

Court of Appeal rules criminal record checks arbitrary and unlawful

The Court of Appeal has ruled that criminal record checks are unlawful. The case was brought by two people who believed that their career prospects risked being affected by the requirement to disclose minor and historic criminal convictions to employers.

One of the claimants had criminal convictions dating back to 1999 for shoplifting a book costing 99p and subsequently failing to attend court. The claimant was suffering from an undiagnosed mental illness at the time. The second claimant had been convicted of two minor convictions of theft dating back to 1981 and 1982, when the claimant was 17 and 18 years old.

Lord Justice McCombe ruled that the criminal record disclosure scheme in the UK was "arbitrary" and "unlawful". He stated that it was unnecessary for any individual to have minor offences disclosed indefinitely, from many years ago merely because there is more than one minor offence. The Court stated:

"Where the rules are capable of producing such questionable results, on their margins, there ought, it seems to me, to be some machinery for testing the proportionality of the interference, if the scheme is to be in accordance with the law."

The current system, run by the Disclosure and Barring Service, states that single convictions for non-violent, non-sexual offences that did not lead to a suspended or custodial sentence should not be disclosed after a period of 11 years from the date of the conviction. This is reduced to five and a half years if the person was under 18 years old at the time of the conviction. If a person has more than one conviction then those convictions will be disclosed, regardless of age or the offence.

As a result of this judgment, the Government is required to submit plans to update the system. The Home Office is currently reviewing the ruling in order to decide whether they will appeal the decision.

If you have been adversely affected by a historic criminal conviction, please do not hesitate to contact our criminal litigation team to discuss how we might be able to assist.

This judgment has been widely reported in the press. [Click here](#) to view BBC coverage.

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