the application stage.
2. Questioning whether the voluntary changes being made by a small number of employers is enough, and explore following the lead taken in the US by introducing 'fair chance hiring' practices, including a statutory requirement for all employers to delay the questions about criminal records until the pre-employment stage.
3. Including Ban the Box as a minimum requirement in the procurement criteria for government suppliers.
4. Implementing the Conservative manifesto commitment of introducing financial incentives to encourage employers to proactively recruit people with convictions.

The report also recommends that all employers, large and small:

1. Consider whether they need to ask about criminal records at all, given that most employers have no legal obligation to ask abo0ut criminal records, and most criminal records are not relevant to most jobs.
2. Review their approach in light of changing data protection legislation, given that it is unlikely that asking about criminal records at application stage is compliant with the GDPR and Data Protection Act 2018.
3. Ensure that if they do need to ask, they only ask for information to which they are legally entitled.
4. Seriously consider what value 'self-disclosure forms' have in the recruitment process, given that if employers need to check the criminal record of individuals at the pre-employment stage, that can be done through official criminal record checks, before having looking at the context and relevance of any disclosable information with the individual.
5. Recognise the business benefits of recruiting people with convictions.
6. Implementing these recommendations would improve recruitment practices so that people with convictions can be given a chance to move on in their lives, making an economic contribution that benefits them, their families and their communities and ultimately reducing crime and making society safer.

ENDS

For more information or interview requests, please contact Christopher Stacey, Co-director. Email christopher.stacey@unlock.org.uk or call 07557 676433 (daytime or out-of-hours).

Notes to editors

1. Unlock is an independent, award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence.
2. There are over 11 million people in the UK that have a criminal record.
3. Unlock's website is www.unlock.org.uk.
4. High-resolution images for media use are available from Unlock's Flickr account. .
5. The report will be available to download from 25th October 2018.
6. The report has been produced as part of Unlock's Fair Access to Employment project, supported by the Esmée Fairbairn Foundation.
7. Unlock runs the website Recruit! – providing advice and support for employers on recruiting people with convictions and dealing with criminal records fairly. Employers looking for further advice about this guidance can contact recruit@unlock.org.uk.
8. For employers that want to sign up as a Ban the Box employer, please see

www.bitc.org.uk/banthebox.

9. Examples of potentially unlawful questions:

Hilton ask ‘Do you have any criminal convictions or cases pending?’

- Asking about ‘any criminal convictions’ could lead to applicants disclosing convictions that are spent under the Rehabilitation of Offenders Act 1974 (ROA) which, if were then taken into account, would breach the ROA. Unless the job role is exempt from the ROA, Hilton should only be asking about unspent convictions.
- In addition, the section in which the question appears as ‘Qualification Questions’, which implies that applicants will be disqualified if they answer yes. It is not clear why the question is asked here, or how Hilton will use the information – in short, it does not meet the necessity test under the GDPR.

Marks and Spencer ask applicants to declare unspent convictions. However, they also ask ‘have you received a police caution in the last five years?’

- The question Marks and Spencer asks is potentially unlawful – cautions become spent immediately and so should not be considered unless the job is exempt from the ROA. It is unlikely that any jobs at Marks and Spencer are exempt (with perhaps a very few exceptions).

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