

Recruiting and employing offenders: the impact of the Police Act

By the time they reach 30, a third of men have criminal convictions, excluding motoring offences. At present, employers are not allowed to check whether job applicants have a criminal record, with the exception of those involved in work with children or with national security implications. When fully implemented the Police Act (1997) will give all employers access to the criminal records of all job applicants. This has prompted concerns that this will heighten discrimination against offenders more generally in the labour market. This study, by Del Roy Fletcher and Alan Taylor, identifies how employers currently respond to job applications from offenders and examines the likely impact of this new legislation on both recruitment and existing employees. It found:

- f** Many offenders are currently 'hidden' in the labour market because they are not disclosing their criminal records.
- f** Most employers interviewed had a formal written equal opportunity policy but few policies specifically mentioned offenders. Many employers felt that such policies should not cover offenders. Two-thirds of employers had a formal or informal policy on recruiting people with criminal records, many of which restricted their recruitment to some extent.
- f** Those conducting interviews were often line managers rather than personnel professionals; they were much less likely to be familiar with relevant legislation or to have received specific guidance or training on interviewing offenders.
- f** Seventy-two per cent of employers felt it was very or quite likely that they would require applicants to provide 'basic disclosures' of criminal records under the Act.
- f** The researchers conclude that the introduction of 'basic disclosures' will heighten discrimination against offenders in the labour market. To counteract this, they suggest policies are needed to encourage employers to adopt procedures for recruiting offenders and to stimulate a positive climate for offenders' recruitment.

Background

The current legislative framework for the recruitment of offenders is provided by the 1974 Rehabilitation of Offenders Act (ROA). This allows some offenders to consider certain offences as 'spent' after a period of time, which depends on the nature of the sentence given and the age of the offender at conviction. The term 'spent' means that offenders are not required to tell employers about their conviction.

At present, employers are not allowed to check whether job applicants have a criminal record, with the exception of those involved in work with children or with national security implications. These restrictions have resulted in some employers demanding job applicants obtain their own criminal record check from the police. In an attempt to improve the system of checks the Government has given all employers access to criminal record information. The Police Act (1997) introduces three levels of disclosure depending on the type of work sought.

- **Enhanced disclosures** will be available for posts involving significant contact with children or vulnerable adults. All enhanced disclosures will involve an extra level of checking with local police records in addition to checks with the Police National Computer and Government-held lists, where appropriate.
- **Standard disclosures** are primarily for positions that involve regular contact with children or vulnerable adults. They will contain details of all convictions on record including spent convictions and details of any cautions, reprimands or warnings.
- **Basic disclosures** are for all other types of occupation not covered by the higher level disclosures. They will show all convictions held at a national level which are not spent. Any employer can ask a job applicant for a copy of their basic disclosure.

Basic disclosures are the most controversial aspect of the new legislation. Their introduction means that when fully implemented the Act will give all employers access to the criminal records of job applicants. Although the legislation does not enforce the disclosure of criminal records, the pressure on job applicants to produce basic disclosures may be considerable. Consequently, many fear that this will facilitate unrestricted vetting and discrimination.

Recruitment policy

Most employers interviewed for the study had a formal written equal opportunity policy but few policies specifically mentioned offenders. Many employers felt that offenders should not be covered by such policies. Employers often made a distinction between 'deserving' and 'undeserving' groups. Offenders were felt to be 'undeserving' because offending was deemed to be a choice rather than an innate characteristic.

Two-thirds of employers had a formal or informal policy on recruiting people with criminal records. Many of these policies restricted the recruitment of offenders. One in twenty (5 per cent), for example, reported that they did not recruit offenders. A further 38 per cent restricted their recruitment to certain posts. Furthermore, 91 per cent were able to cite offences that would automatically bar or be a significant barrier to an individual's employment within their organisations. Sexual and violent offences were most commonly identified.

Recruitment procedures and selection criteria

Recruitment procedures may disadvantage offenders in three main ways:

- Informal recruitment channels are more likely to be used to fill low-paid and low-skilled vacancies. These may be closed to offenders because they depend upon personal recommendations and contact with those in employment.
- Some Jobcentres occasionally screen offenders out of the recruitment process, although this contradicts official policy.
- Private recruitment agencies routinely screen offenders for their clients. Screening is sometimes done without the employer's knowledge to protect the agency's relationship with a client.

Employers in the study mainly used application forms, interviews and references for selecting candidates. Interviews are often based on intuition and subjective judgement and may be susceptible to abuse. Those conducting interviews were often line managers rather than personnel professionals; they were much less likely to be familiar with relevant legislation or to have received specific guidance or training on interviewing offenders. Where recruiters knew about the criminal record of an applicant they often interpreted this as an indicator of a lack of honesty/reliability.

Attitudes towards offenders

Employers' attitudes were extremely complex and often contradictory, reflecting prejudice, experience, folklore and often their individual moral codes. Employers were, for example, most concerned about re-offending yet were unwilling to recruit some of those least likely to re-offend. Similarly, although they felt that anyone could commit an offence, many employers were undecided about whether offenders could put their pasts behind them. There was some evidence to suggest that those recruiting to posts involving daily contact with the general public were less likely to recruit offenders while small employers and those experiencing recruitment difficulties were more likely to do so.

The use of criminal records in selection

Most employers surveyed (85 per cent) asked job applicants if they had a criminal record and of these three-quarters (72 per cent) sought this information from all rather than some candidates. However:

- Many lacked specific employment policies confirming a willingness to recruit offenders on their merit.
- Sixty-one per cent reported that they sought information on all convictions regardless of their relevance to the post.
- Many routinely asked for criminal record information even when the post involved no risk.
- Some failed to state that spent convictions need not be disclosed for posts unless exempt under the ROA.
- When spent convictions were identified, some employers took these into account.
- Few employers sent out information about the ROA with the application form.

In this context, it is not surprising that many offenders do not disclose their criminal records. A third of men by the age of 30 years have criminal convictions excluding motoring offences (Home Office, 1995). Yet less than 1 per cent of applicants in the recruitment exercises studied (less than 60 out of 22,500) disclosed criminal record information. A Human Resource Manager in a food processing company reported that in 28 years no one seeking managerial positions in the company had done so.

Employers and the Police Act

Awareness of the Police Act varied from just 48 per cent of private sector employers to 97 per cent of those in the public sector. Nevertheless, 72 per cent

reported that it was very or quite likely that they would require applicants to provide basic disclosures. Just one in four (25 per cent) of private sector employers intended seeking this information at the job offer stage, raising the possibility that many will use the disclosure to vet offenders.

The new legislation will also increase employers' awareness of criminal records as an issue, leading to more seeking this information. Almost two-thirds thought that the Act would increase their likelihood of doing so. Many thought that requesting basic disclosures would become standard practice:

"If it can give extra confidence that details provided are true and accurate, it would allow us to make better judgements. At present we are far too reliant on applicants being honest." (Human Resources Manager, mail order company)

The pressure on applicants to produce disclosures may be considerable:

"It's like asking for a reference, if they say no to us asking them to produce a disclosure, we'd want to know why." (Human Resources Manager, train-operating company).

About a quarter of those interviewed believed that if employers had to pay for basic disclosures this would reduce their likelihood of asking for them. This was especially the case for voluntary sector employers and those undertaking large-scale recruitment exercises. Others would minimise costs by either focussing on a limited number of sensitive posts or limiting requests to those candidates receiving a job offer. However, most felt that:

"Paying to view the certificates of successful applicants would be small beans compared to the costs involved in a recruitment drive." (Human Resources Manager, mail order company).

Similarly, it would be: "a small price to pay for peace of mind" (General manager, bed manufacturer).

Less than one in seven (13 per cent) thought that it was either very likely or quite likely that they would use the Police Act to check the criminal records of all existing employees. Employers were more likely to use basic disclosures to check individuals in some jobs (59 per cent thought that this was very or quite likely) and some people (28 per cent) reported that this was very or quite likely.

Those intending to check existing employees cited three particular benefits:

- It could alert them to potential problems: "This knowledge would enable us to be vigilant if we knew someone had a criminal record" (General Manager, bed manufacturer).
- It could be used to corroborate suspicions about particular employees: "If someone had been working here say about 18 months and we suspected them of petty theft, then we might want to look at that individual's disclosure certificate." (Human Resources Manager, food processing company).
- It could be used to screen those in sensitive posts.

Conclusions

The researchers conclude that the introduction of basic disclosures will heighten discrimination against offenders in the labour market with potential consequences for re-offending. They suggest the following possible measures to encourage employers to adopt policies for recruiting offenders:

- Access to basic disclosures could depend on employers having appropriate policies and procedures for the recruitment of offenders. Those with such policies and procedures could be identified by a 'kite-mark' system.

In addition, action by central government could include:

- A campaign to help inform offenders of their rights and obligations.
- Initiatives recognising the specific needs of this group and aimed at helping them secure employment.
- The provision of training for front-line Jobcentre staff to enable them to provide appropriate advice and information to offenders. Specialist staff could assist those whose convictions make them particularly hard to employ.

About the study

The research consisted of four distinct but inter-related stages. A literature review identified what is currently known about the recruitment policies and practices of employers regarding offenders and what foreign governments have done to encourage employers to recruit offenders. The core of the research was an in-depth examination of recruitment practice within 26 companies, of varying size, known to provide work in occupations traditionally sought by offenders. This involved documentary analysis of recruitment policies and face-to-face interviews with personnel officers, local managers and trade union representatives. This was supplemented by two employer focus groups and a postal survey of 400 employers.

How to get further information

The full report, *Recruiting and employing offenders* by Del Roy Fletcher, Alan Taylor, Stephen Hughes and Jonathan Breeze, is published for the Foundation by YPS as part of the Work and Opportunity series (ISBN 1 84263 036 9, price £13.95).