

Unlock

Case study: Small charities and social change
Field: Criminal Justice

At a glance

Unlock was set up to support individuals with a criminal record who face barriers as a result of their convictions, particularly in employment. They have seven full- and part-time staff; funding is a mix of donations and grants, and annual income is just over £300,000.

Focus of the case study

The focus of this case study is Unlock's use of strategic litigation in their campaign to reform the criminal justice regime and the laws around it. Of particular concern was the length of the period during which people are required to disclose a criminal record.

What does advocacy mean for them?

Unlock was founded by individuals with lived experience of criminal records who wanted to help others to take responsibility for their past while focusing on the future. Their resources are equally split between giving practical help to individuals living with a criminal record and advocating for change on policy and practice, using research, campaigns and the media. They select their campaigns on the basis of experiences reported on their helpline, and keep a watching brief on commonly occurring issues.

Criminal records policies soon surfaced as a major campaign area. In some cases, individuals who had been in employment for years were suddenly faced with losing their jobs when their employer introduced criminal records checks, revealing their criminal records from years past.

Even though the system was amended after a Supreme Court ruling in 2012 that it was 'disproportionate', it still does not adequately protect people's rights; the current government narrative is, '*Give people with a criminal record a job, but know about their full past*'. Unlock decided to change their focus from behind-the-scenes campaigning to strategic litigation as they felt that, given the issue and available routes of influencing, this was going to be a more effective method.

A second Supreme Court decision went against the government in January 2019 and, as yet, there has been no response, so Unlock's next course of action will depend on what changes the government plans to make.



It may involve contributing to the collation of evidence on what the new policy might need to look like, or it may be a case of launching another challenge.

What's worked?

Rather than bringing cases against the government themselves, Unlock were in a good position to act as 'convenor' for those that did, including: Liberty, Stepnsons and Just for Kids. Their 'backroom' work included referring cases to the other organisations and reviewing individuals' eligibility for legal aid, coordinating the organisations and keeping track of individual cases. Unlock's main contribution was a written submission to the Supreme Court which referenced and drew heavily on an evidence-based report on the impact of criminal records on young people, which they had strategically published at the same time.

Unlock see their distinct contribution as a deep-rooted understanding of the intricacies of the current criminal records regime and a clear understanding of what and how it needs to change. There is no one else working on this specific niche area. They were able to add value beyond the individual facts of cases, providing evidence of, for example, types of criminal record and breadth of the related issues. In addition, they *'could add value of providing evidence of alternative systems'* in other countries. Other parties also saw Unlock as being able to say things that they could not.

Unlock was also able to call on individuals with experience of living with a criminal record to ask them, *'Are you affected by this judgement and if so how?'* Some of these individuals agreed to be spokespeople on the issues and were given preparatory training and support by Unlock. One – a teacher who has talked openly to the media and to MPs at Parliament about the trauma of having a criminal record from her youth – felt that being a spokesperson for the issue had helped her confidence to grow. There are also benefits for others who may be afraid to open up themselves: *'It makes you realise you're not the only one'*.

As a small organisation run by peers, Unlock does not have many resources, but they have passion, and a very clear stance on the issue. They used the flexibility and immediacy of crowdfunding to help pay for the legal work needed to take the case to the Supreme Court. This brought another benefit – that of making their work known to a wider audience.

They could call on the skills and expertise not only of their own Co-Director with a law degree, and a trustee who is a solicitor in a public law firm, but also that of barristers from a leading human rights chambers who, although paid, put in many hours of voluntary work as well.

Challenges/what we've learnt?

Unlock is very conscious that, *'As a small charity, we live or die by our reputation'*. They feel that some of the challenges they have made in the past against public agencies have adversely affected relationships with them. In mitigation, they try to provide resources to promote good practice, so they gain a reputation for this work as well. Reputation also depends on being very responsive to immediate issues, which means they cannot really work on an issue long-term if they are not also able to yield certain successes along the way.

Their work can often seem challenging as it inherently involves the barriers people are facing as a result of their criminal record. However, the strategic litigation *'showed how we could make an indent into making things better'*. Together with the crowdfunding, it *'Gave us confidence to work in a way that we've shown can be effective'*.

Planning is always a challenge because their work is so reactive and responsive to changing contexts and policy shifts. So it is really important to accept that *'change will be incremental and there may be some backwards steps ... before you can go forwards'*.

The strategic litigation work was particularly complex to plan. Different cases had taken different routes through the courts and no one knew whether or not they would end up in the Supreme Court. They became strategic by accident because of the responses of the government. Unlock will use their learning to better prepare for any future strategic litigation work that they undertake.

Allied to that is the problem of timing. Criminal records policy sits between the Ministry of Justice and the Home Office, which can add to the time it takes for any changes to be put into effect. *'It's going to take time and ... things [Criminal Records law] could totally change again'*.

So far, Unlock has been able to prioritise different strands, as needed and when opportunities arise, because they have other concurrent strands of advocacy, e.g. work with employers. But there's always the worry of not achieving the change they want to see: *'We may have to go again and get another set of cases'*. They feel progress has been possible because of the experience and confidence of their Co-Director and his ability to *'build good relationships with people in a position to support our work on this'*.

Unlock is now thinking about the organisation's future strategy. The team are planning to take lessons from these experiences and look at how they can feed them into their influencing and policy work.

This is the case study of one of 11 organisations we spoke to from four fields: criminal justice; homelessness; migration; and violence against women and girls. These case study organisations had annual incomes between £50k and just over £1m. We are incredibly grateful for the rich and open insights that were shared with us.

The case studies are part of IVAR's study *Small Charities and Social Change*, which builds on existing research, drawing on the experience of 11 organisations, to explore the role and contribution of small charities in more depth. It asks how and why small charities are challenging, shaping and changing policy, practice and attitudes. It discusses the challenges and opportunities that they face in doing so.

The report and case studies can be found here www.ivar.org.uk/social-change.