

Financial Inclusion Commission

Written evidence by Unlock

1. Summary

There are just under 10 million people with a criminal record in England & Wales. Before March 2014, approximately 2.5 million people had an unspent conviction. Since changes in the law that came into force on the 10th March, this was reduced to approximately 750,000 people.¹ This submission focuses on financial inclusion issues where a criminal record *per se* causes a problem. As a result, this written evidence primarily focuses on insurance, but reference will also be made to access to mortgages and bank accounts.

2. About Unlock

Unlock is an independent award-winning charity, providing trusted information, advice and advocacy services for people with criminal convictions. Our staff and volunteers combine professional training with personal experience to help others overcome the long-term problems that having a conviction can cause. Our expertise, knowledge and insight helps us work with government, employers and others to change policies and practices so that together we can create a fairer and more inclusive society.

3. General questions set by the Commission

3.1. What policy change would most support increased financial inclusion for the client group you represent?

There remains no mainstream household insurer that considers on the open market people with unspent criminal convictions. There is, in effect, a blanket-ban. The reasons for this are not clear – in part, this is down to the perception (and it is, in Unlock’s view, a perception) that this group are ‘more risky’. Other reasons may include a general unwillingness to engage in this type of business, and the perceived complexity of considering the risks associated with each individual

¹ This is a conservative estimate that is unlikely to fully account for the number of people with unspent motoring convictions/endorsements. There were over 447,000 convicted of motoring offences in 2012.

case. A policy change which ensured that insurers make their decisions based on clear risk-pricing criteria would ensure that people with convictions are treated fairly.

3.2. What do you see as the role of the regulator, government, and financial services in promoting inclusion?

The Government should;

- a. Look at and amend the disclosure rules that apply to convictions when purchasing insurance, particularly in relation to motoring offences (see below).

The regulator should;

- a. Ensure that insurance companies are treating their customers fairly. In relation to obtaining policies, it is clear that mainstream insurers are not treating people with unspent convictions fairly as they are not properly judging their situations based on transparent risk-pricing criteria.
- b. Investigate whether the market is failing in this regard.
- c. Take active steps to ensure that insurance companies do not rely on spent convictions as part of their work.

Insurance companies should;

- a. Be transparent about the data that they are using to base their decisions.
- b. Treat people with convictions fairly by risk-pricing based on the individual profile of the person with convictions.

3.3. Do you have any practical examples of financial inclusion initiatives that have been successful?

Unlock's work in developing a network of specialist brokers has helped to create a semi-competitive market of specialist insurers. Nevertheless, this type of insurance remains 'specialist' in many ways, particularly for people with convictions who rightly question the relevance of their conviction to their insurance, and having to secure a 'non-standard' policy.

An interesting development took place in 2013 when the Consumer Insurance (Disclosure and Representations) Act 2012 came into force. This removed the duty to disclose material facts, and instead answer questions honestly and accurately. This brought particular benefit to people with non-motoring convictions, as insurers such as Admiral, Churchill and the Co-op continued to **not** ask about non-motoring convictions. This shows, either directly or indirectly, an appetite amongst mainstream insurers to *ignore* certain types of unrelated convictions. A similar development hasn't taken place amongst household insurers.

4. Insurance-specific questions set by the Commission

4.1. What role should the state and the insurance sector play in providing a financial safety net in the event of an unexpected life event?

People with convictions are expected to rebuild their lives after they've left prison, or while they're serving their sentence in the community. Families of young offenders often bring their children back into the family home to find that their own household insurance policy is null and void. Insurance is a necessity in the modern world. Affordable insurance is a luxury that most people take for granted.

4.2. Is the insurance market functioning appropriately and competitively?

Although people with convictions are (in most cases) able to secure motor or household insurance, this often comes at a significant additional cost, and not with the mainstream market. Such a blanket experience amongst a significant number of people does not seem to suggest that the market is functioning appropriately or competitively.

4.3. How can we ensure that people on low incomes, especially private tenants, have access to appropriate and attractive insurance products for their possessions and property?

With a particular focus on those with criminal convictions, additional costs because of an unspent conviction is likely to make an otherwise attractive product unaffordable and thereby unattractive. Focusing on genuine risk-pricing in relation to unspent convictions will ensure that people with convictions are treated fairly, regardless of their income. That will enable attractive products for people on low incomes to be accessible to all in that category, including those with unspent convictions.

5. Fair access to insurance - Specific issues

Through our helpline, we deal with approximately 500-600 people a year who contact us with enquiries relating to obtaining insurance.

5.1. Summary of situation / Progress to date

There are nearly 10 million people with a criminal record. However, less than 1% of these people are in prison. Only a handful of those in prison will never return to the community.

Under the Rehabilitation of Offenders Act (1974) all people convicted of an offence must serve a 'rehabilitation period' which starts from the point of conviction. During this period, convictions are 'unspent' and individuals must disclose them to relevant parties such as employers and insurers when asked. After these periods, individuals are not required to disclose the conviction except in specific circumstances such as working with vulnerable people. The periods are many times longer than the actual sentence given to the individual, and in some cases can last for the rest of their life.

Most insurers consider convictions relevant and so ask about convictions at application stage. The majority of insurers will refuse or cancel any cover for people with convictions or a policyholder living in the same home, without any consideration of the specific facts of the case.

Many people with convictions are not aware of the requirement to disclose unspent convictions due to a lack of advice from criminal justice agencies on the ROA and from the insurance industry when taking out policies. This often leads individuals to believe they are covered, when in fact their policies are not valid.

The serious economic and emotional consequences for the individual and their families are obvious. Mortgages require buildings insurance. Many jobs are dependent on the individual being insured to drive. Self-employment opportunities and small businesses need various insurances in order to trade.

Since supporting the establishment of the first specialist broker dealing with these clients, Unlock has developed links with 15-20 brokers. The charity refers its clients to these brokers, in order that they can benefit from a competitive quote. In 2011, and again in 2014, we worked with the Association of British Insurers to produce guidance for insurers. Unlock formed part of a group of consumer organisations to push Government to change the archaic laws on voluntary disclosure, which resulted in the Consumer Insurance (Disclosure and Representations) Act 2012 coming into force in April 2013. However, access to the mainstream market remains elusive for most people with unspent convictions.

5.2. Failure by mainstream insurers to properly risk price

Problem

- Insurers use unspent convictions as a proxy for risk. 86% of former prisoners report their conviction making it harder to get insurance.
- There is no mainstream household insurer that considers on the open market people with unspent criminal convictions. There is, in effect, a blanket-ban. The reasons for this are not clear – in part, this is down to the perception (and it is, in Unlock's view, a perception) that this group are 'more risky'. Other reasons may include a general unwillingness to engage in this type of business, and the perceived complexity of considering the risks associated with each individual case.

- There appears to be a 'herd' mentality, where all mainstream insurers have taken the decision to stay away from this particular group.
- The data that is apparently relied on, which claims to show that people with unspent convictions are 'riskier' customers, is not available. There is a lack of trust in the insurance industry's position of pricing fairly when there is a lack of transparency, and this lack of data makes it difficult to challenge the current status quo.
- Through 'off the record' conversations with specialist brokers that cover people with unspent convictions, it appears that, on the contrary to popular belief, people with unspent convictions who disclose their convictions to a specialist insurer are a much 'better' customer in terms of their loss ratio.
- Some people with convictions remain 'uninsurable'.
- Employers struggle to get commercial cover for employees/volunteers. We have seen an increasing problem amongst employers that are willing to give people with convictions a job (or voluntary opportunity) who are struggling to find appropriate commercial insurance (e.g. employees liability). The result is that they end up being unable to follow through their offer of a job, or having to terminate the role at a later stage.

Solution

- A regulator-led investigation into the data used to risk-price customers with unspent convictions.
- A policy change which ensured that insurers make their decisions based on clear risk-pricing criteria would ensure that people with convictions are treated fairly.
- Insurers should replace their discriminatory blanket ban with a data-driven risk pricing model. Anecdotal evidence suggests that people with convictions are no higher risk than average customers
- The FCA should regard this as a 'market failure' and raise 'access and competition' issues due to a failure in proper risk-pricing.
- Insurance companies that exclude people with convictions should make this clear to customers and create links with specialist providers to ensure that customers with convictions are treated fairly
- Products should be developed that enable employers to get commercial cover for employees/volunteers at a reasonable price

5.3. Lack of choice and competition = higher prices

Problem

- In a relatively exclusive market, premiums are often higher with specialist brokers. Four fifths of people with convictions report paying more for their insurance, suffering financial detriment or a lack of cover as a result.

Solution

- The regulator should regard this as a 'market failure' and raise 'access and competition' issues due to a failure in proper risk-pricing.

5.4. When motoring convictions become 'spent'

Problem

- When reforms to the Rehabilitation of Offenders Act 1974 came into force in March 2014, a last-minute savings provision was made to retain the status quo in relation to motoring endorsements. This means that a minor fine for speeding takes 5 years to become 'spent', although a prison sentence of 8 months given to a different person at the same time becomes spent 2 months earlier. Given there are over 440,000 motoring convictions each year, this leaves people with motoring convictions at a significant disadvantage. This was the direct result of lobbying by the insurance industry, with a particular concern on motor insurance, but the result has been that individuals with motoring offences are significantly penalised in relation to household insurance as well as when seeking employer

Solution

- The Ministry of Justice and the Department for Transport need to develop a specific solution to disclosure rules to ensure that recent motoring offences are disclosed to motor insurers, but that they don't need to be disclosed to other types of insurers and/or employers beyond a period equivalent to a similar sentence for a non-motoring offence.

5.5. Awareness of the issue amongst individuals

Problem

- People don't realise the need to inform insurers when they are convicted or when they have an unspent conviction

Solution

- People in prison, on probation, and on conviction at a court, should be provided with information on the importance of insurance, the impact of a criminal conviction, and where they can go to secure insurance with a conviction
- Insurance companies (and comparison websites) should ensure that all customers are aware and clear about what is meant by an 'unspent' conviction when applying for insurance, including those of anyone in the household (for home insurance) and anyone on the policy for motor insurance, and make clear whether disclosure is required at application, mid-contract or renewal

5.6. Questions about convictions by insurers

Problem

- Insurers regularly ask about 'any convictions'.
- Insurers use 'spent' driving offences (as they can stay on licences for up to 11 years) (see later)
- People are punished for being honest (as insurers normally only check at claim) which potentially encourages dishonesty.

- People don't trust insurers with the information, so often don't disclose.
- Insurance professionals don't understand the law. Unlock is regularly contacted by insurance practitioners seeking advice,

Solution

- Insurers should make it clear that applicants only need to disclose unspent convictions.
- Good practice guidance on motoring offences and 'disclosure' should be developed.
- ABI good-practice needs to be enforced.
- The FCA should investigate the compliance of insurance companies in treating customers fairly with the questions.
- Insurers should ensure that their staff are training on criminal record disclosure laws.

5.7. Insurers use of spent convictions to refuse to cover individuals

Problem

- Driving licences hold details of spent convictions.
- Due to confusion around the definition of "refused" and "cancelled" insurance, many people with unspent convictions are unable to get policies by insurance companies and believe themselves to have been "refused or cancelled " insurance. Subsequently, when applying for further insurance once their conviction is spent, they believe they have to disclose the fact they've had insurance 'refused'. Insurance companies can ask an applicant if they have had a policy voided without the question having a time limit.
- Existing insurers rarely remove details of convictions once they become spent.

Solution

- The DVLA should remove details of convictions once they become spent. The DVLA currently hold onto drink-driving related offences for 11 years, way beyond when they become spent under the ROA. This can continue to cause people problems when applying for insurance (motor in particular) even though the conviction is spent.
- There should be a restriction on the ability of 'refused/cancelled' questions to be able to elicit details of spent convictions.
- Insurance companies to have policies/practices that remove convictions from files when they become spent.

5.8. Dealing with claims

Problem

- Claims handlers at insurance companies require claimants to provide copies of their police records. We have seen many examples where insurers require people to apply for a 'subject access request' to provide proof of their convictions, and this includes details of spent convictions which insurers have no right to be provided with. Although in most cases the insurer ultimately proceeds with the claim, this process often results in people backing out of the claim through fear of how the insurer will react.

Solution

- Insurers should only require individuals to undertake 'basic' disclosures, which provide evidence of any unspent convictions.

- The Information Commissioners Office should take action against insurers that require individuals to provide an 'enforced subject access request'.

6. Fair access to mortgages – Specific issues

Through our helpline, we deal with approximately 30-50 people a year who contact us with enquiries relating to obtaining a mortgage. Although these numbers are small when compared to the number of enquiries we receive relating to insurance, they do still provide a basis to provide some observational comments based on anecdotal cases we've dealt with, which is what has formed the information we've produced for our self-help information site.²

In particular, the practice of mortgage providers appears to be inconsistent. Some providers ask clear questions about convictions, and tend to automatically refuse anybody who discloses. Alternatively, some providers simply don't ask, in which case the advice we provide is that individuals don't have to disclose. However, particularly this latter position, appears to be based on a shaky assumption that these providers are not interested in criminal convictions.

To better understand the barriers to and issues, further research would be required, including conversations with mortgage providers as well as individuals with convictions who have (or are looking at) a mortgage.

² Available at <http://hub.unlock.org.uk/knowledgebase/owning-home/>

7. Fair access to banking services – Specific issues

Summary

During the course of a 9-year project to develop access to banking for people near to release;

- Unlock has helped to set up 74 prison/banking programmes
- 114 prisons now have links with a high-street bank
- The 'big 5' current account providers (Barclays, Halifax (part of Lloyds Banking Group), HSBC, Santander and RBS) are all actively involved, as well as a significant contribution from Co-operative.
- By the end of 2013, all prisons that wanted and needed a basic bank account opening programme had one

In the final year of the project (2013-14), 5936 basic bank accounts were opened for people in prison ready for them to use once they were released

End of project report

In reporting on the progress of the above work, Unlock published a detailed report in March 2014 which made a series of recommendations. We would like to bring this to the attention of the Commission, rather than include the substantive points in this response.³

Additional problem – Treatment of people with convictions in the community

Problem

- There is anecdotal evidence to suggest to some banks are using media reports of convictions (particularly of a sexual nature) to withdraw banking services for individuals. It is unclear the extent to which this takes place, and there is a lack of transparency or acknowledgement amongst banking institutions as to their policies in this regard.

Solution

- Banks should be clear about their policies and practices towards people with convictions.
- Banks should not take action against a customer unless there is clear evidence of financial fraud which poses a live risk to the bank.

³ It is available to download at <http://www.unlock.org.uk/policy-issues/specific-policy-issues/bank-accounts/>.
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Winner – Helpline Awards 2014 – “Best innovative use of technology”

Guardian Charity Awards Winner 2011

President: General The Lord David Ramsbotham GCB CBE

This document was written in December 2014 by Christopher Stacey, Director (Services). Any questions about this response should be directed to [REDACTED]