

**CLiNKs**

Supporting the voluntary sector  
working in the criminal justice system



# Influencing policy

**Clinks member – Unlock**



**Part of the Stronger Voice project**

June 2021

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**Cover photo:** Left to right are Jennifer Twite, Head of Strategic Litigation at Just for Kids Law, Christopher Stacey, Co-Director of Unlock from 2013 to 2021, now Director of Support and Development at Clinks and Alex Temple, trainee solicitor at Just for Kids Law – outside the Supreme Court.



Funded by

**LLOYDS BANK  
FOUNDATION**  
England & Wales



# Introduction

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The voluntary sector working in criminal justice has extensive knowledge and experience that is a vital tool for effectively advocating and bringing about tangible changes in the criminal justice system.

Clinks has been funded by the Lloyds Bank Foundation for England and Wales to deliver the Stronger Voice Project – a three-year project with the aim of strengthening the voice and influence of the voluntary sector working in criminal justice through a programme of information, collaboration, training and capacity building.

As part of this project, we are running a series of expert seminars; the first of which seeks to highlight the different approaches and strategies voluntary organisations working in the criminal justice system take to influence policy. We hope that through sharing these varied examples organisations can develop a greater understanding of policy influencing work and gain new knowledge about different approaches that can then inform their activity.

We would like to express our thanks to Unlock for delivering [an online seminar on its policy influencing and advocacy work](#). The following case study compliments the online seminar about Unlock's strategy for influencing policy with a particular focus on how it has used the law to advocate for change.

## About Unlock

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Unlock is a national independent advocacy charity that supports, speaks up and campaigns for people facing stigma, prejudice and discrimination because of their criminal record.

Unlock supports people with criminal records by providing information, advice and support through its website and helpline. Unlock also supports employers with the fair treatment of people with criminal records and provides disclosure training and other resources to practitioners supporting people with criminal records.

As well as providing these services, Unlock undertakes research on the barriers faced by people with criminal records, challenges poor practice by employers and works at a policy level with the government, employers and other key stakeholders to advocate for a fairer and more inclusive society.



# Unlock's approach

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## Independent

**Involve and include people with convictions**

**Think big. Act big. Stay small.**

**Ear to the ground, voice at the top**

**Work in partnership**

## Advocating for change

### The issue

As things stand, a criminal record is for life, often disproportionate to the offence and prevents people from moving on from their past.

- Over 11 million people in the UK have a criminal record
- 33% of Jobseeker's Allowance claims are by people with a criminal record
- Three-quarters of employers reject applicants that declare a criminal record.

### Two key focuses

To change this and create a fairer and more inclusive society, Unlock's advocacy and influence work focuses on:

- What gets disclosed
- How criminal records are used.

### Four key ways of working

Unlock does this through:

- Project-based work focusing on key areas such as employment
- Policy work by working in collaboration with government officials and other key stakeholders
- Research to identify and build up the evidence base on the barriers faced by people with convictions
- Strategic litigation using the law to push for change.

# Strategic litigation: using the law to create change

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This case study will take a closer look at Unlock's 'strategic litigation' approach i.e. using the law to create change.

## Example: Landmark challenge to the government's criminal records disclosure regime

Unlock was instrumental in a legal challenge brought against the government for its criminal record disclosure regime that in turn led to significant changes which will continue to improve the lives of thousands.

### What made Unlock take on a legal challenge of the government and pursue this approach for influencing change?

The first step was identifying that there was a need for a change in the law. The criminal records disclosure system allowed the government, employers and society to continue to punish, discriminate against and marginalise people because of things they have done in the past. Unlock therefore had a clear goal – how do we get to a place where this no longer happens and people no longer have to disclose old criminal records?

Unlock had been working to try and make improvements to the system for a number of years already, by engaging and working collaboratively with key decision-makers in the government. In 2013 – after being part of an Independent Advisory Panel set up by the then Home Secretary to look at the issue of criminal records disclosure – the government introduced a filtering system to determine what convictions would show on criminal records checks. It was a welcome improvement, but it did not go far enough and many people with convictions continued to feel the disproportionate effects of the criminal records disclosure regime.

There was a limit to how much the government was willing to change the system in place and it was becoming increasingly clear that they were resistant to making any further reforms. Unlock realised that there was only so far they could get with this strategy of stakeholder engagement and collaboration with officials on its own. A change in the law was the only way to get the fundamental reforms needed in the disclosure system.

Unlock gathered evidence from those affected by the law as it stood, to better understand the challenges they faced and build a case for change. Through doing this, Unlock also learnt more about legal challenges that had been brought by other charities against the government for its criminal records disclosure system which gave them a foundation to build on.

From this knowledge, Unlock was able to build a strategy that combined evidence, policy influencing and the law.

## What happened next?

Unlock is not a legal charity so it noted that working in partnership with others who had the necessary legal expertise would be vital. It formed a partnership with the legal teams at Liberty and Just For Kids Law to bring the legal challenge. This partnership was important and worked well, because through their research, they were able to provide an evidence base for the legal challenge. Together, they brought a different perspective, developed through their work supporting people with criminal records about the wider picture and reality of the impact of the disclosure regime on people's lives.

Unlock provided a witness statement to the High Court based on the evidence they had gathered and in 2016 it was ruled that the criminal record disclosure regime that was in place at the time was unlawful.

That was not the end of the journey. The government went on to challenge the ruling and the case went on to reach the Supreme Court.

## When the case was taken to the Supreme Court, what role did Unlock play?

Unlock focused on conducting more research to build more evidence that could be used to support the case. In particular, it conducted research into youth criminal records and the findings were published in May 2018. The publication was timed specifically to coordinate with the Supreme Court Hearing that took place a month later. That way, Unlock could draw on this new evidence in its witness statement to the court.

To complement this effort, Unlock also did a lot of work to raise awareness and get media coverage of the hearing and the disproportionate use of criminal records.

It is really important to Unlock that its advocacy and influence work is connected to its support work for people with criminal records. Legal processes can be complicated, difficult and time-consuming to follow. A key part of Unlock's role throughout this was communicating with people who would potentially benefit from the outcome of the Supreme Court hearing and ensuring they were kept updated. During this time, Unlock saw an unprecedented rise in people accessing their website and helpline.

The Supreme Court hearing took place in June 2018, and six months later in January 2019 the Supreme Court ruled that the criminal records disclosure regime was in breach of Article 8 of the European Convention of Human Rights.<sup>1</sup> Two aspects of the regime in particular were highlighted as disproportionate:

- Disclosure of youth cautions as an adult
- The rule that if a person has more than one conviction – regardless of its seriousness and when it is spent – that it must always be disclosed.

## How did things change for people with convictions as a result of this work?

There was a lot of excitement after the Supreme Court made its ruling that things were finally going to change. However, Unlock was disappointed to see that after the ruling, the government had not taken any action. It was clear that the legal case was not the end and there was still work to be done to get a response to the ruling from the government.

Over a year later, there still had not been any changes or indication of any changes coming. Therefore, one of the big challenges for Unlock was keeping up the pressure from the ruling. In the beginning of 2020, Unlock – along with Liberty and Just For Kids Law - wrote to the government to raise concern over the lack of progress since the judgement.

Finally, in summer 2020, the government brought forward plans to change the criminal records disclosure regime. These then came into effect in November 2020. The most significant changes are:

- Childhood cautions no longer appear on standard and enhanced DBS checks. This change is estimated to benefit at least 5,000 people a year.
- The 'multiple conviction rule' (where more than one conviction meant it would appear on checks for the rest of a person's life) was removed. This change is estimated to benefit around 45,000 people a year who will now have a clear standard and enhanced DBS check.

## What are the next steps going to be?

The changes to the criminal records disclosure regime, as a result of the legal challenge, are highly welcome and a vital step in the right direction. Though Unlock still believes that there remains a need for further and wider reform.

Unlock is working on influencing policy through other ways to achieve this. To keep up the pressure for change, it has formed a new partnership with Transform Justice to launch a campaign called the #FairChecks movement.

For this to be successful, they ensured the campaign had:

- A persuasive message that people could get behind The need for a disclosure regime that is fair and gives people a genuine chance of moving on and contributing fully to society.
- A clear, overarching aim This is to show what their message would look like in practice. For Unlock this is a system where minor and very old crimes do not appear on criminal records checks.
- Tangible steps and solutions Unlock identified key areas for reform that would help to achieve this aim.
- A clear call to action for the government Unlock is calling on the Home Office and the Ministry of Justice to launch a major review of the legislation on the disclosure of criminal records.

- An easy way to get involved Unlock is encouraging people to contact their local MPs for support with a letter they have already drafted and for individuals and organisations to show their support through a range of social media and other channels.

## **Are there any learnings from going through the legal challenge process that you could share?**

Unlock feels the most important thing before going down this route is to be really clear as an organisation that this is the best approach for you and a necessary one. It had a clear and tangible aim to change the criminal records disclosure regime and identified that it was not achievable without a change in the law.

It is important to be sure of this, because it was a lengthy and resource-intensive process, taking around five years of work to support the legal challenge before it got to the stage of the Supreme Court and after that was another two years of work to see changes implemented. It meant that Unlock had to be around in the long-term and maintain its determination and commitment to achieve change. Unlock also did not have any specific funding for this work, particularly at the start and had to launch a CrowdJustice campaign to raise the money to cover legal costs.

For Unlock, the main takeaways from being part of this important legal process is the value of partnership working and being evidence-based. Getting the legal challenge off the ground was difficult. Unlock had to recognise where its expertise laid and where the gaps were so it could form partnerships with other firms and organisations that had the necessary legal expertise whilst bringing its own vital knowledge to the table. It was only through research and gathering evidence to back up their claims that they were able to achieve this outcome and represent the issue in the most compelling and effective way possible.

<sup>1</sup> Article 8 of the European Convention of Human Rights is the right to respect for private and family life, home and correspondence.



## Our vision

Our vision is of a vibrant, independent and resilient voluntary sector that enables people to transform their lives.

## Our mission

To support, represent and advocate for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.

## Join Clinks

### Are you a voluntary organisation supporting people in the criminal justice system?

Join our network of over 600 members.

Clinks membership offers you:

- A voice to influence change
- Practical assistance to be effective and resilient
- Support from a community of like-minded professionals.

[www.clinks.org/membership](http://www.clinks.org/membership)

### Clinks

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