

Government “Needs to Rethink DBS Check System”

In the know

Employers in certain industries are interested in an employee’s background in order to assess their suitability for a job they have applied for. Recent court cases have challenged the appropriateness of the system which will now need Government attention.

Disclosure and Barring Service

Individuals can be legally barred from taking up work in the medical and education sectors because of previous criminal convictions;

The Disclosure and Barring Service produces certificates containing information on an individual’s previous convictions from which an employer will assess an individual’s suitability;

Some convictions are considered ‘spent’ after a defined period of time, meaning that they will not appear on the DBS disclosure and therefore should not play a part in the employer’s recruitment decision;

Other rules also apply to the information which can be included on a certificate. Recent changes to this mean that single convictions for certain non-violent, non-sexual offences will not show as part of disclosure after 11 years (shorter if the offence was carried out when the individual was a minor);

However, this exemption does not apply when more than one conviction has been issued, regardless of the type of offence etc.

‘Multiple Conviction Rule’ Challenged

The Government recently had to defend this ‘multiple conviction rule’ system when it was challenged in the Court of Appeal;

Two individuals had been prevented from undertaking a job because of this rule. One was refused a job as a teaching assistant because of cautions received in relation to a shoplifting offence followed by a bail offence. The multiple

rule meant that these convictions were disclosed on her DBS check;

The High Court had previously ruled that the multiple rule was a breach of an individual’s right human rights, specifically the right to have a private life;

The Court of Appeal agreed, saying that it should be possible to build in a filter to the system that takes into account the offence type and the amount of time since the conviction;

The decision was welcomed by Unlock, a charity which assists people who have criminal convictions. The current system is “blunt, restrictive and disproportionate” says the charity who is urging the Government to change it.

Croner Tips

- **Making recruitment decisions on unspent convictions is perfectly lawful. However, spent convictions should not play a part;**
- **The result of this case creates some confusion for employers over the appropriateness of their recruitment decisions where DBS checks are concerned;**
- **However, employers should not change their practice in relation to checking a prospective employee’s criminal record in light of this decision. The legal challenge was taken against the Government, not the employer;**
- **The Government will have to make official changes to the disclosure system, possibly by adding an extra filter as suggested by the Court of Appeal, if it is to implement the recommendations.**

Please contact the Business Support Helpline for advice on your specific situation before acting on the information in this article.