Landmark Court of Appeal ruling – Government loses appeal against DBS filtering regime

Wednesday 3 May, 2017

Ruling gives hope to thousands of people trying to put their past behind them

The Court of Appeal has today rejected the Government's appeal to a decision of the High Court in January last year, which ruled that the criminal records disclosure scheme was disproportionate and unlawful.

The judgment, handed down today, involves a number of cases that were heard in the Court of Appeal in February this year, including cases brought by Liberty and Hodge, Jones & Allen, supported by Just for Kids Law.

The court ruled that the disclosure scheme has insufficient safeguards to be lawful, and that the scheme is disproportionate. In one case, a man was convicted in the 1980's of ABH when he was 16-years-old and received a conditional discharge. The President of the Queen's Bench Division, Sir Brian Leveson, said in his judgment:

> "It is difficult to see how publication of this detail, 31 years on, is relevant to the risk of the public, or proportionate and necessary in a democratic society."

Christopher Stacey, Co-director of Unlock, a leading charity for people with convictions that supported the legal challenge and who attended the hearing in the Court of Appeal, said:

> "Thousands of people contact us every year because they are being unnecessarily anchored to their past as a result of a criminal record disclosure system and DBS filtering process which is blunt, restrictive and disproportionate.
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> "We're delighted with the Court of Appeal's ruling in this important case, which stands to affect many thousands of people with old or minor criminal records. Over 240,000 DBS checks every year disclose convictions or cautions. Since the filtering scheme was introduced in 2013, it's helped some people with old and minor records to be free of the stigma and discrimination that so many face when they have something they have to disclose to an employer. However, the current system doesn't go far enough. It operates with inflexible rules meaning that, for example, someone with more than one conviction on their record will have to disclose all of their convictions indefinitely, regardless of the nature or circumstances of the conviction or the length of time that has since passed. The system acts as an additional sentence that often runs for life. It desperately needs reform. These shortcomings have today been recognised by the Court of Appeal.
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> "We strongly urge the next government to take immediate steps to respond to today's ruling by reforming our criminal records system. A fairer and more flexible system would be one with expanded automatic filtering rules and a discretionary filtering process with a review mechanism. This would enable those with old and minor convictions to move on positively with their lives and to more easily gain employment. It is common sense that, while certain offences need to be disclosed to employers, we should not be unnecessarily blighting the lives of people who are trying to get on in life by disclosing old, minor and irrelevant information that holds them back and stops them from reaching their potential. We are committed to continuing our work with government, the DBS, employers and other key stakeholders to drive forward these much needed reforms."

Debaleena Dasgupta, Legal Officer at Liberty and solicitor for P, said:

> "This important ruling gives hope to huge numbers of people whose ambitions have been dashed because of minor mistakes they made in the past.
>
> "The Government must urgently fix this broken system that needlessly prevents people from rebuilding their lives and contributing to society. We look forward to seeing a fairer scheme which has the capacity to consider individual circumstances where appropriate."

ENDS

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For more information, 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. Christopher Stacey is Unlock's spokesperson and available for interview.
2. Unlock is an independent award-winning charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record.
3. There are over 10.5 million people in the UK that have a criminal record. In 2015/16, 241,203 standard and enhanced DBS checks disclosed convictions or cautions.
4. Unlock's website is unlock.org.uk.
5. High-resolution images for media use are available from Unlock's Flickr account.
6. Unlock has made a number of recommendations for reform to the DBS filtering system. These are available here.
7. The judgement is available online.
8. This judgement does not have any immediate impact on the current DBS filtering scheme.
9. We have practical self-help information on how the current filtering system works on our information hub.
10. Find out more information about our policy work on the DBS filtering process here.
11. Summaries of the facts of the cases involved in the legal challenge are explained here.
12. The current system is explained below:

The Police Act 1997 created the Disclosure and Barring Service (DBS – formerly the Criminal Records Bureau), which provides details of a job applicant's previous convictions to prospective employers.

For certain types of work, particularly work with children or vulnerable adults, the standard or enhanced certificates issued by the DBS used to list all the job applicant's previous convictions and cautions. However, in 2013, the Government amended this scheme following a Court of Appeal ruling (T v Chief Constable of Greater Manchester) to introduce a "filtering" process. Single convictions for non-violent, non-sexual offences that did not lead to a custodial sentence (including a suspended one) will be "filtered" (i.e. not disclosed) after 11 years (five-and-a-half years if the person was under 18 at the time of the offence).

The new filtering process does not apply if a person has more than one conviction – regardless of the minor nature of the offences or the person's circumstances at the time.

The Rehabilitation of Offenders Act 1974, which governs the circumstances in which a person has to admit to a previous conviction if asked, operates in a similar way. A person applying to work with children or vulnerable adults does not have to disclose a conviction which is "filtered".

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