



THE SECONDARY PUNISHMENT: A Scoping Study on Employer Attitudes to Hiring People with Criminal Convictions

Irish Penal Reform Trust (IPRT) is Ireland's principal independent non-governmental organisation working for systemic penal reform and change. Our vision is a just, humane Ireland where prison is used as a last resort. We advocate for a progressive criminal justice system that prioritises alternatives, to prison, upholds human rights, and champions reintegration.

This report has been externally commissioned for publication by Irish Penal Reform Trust (IPRT). The report contains work led by Dr Joe Garrihy and Dr Ciara Bracken-Roche, both from the School of Law and Criminology, Maynooth University.

The views, findings, and conclusions expressed in the main body of the report are those of the authors and do not necessarily reflect the views of IPRT. While IPRT has provided guidance and feedback at various stages of drafting, neither IPRT nor its staff authored any of the content in the report. The recommendations, however, were shaped in partnership between the authors and IPRT.

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This report is presented in good faith to inform and stimulate wider debate and reform on this topic.

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Foreword

IPRT has a long history of campaigning for the removal of barriers to employment and wider reintegration for people with convictions. During this time, we have worked alongside and received hundreds of queries from people with convictions, many of whom reported significant barriers to accessing employment. That is why we were delighted to commission this scoping study into employer attitudes to hiring people with convictions with generous support from the Irish Human Rights Commission and the Open Doors Initiative. Understanding the perspectives of employers will help us and others to work alongside them to dismantle the barriers, both real and perceived, that can stand in the way of recruiting people with convictions. Drawing on this study, we can work to improve our knowledge of how diverse recruiting practices, that are inclusive of people with convictions, can benefit organisations and individuals alike.

We know these individuals have skills, experience and qualities that would benefit workplaces, but we know from our work they are all too often overlooked, despite making up a substantial part of the potential workforce. While we recognise that employers have previously engaged in surveys, this is the first dedicated piece of research on employer attitudes to hiring people with convictions that has been published in Ireland. However, we also need to be conscious that this is a scoping study, with a relatively small and limited sample size. While clear themes emerged and issues were identified, a larger piece of data collection and analysis on this topic should be conducted.

While there has been some legislative progress - such as the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016) - further legislation is needed on spent convictions. This report is timely given that it comes at a time when the Department of Justice is finalising the successor strategy to build on the progress made by its *Working to Change: Social Enterprise and Employment Strategy 2021-2023*. This research reminds us of the changes we must continue to make as a society to ensure that, once a person has served their sentence, they don't go on to face a lifetime of discrimination. It is heartening to see that employers are generally supportive of considering people with convictions for employment, but it is clear from the report that there is a need to address information and resource deficits and we hope that the State employs a holistic approach to put in place the necessary supports to achieve real change.

IPRT will continue to campaign for legislative reform and to support, where possible, the implementation of these recommendations. However, IPRT, employers and other actors are limited in what we achieve alone.

Employment enables people to give back – to their family, community, and the economy – and helps to make society a safer place. Employers are eager, with the right information and support, to support this journey for people with convictions.

We want to express our gratitude to and appreciation for the participants who were so generous and open in their contributions, despite what is likely a challenging topic for some people.

We also want to extend our sincere thanks to Dr Joe Garrihy, Dr Ciara Bracken-Roche and their team for taking on the task of expanding the much-needed evidence base on this topic, and for navigating the project so sensitively.

Saoirse Brady
IPRT Executive Director



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Executive Summary

This report examines the attitudes of employers in Ireland to hiring people with convictions(s) (PWCs) and the experiences of PWCs in employment. Employment remains a key protective factor on the desistance journey and supports the development of an inclusive, fair, and equal society (Carr et al., 2015; Healy, 2017; Reich, 2017). Successful reintegration can partially be measured by employment outcomes for PWCs (Ramakers, 2021).

There is evidence that employers are broadly open to hiring PWCs, but raise concerns based on perceptions of risk in doing so. The absence of guidance and uncertainty about evidence-based approaches and legal requirements leads to inconsistent policies and practices while PWCs continue to face intersecting barriers to employment and reintegration.

This report draws on a multi-method study of employers' attitudes to hiring PWCs and experiences of employment pathways for PWCs, comprised of a survey (n = 55), interviews (n = 23), and a participatory symposium of key stakeholders in the summer of 2023.

The report presents 10 recommendations based on the key findings listed below.

– **Perceptions of risk without an evidence base underpinned employer concerns about hiring PWCs** including but not limited to safeguarding, reputational damage, reoffending, personality, qualifications, job performance and lack of support.

– Opportunities for progress emerged, with **employers broadly willing to hire PWCs, but seeking guidance, information, and support in order to do so.**

– **Half of the survey participants did not have specific policies or practices that require disclosure** of criminal convictions but Garda Vetting and GDPR requirements are not clearly understood by all employer participants or PWCs.

– **Persistent barriers to employment for PWCs include stigma, lack of transparency in hiring processes, demands on resilience, motivation and desistance, and narrowing job opportunities.**

– The imperative of shifting mindsets from moral censure to inclusive policies and practices was highlighted, with the need for clear communication and messaging.



Recommendations

Arising from the research is a series of 10 key recommendations, which fall into three distinct areas:

- A. Creating a Positive Environment and Robust Infrastructure for the Recruitment of PWCs;**
- B. Encouraging and Supporting Employers to Recruit PWCs; and**
- C. Supporting PWCs with Access to Meaningful Employment.**

A. Creating a Positive Environment and Robust Infrastructure for the Recruitment of PWCs

1. The Government should progress legislative reform that promotes inclusivity and anti-discrimination for PWCs.

This could include, but should not be limited to, the expansion of the current scheme for spent convictions to increase its proportionality, and an amendment to the Equality Acts to prohibit discrimination on the grounds of a criminal record.

2. The State should lead by example in implementing recruitment and employment policies and practices that are inclusive of PWCs and introducing sustainable procurement practices that support the employment of PWCs.

All State departments and agencies should demonstrate leadership in ensuring their policies are inclusive, this could include specifically naming PWCs in their Equality, Diversity & Inclusion policies and by making inclusive practices visible from the earliest point in recruitment. In procurement activities, this could include adding social impact clauses, as part of a wider sustainable procurement practice and diversifying supply chains to allow social enterprises that employ PWCs to bid for contracts.

3. Budget 2025 should provide dedicated funding for a national information campaign to inform the public – PWCS, employers and other stakeholders alike – of the laws and resources that relate to employment for PWCs.

An information campaign to provide clarity on relevant laws and regulations, as well as highlighting specific initiatives that employers can avail of when recruiting PWCs should be developed. This could be through an existing body, such as the Citizens Information Board. In particular, the Irish Human Rights and Equality Commission (IHREC) should be funded to conduct a dedicated information campaign following any amendment to protected characteristics under the Equality Acts.

4. Limit the use of Garda Vetting only to roles where it is necessary and appropriate.

Employers should seek to limit the use of broad background checks and have clear policies and practices that limit formal or informal searches of prospective employees.

B. Encouraging and Supporting Employers to Recruit PWCs

- 5. Budget 2025 should provide ring-fenced funding for the establishment of a dedicated support service relating to the recruitment of people with convictions that is accessible to employers and PWCs alike.**

Many of the concerns of employers could be addressed through the development of a service providing expert advice and support to employers, before and during employment. The range of optional supports to be developed should include: a detailed guidance document/toolkit, resources on the principles of fair hiring, policy templates, GDPR compliance information, and information on the appropriate use of Garda Vetting. To ensure immediate and responsive support is available, a dedicated helpline should accompany these resources to support specific queries.

- 6. Establish an 'Empowerment Hub' to acknowledge and promote inclusive practices.**

In collaboration with employers, create an online hub where employers can publicise their inclusive ethos and job opportunities open to PWCs, so PWCs can plot a course towards meaningful and fulfilling careers with employers who support PWCs.

C. Supporting PWCs with Access to Meaningful Employment

- 7. Develop a 'disclosures calculator' to accessibly provide bespoke information on PWC disclosure obligations.**

This calculator, similar to those available in other jurisdictions (see Unlock [UK] and Disclosure NI [Northern Ireland]), would help PWCs better understand when their conviction will become spent and when they may need to disclose their criminal record when applying for jobs.

- 8. Name PWCs as a target group in the Department of Enterprise, Trade and Employment Strategic Plan and ensure they are reflected in appropriate initiatives to secure employment.**

The Department of Enterprise, Trade and Employment should identify target groups, including PWCs, and develop bespoke initiatives to support them in securing employment. Initiatives should be evidenced and should not place blanket exclusions on PWCs.

- 9. Develop tangible opportunities to capture and promote lived experience beyond convictions.**

Supporting existing and developing new methods to capture and promote lived experience in the years after a conviction and/or criminal justice sanction in a tangible way is highly valued by PWCs and employers. This could include initiatives such as 'proof of rehabilitation' schemes. Additionally, a peer-support network and/or group would provide a space where PWCs with experience in navigating the labour market could provide guidance and mutual support from shared understanding.

- 10. Address insurance barriers for PWCs who are interested in pursuing self-employment.**

This could include exploring the introduction of an insurance underwriting scheme designed to remove barriers to securing public liability insurance for PWCs, as articulated in the Working to Change strategy. The Department of Justice should include this as an action in its follow-on strategy.

Introduction

The perception that a person released from prison or completing any punishment imposed by the criminal justice system (CJS) is free to progress with life unencumbered is understandable yet unsubstantiated in both theory and practice. The burden of navigating society for individuals with a criminal conviction is very challenging. The international literature, including the underdeveloped space in the Irish context, reveals that the negative effects of contact with CJSs are often just the start of longer-term entanglement within it and barriers stemming from it (Henley, 2018; Maruna, 2011). The negative effects of having a criminal conviction are multi-faceted – from internal experiences of shame and stigmatisation to external prejudices and discrimination that create barriers to employment, education, housing, and various forms of civil participation (Chin, 2017; Henley, 2018; McNeill et al., 2022; Naylor, 2011; Unlock, 2019). The barriers these individuals face is characterised as a secondary punishment, sometimes lifelong, but these barriers can be ameliorated to harness the redemptive and constructive power of employment and reintegrative pathways for people with convictions (PWCs).

Employment remains a key protective factor on the desistance journey – ‘the long-term abstinence from criminal behaviour among those for whom offending had become a pattern of behaviour’ (McNeill et al., 2012: 3) – and supports the development of an inclusive, fair, and equal society (Carr et al., 2015; Healy, 2017; Reich, 2017). Successful reintegration can, partially at least, be measured by employment outcomes for PWCs (Ramakers, 2021). However, many employers are concerned about the risks associated with hiring PWC as they believe there is a higher chance of future criminal behaviour occurring – this is not necessarily reflected in the data, nor does it benefit society more broadly (see Bushway and Kalra, 2021). Moreover, in many countries, this type of vetting by employers is counter to privacy law. In Ireland, employers currently lack evidence-based approaches and guidance to help them develop and implement inclusive and fair policies and practices for PWCs. However, our study reveals a willingness by employers to explore and/or actively hire PWCs in many contexts. This report draws on a multi-method study of employers’ attitudes to hiring PWCs and employment pathways for PWCs comprised of a survey (n=55), interviews (n=23), and a participatory symposium of key stakeholders in the summer of 2023.

Following this introduction, the report is divided into five sections commencing with a review of the most relevant literature followed by a concise discussion of the research methods. The findings section is subdivided into five key areas 1) risk, 2) disclosure, GDPR and privacy, 3) barriers and challenges, 4) central consequences (rather than collateral consequences), and 5) opportunities for progress. The conclusion section leads to an elaboration on the recommendations.



Contextualising fair hiring and criminal convictions

There remains a lack of clear and available data on the number of PWC in Ireland. However, international data reveals the volume of convictions across the populations of jurisdictions is arguably higher than one might expect. In the United States of America, one in three adults possesses a criminal conviction (Korzenik, 2021). In the United Kingdom, one in six people have a criminal conviction while “an estimated 700,000 have an ‘unspent’ criminal record that should be disclosable for any type of job at the employers’ request” (Unlock 2022 cited in Rovira, 2023). Most people who have a criminal conviction have never served a prison sentence which is important in framing this study.

Many people, including employers, commonly think of the most serious offences and extensive prison experiences when the issue of criminal convictions is raised. However, of the many minor offences that come before the first level of the judiciary in the District Court, relatively few go on to serve a custodial sentence (Courts Service, 2023). Of the 338,823 cases that came before the District Court in 2022, approximately 3,796 resulted in a custodial sentence (Courts Service, 2023). Thus, high case numbers produce a vast number of individuals with a conviction, which means a criminal record, but most are for less serious offences. For instance, of the total number of cases, 181,969 related to road traffic offences (Courts Service, 2023). These initial considerations offer an appropriate point of departure for the study that follows and allow a constructive engagement with the attitudes of employers to hiring PWCs and the experiences of PWCs in the labour market.

The available data on outcomes for PWCs in the labour market are stark and illustrate a narrower range of sectors than the general public (Central Statistics Office (CSO), 2023). The latest figures reveal that after probation and prison tend to disproportionately work in the construction, administrative support, and retail sectors (CSO, 2023). Three years after their sanction, 40 per cent of people on probation were employed while only a quarter of people released from prison are in some form of employment with the majority reliant on a social welfare payment (CSO, 2023).

Employers’ attitudes captured in Northern Irish research (NIACRO, 2020) identified that 85% would be prevented from hiring PWCs owing to concerns about the safety of current employees or clients. Within Ireland, IPRT (2019) found that 81% of survey respondents’ criminal records negatively impacted their experience of “getting a job”. However, SOLAS (2019) found that over 60 per cent of surveyed employers would hire a PWC while 67 per cent asserted that they would be more likely to hire PWCs that had completed education programmes during their sentence. 53 per cent of the general public respondents reported that ‘it wouldn’t bother them’ having a PWC as a colleague and 68 per cent reported ‘it wouldn’t bother them’ being served by a PWC in a customer-service setting (SOLAS, 2019). It is within this framing that the most relevant literature and legal frameworks will be reviewed in the following chapter.

Literature Review

Employment Legislation

Irish Equality Legislation

In Ireland, there is currently no legislative protection against discrimination based on a criminal conviction. While the Criminal Justice (Spent Convictions and Certain Disclosures) Act (2016) allows those with spent convictions¹ to refrain from disclosing their prior convictions, it does not include any explicit anti-discrimination provisions. There is specific equality legislation in Ireland that prohibit discrimination on nine grounds, specifically the Employment Equality Acts 1998-2015 (the EEA) (1998) and the Equal Status Acts 2000-2018 (the ESA) (2000), but protections for those with criminal convictions do not constitute one of these grounds. Particularly, the EEA (1998-2015) promotes equality, allows positive action measures to ensure full equality in practice, and prohibits discrimination. Further, the ESA (2000) prohibits discrimination pertaining to the provision of goods and services, accommodation, and education. Both acts share the grounds of family status, sexual orientation, gender, religion, race, age, disability, and membership of the Travelling community. Additionally, the EEA (1998) refers to civil status, whereas the ESA (2000) refers to marital status. The Criminal Justice (Rehabilitative Periods) Bill (2018), which is still going through the Oireachtas, proposes an amendment to the EEA which would prohibit employers from treating a person less favourably because of spent convictions.

However, extending beyond discrimination solely based on spent convictions, recommendations have been put forward for the EEA and the ESA that include the addition of a new ground of discrimination based on a criminal conviction (IPRT, 2021; IHREC, 2021; 2023). Within the submissions received for the review of the Equality Acts, ‘criminal conviction’ was the second most popular ‘additional’ ground proposed by those who made submissions (Department of Children, Equality, Disability, Integration and Youth, 2023). Specifically, IPRT (2021) suggests the inclusion of the ground of ‘criminal conviction’ to section 6 of the EEA and section 3 of the ESA, or the addition of a new provision to each act that specifically addresses discrimination pertaining to a criminal conviction. Appropriate exemptions relating to this ground should be limited by principles of “proportionality;

accessibility and clarity; consistency with Ireland’s EU and international obligations; coherence; and effectiveness” (IHREC, 2023: 67).

International Guidance on the ‘right to work’

There are key international treaties that recognise that rehabilitation and reintegration fall within the human rights framework. *Article 10* of the International Covenant on Civil and Political Rights (1966) exemplifies this by placing an obligation on states to seek to reform and socially rehabilitate prisoners. Regarding ‘the right to work’, this is explicitly recognised within *Article 6* of the International Covenant on Economic, Social and Cultural Rights (1966) which includes ‘the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right’. Similarly, *Article 23* of the Universal Declaration of Human Rights (1948) asserts that everyone has the right to work, to freely choose employment, to favourable and just working conditions, and to protection against employment. Nevertheless, despite these rights and the evidence of positive attitudes towards employing PWCs (Smith, 2021; Atherton and Buck, 2021; Reich, 2023), the literature highlights that there are significant barriers to employment for people with convictions (Guguere and Dundes, 2002; NIACRO, 2020; Barr, 2023).

‘Decent work’ is recognised as a human right and is outlined in several international human rights instruments (Council of Europe, 1961; *Article 11*, Committee on the Elimination of Discrimination against Women, 1979; International Covenant on Economic, Social and Cultural Rights, 1996). Both ‘decent work’ and fulfilling employment for PWCs are essential to prevent reoffending (Gill, 2002; Ramakers et al., 2017, 2018; Barr, 2023). *Article 6* of the International Covenant on Economic, Social and Cultural Rights (1996) refers to the right to decent work and freely chosen employment. The Council of Europe (1961) created the European Social Charter which is a treaty that guarantees fundamental social and economic rights, including a large range of human rights relating to employment, such as the right to work, and the right to just conditions of work. However, these conditions have not been incorporated into Irish law, so the rights comprised within these covenants are not legally enforceable before domestic courts (IHREC, 2023b). Several empirical studies highlight

¹ Spent convictions refers to some situations where certain offences can be removed from the record, or may not have to be disclosed after a period of time. Under the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, a range of less serious offences become spent after 7 years. This means that an adult convicted of an offence covered by the Act does not have to disclose the conviction after 7 years, except in certain circumstances (Citizen Information, N.D.: Online)

how employers' favour 'dirty work' or positions of lower status for PWCs (Waldinger and Lichter, 2003; Pager et al., 2009; Sugie et al., 2020), and PWCs have reported experiencing barriers to 'decent work' (Gill, 2002; Barr, 2023).

Risk

The social construction of PWCs as inherently 'risky' individuals (Henley, 2019: 3) is underpinned by stereotypes in media, popular culture, and literature, and is legitimised through legislative provisions on disclosure and denial of rights across multiple jurisdictions (Corda et al., 2023; Jacobs and Larrauri, 2015). Individual employers often operate within a perceived evidence vacuum despite the efforts of many practitioners and academics in the field to highlight that the categorisation of PWCs as 'risky' is overemphasised (Unlock, 2021; Vuolo et al., 2017; Working Chance, 2023). Thus, definitions of risk are problematic at best, while perceptions of risk frequently rest upon these seemingly reified characterisations and policies (Henley, 2014; Uggen et al., 2014). Safeguarding is necessary in specific circumstances, such as working with vulnerable groups, but it can be interpreted too broadly to include PWCs in any role in the workforce (Agan and Starr, 2017; Pijoan, 2014; Tynan and Stacey, 2021).

When safeguarding concerns are explored, the underlying feeling is better defined as fear: fear of the unknown, fear of the societally characterised 'other', fear of perceived danger, and fear of reputational taint or stigma (Birenbaum, 1970; Goffman, 1963; Sugie et al., 2020). The link between risk and fear lead to the words being used interchangeably at times, or as a proxy at others. The literature on general risk versus real risk shows 'wild fluctuations' (Loewenstein and Mather, 1990: 156). Despite the introduction of competency-based recruitment processes in applications, shortlisting, and hiring selections, discretion remains at the heart of hiring processes (Dobbin et al., 2015; Hoffman et al., 2018; Uggen et al., 2014). Accordingly, efforts to assess and/or measure perceived risks are fundamentally based on discretion throughout the hiring process (Hoffman et al., 2018; Tynan and Stacey, 2021).

Decisions relating to risk generally rely on the perceived paths of less resistance and a risk-averse approach to hiring broadly, particularly with PWCs (Sugie et al., 2020). The risk of PWCs re-offending and the intertwined security and safety of their business, staff, and clients/customers looms over employers' considerations (Lukies et al., 2011; Pager and Karafin, 2009; Pager and Quillian, 2005). Exemplifying a 'preoccupation with risk' (Henley, 2014: 22), employers have expressed concerns about safety, especially regarding violent and/or sexual offences (Bushway and Kalra,

2021; Jacobs and Larrauri, 2015; NIACRO and Brown, 2021). Recent attitudinal data from Ireland highlights negative attitudes towards PWCs that "are statistically significantly less accepting than towards the other [minority] groups" (Department of Children, Equality, Disability, Integration and Youth, 2023: 21). Atherton and Buck (2021: 200) conversely assert that employers with experience of hiring PWCs report an inversion, and associated commercial benefit, in developing 'courtesy kudos'.

Employer responses to fear and/or risk in hiring PWCs generate practices and risk assessment protocols that are usually ad hoc and 'largely symbolic practice' (Maurutto et al., 2023: 9), rather than an effective reducer of risk, and so represent performative 'security theater' (Zedner, 2009: 22). Risk remains a persistent primary factor in employers' attitudes and assessments of applicants with convictions that negatively impacts their likelihood of successfully gaining employment (Agan and Starr, 2017; Sugie et al., 2020). As discussed, certain offences have been identified as increasing employers' disapproval such as violent, sexual or some drug-related offences, while trust has been identified as a central feature in employers choosing to hire PWCs (Obatusin and Ritter-Williams, 2019).

In the absence of evidence-based decision-making or assessments of perceived risk, criminal records have developed into markers of negative distinction for employers and, indeed, policymakers (Henley, 2019; Sugie et al., 2020). Far from recognising PWCs as nuanced, complex individuals, their records become their defining characteristic and an unshakable attribute that shapes their pathways to and through employment, including progression and promotion within organisations (Adams et al., 2017; Corda, 2023; Cundiff, 2016; Pager, 2003). Perceptions of risk persistently impact the lives of PWCs while being inaccurate in premise and application (Tynan and Stacey, 2021). As will be discussed further in the following sections, empirical evidence on desistance and recidivism demonstrates that without new convictions in the intervening period, previous convictions are no longer predictors of future criminal offending (Maurutto et al., 2023).

In addition to risk and fear, trust is elaborated in the literature as a concern for employers (Haslewood-Pócsik et al., 2008; O'Neill, 2018). Considerations of who is trustworthy and/or deserving of trust is manifest in formal and informal, and conscious and unconscious interactions, policies, and practices (Bushway et al., 2007; Peleg-Koriat and Weimann-Saks, 2021; Sugie et al., 2020). Garland (2001: 180–181) noted that "the assumption today is that there is no such thing as an 'ex-offender' – only offenders who have been caught before and will strike again. 'Criminal' individuals have few privacy rights that could ever trump the public's

uninterrupted right to know". The distinction between diverse marginalised groups and PWCs lies in the moral censure and resulting diminution of status and rights. Put simply, there are 'complex social processes of meaning-making' (Henley, 2019: 3) that construct PWCs as less deserving of equality and fairness in policy and practice, not least stemming from the belief that they have been forfeited by their offending behaviour (Henley, 2022; Pijoan, 2014).

Stigma and shame, combined with the burden of their past and constant fear of disclosure, have profound impacts on PWCs (Evans et al., 2019; Goffman, 1963; Maruna, 1999). Redemptive narratives (Maruna, 2001) are developed over many years but are not immune to setbacks and benefit from key protective factors (Stone, 2016). Stable housing and gainful employment provide 'hooks for change' (Giordano et al., 2002) to build strong bases for PWCs to reintegrate into society, but their acquisition also operates as key milestones of progression (Brown, 2018; Healy, 2017; Houses of the Oireachtas, 2019; Ó Loingsigh, 2004; McNeill and Graham, 2018).

Policy in Ireland, Europe, and Internationally

Criminal Background Checks (CBCs)

In Ireland, under the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016 (NVBA), Garda Vetting is conducted for those who are carrying out work or activities which involve access to, or contact with, children and/or vulnerable persons. An Garda Síochána plays no role in the decision-making process, rather they provide details of a person's criminal record, including any pending prosecutions, within or outside the state. However, section 14(1) highlights that the enquiries extend beyond a criminal record to include any 'specified information relating to the person' (NVBA). Further, section 14A(1) highlights that all convictions will be disclosed unless, if generally holding one conviction, the person 1) was at least 18 years old at the time of the offence, 2) did not commit an excluded offence, 3) the conviction is at least seven years old, 4) the person has served or complied with any sentence imposed, or order made by the court (NVBA) Section 14A(4) highlights the exceptions to the general one-conviction rule.²

In Europe, and internationally, several forms of CBCs exist. While there is a widespread consensus

that CBCs in American jurisdictions are unmatched due to their availability through public and private platforms (Jacobs, 2015; Corda, 2018; Lageson, 2020), recent research has challenged this assumption, highlighting how Europe's 'sacred protection of privacy rights' is contradictory (Corda et al., 2023:9). There is evidence of the rise in CBCs for non-criminal justice related matters in the US (Corda, 2018; Rovira, 2023) and Canada (Maurutto et al., 2023), and this increase is also exemplified in European jurisdictions (Larrauri Pijoan, 2014a; Kurtovic and Rovira, 2017; Henley, 2019; Rovira, 2023). The establishment of the European Criminal Records Information Service (ECRIS) in 2012, a decentralised system obligating all Member States to provide criminal record information of its national citizens to one another on request, has also increased the checks for non-criminal justice related information (Henley, 2019; Commission of the European Communities, 2020).

While US states such as Florida have an open record policy, allowing unrestricted access to criminal history information (Corda, 2018), like Ireland, the general practice in Europe is that the employers do not have direct access to CBCs (Boone, 2011; Larrauri, 2011; Herzog-Evans, 2011; Morgenstern, 2011; Gov.UK, 2023). Regarding the scope of CBCs, in continental Europe, employers are generally unable to conduct a CBC unless a specific law authorises it (Larrauri, 2014b), such as mandatory CBCs for public sector employment in jurisdictions such as France (Herzog-Evans, 2011) and Spain (Larrauri, 2011). Nevertheless, there has been a shift in this phenomenon as the EU Directive 2011/93/EU on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography (2011), requires those with convictions for sexual offences to inform employers of relevant convictions when working with children, has been transposed into law in most EU Member States. Consequently, this enables private employers to request CBCs during the hiring process (Larrauri Pijoan, 2014a; Rovira, 2022). Like Ireland, checks by public and private employers are presently undertaken for those working with children or vulnerable groups in Germany (Morgenstern, 2011) and the Netherlands (Boone, 2011). Extending beyond checks pertaining to working with vulnerable persons, the UK's enhanced checks under the Disclosure and Barring Service (DBS) (Larrauri, 2014b) and France's Bulletin 3 check under *Article 168* of the Penal Procedure Code (2000)³ offer a wider scope for private employers to access conviction information.

2 As this does not apply to offences under the Road Traffic Acts 1961 to 2014 (except for section 53(2) of the Road Traffic Act 1961), under section 37A of the Intoxicating Liquor Act 1988, and under section 4, 5, 6, 7, 8, 8A(4), or 9 of the Criminal Justice (Public Order) Act 1994 (Law Reform Commission, 2022).

3 Bulletin 3 contains sentences of 2 years of imprisonment or more, and sometimes shorter imprisonment sentences if the court has decided it was necessary, along with sentences which prohibit certain professional activities. This only gives information on the nature of the sentence, not the offence.

While all unspent convictions are generally disclosed in CBCs in Ireland under the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, and in the UK under the Rehabilitation of Offenders Act 1974, there are certain variations of the timeframes and levels of convictions included on CBCs in various jurisdictions (Morgenstern, 2011; Herzog-Evans, 2011; Boone, 2011). A particularly promising practice is the emphasis on relevancy in several jurisdictions through limiting the disclosure of offences to those relevant to the specific type of employment (Morgenstern, 2011; Ministry of Justice and Security, 2023). Specifically, the Netherlands' 'Certificate of Good Conduct (VOG)⁴' only discloses convictions that pose a risk to the position or purpose for which you are applying (Boone, 2011; Ministry of Justice and Security, 2023). While offering the employee this degree of privacy has been welcomed (Henley, 2019; Boone, 2011; Boone and Kurtovic, 2015), there remains concern pertaining to whether the vetting agency is best placed to make this decision for a vast number of companies (Boone and Kurtovic, 2015).

Worryingly, CBCs have expanded beyond previous convictions in some jurisdictions to include various forms of contact with the police and police records (Maurutto et al., 2023; Larrauri, 2014b), including instances of victimisation in the UK (Larrauri, 2014b). These take the form of Vulnerable Sector Checks and Record and Federal Judicial Matters Checks in Canada (Maurutto et al., 2023) and Enhanced level checks in the UK (Larrauri, 2014b). In both jurisdictions, these checks offer the police discretionary measures to disclose further information (Larrauri, 2014b; Maurutto et al., 2023), such as non-conviction disposition information in Canada (CCLA 2014 in Maurutto et al., 2023). Moreover, recent research draws attention to the 'commodification of criminal records' (Corda, 2018:241; see also Corda and Lageson, 2020; Lageson, 2020). It has been identified that US-style commercial background checking companies, which sell criminal record information, now exist in Europe under the promotion of public safety (Corda and Lageson, 2020; Lageson, 2020). Well-known companies include LaxBase.ie in Sweden (Jacob and Larrauri, 2015) and InstantCheckmate.com in the US (Corda and Lageson, 2020). While these websites assert that the information they provide cannot be used for decision-making, they have no practical oversight pertaining to how the information is used (Corda and Lageson, 2020).

Legislation

In the early 2000s, there was an emerging consensus in the Republic of Ireland about the lack of rehabilitation law for those who committed offences as adults and the necessity for some form of spent convictions system (Children Act, 2001 (s.258); National Economic and Social Forum, 2002). In 2007 the Law Reform Commission issued a report supporting a spent convictions policy in 2007, stating 'the safety of the public can be adequately ensured where a spent conviction scheme is in operation'.⁵ Belatedly, the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 was enacted with the intent to operate as a rehabilitative tool for individuals, whereby previous convictions may become spent or removed from the record in certain circumstances. Section 5(2) asserts that a minimum of seven years must have passed since the effective date of the conviction, under section 4(1)(b), crimes tried in the Central Criminal Court are excluded and, as an outlier in Europe (Houses of the Oireachtas, 2019), under section 5(3), there is an arbitrary cut-off at one offence that may become spent, excluding certain public order or minor motoring offences. This is limited to a 12-month or less custodial sentence, or a 24-month or less non-custodial sentence under section 5 (Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016). The 2016 Act has been repeatedly criticised for its limited scope (McIntyre and O'Donnell, 2017; Houses of the Oireachtas, 2019) but there is hope it will be extended and amended, adopting a fairer approach and a principle of proportionality, within the Criminal Justice (Rehabilitative Periods) Bill 2018 (McIntyre and O'Donnell, 2017) if it is enacted.

The US has generally had fewer and weaker provisions for legal rehabilitation (Corda et al., 2023), while European and other international jurisdictions are more inclusive. Convictions may also become spent, sealed, or expunged in the UK (Rehabilitation of Offenders Act, 1974), Spain (Criminal Procedure Act, 2016), France (Penal Code, 1994), Canada (Criminal Records Act, 1985), and Germany (BZRG, 2021). While the UK (Rehabilitation of Offenders Act, 1974), Ireland (Criminal Justice (Spent Conviction and Certain Disclosures) Act 2016), France (Herzog-Evans, 2011), and Spain (Criminal Procedure Act, 2016) allow automatic rehabilitation after a certain period, in Canada individuals must apply to the Parole Board (Criminal Records Act, 1985). Distinct

4 Verklaring omtrent het gedrag (VOG)

5 The draft Spent Convictions Bill 2007, the first of its kind, was introduced in 2007. The Bill was reintroduced under a successive Government as the Criminal Justice (Spent Convictions) 2012. The Criminal Justice (Spent Convictions and Certain Disclosures) Bill was passed through both House of the Oireachtas in 2016, albeit much more conservative than when it was originally introduced to the Houses.

from Ireland's blanket seven-year rehabilitation period under section 5(1)(b) of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, other jurisdictions tend to differentiate rehabilitation periods depending on the offence and the sentence (BZRG, 2021 [Germany]; Rehabilitation of Offenders Act 1974 [UK]; Criminal Records Act, 1985 [Canada]; Penal Code, 1995 [Spain]), or by the automatic legal rehabilitation process in France, with rehabilitation periods ranging from three to 10 years without further offence (Penal Code, 1994 (Article 113-12 – 113-17)).

While promoting legal rehabilitation, France (Penal Code, 1994), the UK (Rehabilitation of Offenders Act, 1974), Ireland (Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016), and Canada (Criminal Records Act, 1985) exclude serious and public protection offences, particularly crimes of a serious sexual nature. However, Germany allows sexual offences to be removed from CBCs after 10 years (Morgenstern, 2011) while all convictions can become sealed in Spain (Penal Code, 1995 (Article 136.2)). France, an outlier, allows for a rehabilitation ritual whereby fulfilling conditions, albeit demanding ones, and partaking in a formal judicial hearing results in an official acknowledgment of desistance. This can apply to all types of crimes, even those excluded from automatic rehabilitation, if certain conditions are met (Herzog-Evans, 2011). After these processes, there are instances within several jurisdictions where spent convictions can be disclosed, particularly when applying for several public service jobs in Ireland (Criminal Justice (Spent Convictions and Certain Disclosure) Act 2016) and in Spain (Larrauri, 2011).

Privacy Legislation

Legislation: General Data Protection Regulation (GDPR) and the Irish Data Protection Act 2018 (IDPA)

In the privacy context, specifically, there are other qualifications under the GDPR that limit the context in which people can be asked to disclose their convictions histories. Article 5, Chapter 2 of the GDPR highlights the need for purpose limitation and data minimisation when collecting people's personal data. Purpose limitation asks for a clear reason why you are collecting or processing data from the outset, and states that you can only ask for data if the collection is necessary for the original purpose, that you have the individual's consent, or if there is a clear reason set out in law. Hence, in Ireland and in the EU, only in cases where an employee's role would possibly involve work with children or vulnerable adults should people be asked to disclose their criminal records data. Data minimisation further supports this approach by outlining that an organisation should only ask for information to fulfil its stated purpose, and it

is limited to that purpose. *Article 6* of the GDPR further specifies that if an employer wants to process any criminal convictions data, they must have a lawful basis to do so. There are six lawful bases: contract, legal obligation, vital interest, public task, consent, and legitimate interest.

Unlock (2023) has stated that most employers who are adhering to GDPR guidelines as per Article 6 are likely to rely on consent, legal obligation, and legitimate interest as their lawful basis for collecting criminal records data. Consent is where there is a clear reason why an employee's contract would need an employer to collect criminal record data, e.g., if someone is working with vulnerable individuals. Legal obligation is where the processing is necessary for the employer to comply with the law. For example, in Ireland, any employee who was going to work with vulnerable adults or children must be vetted by An Garda Síochána under the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012–2016. And lastly, an employer can ask for disclosure due to legitimate interest which applies where the processing of data is necessary for the business to function. The employer must be able to protect the data rights of PWCs and the reason why they are asking for this information must be clearly defined. Examples of this could be related to employee monitoring for safety, physical security, and insurance requirements, amongst many others.

In Ireland, the IDPA 2018 and the NVBA 2012-2016 outline national policies related to convictions histories and disclosure. With the NVBA, certain employers have a legal obligation to carry out a standard vetting process (this would include doctors, solicitors, and anybody working with children or vulnerable adults). As part of the Garda Vetting process, an applicant must disclose all convictions. In other contexts, employers can ask individuals to disclose voluntarily, but an employer needs to provide details of their lawful basis for asking and a copy of their privacy policy which should set out the data retention periods and with whom the data will be shared. Further, the amendment of provisions within the EU Commission Regulation 2015/1998 by the EU Commission Regulation 2019/103 introduced 'Enhanced Background Checks' for employees of the Irish Aviation Industry. This Standard Background Check completed by the NVBA is also one element of an Enhanced Background Check completed by the Security Vetting Unit within the Garda National Crime & Security Intelligence Service (GNCSIS) (An Garda Síochána, 2023).

Privacy Concerns

In Europe, punishment should not 'name and shame' (Whitman, 2003), as this infringes on an individual's privacy. This applies in the context

of restrictions on publishing judgments with real names on official websites or through news media and with the dissemination of convictions records (Jacobs and Larrauri, 2011). Additionally, criminal convictions are classified as sensitive personal data under Article 9 of the GDPR and the party responsible for collecting that data (the data controller) has additional responsibilities to safeguard the information. European countries do not allow widespread access to criminal convictions data, and access to this information is typically limited to contexts where necessary (such as an individual seeking employment with vulnerable groups), and then this information is processed by police services or another criminal justice agency. This precedent reflects the belief that an individual, even if they have criminal convictions, should retain all their rights, including their right to privacy (Larrauri, 2011). Individuals should not be treated as second-class citizens or deprived of their rights because they have convictions, and any deprivation of an individual's rights should only, clearly, be imposed by a judge (Larrauri, 2011).

Maurutto et al. (2023) highlight a concerning shift beyond criminal conviction checks in Canada, called Vulnerable Sector Checks (VSCs). These reports are more comprehensive than traditional reports on past convictions and feed into a form of risk profiling on the part of employers as the VSC can include any routine occurrence report by the police, including but not limited to mental health support calls, domestic violence calls, and witness statements (Maurutto et al., 2023). Research focusing on this expansion of criminal checks beyond convictions points to a form of function creep (where initially a technology or tool is introduced for one purpose but slowly becomes used for other reasons) where police services lose control of disclosure and context for information and individuals are at risk of being profiled beyond necessary criminal background checks (Maurutto et al., 2023, Koops and Galic, 2021).

This shift towards a risk-based approach to not only investigating people's criminal convictions history, but any engagement with policing services, goes beyond issues with due process and privacy (Zedner and Ashworth, 2019, Zedner, 2017), but extends to those who could be defined as risky. While there is a legally mandated need to disclose convictions histories, there is no research showing that, after a few years from the last conviction, a prior conviction is a predictor of future criminal behaviour (see Kurlycheck et al., 2006; Blumstein and Nakamura, 2009; Bushway et al., 2011; Sothill and Francis, 2009).

Collateral Consequences

PWCs may experience a 'civil and social death' (Henley, 2018: 76) due to the negative assumption of 'once an offender, always an offender' (Fitzgerald O'Reilly, 2014: 477). These types of challenges are referred to as the 'collateral consequences' of a criminal record. Nevertheless, given the wide-reaching impact collateral consequences may have, this term has been criticised (Earle, 2016; Henley, 2019). The word 'collateral' fails to encapsulate the significance of discrimination post-sentence because it implies something secondary (Earle, 2016; Henley, 2019). In many cases, the penalties PWCs experience may exceed those of the original punishment (Earle, 2016). Thus, discrimination against PWCs should be considered central, rather than collateral, to models of criminal justice pertaining to blame and moral stigmatisation (Henley, 2019).

A central collateral consequence for PWCs is the loss of employment opportunities, as employers are reluctant to hire PWCs (Law Reform Commission, 2007; Uggen et al., 2014; Vuolo et al., 2017; Sugie et al., 2020). Employers assert that their concerns include the perceived risk, the lack of trust (Bushway et al., 2007; Ramakers et al., 2015; Obatusin and Ritter-Williams, 2019), and the fear of liability (Finlay, 2009; Sugie et al., 2020; Haslewood-Pócsik et al., 2008). Further, employers tend to avoid, or demonstrate reluctance to hire people with recent convictions (Fahey et al., 2008; Uggen et al., 2014; Smith, 2021) or serious convictions (Pager, 2007; Uggen et al., 2014; Smith, 2021). Those with violent or sexual offences are usually automatically excluded from consideration (Guguere and Dundes, 2002; Smith, 2021). This is particularly problematic as much scholarship highlights that a lack of employment can lead to recidivism (Law Reform Commission, 2007; Denver et al., 2017), and this has been recognised by employers (Obatusin and Ritter-Williams, 2019).

Emerging scholarship illustrates that *careers*, not just *jobs*, are more likely to positively impact reoffending rates (Gill, 2002; Ramakers et al., 2017, 2018; Barr, 2023). Indeed, Barr (2023) in one example, highlighted that the inability of one woman in the UK to partake in her desired career resulted in unfulfilling employment, which she believed ultimately contributed to her drug relapse and subsequent return to prison. Nevertheless, it is widely assumed, and favoured by employers that PWCs should be employed in 'dirty work' or positions requiring manual labour, rather than 'good jobs' or higher-status positions (Waldinger and Lichter, 2003; Pager et al., 2009; Sugie et al., 2020). Employers reported a higher aversion to offering PWCs positions of a higher status, particularly those positions requiring customer contact (Sugie et al., 2020). Similarly, while research pertaining to this area in Ireland is limited,

existing research has exemplified that PWCs tend to be employed in unskilled, low-paid (Ó Loingsigh, 2004) and short-term employment (Fitzgerald O'Reilly, 2014). Relatedly, further exclusion is apparent as PWCs are generally prohibited from undertaking various forms of public employment in continental Europe (Jacobs and Larrauri, 2013), including Ireland (Houses of the Oireachtas, 2019) and the US (Archer and Williams, 2006).

In response to these challenges, policies such as 'Ban the Box' in the US (Agan and Starr, 2016) and a similar campaign initiated by the national charity Unlock (2022) in the UK have been introduced. These initiatives promote the restriction of screening for criminal records, and this has been widely implemented. While this is a welcome development, emerging scholarship indicates that this may unintentionally exacerbate inequality by utilising other distinguishable factors, such as race/ethnicity or gender, to make assumptions about criminal behaviour in the absence of specific information (Agan and Starr, 2016; Doleac and Hansen, 2016; Vuolo, Lageson and Uggen, 2017). Discrimination is heightened for black males (Lageson et al., 2015; Vuolo et al., 2017), and white males receive 36% more callbacks than black males (Agan and Starr, 2016).

Extending beyond employment, additional collateral consequences pertain to access to insurance (Dale, 1976; Henley, 2018; Maurutto et al., 2023). PWCs may face unjustified increased insurance premiums, have difficulty gaining access to insurance, or experience outright refusal in Ireland (Houses of the Oireachtas, 2019) and the UK (Henley, 2018; Unlock, 2022). Exacerbating exclusion from employment for PWCs, employers have reported higher insurance premiums for hiring PWCs (Gill, 2002), or instances where insurance companies have threatened to terminate coverage if PWCs are hired in Canada (Maurutto et al., 2023). A lack of access to public and stable housing for PWCs has been widely documented in various jurisdictions (Ó Loingsigh, 2004; Archer and Williams, 2006; Brown, 2018; House of the Oireachtas, 2019). Social housing providers are awarded discretionary powers over decisions regarding the provision of housing for PWCs in the UK (Unlock, 2022) and Ireland (Houses of the Oireachtas, 2019), highlighting their ability to apply a blanket ban on PWCs. In Ireland specifically, there is a lack of accountability and transparency surrounding housing waiting lists for PWCs (Houses of the Oireachtas, 2019).

Several authors have highlighted a possible way forward in mitigating the collateral consequences of a criminal record (Chin, 2011; Maruna 2011; Henley, 2019). Indeed, the term 'consequences' is problematic as it infers that this discriminatory conduct automatically follows a conviction (Henley, 2019). Therefore, it has been proposed

that collateral consequences should be incorporated into the sentencing process (Chin, 2011), and into reform efforts to be deserving of a 'rehabilitation' title (Maruna, 2011). Moreover, Henley (2019) suggests four principles for fair treatment of criminal records to be considered after a completed sentence which follow:

- 1) Retraction, which involves drawing back on access to criminal record information following the completion of a sentence to ensure privacy;
- 2) Relevance, which states that less favourable treatment of PWCs will only be permitted where there is a degree of 'relevancy' between the offence and the specific enquiry;
- 3) Recency, which advocates that the age of any relevant offence must be considered as this is likely to be predictive of future reoffending; and
- 4) Redeemability, which requires that no individual should be excluded permanently from the possibility of legal rehabilitation solely based on the nature of the offence or sentence.

Methodology

This section explains the methodological approaches that were used for the data collection and research necessary to compile this report. This research report aims to build the evidence base around employers' attitudes to hiring PWCs in Ireland and about barriers, pathways, and policy goals that will help improve and increase access to employment for PWCs. The research team has run this project alongside another project that focuses on the higher education context, as the two projects run symbiotically, including data collection and certain outputs.

With a specific mind to seek out an approach and model that would be easily implemented into policy actions, as well as scalable and translatable across sectors, we employed a multiple methods approach. All methodological choices involve trade-offs, and thus our approach seeks to balance these against limitations on research participants' voluntary time and the timelines of the project generally. We attempted to produce a research design that would maximise the granularity and diversity of data sources and methods, which included a survey, semi-structured stakeholder interviews, and a participatory symposium. The variation in employing qualitative, quantitative, and participatory methods in a project is proven out in the literature (Clark et al., 2021), with each method chosen by the research team to achieve specific outcomes and outputs for the project, which will be further outlined below. The researchers also employed a 'peer' research assistant with lived experience in post-conviction employment markets and the associated barriers who helped analyse data. The research project was approved by the Maynooth University Ethics Committee in March 2023 prior to any primary research collection commencing, with desk-based research in streams one to three (below), informing data collection methods in streams four to six (below).

The research was carried out from January through July 2023 in six main, but overlapping, streams:

1. desk-based literature review relating to employment outcomes and practices for PWCs in Ireland and internationally;
2. collating Irish employment and privacy policies as they relate to PWCs;
3. mapping and analysis of relevant legal and policy frameworks;
4. surveying employers and employees;
5. interviewing stakeholders; and
6. hosting a participatory symposium with stakeholders.

Each stream of research, but especially streams one to three, informed later stages of data collection so the project built on itself naturally throughout its duration. Through mapping academic literature followed by employment policies, privacy legislation, and legal frameworks related to PWCs accessing employment, the research team were better able to shape the survey and interview questions, which then helped give shape to the work that took place during the participatory symposium.

The survey data speaks to the broader trends related to attitudes in hiring PWCs, what the process looks like, and how it might be changed. This survey was helpful in allowing the research team to make evidence- and experience-based recommendations. One limitation of the survey that if an individual closed their browser or left the survey without getting to the final pages, ethics guidelines stipulated their responses could not be included in the researchers' analysis. The interview data gave the research team insight on the type of questions to ask employers and PWCs about accessing employment, which gave us access to individualised experiences; this data is perhaps the richest component in terms of hearing the personal stories of employers and PWCs. Interviewees were contacted through snowball sampling whereby interview participants were asked to identify other possible participants with experience in the area. The researchers used their existing networks with organisations who work with PWC including HEI Access, Academia, Probation Service, Community Organisations, and Social Enterprises to identify and recruit prospective interview participants. The inclusion criteria for employers aimed to gather data from a range of employers, in small, medium, and large businesses, and staff, working at basic grade, management and recruitment levels of the organisations. In terms of format, interviews were carried out both online and in person depending on what was most convenient for the interviewee. Online interviews took place via MS Teams, and in person interviews were carried out in location on Maynooth University campus or

at another location agreed upon by interviewer and interviewee. The average interview length was 45 minutes, and they were recorded to be transcribed later, and then coded for data analysis. The questions posed centred on the participants' experience of employment for PWC and included questions, where applicable, on themes such as (but not limited to) policy-making, working practices, barriers to education/employment, best practice, stigma, resilience, and risk assessment.

Finally, the participatory symposium allowed the researchers to engage key stakeholders in a workshop-like setting run by an expert facilitator where they could help assess the current context and help make recommendations for policies to increase access to employment for PWCs. PWCs, Higher Education Institute (HEI) staff, and employers were all brought together to work in groups to identify challenges to access for PWCs and the needs and responses that would help overcome these challenges. The participatory symposium was run as a co-design workshop in Maynooth University and took place as a half-day event based on experience and collaboration. Therefore, we worked on recommendations and solutions with individuals rather than for individuals. While we presented some findings to help prompt discussion, all participants worked together to identify key challenges they saw for PWCs in finding fulfilling employment, and in overcoming uncertainty around hiring processes. Dr. Threase Finnegan-Kessie (Department of Design Innovation, Maynooth University) worked with the research team to facilitate the participatory symposium and ensured that individuals collaborated creativity. Due to the sensitive nature of the topic and many individuals with lived experiences participating, Chatham House Rules applied for this event.

Sampling for the three data collection tools constitutes an important facet of the study. The survey data comprised 19 complete responses from PWCs, nearly three-quarters (n=15) of whom identified as men while four identified as women. The age groups were heavily represented in the 35-44 (n=10) followed by the 45-54 group (n=4). Regarding nationality and ethnicity, the participants identified overwhelmingly as Irish (n=18) and White Irish (n=18). Incomes were distributed across the range up to but not above €100k, with €0-20k (n=6) and €30,001-40k (n=7) most represented. Within this cohort, 14 had never worked in the criminal justice system while the four had included prison teachers, resettlement coordinators, project leaders and mentors. We received 36 complete responses from employers, three quarters of whom were women (n=26). Age profiles were distributed widely with one third 45-54 (n=12), a quarter 35-44 (n=9), one in five were 25-34 and six respondents were 55-64 with

only two being over 65. In terms of nationality and ethnicity, the overwhelming majority identify as Irish and White Irish (n=30) with two respondents from the UK, and one each from Brazil and Germany while four participants identified as 'Other White' and two as 'Other (inc. Mixed Background)'. Of the respondents, only three had experience related to the criminal justice system which included roles as a district court judge, an organisation worker assisting PWCs, and a youth justice worker. Incomes of €50-70k were most represented (n=11) with five respondents in the highest income bracket of over €100k. eight respondents earned €70-100k and six were paid €30-40k with two falling within €40-50k leaving only one earning under €20k and €20-30 respectively.

The interview sample comprised 11 PWCs, with 10 males and one female. Despite every effort to recruit additional female PWC interview participants, one was successfully completed. Conversely, of the nine employer participants, eight were female with only one male in organisations ranging from small through medium (≈1k staff) to large (≈13k staff). Three interviews were conducted with associated stakeholders to gain insight into the issue more broadly.

The participatory symposium welcomed 14 participants, of which six were male and eight were female. Regrettably, the study is limited in insights into race and ethnicity as all but one of the participants were White Irish. These limitations acknowledge that qualitative research does not aim to be representative but gains insight through the in-depth analysis of individuals' experiences and perceptions.

The data were critical in identifying variations in attitudes, policy, and practice relating to hiring PWCs. Across the survey, interviews, and participatory symposium, it was made clear that the purpose of the discussion was to capture experiences. This was further reflected by the research team's effort to engage different stakeholders across the different methods of data collection. The research team used Qualtrics and SPSS for basic quantitative analyses of survey data, while interview data was analysed using NVivo 12 (qualitative) software. Once transcribed, the interviews were coded and subjected to thematic analysis. The participatory symposium produced its own recommendations. All findings were drawn together to support the research team in synthesising the data for the final report to make forward-thinking, evidence-based policy recommendations.

Findings

Risk

The precise definition or perception of what constitutes risk, or a 'risky' applicant, was not clear across the dataset. Employer participants reported various potential concerns about employing PWCs while PWC participants' experiences of being deemed a risk were often vague and undefined. Safeguarding staff and/or clients or customers was the primary consideration of the employer participants. However, the measurement of risk and its mitigation were sources of ambiguity, as were the legal requirements and/or parameters demarking them. This reflects a broad spectrum of knowledge and (un)certainty by employers and PWC as will be discussed further below.

The employer participants contributed their perceptions of hiring PWCs while none identified as having specific policies targeting this cohort or having knowingly recruited PWCs. In this context, employer participants articulated a pattern of concerns regarding PWCs as employees. As discussed in the Literature Review, many of the employer survey respondents' concerns are presented across multiple variables in Figure 1 reflect those in international scholarship (Lukies et al., 2011; Pager and Karafin, 2009; Pager and Quillian, 2005).

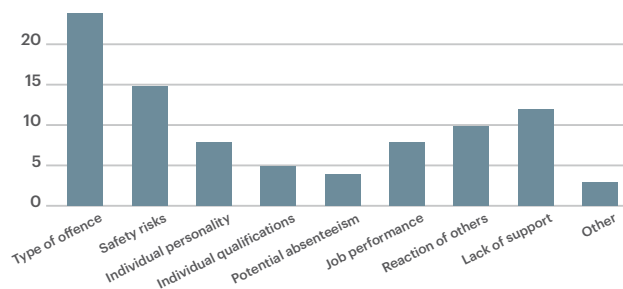


Figure 1: Employer Concerns on Hiring PWCs

An area of defined risk for employers that we spoke to was the type of offence and if it directly related to the sector and role, for example financial crimes such as fraud and embezzlement (in roles where PWCs would be handling or processing money), theft (construction), and crimes against the person (healthcare). Participant 14, who works in a recruitment agency, pointed to how a variety of requirements were favoured by US corporate clients but were not always permissible due to GDPR.

Employers contended that there was an absence of clear criteria, beyond the Garda Vetting process, and measurements of risk available to them when hiring PWCs. There was a large variance with this issue between large organisations versus

small businesses with larger organisations often outsourcing their background checks to another firm and not thinking much about the process or outcomes. Conversely, small businesses relied on disclosure and made assessments based on this disclosure. No clear criteria or practice seemed to apply across the employers we spoke with. Contrary to Loewenstein and Mather's 'wild fluctuations' (1990: 156), a distinct pattern of establishing hierarchies of offence emerges from our analysis.

A 'hierarchy of offences' featured heavily across the qualitative data, as outlined below:

If I'm being brutally honest, I think reputationally you wouldn't want. [...] a well-known previous offender to be that person that I'm trying and testing the water with [...] So, the nature of the crime is definitely something.
(Participant 14, Employer)

Both employer and PWCs participants referred indirectly to this concept in discussions on risk and associated considerations. Employer participants asserted a clear delineation between less serious offences, most often exemplified as road traffic offences, and more serious offences with a particular focus on violent offences and/or sexual offences. Asked if people with violent convictions pose a risk to other staff, surveyed employers' responses were dispersed ascending and descending almost evenly either side of the primary neutral response (with slightly higher strongly disagree response) as illustrated in Figure 2.

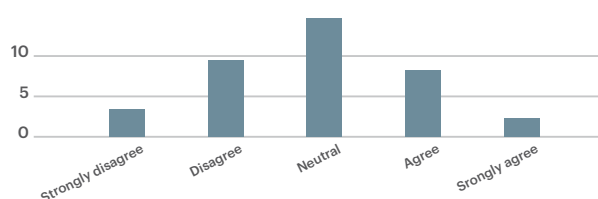


Figure 2: Employer Sentiment on Risk to Other Staff

PWC participants expressed overlapping conceptualisations of a hierarchy of offences and its relationship to risk. A more nuanced articulation was shared by Participant 6 with the inclusion of structural causes of crime while adhering to specifications of serious offences asserted by employers.

It's the nature of offences, [...]there's kinda criminal offences that are social in nature and there's kinda personal offences like so if it's sex offences, [...] they probably do need to stay on it because, it's about the risk, [...] risk assessment... that's a legitimate thing.
(Participant 6, PWC)

Employers were working on the 'gut' feeling of what was more dangerous. However, the level of risk or danger and who it may be directed at was not clear. It is uncertain whether the fear was that PWCs for a serious offence will commit an offence while employed in the organisation, against a colleague or the employer, against a customer/client, or commit an offence external to the organisation.

I suppose protecting your own employees, and if somebody had a conviction that [...] could be interpreted as not being responsible or taking care of your employees or protecting them. [...] I think kind of violence-based crimes will be [...] hard to get your head around necessarily. And theft probably [...].

(Participant 26, Employer)

Some employer participants in the interviews downplayed considerations of risk regarding reputational damage but this consistently featured in discussions of risk and potential integration of PWCs into organisations. When employers were asked if they were concerned about the reactions of other staff members, 41% of employers (n=15) said their staff would not be predisposed to negative reactions to PWCs as colleagues. However, 34% (n=11) remained neutral and a significant percentage (31% (n=10)) agreed or strongly agreed that staff would have a negative reaction to PWCs. Regarding concerns about customers' reactions to PWCs, only one-sixth (n=6) were neutral. Consequently, 44% (n=16) disagreed or strongly disagreed but nearly four in 10 agreed or strongly agreed with having concerns about their customers' reactions. The nub of the issue regarding this finding of perceived risk-averse hiring of PWCs (Sugie et al., 2020) is articulated somewhat fatalistically by Participant 8.

People may say, Joe, "oh, you know, [...] we want to give them rehabilitation, give [them] a chance" and that. But when it comes to if they had a business and they had two people there, you know what, why would they take the chance?

(Participant 8, Employer & PWC)

A PWC survey respondent asserted that, "Criminals are viewed as bad people. Not people who made mistakes". This characterisation frames much of the perceptions and (sometimes unspoken) discourse around hiring PWCs. Concerns about reputational damage, integration and re-offending are infused with the sense that PWCs are morally dubious, are a potential source of taint for employers, organisations, staff and customers. Risk, therefore, is permeated by a form of moral censure of PWCs which undermines considerations of rehabilitation, reintegration, and inclusion throughout the data. This concept will be further elaborated in the sections on disclosure, privacy, and opportunities that follow.

PWCs participants reported their experiences of positive and negative engagement with prospective employers' approaches to their riskiness related to their conviction(s). Those with considered, contextualised and discursive policies and practices were contrasted with those that were rigid and lacking transparency.

They also have a framework in place where the risk is assessed on the time, [...] like it has happened in the previous seven years, fourteen years, [...] it's time dependent and then they can gauge the risk through that and the reason why you give. ...So that conversation, I think it makes it a lot more workable. It adds a lot more colour to it than just like, "right. Okay. Yeah. It's a yay or nay".

(Participant 4, PWC)

Discretion remains the primary arbitrator of risk and practice whether there are policies or not. Aligning with the existing scholarship (Hoffman et al., 2018; Tynan and Stacey, 2021), implementation of policies persistently relies on interpretations of risk and measurements thereof while the absence of policy often requires solely discretionary decisions.

"Proof of rehabilitation would be handy but is impossible, general vibe of them tells enough"

(Survey Respondent, Employer)

There is evidence of what Scheman (2020: Online) calls 'therapeutic trust' – where despite doubt about one's trustworthiness, "trust is placed in someone in the hope that they live up to it" which imbues 'second' or 'fair chance' narratives. According to Bok (1978: 31), "whatever matters to human beings, trust is the atmosphere in which it thrives".

The perceptions of risk that permeate all discussions and considerations of employment for PWCs with a consequence that disclosure of convictions is often considered the remedy (or antidote). However, despite some awareness of GDPR, considerations of PWCs are often infused with a sense that risk may be mitigated by disclosure and this right to know (primarily attributed to safeguarding staff, clients, and reputation) outweighed the rights to privacy of all applicants but particularly PWCs. This reflects the literature whereby PWCs are implicitly or explicitly deemed to have forfeited some or many of the rights afforded to the general population (Bradford-Clarke et al., 2022; Henley, 2018; Pijoan, 2014). PWCs participants felt this, and it contributes to feelings of isolation, stigmatisation, and exclusion. PWCs queried the subjectivity of their designation as 'risky' with Participants 4 suggesting that their punishment continues if they carry the burden of such designations.

20 years later [...] it's still hanging around your neck. It's [...] disillusioning even in that sense

of they said...this is the punishment, but it's not really [...]. It wasn't just 12 months' probation... that's the start of the punishment. [...] It's like it's still there. You're still getting punished for it, you know?

(Participant 4, PWC)

The employer participants were certainly open to the idea of integrating PWCs into their respective workforces but the legislative, local policy and practical 'know-how' were perceived to be lacking. Guidance and resources to inform their pathways to do so were foremost in their minds as they sought to approach this issue and/or proceed with best practice in the area. For PWCs participants, being deemed indefinitely and/or perpetually risky impinged upon cornerstones of their progress and survival such as trust and as Baier (1997) contends, people cannot flourish without trust.

Our research shows that definitions of risk, such as they are, rest upon social constructions rather than evidence-based criteria and reflect the literature in which fear and its relationship with trust remain the underlying framework for approaches to PWCs as applicants. Risk is inexorably linked to fear and trust. While we do not advocate 'blind' trust, we suggest that broad policies reliant on risk paradigms increase the likelihood of exclusionary outcomes for PWCs. Therefore, Garda Vetting notwithstanding, we argue that PWCs should be afforded the same rights as general applicants and/or employees. Trust is often offered conditionally and PWCs experience it as being accompanied by further conditions and feel it may be withheld from the outset and/or is never far from being withdrawn. The philosopher Onora O'Neill (2020: Online) contends that "to place and refuse trust intelligently we must link trust to trustworthiness, and must focus on evidence of honesty, competence and reliability" but PWCs participants feel that they must achieve impossibly high thresholds to overcome presumptuous risky subjectivities.

Disclosure, GDPR and Privacy

Disclosure

Throughout the study, participants often presented the antidote for risk as sharing as much information as possible – either through formal or informal disclosure requirements. Of the employer survey respondents, half (n=18) reported operating specific convictions policies and/or obligations for PWCs to disclose their status in the recruitment process. This is echoed by the number of businesses stating that risk assessment protocols are in place for PWCs. Two employers required disclosure on application and at interview,

respectively, while four did so upon starting the job and eight at an unspecified other point of the job. Often PWCs do not feel good about disclosing their conviction(s), with nearly three in four (74%) PWC survey respondents reporting this. However, 74% also stated that they disclose their convictions(s) when asked, with only 16% reporting non-disclosure. PWC participants across the dataset were not inherently resistant to disclosure requests but felt that this should be warranted, as seen in the following quotation.

Do I think they should be allowed ask? If it's relevant. If there's some sort of like risk factor involved. It shouldn't be just a blanket.

(Participant 4, PWC)

The relevance of an offence is codified in GDPR, but PWCs in this study were generally concerned about the perceived overemphasis on their conviction to the detriment of due consideration or valuation of their skills, merits, and talents. Put succinctly:

We never talk about talent; we only talk about what people have done.

(Symposium Participant 1)⁶

Half of the 36 employers surveyed had specific convictions policies and/or obligations for PWCs to disclose their status in their applications. This is echoed by the number of employers with risk assessment protocols for PWCs (18 [50%] with protocols, 11 [31%] unsure and seven [19%] with none).

Of the 36 employer respondents, 14 stated that they first asked individuals to disclose their convictions during recruitment while 14 said they did not ask. Another four respondents were unsure. The specific stage at which people are asked about their convictions varies, as represented in Figure 3 below.

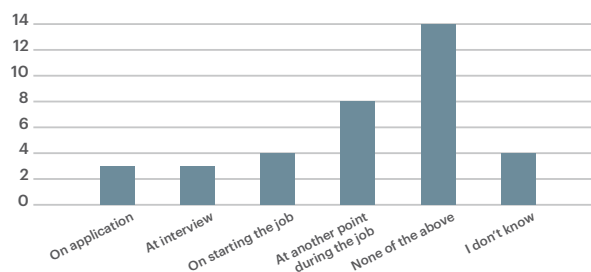


Figure 3: First Request for Disclosure

Most businesses surveyed who do ask for conviction do so if Garda Vetting is required, on offer of a job, and/or when references are being checked after the interview stage. While the survey did not capture the reasons that respondents did not require disclosure, the interview data was

⁶ The Participatory Symposium adopted the Chatham House Rules and therefore, the contributions can be reproduced but will not be attributed to identified individuals. (see <https://www.chathamhouse.org/about-us/chatham-house-rule>)

revealing in this regard. Employers' approaches can be categorised into 'passive', 'active' and 'hybrid' policies. Put simply, employers with passive non-disclosure policies had not considered doing so and those with active policies had but decided not to do so. The decision not to require disclosure stemmed from inclusive ethos and appreciation of GDPR compliance.

Among the PWC Participants, the reported awareness of specific convictions policies or obligations to disclose in job applications was 74% for all respondents. Nearly two-thirds of the PWCs participants reported being asked to disclose when applying for a job. For these 12 who were asked to disclose, five (42%) were asked on application with a further three (25%) being asked at interview. Thereafter, one respondent was asked on starting the job with three asked at another point in the employment. Delving deeper, we asked PWC survey respondents to report all the occasions where they were required to disclose their convictions history with revealing results. Nine were asked to disclose on application and nine at interview with six asked upon starting the job and five at another point in the job. The multiple points of requested disclosure for PWCs means that successfully passing the application or interview stage does not guarantee preclude more disclosure requests.

Being subject to disclosure or the possibility of it causes anxiety and distress for many PWCs (Henley, 2014; Rovira, 2022) 90% of PWCs surveyed expressed 'worry about disclosing their experience with the criminal justice system' (32% agreeing and 58% strongly agreeing) with one respondent adding, "The main hurdles for me with job applications have been anxiety pre-application". This is borne out in the interviews with reports of distress causing inconsistent and potentially problematic choices within the application processes, such as those shared by Participant 1.

You always had the idea that they could find out somehow, and I wasn't really sure at the time, but I would lie [...] [in] some of them and I wouldn't on others.

(Participant 1, PWC)

Moreover, the trauma of negative experiences may have long-lasting impacts as reported by an anonymous PWCs survey respondent's stark contribution, "It's been over 30 years since my last conviction and the prospect of an interview still haunts me as I have had bad experiences before".

The anxiety evoked by the Garda Vetting process ranged from minor to visceral. Participants' varying degrees of certainty regarding the scope and eligibility of Garda Vetting procedures generated a sense that it may constitute "an impediment to [my] career progressing"

(Participant 6, PWC). Combined with employers' varying degrees of certainty but crucially, their obligations, and power to interpret and decide how to deal with Garda Vetting data findings was concerning.

I've had to have Garda clearance twice for two separate organisations. So, I think for [redacted, community sector] and then [ibid] and nothing has come back. But I would have some low-level anxiety around that and be uncomfortable if that came back to the management just because of the contrast between the previous stage in my life and where I am presently and having to somehow justify that or explain it.

(Participant 6, PWC)

Justifying disclosures and interpretation of the disclosed information

Justifications for disclosures stem from conceptualisations of risk as previously discussed but employers and PWCs raised various justifications, their merits, and the interpretation of the disclosed information across the dataset. Both employer and PWCs participants coalesced around a temporal element of conviction records. The length of time since a conviction was raised as a critical factor in a person's desistance journey but also a reasonable measure of their conviction's relevance to the person's contemporary self and suitability for the role.

I guess you have to take into account how long it is since the conviction was gained. [...] I feel that what you would say is probably the main concern will be the risk of somebody reoffending.

(Participant 26, Employer)

Despite participants' broad agreement on the temporality of convictions and what this represents for the individual, such interpretations are not a given. The excerpt below demonstrates the inconsistency in the interpretation of disclosed information and synthesises many of the intersecting barriers that shape, often narrowing, opportunities, adaptations, and outcomes for PWCs.

I think unless you've got a conviction where you represented a danger to the safety of the public. [...] Like I've a friend who has a criminal conviction for selling drugs in the 90s. He was a drug addict at the time, and he had 20 years clean, and he went for a job with An Post and they didn't give it to him because he had a criminal record. Now he is 20 years clean, working in services, working in drug services as an advocate for drug addicts, for prisoners. And then they denied him on the grounds that he had committed this crime in the 90s. And I really think that it is none of their business.

(Participant 1, PWC)

Inconsistencies in interpretations of disclosed information contribute to the lack of transparency and/or clarity of the parameters, justifications, and motivations for activating the Garda Vetting process. Participant 4 queried this with a particular focus on its potentially broad remit.

It felt to me as if it's a... roundabout way of just enabling employers to find out your history under the guise of some sort of legislation that promotes child protection and vulnerable people. It's like anyone can find out. I could have a clothes shop and go through Garda Vetting, and say, "Oh well, it's to protect the customers, just to find out if you ever robbed like €100 on your boss 20 years ago" and just say, "oh, well, this is why I'm doing it".

(Participant 4, PWC)

The practices of employers regarding disclosure policies and Garda Vetting are complex and characterised as "a potential banana skin" (Participant 26, Employer). Larger organisations often outsource recruitment and/or screening or data management services. Some employers would prefer not to know but as previously discussed, the predominance of a risk paradigm leads to fears that if something happened, they would face questions about their policies and practices to screen their employees and safeguard their staff/clients. Moreover, even if no adverse events occur, as such, if they became aware of a conviction, there was a genuine sense of uncertainty about what to do, if anything. Employer Participant 14 in a large recruitment agency expressed their concerns specifically frankly as follows.

But if we were asking [about convictions] and we do, we will in time be asking that, we will work on the wording of that question, well let's say they do disclose, [...] "I actually have a spent conviction". Okay, but what do we tell our recruiters to do with that information and how does that impact their bias then moving forward? And then there's the whole piece of "well, do I tell their client or do I blindside my client?" And it's very, very very complex.

(Participant 14, Employer)

It is notable that even with highly developed and diversified organisations, policy and practice in this area often fell short while presenting little guidance in a range of events. Rather, they relied upon ad hoc and highly discretionary solutions. Employer Participant 16 detailed the lack of guidance and the rarity of encountering complications arising from disclosure policies and practices in their law firm. The absence of experience with an employee's disclosure but concerns about legal obligations, sectoral-heightened reputational damage, and duty of care to the employee combined to result in an

intervention involving investigation and direct interaction with the employee in question. Empathy and understanding shaped a favourable resolution but there was no policy underpinning the process. The employer participant revealed the complexity of engaging with this issue despite its relative rarity in an information and guidance vacuum. Even though there is legislation and clear guidance regarding GDPR, employers' understandings, implementation, and compliance with GDPR is nuanced and requires examination in the following section.

GDPR

GDPR has entered the common parlance and imagination. Perhaps consequently, the awareness of GDPR and its obligations captured in the data were relatively well informed. As outlined in the Literature Review, the key articles are Article 5, Chapter 2 (need for purpose limitation and data minimisation when collecting people's personal data) and Article 6 (requirement to satisfy one of six legal bases to process criminal convictions data).

The importance and implications of GDPR for hiring PWCs was explicated effectively by Participant 14 from a large recruitment firm. The equal billing of respecting the rights of the PWCs while avoiding a breach is revealing, while the absence of a policy in place for dealing with PWCs is telling considering their links across multiple sectors and the volume of staff and clients.

Well, GDPR is in everything that we do. No one [...] wants a breach. We have an excellent, we've our DP [Data Protection] Team [...], we'd involve them in anything that we would need to. Obviously, prior conviction would be classified as special category data so, [...] if someone was to disclose that we need to figure out [...] where [are] we storing it? What are we doing with it? Who needs to have access to it? [...] you really need to have a data impact assessment completed in order to understand what we do or where we store and all that. But we don't currently have that in place at all. It's just more we deal with it if it if it arose, but we're not asking it. So, we don't because we're not asking it then we're not, we don't need to store.

(Participant 14, Employer)

It is noteworthy that the "we're not asking" in the above excerpt refers to a blanket policy requiring applicants to disclose but elsewhere in the interview, Participant 14 outlines the specific sectors where disclosure policies are required by their clients including the health sector.

Thirty employers surveyed agreed or strongly agreed that they were aware of how GDPR impacts their organisation's recruitment policies and practices. However, this did not bear out when, in accordance with GDPR, they were asked if PWCs should only have to disclose when working with vulnerable populations or when they have violent convictions. The figure below demonstrates that nearly two-fifths of the employer survey sample do not agree with a GDPR-compliant approach in all cases, specifically when violent offences are involved. This reflects the previous discussion of risk and disclosure, and it is reasonable to assert that this further supports the conception of a hierarchy of offences.

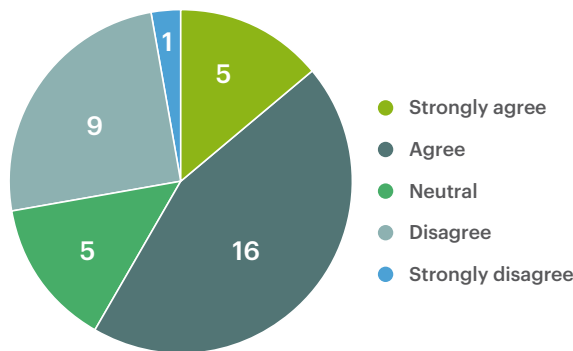


Figure 4: Employers Who Believe in Disclosure for Working with Vulnerable Populations or When They Have Violent Convictions

GDPR was often given due deference in larger companies, but the scale and organisation meant that often GDPR was the remit of a specialised section or team within the company. Thus, the responsibilities and associated considerations of GDPR were often taken out of the hands and perhaps consciousness of individual staff members. Moreover, while GDPR was asserted as central to data collection, management, and storage, many of the employer participants admitted that they did not generally consider the relationship between GDPR and disclosure requirements and/or convictions of data collection, management and storage for applicants or staff with convictions.

Despite the reported familiarity with GDPR in the qualitative data, PWCs participants expressed deep reservations about the protections offered by legal frameworks. Employers' motivations for and capacities to circumvent the defined legal parameters of GDPR were frequently raised by PWCs participants. The distress in the excerpt below illustrates that the lost position is only partially accounting for the malign effects of this incident. The deep emotional impacts are inexorably linked to legal and procedural propriety are discussed here:

It's humiliating and despite there being equality policy its obvious employers get around this easily. And the catch 22 to disclose and if you don't, you may end up losing the role is a nightmare it's not made known, and I lost a role several years ago because I didn't know this and didn't mention it until my first day. So, I lost the role for simply not telling something I would have if I'd known there was a standard for doing so at a specific point.

(PWC Survey Respondent)

Privacy

The relationship between GDPR in the formal legal and procedural sense and conceptualisations of privacy more generally bears further analysis. The characterisation of PWCs and general applicants' right to privacy is asserted in relation to GDPR, but it is often undermined by formal and informal practices, including searching for information on applicants online and trawling their social media histories. This contradiction is often casually discussed but is especially relevant when examining the lived experiences and outcomes for PWCs in employment. PWC Participant 10's assertion reflects the feelings of most other PWCs in the study regarding their right to privacy and conditions of disclosure as follows:

I'm under the impression that if a person doesn't need to know, I don't need to tell them. If you ask, I have no problem making a decision on whether I tell them or not.

The introduction of formal online background checks including social media profiles is a markedly modern problem for PWCs. Crime reportage is notoriously sensationalist and represents readily available and long-lasting pernicious artefacts for PWCs. Thus, their inclusion in formal recruitment processes represents a departure from competency-based approaches. Employer Participant 14 shares the plausible justifications for such checks according to risk-based paradigms rather than privacy favouring approaches.

There is all these things that you'd hear of like social media checks and things like that. Again, there are more prominent for the likes of [large digital technology firm] or [large digital technology firm] or those, that kind of thing. [...] what my understanding of what those checks are is like that there's no extremists in terms of, you know, promoting different things or different religions or different like terrorism or anything like that.

Therefore, the introduction of formal or informal internet trawling can be very detrimental to all applicants' right to privacy and certainly separations between professional and personal lives but is especially so when considered with the

moral censure endured by PWCs indefinitely and certainly long after the end of their criminal justice involvement.

I'm sure it would. Like I'm sure it would to some extent influence the decision. I think we'd be naive to think it wouldn't. But that wouldn't be as part of a... I think that would be an informal check.
(Participant 14, Employer)

The malign impact of an internet search on an applicant with convictions cannot be understated. The right to erasure (Articles 17 & 19 of the GDPR) is also known as the 'right to be forgotten' right to "have your data erased, without undue delay, by the data controller", if one of several grounds applies including no longer being necessary, withdraw your consent, and no overriding legitimate grounds for continuing the processing (Data Protection Commission, N.D.). This is relevant for participants with convictions who wish to remove timestamps that usually reflect the lowest point of their lives. As previously discussed, the reporting on crime and people who commit crime is rarely unbiased and offers little context. Moreover, historic offences are crystallised and can undermine years of rehabilitative work on the self and consistent pathways to a meaningful sense of self and contribution to society in the intervening years. Thus, this normalisation of internet searches of applicants, or colleagues, detailed in the quotes below, represents a contemporary layer of complexity and a potential threat to their chances of securing employment while also acting as another source of anxiety.

We don't [formally conduct media background checks] but that's not to say that somebody mightn't do a quick kind of look at somebody you know, just look up online, but we don't do anything formal.
(Participant 26, Employer)

The right to privacy was brought into sharp relief in revealing discussions with employers when it was put to them - would you advise someone you knew well to disclose or not? As previously discussed, there can be a gap between aspiration and likely real-world decisions, but this can be bridged to some extent by bringing the matter to a personal level, even if still hypothetical.

It's very hard one because I think if I was advising somebody I knew, I don't know. I'm imagining I'd be saying, "yeah maybe let them know." But then you might be thinking, "well, why would you let anybody know if it's not going to come out and it's not going to affect anything?"
(Participant 26, Employer)

The contribution above raise deep questions about the general principle of the right to privacy and PWCs practical pathways through employment. Managing employers' rights and requirements

is one thing but managing their preferences, practices (media checks), and unspecified expectations or interpretations of PWC's right to privacy versus their formal or informal right to seek disclosures is something else altogether.

The above discussion invariably frames privacy as a constellation of issues comprising disclosure, GDPR and privacy but these also form barriers and challenges for PWCs and employers when hiring PWCs. It is to the broader array of barriers and challenges that our attention turns in the following section.

Barriers and Challenges to Employment Stigma

Stigma - 'an attribute that is deeply discrediting' (Goffman, 1963: 3) - is an enduring feature of life and employment for PWCs. An approximation of the experiences of PWCs participants is the sense that stigma cannot be switched off so, while it persists, coping and adaptations are essential but not always effective. Participant 10 drew on his experience after his release from prison after twenty years to communicate the omnipresent feelings and manifestations of multiple stigmas experienced in his daily life.

For a long time, I used to walk around thinking that I had a banner over my head, "ah this fella's a lifer" [...] That flashes every time someone's walking past because even when COVID, the masks were still on, all you get to see is people's eyes. So, eyes look at you and you're thinking automatically, "I don't know them, do they know me?" Little bits of paranoia stuff kick in. "Is there a sign over my head? Do I have it tattooed on me forehead?" So, that can be quite difficult at times.

PWCs often must develop high levels of resilience and coping strategies to address their behaviour and/or overcome the challenges that they face (Henley, 2022). However, this is achieved to varying degrees and measurements of success with one PWCs survey respondent seemingly bereft of these as expressed in their contribution, "I feel completely isolated and marginalised. It's a helpless, hopeless and overwhelming feeling". High levels of resilience should not be a prerequisite for PWCs to move on with their lives and reintegrate into society but the findings on negotiating the labour market and navigating the workplace suggest that PWCs will almost certainly struggle without them.

"Once an offender, always an offender" (Fitzgerald O'Reilly, 2014: 477) underpins many of the barriers and challenges faced by PWCs. In the survey data, while 97% of employer survey respondents agree or strongly agree that employment plays a key role in helping to reintegrate PWCs into society, 95% of PWCs and 92% of employers agreed or strongly agreed that there are barriers to employment

(and/or higher education) for PWCs in Ireland. However, the precise nature and composition of these barriers are diverse and will be elaborated on in the following sections. It is important to highlight the experience of PWCs in the study who overwhelmingly state that their punishment commences, in earnest, after release from prison and/or persists long after the completion of their criminal justice sanction. Echoing the quotation by PWC Participant 4 on “still getting punished for it” in the previous section, another interviewee reflects on their ‘naivety’ in not recognising the long-term consequences of living and working with a conviction. They said that they weren’t “aware there would be a secondary punishment” (Participant 24, PWC).

I was very naïve [...]. So, when I was walking out the gates, in my head, my punishment was over. [...] It was done. I'd served my time. I could start over a fresh. I firmly believed that. Convictions never really entered my head, [...], the long-lasting effects of having them either. So, I felt that I had done more than enough, I had gone above and beyond. I use my time to the best of my ability, and that it meant something, and it had a value. [...] I wasn't aware there would be a secondary punishment.

When PWCs were asked about their experience with job applications, 47% of those surveyed reported negative experiences by disagreeing or strongly disagreeing that they had positive experiences when applying for employment, while 32% had a neutral response (see Figure 5). Moreover, 73% noted that they faced barriers in applying for jobs with only 15% countering this statement. The isolation and stigmatisation experienced by PWCs are captured by Figure 6 with 59% agreeing or strongly agreeing with the statement and only 21% reporting countering views.

A mixed range of experiences was reported regarding support from employers was evident in the responses with 42% reporting very negative experiences (47% negative overall) but 26% reporting positive or very positive experiences while another 26% were neutral in their estimation.

This presents an initial portrait of PWCs feeling isolated and burdened by the stigma of their interaction with the criminal justice system while facing barriers to employment. While the nature of the employer to which they are applying is not captured here, it is reasonable to infer that the levels of support experienced may be shaped by the sectors and/or companies involved (i.e., employers with active programmes to recruit and/or welcome PWCs and/or social enterprises).

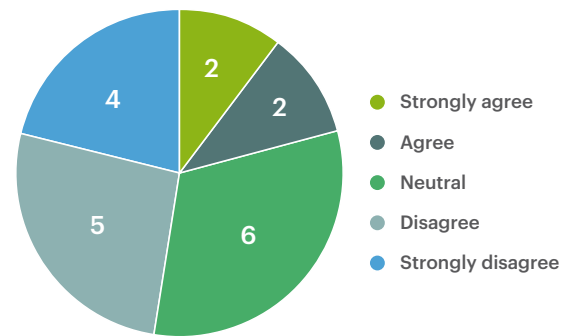


Figure 5: PWCs Responses to 'I have had positive experiences in applications for employment'

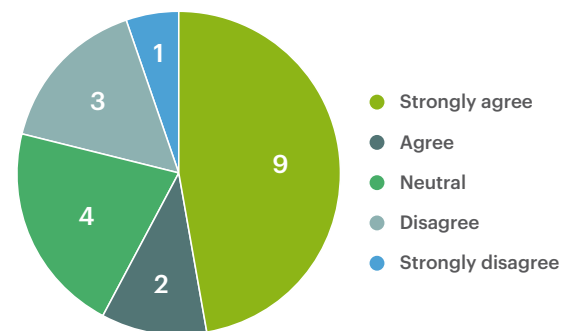


Figure 6: PWCs Responses to 'I felt isolated or stigmatised in applying for employment because of my experience with the criminal justice system'

The desistance journey, away from criminal acts, addiction, trauma, and successful reintegration into society with renewed hope is fundamentally tied to employment opportunities and outcomes for PWCs (Healy, 2017; Maruna, 2001; Uggen et al., 2014). Two contributions that follow from Participant 10 express this in complementary ways. Firstly, the sheer excitement of attaining a job.

I'm actually still excited. I'm like, this is gonna be my first full-time job in this field. So, for me, I am really excited about this job.
(Participant 10, PWC)

Secondly, achieving a goal in the form of a position in the sector to which he wished to dedicate his career.

It's probably the last piece of the puzzle that needs to be put in place for me to start living my life properly.
(Participant 10, PWC)

These quotations highlight the ambition and excitement about obtaining employment and how important it is to a full life for PWCs. However, these ambitions and goals are often seen as the “last piece of the puzzle” which implies a multitude of achievements across the range of potential challenges faced by PWCs (as discussed further below), which may diminish opportunities and outcomes for this to be the thing that allows him to “start living life properly”. Thus, discriminatory, overly bureaucratic, and ad hoc policies and practices in employment may diminish

opportunities and outcomes by undermining or stymying ambitions pursued and goals set by PWCs. One such example, in the below quotation, is compelling in its modest ambition, but frustrating in its potentially needless obstruction with malign consequences.

I'd be absolutely devastated because I've had [many] years to think of my future, what my life should be. So, I probably have unreachable and unattainable goals. But I have dreams of having a family, settling down, getting the job that I want that's not actually a job [addiction support services], getting a cat, that kind of stuff, you know? Going on holidays. And having to change that, I don't know if it's gonna be [in] any way damaging, but I am fearful of that happening.
(Participant 10, PWC)

Lack of Transparency in Job Application Process and Garda Vetting

The lack of transparency in job application processes was a theme for PWCs across the datasets. Symposium participants expressed the belief that PWCs had “failed on paper” without even being granted the opportunity to provide further contextual information. Requirements to gather, adapt and submit documentation and application forms – more complicated for PWCs due to the necessity of retrieving documents from criminal justice agencies – are time and finance consuming.

Identifying the employer’s requirements in addition to Garda Vetting and legal obligations demand careful navigation as the consequences for a misstep may be immediate (failure to attain the job) or long-lasting (complications in the job at a later date and/or undermining workplace relations). PWC Participant 4 outlines the lengths to which they went to complete the job application most accurately, while also wishing to respect the process, their legal obligations and their right to privacy. However, if the resulting interpretation is inaccurate, the route to employment can be severed with little or no opportunity for further recourse or contextualisation. Many PWCs perceive a lack of transparency around the job application process, because they feel there are limited opportunities to contextualise their experiences beyond the application form or CV. This is further compounded by a lack of communication about outcomes of job applications, which leads many PWCs to assume they have not gotten a job due to their conviction(s) history as described below.

So, I done a lot of reading on this and never got the sense that anything was like crystal clear. So, to the best of my interpretation of it was like well look it, it qualifies under them four circumstances [...] I don't have to declare it. So, I didn't declare it. And it came back, and the job offer was retracted. I was told there was no appeals process, I wasn't

given an explanation. [...] it was just that like there was some problem with the vetting or something came up with the vetting. [...] they didn't say, "right, you didn't declare it" or "because this came up". So, it was really vague. So, it was really exclusionary in a sense that [...] there was no conversation about it. There was no explanation. [...] there was no appeals. Now I did contact them, and you know in an attempt to [...] have some sort of conversation about it. It was sort of a stonewall [...].

(Participant 4, PWC)

An understandable anxiety is felt by PWCs around disclosure and transparency in job application processes. The uncertainty about declaring convictions and reasons for outcomes of job competitions generated by the disclosure policies was consistently asserted as problematic and anxiety-inducing for PWCs in the study. Honesty in applications without recourse presents problems for PWCs as experienced by Participant 10.

I have applied to for a number of jobs with them on [recruitment firm] site and it kept coming up, "have you any previous convictions?" and I kept pressing yes and I'd never hear anything back. I wouldn't even get response to say that you were also successful this time. It was only just this one, I think maybe out of persistence of applying for jobs with them that I actually got access to an interview. Like if they came back and said right, we have an issue with A, B or C or we need more information on A, B, C I can work with what. Whereas the not knowing.

This experience of stigma permeates the daily lives of PWCs as seen in the experience of this individual, and can become an internalised barrier to the pathways they pursue. This showcases, even more so, the need to break down social stigmas and more formal manifestations of these stigma for PWCs.

Resilience, Motivations and Desistance Tested

The general anxiety and uncertainty about application practices and outcomes is further amplified by perceptions of Garda Vetting by both PWCs and employers. From both groups, there is a lack of clarity around what a Garda Vetting document looks like and what is made known to prospective employers. So, perceptually, Garda Vetting further contributes to anxiety and uncertainty as it is seen as ambiguous in nature and lacks transparency for individuals and can serve to inhibit reintegration.

I suppose like it leaves you really unsure about like the whole process. [...] I got knocked back for that job. It was already ready to go, and then the next job you just don't know. You know it's

going to come up and what way is it going to be interpreted. [...] it's like it means a lot more than just the 40 hours a week and it's [...] hopes for the future and stuff and it's like, here we go again, [...] it's like, what way is this process going to go? You know, so it like it does leave you unsure you know a little bit. A little bit vulnerable like to...this system you know.
(Participant 4, PWC)

This quotation highlights the transformative power and stability that employment brings to PWCs, but then showcases how ambiguity around the application process and bureaucratic practices really knocks their confidence and can lead to hopelessness.

Uncertainty can be destabilising for anyone but can be particularly so for PWCs as they negotiate multiple intersecting challenges to maintain their stake in society. However, failure to secure employment on a consistent basis can lead some PWCs towards a return to their offending if these were a source of income as, according to Participant 24, "the only thing that had a value when I was out there looking for any work was my background to my convictions" which appeared to become the only reasonable option as detailed below.

Everywhere I went I'd get so far in the interview process, the convictions piece would come up and it was just the end of the road like. So, all of my money was being spent then job searching and all that stuff. [...] I had very little means. Like I was trying to keep the rent going, trying to get up and down to see my son, and I ended up just going backwards then. I started doing the same old stuff because I had [...] But it was the only way I knew how to make a few quid and I needed it at the time because I couldn't even feed myself right. I was spending my money looking for work all day every day.
(Participant 24, PWC)

Narrowing Job Opportunities

The reaction of employers, perceived and experienced, is a narrowing factor, for opportunities across sectors and roles, for PWCs. Employer participants acknowledge that certain sectors, such as financial and legal, actively seek to exclude applicants with convictions, while technology or social media organisations reportedly utilise informal trawls of applicants' internet profiles to ensure the 'right fit'. An employer interviewee elaborates an unambiguously exclusionary environment within the legal sector for PWCs.

I think it's very different in a law firm. I've got to say versus the prospectus, I think [be]cause in a law firm it's all about from a client perspective and

you dealing with the courts all the time. So, you know, I think that it would be quite tricky. I think it would it be something we'd have to really carefully consider if we could take people. It would depend on the conviction and like how it's serious it was.
(Participant 16, Employer)

The interviewee below conveys the common assertion that PWCs are thus implicitly or explicitly funnelled towards vocational roles such as community or care work where their lived experience will be accepted in a non-judgemental way, and interpreted as an asset rather than a burden or liability.

In another job, in me present job which I got which is in social care services, I did put it down. I suppose one of the things, well the two reasons why I put it down is because, one, I knew like me experience at the time, this is going to come up. It doesn't matter what it qualifies under, what you think it qualifies under, it's gonna come up. And then the other thing was, I suppose you'd just be feeling that they'd be more understanding in the social care setting, which they were.
(Participants 4, PWC)

It is well established in both desistance and wider criminological literature that PWCs may develop 'redemptive scripts' (Maruna, 2001) that are enhanced by drawing on their lived experience to 'give back', and in doing so this constructively maintains their journey. However, this should be a choice rather than a prescription. The experiences shared by the PWCs in the study portray a society and labour market where opportunities diminish and narrow, leaving only certain roles as appropriate, available and welcoming for PWCs as borne out in the latest CSO (2023) figures.

PWC participants in the study recognised the experience of the being nudged towards certain sectors while being pigeon-holed into prescribed roles. However, an internalisation of these prescriptive assumptions was also reported. The resulting practice of self-de-selection was also caused by fear of rejection and vulnerability to exposure through disclosure. Consequently, some PWC Participants explained that they avoided certain roles and sectors and furthermore, avoided applying for opportunities in the labour market and beyond.

But it's important to recognise that if I see a barrier coming down the street, I ran away. You know what I mean? I just didn't apply for anything. And I've lived my life that way.
(Participant 1, PWC)

This also links to the relationship between job and/or employee loyalty versus entrapment discussed further in sections that follow.

The requirements and lack of transparency within applications for community sector work have

caused Participant 10 to consider giving up a long-held and desistance-linked goal of working in addiction services.

I feel like it's pushed me towards just going for mainstream employment. [...] I don't wanna minimise it or dismiss it or anything, but I've kind of geared myself towards a certain avenue, so what I've done is towards recovery and addiction and stuff like that. And now I'm fine, and that I can't apply for another job while the Garda Vetting process is happening. If I do, I'm gonna have to go through the whole Garda Vetting process again. So, [...] maybe I'll just go and get a job in a warehouse and just real waste the last number of years that I've done training.

This experience further exemplifies the need to build bridges between educational pathways and employment opportunities for PWCs because when individuals are doing educational training for particular employment outcomes, they need to be made aware of the barriers they could face as PWCs. This begs the question of whether the employment opportunities available to PWCs line up post-qualification.

Gaining employment after successfully navigating the recruitment processes as a PWCs is an achievement in itself. However, the PWCs participants raised issues around opportunities and barriers to progression and promotion in the organisation. This was the consensus from the Participatory Symposium dataset and reflected in the interview data as exemplified by the events recounted by Participant 1 below.

I did work with a guy, and we were all sort of night workers and there was this guy, and he was brilliant at his job, but he was real lumpen you know? Real working class. But he was so good at his job. Then this job came up within the job, right? It was like a supervisory role, and he should have got it. All day he should have got it. But he didn't get it, he had a conviction, and he didn't get it. They gave it to somebody else who had been working sort of under him or at least he was helping him.

The life-long punishment and barriers experienced by PWCs can be seen in the above quotation, because despite someone excelling in a role, their experience and commitment to the job, this can fall by the wayside because of a conviction(s) history.

The inconsistency of experiences was laid bare in Participant 24's account of their first job after release from prison. It underlines how informal recruitment processes and specific Garda Vetting procedures combine to enmesh PWCs in systems whereby there is persistent ambiguity about if, and when, they may be required to disclose, why and the consequences of doing so. Thankfully, this account presents these issues with positive

outcomes that served to reassure and support Participant 24. However, interpreting the context-specific elements of the account (other employees with contact criminal justice system) and considering the broader dataset, it is reasonable to argue that it could have had the opposite outcome while this only became apparent during the events which induced anxiety throughout.

My first full time job after prison. It's a distribution company. I got it through a friend. I didn't get it through your normal hiring processes and then within, within maybe with six to nine months of working for them, I was asked to go as a supervisor. Then I was asked to step up to be the manager at night-time and all this stuff and I told them then like as I was became [sic] the supervisor and the say "sure we don't care. We know what you're doing now like and that's all we need". So, which was great to just get it out of the way and just tell them, d'ya know? They didn't care one bit. In fact, every single member of my team, when I was a manager, were all people with convictions, or all people that have been in trouble in the local area.

The accumulated accounts above constitute an under-reported barrier within employment for PWCs. The distinction between and availability of 'jobs' versus 'decent jobs' and on to meaningful careers emerged from the participatory symposium data. Put simply, the assumption being challenged is that any job is good enough for PWCs while a narrow field of jobs are available to them. A Symposium Participant drew attention to that asserting, "No focus on quality of life and fulfilling employment, it's only job numbers". Though not mutually exclusive, both presuppositions are pernicious in denying PWCs opportunities to broaden their horizons and pursue a career in myriad field or sectors. Aptly put by PWC Participant 6, "You're only as broad as the horizon you have like". Moreover, such narrow field of opportunity do little to sustain motivation and ambition while confining PWCs to precarity in employment and myriad aspects of their lives supported by their employment, not last, desistance. Another Symposium Participant synthesised this sentiment thus.

Moving towards a job being a job, a job is any job, and then we're setting people up to fail. They're one paycheck away from destitution. Why are we capping their talent?
(Symposium Participant)

This preceding discussion of the key barriers and challenges faced by PWCs and employers in hiring PWCs is not exhaustive. The scope of this report precludes an in-depth discussion of the myriad of further barriers and challenges that arise including but not limited to a gap in technological skills after release from prison, commuting between

and cost of managing multiple simultaneous low paid jobs, and working lives infused or shaped by disclosure (chosen or unchosen). The following section will address what are referred to in the literature as ‘collateral consequences’ but what we, in recognition of Henley and other’s work, are referring to as ‘central consequences’ for PWCs.

Central Consequences (Rather Than Collateral)

The resilience required to navigate the employment market discussed above is sorely tested but is revealed when considered with the intersecting consequences of having a criminal record. The term ‘collateral consequences’, though established in the literature, is challenged by Henley (2019) among others (Corda, 2018) occupational restrictions, exclusions from public housing, and loss of welfare benefits represent one of the salient yet hidden features of the contemporary American penal state. This chapter explores, from a comparative and historical perspective, the rise of the many indirect “regulatory” sanctions flowing from a conviction and discusses some of the unique challenges they pose for legal and policy reform. US jurisprudence and policies are contrasted with the more stringent approach adopted by European legal systems and the European Court of Human Rights (ECtHR and accordingly, we diverge from the literature (including earlier in this report) by choosing the term ‘central consequences’ to reflect their importance in determining a PWCs trajectory, opportunities and outcomes in the short, medium and long term.

The myriad challenges faced by PWCs because of their conviction are rarely experienced in isolation and often overlap to generate sets of circumstances that are increasingly difficult to manage. PWC Participant 10 presents such instances where years of work on the self and developing a pathway are repeatedly jeopardised.

I went through a rough patch there a couple of months back where I was doing a Level 7 in [HEI] in [programme]. I took on a Level 6 and I was working two jobs, and I was under risk of losing my apartment because my tenancy was up and that put my recovery really to the test. And so, I kind of pulled it back, settled down with my apartment, got a six-month extension. I stepped back from the Level 6. I completed the Level 7. So now all I have is two jobs that I’m doing. So, what would end up happening is I could be leaving home at seven o’clock in the morning to go the [Dublin suburb], be there for about half eight until half one on my CE Scheme and then I have to travel back to [another Dublin suburb] and work in [a grocery shop] down from four until 10 o’clock at night. And then get home half ten, quarter to

11 at night and then do it all again the next day. And that is not manageable. That’s not, it’s not manageable in the long term and it’s changing, it’s in a position where it’s going from short term to long term.

(Participant 10, PWC)

There are immense challenges involved in building a life and carving a stake in society by pursuing education (PWCs often have lower rates of educational attainment and have had negative experiences with education in their youth (Brown et al., 2020)) while managing multiple low paid jobs (PWCs often have few professional or trade qualifications) and sustaining stable accommodation (instability of housing and homelessness are persistent features of life for PWCs, especially those leaving prison (Nilsson et al., 2023)). Additional challenges in managing their mental health (PWCs in prison and the community present with higher rates of mental health issues compared to the general population (Western, 2018)), all while regulating treatments or completing programmes for addiction (PWCs may have struggled with addictions and these often linked to their criminal justice involvement (Department of Health/Department of Justice, 2022)).

The mundane obligation of taking out insurance policies is central to everyday aspects of our lives such as commuting, securing a mortgage, and securing home contents are further complicated by requirements to disclose convictions as outlined by PWC Participant 4.

Some companies. Yeah. Have you ever been convicted of a road traffic offence? Have you ever been convicted of any offence? And definitely like house insurances and stuff.

There exist many obligations for PWCs to disclose to insurance companies. These insurance-related central consequences overlap with barriers to employment for PWCs such as motor insurance being directly or indirectly essential for many jobs. It is noteworthy that a de facto bar on PWCs entrepreneurship by insurance companies represents a significant barrier yet to be overcome (Government of Ireland, 2020; Unlock, N.D.). Participant 20 detailed the refusal to offer policies to start-ups for those presenting with a criminal conviction and consequently all but extinguishing hopes of business ownership and/or some forms of self-employment for PWCs.

While a more comprehensive examination of the diverse but overlapping ‘central consequences’ of having a criminal conviction beyond employment is warranted, the aim here is merely to bring them sufficiently into focus to account for the complexity of the lives and employment experiences for PWCs. Moreover, their brief elaboration here prefaces an exploration of the opportunities for progress in

this area including more holistic approaches that involve employers' recognising the enmeshing nature of life and employment for PWCs leading to due consideration shown in recruitment and employment contexts.

Opportunities for Progress

Guidance, Information and Support

Despite the persistent issues discussed thus far, there is cause for cautious optimism. Examples of progress and/or seeds of initiatives toward more inclusive hiring practices for PWCs feature frequently in the analysis. As discussed in Section 2 of this chapter, nearly nine in ten (88.9%, n=32) employer survey respondents agree (n=20) and strongly agree (n=12) that they would consider hiring PWCs in the future. This is reflected in the interview data, yet the previously discussed barriers to hiring PWCs as listed by employers include the type of offence and safety risks, though some also state reactions of others would be a concern alongside lack of available supports.

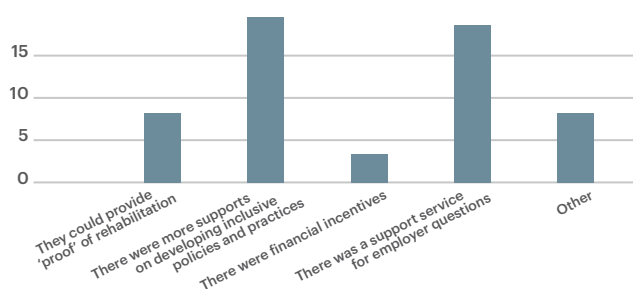


Figure 7: What would make employers more likely to consider hiring a person with a conviction (multiple answer question)

As per the above graph, employers would most like additional supports on inclusive policies and practices, as well as access to a support service to answer their questions relating to hiring a PWCs. Employers also suggested an 'intermediary service' (other similar suggestions referred to a liaison/support person for PWCs and Employers), information resources, training and education in this area, trauma-informed practice, and good practice advise.

Many of the suggestions are evidence of PWCs and Employer Participants' consistent assertions that guidance and training are key supports needed in this area. Various forms of support were proffered from "a dedicated support person who is a reference point for both the PWCs and the organisation in the first couple of months" and "mechanisms and support to educate other staff to accept a PWCs role to contribute as valid as theirs" (both Employer survey respondents). Employer Participant 22 drew on specific insight to suggest a bespoke intermediary within the existing criminal justice system and employers as detailed below.

If you've got people on with probation bonds at the end of their sentence, if they act as like that intermediary or support network, you'll find employers much more comforted with the idea that there's someone within the justice system that's giving that level of support that potentially employer can't do.

The absence of clarity regarding convictions' impact on the job applicant's status, progress and lack thereof reinforces feelings of judgement and stigmatisation leading to potential hopelessness and recidivism among some PWCs. Clear guidance and information resources would seek to avoid this and facilitate a more holistic approach to recruitment that appreciate the circumstances and challenges faced by PWCs seeking employment.

While the vast majority of PWCs have never spent time in prison, PWC Participant 10 highlights the training and guidance for those being released from prison to bridge skills gaps such as technological and computer literacy, particularly for those emerging from long sentences.

There needs to be a bit more guidance for people, especially those that are coming out as long-term prisoners. [...] Training around technology while they're in prison, giving people a sense of what an iPhone looks like, how to send emails, that kind of stuff without having to specifically do the ECDL or that kind of stuff if you're not into that.

Opportunities for PWCs to communicate information on what they can offer, their desistance pathway and/or progress that they've made in the period since their offence are often challenging but invaluable. Employer participants asserted ad hoc criteria utilised to attempt to measure this (i.e., offence type, number of offences, length of time since last offence, employment and/or education history, etc) but initiatives such as Spéire Nua offer opportunities for PWCs to capture their "non accredited and experiential learning" to "assist people to get certified recognition for their soft skills and experience" while gathering information from their clients to assess it "using this Benchmarking process of desired rehabilitative outcomes" (Spéire Nua, N.D). Such programmes offering more tangible demonstrations of 'desistance signalling' (Reich, 2023) and rehabilitation align with many of the desired supports for PWCs and Employers in this study.

Shifting Mindsets from Moral Censure to Inclusive Policies and Practices

Guidance and support can come in many forms as the diverse opportunities above demonstrate. However, to avoid opportunities being lost, many participants compellingly asserted the need for a shift in mindset regarding PWCs generally and specifically relating to employment. Though

prioritised by PWC Participants in this study, most employers agreed with this despite the persistent role of risk in shaping their policies and practices. A symposium participant contributed to this discussion by profoundly querying “why are we capping people’s talent” while PWC Participant 6 prophetically stated, “You’re only as broad as the horizon you have like”. Despite the absence of data in Ireland, international data reveals the breadth of criminal convictions across the community with one in three adults in the USA and 12.3 million people in England and Wales possessing a criminal conviction (Working Chance, 2023; Korzenik, 2021). Thus, the conceptualisation of the PWC as being a distinctly risky cohort or the ‘other’ is unsustainable and must be addressed to bring about fair hiring practices.

The contemporary focus on Equality, Diversity, and Inclusion (EDI) initiatives offers opportunities to address preconceived characterisations of capacities and integration. When considered through the lens of fair hiring for PWCs, such policies offer insight into the role of the risk paradigm and need for guidance with a shifted mindset. Put simply, there remains uncertainty as to how inclusion programmes, policies and practices may be operationalised for PWCs. The data contains multiple discussions on the opportunities and organisational know-how available through existing inclusivity frameworks such as those for people with intellectual and/or physical disabilities. However, almost every discussion drawing on this transferable knowledge stalled when the issue of moral censure was raised. Put another way, the introduction and integration of other marginalised groups into organisations did not encounter the moral judgement that arises for PWCs as articulated by Employer Participant 14.

It’ll be the same logic in principle [to people with an intellectual disability] that we will apply to someone with previous convictions. Now the only thing that I foresee being a huge challenge is the nature of the conviction that was committed and if you’re talking about sex offenders and murderers and all that kind of stuff, you’re going to have people split decision. You’re gonna have people going, you know, “well, they’ve paid their time, they’ve done their crime. There’s a very good rehabilitation programme in place. These people now deserve an opportunity”. Then you’re gonna have people go, “No, no, no, that’s not right. They never should have”. And then there is the whole weighting and distribution of what people think are petty crimes or what are fine crimes.

Some correlations were drawn with prejudice against members of the Traveller Community and Asylum Seekers, but obvious distinctions were drawn between these and PWCs. It is by addressing these perceptions and confronting risk-reliant approaches, that mindsets may

change, and more inclusive hiring may be available for PWCs. Participant 8 contended that once introduced, PWCs have increased chance of succeeding and winning over prospective employers and colleagues as outlined below.

Once you get your foot in the door and they see that they can do the job. [...] and they’re genuine. I think it’s all about communication and getting rid of [...] that... “criminal conviction” because straight away “do you take [the applicant]?” [...] It’s like ‘no’... it’s initial, [...] it’s a fear too. People... are struggling, everybody [...] businesses and that and they want the best, [...] that is the initial reaction. But if they only [...] took time and [were] able to realise that maybe these people are really [...] looking for a break and they’re gonna be really, really good.

This is supported in the international literature whereby companies engaged in fair or second chance hiring programmes report lower turnover rates and increased staff loyalty (Korzenik, 2021). Though ‘loyalty’ was evident in the data, a cautionary note is essential. Loyalty is a much sought after trait for employers and can, to varying extents, be engendered through gratitude for the opportunity to work, gain independence and establish a stake in society. However, loyalty through another lens may constitute entrapment as PWCs recognise the limited opportunities to gain employment elsewhere that may stem from the difficulty in securing their current position. Moreover, the stigmatisation and low self-esteem endured by many PWCs combines with a fear that their progress to date is never fully secure and may be taken away at any moment. PWC Participant 24 effectively elaborates on these conflicting feelings.

I’d always be given 110% because I know like, God forbid again this job would be gone, I’d be back out in that hamster wheel out there and I’d be disclosing my past to people that I don’t know, while I’m trying to tell them what I can offer. It’s just a shitty situation to be in, so, yes, there is elements of loyalty. There is absolutely. [...]. But it is more linked to the fact that [...] you’re so relieved to get a chance that you’re not gonna lose [...] that chance. I did have a feeling of being trapped for quite some time and for maybe the last year of my employment. [...] Trapped because I felt that there was no opportunity out there and trapped because I had no transport and because [...] I knew how hard it was to get that job. So, there is that feeling of entrapment, but I had to give him 110% of my work. [...] But there was a real fear of losing the job.

Conflicting as such experiences are, it is important to identify and share such perspectives as desirable attributes such as loyalty are nuanced for PWCs and should not be prescribed expectations for employers. The arguably pejorative assumption that a PWC employee will “run through a brick wall for you” (Korzenik, 2021: 109) places undue pressure on PWCs who should be free to complete their work to the same level and demonstrate the same commitment as their peers rather than above and beyond based on their status as PWCs.

Communication and Messaging

Deficits in communication and messaging were raised across the dataset by PWCs and Employers alike. PWC Participant 1 below contends that where supports exist, they are often not widely known and would benefit from publicity or promotional campaigns.

I think there should be some sort of promotional campaigns, especially [...] a public body that's interested in sort of employing people with a history of criminal offences, but obviously with a proven track record of not doing it anymore, desistance. [...] I think that they should be promoting that so then at least then if someone comes out of prison, or if they get a suspended sentence, which is what I got, they don't have to go through their life thinking like “oh this is gonna hang over me forever”. You should let people know “okay if you've got X offence, well then in 5 years' time that's gone off your record.” Or “after 5 years you no longer have to disclose it”. [...] You can prove desistance.

In addition to the promotional campaign suggested by PWC Participant 1, a constructive point is harnessing the resources and data on spent convictions legislation. Although currently being reformed, in no small part due to the work of Senator Lynn Ruane (2020) among others, the current spent convictions legislation in Ireland remains persistently restrictive. Nonetheless, a resource or tool that is accessible and provides clear answers to users on their legal obligations to disclose in relation to spent convictions would be very welcome. One such tool is in operation in England and Wales in beta form. Developed and hosted by Unlock, the “Disclosure Calculator”⁷ provides swift results after the user inputs their specific details.

The deficits of communication and transparency (see Barriers section) are easily remedied through considered messaging in job specifications, inclusive messaging on websites and communication of requirements and recruitment outcomes. Positively, employers expressed willingness to engage in more proactive

interactions with PWC applicants. Some employer participants had done so in ad hoc practices and others were considering best practices by adopting existing inclusive hiring frameworks. International scholarship supports approaches using personal interactions with PWCs rather than relying solely on traditional paper-based recruitment strategies as being more constructive (Guguere and Dundes, 2002; Atherton and Buck, 2021; Reich, 2023).

The opportunities for progress for PWCs in employment are evident in the findings of this study. It is reasonable to assert that some developments and attitudinal shifts are at play in this space but there are opportunities to achieve much more in the short and medium terms. The findings elaborated in the preceding sections are revealing for their scalability with some barriers removable in relatively straightforward ways while others present broader and perhaps ‘wicked’ – very hard to solve – problems but policies and practices are central to amelioration of employment conditions for PWCs.

7 See <https://unlock.org.uk/disclosure-calculator/>

Conclusion

The case for fair hiring practices is clear. The benefits far outweigh the risks, perceived or otherwise, and this is borne out in exponentially growing international scholarship and case studies (Atherton and Buck, 2021; Korzenik, 2021). Meaningful employment for PWC benefits the employer, the PWC and society in myriad ways, not least in filling skills gaps and labour shortages but also reintegrating marginalised individuals and supporting more inclusive safer communities with fewer potential victims. There are established initiatives (see City of Philadelphia Fair Chance Hiring Initiative) and legislative reforms (see Second Chance Act, California, USA) while organisations in multiple jurisdictions are supporting fair hiring practices (see the National Reentry Workforce Collaborative USA; Unlock and Working Chance [both UK]), including the recent 'Working to Change' programme in Ireland.

While a detailed elaboration of such cases is beyond the scope of this report, there is demonstrable positive momentum in this space that can support further progress in the Irish context. This study reveals that employers' attitudes are generally supportive of recruiting PWCs despite expressing concerns and expressed desire for guidance and supports in doing so. The attitudes of employers are given further meaning by examining the experiences of PWC who are subject to them. Thus, collecting data from both employers and PWC was essential to comprehensively address this issue. The resulting recommendations (see pages 8 and 9) stem from the synthesis of participants' contributions across three distinct data collection methods with the extant international scholarship and data on policies and practices. The upcoming and/or recommended legislative amendments provide a legal framework for fair hiring practices but should go further. However, legislation alone will not ameliorate PWC employment chances and conditions. A shift in mindset away from risk-based approaches to evidence-based policies and practices is fundamental to establishing inclusive hiring practices in a fairer society.



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