

Committee	Dated:
Establishment Committee	5 September 2019
Subject: Ban the Box	Public
Report of: Chrissie Morgan, Director of HR	For Discussion
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Summary

‘Ban the Box’ is a campaign which calls on UK employers to give ex-offenders a fair chance to compete for jobs by removing the ‘tick box’ from their application forms asking about criminal convictions, and only asking this question later in the recruitment process; unless the post has a regulatory or other legal reason for not doing so.

Ban the Box will not result in everybody with a criminal record gaining work, but it importantly reduces the potential for rejection on what could be irrelevant convictions at the application stage; and instead focuses on the applicants’ skills, experience and ability irrespective of previous convictions.

The City of London Corporation currently asks job applicants about their criminal conviction record on all job application forms. This report considers the implications for the City Corporation to change this practice and sign up to the Ban the Box campaign.

Recommendations

Members are asked to discuss the report and consider whether the Establishment Committee endorses the development of a policy in support of the Ban the Box campaign.

Main Report

Background

1. Ban the Box originated in America during the late 1990s as a campaign by civil rights groups and advocates for ex-offenders, aimed at removing the tick box that asks if applicants have a criminal record from job application forms. As part of ‘Fair Chance Hiring’ the aim is to ensure that anything that makes it harder for ex-offenders to find a job makes it likelier they will re-offend.
2. Employers instead ask any questions about criminal convictions later in the recruitment process, thereby enabling job applicants to be assessed first on their skills, experience and ability for the role rather than past mistakes. However, roles involving working with children and/or vulnerable adults are exempt.

3. In October 2013 the Ban the Box Campaign was launched in the UK by the corporate and social responsibility advocacy charity Business in the Community (BITC), part of the Prince of Wales' Responsible Business Network. To date 130 employers have signed up to Ban the Box, covering more than 839,000 roles¹. These include Accenture; Barclays; Boots; Bristol City Council; Carillion; the Civil Service, Eversheds; Interserve; Land Securities; Linklaters; Ricoh, Sodexo; Southbank Centre and Veolia. However, there is variation in whether organisations that have signed up display the campaign logo or promote having signed up in their recruitment literature.

Why consider adopting the Ban the Box approach?

4. Employers are not legally required to ask about criminal records at the point of applying for jobs, however by integrating such disclosures into the application form:
 - It makes it difficult for applicants to get past the initial sift as it's often used to screen applicants.
 - There's limited opportunity for the applicant to contextualise or to explain, to enable an informed assessment of the conviction(s).
 - Applicants may de-select themselves from applying, giving rise to the possibility of missing out on potential applicants.
 - It can lead to indirect discrimination, as people from Black, Asian and Minority Ethnic (BAME) groups are disproportionately affected by criminal records².

What does signing up to Ban the Box mean?

5. Employers who sign up to Ban the Box agree to:
 - Removing any tick box from job application forms that asks about criminal convictions.
 - Considering applicants' skills, experience and ability to do the job before asking about criminal convictions.
 - Reviewing their employment processes to ensure that when a candidate discloses a criminal conviction, they are given a full opportunity to explain the situation.
 - Ensuring that the circumstances of any conviction are fairly assessed against their relevance to and risk within the role before a decision is made.

Options: Ban the Box in practice

6. There are various points during the recruitment process when applicants could be asked about any criminal convictions i.e. after shortlisting, at interview, conditional offer stage, or not asking about criminal convictions at all (unless in a regulated role or otherwise legally required to check). This

¹ [BITC Employers that have banned the box.](#)

² [Double discrimination? The impact of criminal records on people from black, Asian and minority ethnic backgrounds](#), Unlock (July 2019).

decision could vary depending on what's most appropriate for different types of roles or contracts. We are now looking at the implications and options for implementation to consult with service departments, Summit Group, the Security Board, the Peoples' Security Board and the trade unions.

City Corporation's current position

7. All City Corporation applicants are required to disclose any 'unspent' convictions at the application stage and are advised that having a criminal record will not necessarily be a bar to obtaining a position. However, all 'spent' convictions must additionally be declared for those posts identified by the department as exempt from Section 4(2) of the Rehabilitation of Offenders Act 1974 (ROA), predominantly posts requiring a DBS clearance.
8. When convictions are disclosed the Recruiting Manager/Panel with HR support assess the impact of the disclosure through a risk assessment process. This will most likely involve scheduling an appointment to discuss the matter further, following which come to a view as to whether the risk can be mitigated or managed. If the decision is not to employ, the candidate should be given appropriate feedback.
9. Furthermore, the City Corporation's 'Statement of Particulars of Employment' contains a clause regarding it being a condition of employment to inform the City Corporation when convicted of any criminal offence (including driving offences) during employment. Failure to do so may result in the termination of employment, where there are either undisclosed or new convictions. Each case would be considered on its own merits.

Proposals

10. The Ban the Box campaign is a positive step to support ex-offenders into work, senior management do however need to carefully consider the implications of the practical and operational issues to enable this to be implemented effectively.
11. For roles classed as 'regulated activity' such as working with children and/or vulnerable adults' criminal convictions will continue to be asked at application stage as part of safer recruiting practices; when it will not be possible to recruit people with certain criminal records.
12. Any decision to sign up to the campaign will require correlation with work already in progress i.e. the review of DBS levels and high-level security checks of posts; and the Attracting Talent Project which includes a working group reviewing the format of the application form. In addition to taking into account any views as outlined in point 6 above.

Corporate & Strategic Implications

13. The ethos of Ban the Box is aligned to the City Corporation's Corporate Plan 2018-2023 by contributing to a flourishing society, people having equal opportunities to enrich their lives and fulfil their potential. In particular, where people from BAME groups are over-represented in the criminal justice system, waiting until later in the recruitment selection process to ask about criminal convictions helps to eliminate unlawful discrimination³.

Implications

14. Ban the Box is about more than just a process, as an organisation it's about the senior leadership team taking the decision to create a recruitment culture that welcomes suitable candidates with criminal convictions. If job offers are withdrawn late in the recruitment process due to criminal convictions, it is probable that this will prompt complaints and that any other appointable candidate will have either lost interest in the job or found another job.
15. The criminal record information that employers can take into account during the recruitment process is primarily defined by the ROA. This Act is designed to improve the chances of offenders being fully rehabilitated into society by removing some of the barriers that they face.
16. The ROA defines the period of time during which all cautions and convictions must be disclosed by candidates to employers, if they are asked. Within this time period, the conviction is regarded as unspent. When a caution or conviction has become spent which is determined by the sentence given, the offender is treated as rehabilitated in respect of that offence and is not obliged to declare it for most roles. However, noting that the most serious of criminal offences never become spent. The rehabilitation periods set out in the ROA for the most common sentences and disposals are attached at appendix 1.
17. Employers are legally allowed to consider unspent convictions during the recruitment process which could provide grounds for refusing employment. For most roles, it is unlawful to make a recruitment decision based on a spent conviction, unless the decision relates to specific types of roles which generally involve positions of trust i.e. doctors, lawyers and accountants. Furthermore, work defined as 'regulated activity' is exempt from the ROA⁴. This means that employers can ask about both spent and unspent convictions, finding out about all criminal convictions, apart from a small number of minor convictions that have been 'filtered' from a candidate's record.

³ As above, footnote 2.

⁴ [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(SI 1975/1023\)](#), as amended.

18. For certain roles, a Disclosure and Barring Service (DBS)⁵ criminal record check will be carried out and convictions disclosed risk assessed with decisions made on a case-by-case basis. Apart from when an applicant has been barred from working in certain roles classed as 'regulated activity', such as working with children and/or vulnerable adults and therefore cannot work with these groups.
19. There is a need to confirm with service departments if there are sections which need to have separate arrangements.

Health Implications

20. None.

Conclusion

21. The Ban the Box ethos is to allow ex-offenders fair access to employment, giving them the opportunity to put past mistakes behind them and thereby enable improved life chances. In turn this can help reduce re-offending rates and benefit society at large.

Appendices

Appendix 1: Summary of the most common rehabilitation periods

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⁵ DBS checks range from: Basic (unspent convictions only); Standard and Enhanced (spent and unspent convictions together with non-conviction information, held by the local police and considered to be relevant to the role; or Enhanced and Barred (i.e. individual's barred from working in regulated roles with vulnerable adults and/or children).

Appendix 1: Summary of the most common rehabilitation periods

Under the Rehabilitation of Offenders Act 1974, eligible convictions or cautions become 'spent' after a specified period of time, known as the 'rehabilitation period'.

The rehabilitation periods depend on:

- the sentence given or disposal administered as a result of a conviction
- the age of the individual on the date they are convicted

The table below shows the rehabilitation periods for the most common sentences and disposals.

Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered
<ul style="list-style-type: none">• Sentence of imprisonment for life• Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over four years• Sentence of preventive detention• Sentence of detention at Her Majesty's Pleasure• Sentence of custody for life• Public protection sentences* (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders) <p>*A public protection sentence (the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006 means a sentence of imprisonment or detention, as detailed above, imposed for specified sexual and violent offences.</p>	These sentences are excluded from rehabilitation and so will always be disclosed	These sentences are excluded from rehabilitation and so will always be disclosed
Sentence or disposal	Rehabilitation period if aged 18 or over when convicted or disposal administered	Rehabilitation period if aged under 18 when convicted or disposal administered

A custodial sentence of over 2 years 6 months but not exceeding 4 years	7 years from the date on which the sentence (including any licence period) is completed	3 years 6 months from the date on which the sentence (including any licence period) is completed
A custodial sentence of over 6 months but not exceeding 2 years 6 months*	4 years from the date on which the sentence (including any licence period) is completed	2 years from the date on which the sentence (including any licence period) is completed
A custodial sentence of up to 6 months*	2 years from the date on which the sentence (including any licence period) is completed	1 year 6 months from the date on which the sentence (including any licence period) is completed
A sentence of service detention	1 year from the date on which the sentence was completed	6 months from the date on which the sentence was completed
Dismissal from Her Majesty's Service	1 year from the date of conviction	6 months from the date of conviction
Fine	1 year from the date of the conviction in respect of which the fine was imposed	6 months from the date of the conviction in respect of which the fine was imposed
Community order or youth rehabilitation order	1 year from the last day on which the order has effect	6 months from the last day on which the order has effect
Driving endorsements	5 years from the date of conviction	2 years 6 months from the date of conviction
Driving disqualification	When the period of the disqualification has passed	When the period of the disqualification has passed
Simple caution, youth caution	Spent immediately	Spent immediately
Conditional caution, youth conditional caution	3 months or when caution ceases to have effect if earlier	3 months or when caution ceases to have effect if earlier
Compensation order	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required	On discharge of the order (i.e. when it is paid in full). Proof of payment will be required
Absolute discharge	Spent immediately	Spent immediately
Relevant orders** (orders that impose a disqualification, disability, prohibition or other penalty)	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent	The end date given by the order or, if no date given, 2 years from the date of conviction - unless the order states 'unlimited', 'indefinitely' or 'until further order' as in these cases it will remain unspent

Source: <https://www.gov.uk/guidance/rehabilitation-periods>

*Suspended custodial sentences are treated the same as custodial sentences for this purpose. It will be the length of the sentence imposed by the court, not the period it is suspended for that dictates when it will become spent.

**Relevant orders include conditional discharge orders, restraining orders, hospital orders, bind overs, referral orders, care orders and any order imposing a disqualification, disability, prohibition or other penalty not mentioned in the table.