Home Office

An analysis of Disclosure and Barring Service applications for 2015/16

Research Report 118

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Acknowledgements

Executive summary

This report summarises analysis undertaken to inform proposed amendments to Part V of the Police Act 1997. The Act governs the disclosure of criminal record information by the Disclosure and Barring Service (DBS) in England and Wales. Disclosure rules set out in Part V of the Police Act 1997 determine what convictions and cautions are disclosed on certificates. The proposed amendments remove two of the rules that disclose some or all of an applicant's criminal record history:[1] the 'multiple conviction' and 'youth caution' rules.

Analysis was undertaken on a 2015/16 dataset held by the DBS. This dataset included information on applicants' criminal records history and details of which convictions and cautions were disclosed to employers under the DBS criminal record check.

The analysis shows how many convictions and cautions, and of which type, would no longer be disclosed to employers upon the completion of a DBS criminal record check. It also shows how many applicants – had the proposed rule changes been retrospectively applied to 2015/16 applications – would have returned clear certificates, with no other criminal record history disclosed under the remaining disclosure rules.

In total, 4,214,541 certificates were issued by the DBS in 2015/16.[2] A total of 357,946 applications were matched against a conviction for at least 1 offence on the Police National Computer (PNC) 2015/16. Of these, 237,949 applications resulted in the disclosure of convictions or cautions to employers. Applying the proposed rule changes retrospectively to the 2015/16 dataset would mean that 46,626 of these 237,949 applications would not have disclosed any convictions or youth cautions. This represents around one in five of applications that disclosed.

Of the two changes, removing the 'multiple conviction' rule has the greatest impact in terms of the number of applicants affected. A total of 41,041 applicants in 2015/16 would, if the 'multiple conviction' rule was removed retrospectively, no longer have their criminal record history disclosed.

The equivalent figure for the 'youth caution' rule was 5,585 applicants. For those applications whose criminal record would now not be disclosed due to the exclusion of youth cautions,[3] 1% involved cautions for offences that were defined as being both 'serious' <u>and</u> 'recent'.[4]

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[1] The term 'criminal record history' is used to include convictions, cautions, warnings and youth reprimands.

[2] The source for this figure may be found on p 14 of the DBS 2015/16 annual summary, available here: https://www.gov.uk/government/publications/dbs-annual-report-and-accounts-2015-to-2016 [Accessed August 2020] (Note: numbers of certificates issued may differ from number of applications due to timing).

[3] References to youth cautions in the text also cover youth reprimands and warnings.

[4] See p 8 for definitions of 'serious' and 'recent'.

The analysis also showed that the changes affected a higher proportion of applicants for DBS certificates who received convictions or cautions while under the age of 18, than applicants who received their convictions fully during their adult life. Some 85% of applicants with youth convictions or cautions would see at least 1 offence removed from their list of disclosed offences, while 32% see all their convictions/cautions removed. By contrast, smaller proportions of adult offenders – that is, those who received all their convictions during adult life – would have at least one or all their convictions removed from their list of disclosed offences (33% and 16% respectively).

Background

Changes to disclosure rules

The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020 sets out legislative changes to the criminal records disclosure regime, by changing the disclosure rules set out in Part V of the same Act. These changes follow the Supreme Court judgment in *P and others* in January 2019.[5] The legislation determines what cautions and convictions are disclosed on criminal record certificates produced by the Disclosure and Barring Service (DBS).

The court found two aspects of the scheme to be disproportionate and therefore incompatible with Article 8 of the European Convention on Human Rights. These were the requirement for disclosure on criminal record certificates:

- where an individual has more than one conviction, irrespective of offence type or time passed (the 'multiple conviction rule'); and

- of certain out-of-court disposals issued to young offenders (youth reprimands and warnings).

Criminal record certificates are provided to help employers make decisions about an applicant's suitability for certain roles, mostly for those working closely with children and vulnerable adults. The DBS undertakes the disclosure function for England, Wales, the Isle of Man and the Channel Islands, although the legislation that creates the disclosure rules only applies in England and Wales. In total, 4,214,541 certificates were issued by the DBS in 2015/16.[6]

There are four kinds of check carried out by the DBS:

- basic;

- standard;

- enhanced; and

- enhanced with a check of the barred lists.

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[5] See: https://www.supremecourt.uk/cases/uksc-2017-0121.html [Accessed August 2020].

[6] The source for this figure may be found on p 14 of the DBS 2015/16 annual summary, available here: https://www.gov.uk/government/publications/dbs-annual-report-and-accounts-2015-to-2016 [Accessed August 2020] (Note: numbers of certificates issued may differ from number of applications due to timing).

The basic check was historically carried out on behalf of the DBS by Disclosure Scotland. However, this changed in 2018 when it became the DBS's responsibility.[7] Basic checks have not been included in the data used for this analysis as the dataset predates this change and would not in any case affect the results. At the time of publication of this report, there are two different sets of disclosure rules: one for cautions and another for convictions. For a caution to be disclosed to an employer it must satisfy one (or both) of the following conditions, it must either be:

- 'recent' (this is defined as any sentence given less than 2 years before the date of the application to the DBS if the person receiving it was under 18, and 6 years if they were over 18);[8] or

- 'serious' (according to a pre-defined list of serious offences).[9]

Youth cautions are a formal out-of-court disposal that can be used as an alternative to prosecution for young offenders (i.e. those aged 10 to 17) in certain circumstances. They replaced reprimands and warnings from 2012.[10] Youth cautions require that the offence be admitted by the offender. Police advice on the use of youth cautions is contained in an Association of Chief Police Officers (ACPO) document on youth disposals 'the gravity matrix' (2013).[11] More serious offences (for example, kidnapping, abduction), which are graded as level 4 in the matrix, would normally expect to result in a charge rather than a youth caution (although decision makers can exercise their discretion *if* the circumstances justify this).

For a conviction[12] to be disclosed to an employer it must satisfy one (or more) of the following conditions, it must either:

- be 'recent'[13] (up to 11 years before the date of the application to the DBS if the conviction was handed down after the person became 18, or up to 5.5 years if they were under 18); or

- be 'serious' (according to a pre-defined list of serious offences); or

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[7] See: https://basicdisclosure.com/ [Accessed August 2020].

[8] These time periods are counted from when the caution is handed down.

[9] The list of serious offences can be found at: https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check [Accessed August 2020].

[10] They were introduced by section 135 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, replacing reprimands and warnings.

[11] The report can be found at: https://yjresourcehub.uk/out-of-court-disposals-and-prevention/item/625-acpo-youth-gravity-matrix.html [Accessed August 2020].

[12] These rules apply to suspended sentences as well.

[13] This is determined by the difference between the date when the conviction/caution was given, and the date of the DBS application.

- carry a custodial sentence; or

- if an applicant has more than one conviction, then all their convictions are disclosed (known as the 'multiple conviction rule').

The multiple conviction rule means that all convictions are disclosed, regardless of age or offence. Therefore convictions, which may not on their own meet any of the first three conditions, will still be disclosed if the applicant has additional convictions. This applies both to convictions that were handed down on the same date, and convictions taking place on different dates.

The prospective changes to the rules described above are twofold and reflect the court judgment. The first change is that checks will cease to disclose youth (aged 10 to 17) reprimands and warnings (the predecessors of youth cautions), and youth cautions under the rules set out in Part V of the Police Act 1997 (para 10). The second change will entirely remove the multiple conviction rule, so convictions will now only be disclosed based on rules covered in the first three conditions above.

These changes have been informed by analysis of those cautions and convictions disclosed and numbers of certificates (i.e. individuals) disclosing *any* criminal record history. All applications made during the financial year 2015/16 were analysed under the current (as at 2020) regime and under the proposed changes. This report outlines the data used in the analysis, the approach taken, and the outputs generated.

Analytical requirement

The analytical requirement is to test the impact of the proposed rule changes retrospectively, using historical data on:

- the numbers and types of <u>offences</u> that would no longer be disclosed under the proposed rule changes – typically to employers (including those employers screening applicants to work in areas of safeguarding concern); and

- the numbers of <u>applications</u> no longer disclosing *any* convictions or youth cautions, *but* still carrying them undisclosed.[14]

To make these assessments it is necessary to identify the numbers of offences and/or applications being disclosed due to any combination of existing and proposed rules. This is best achieved using a historical dataset that is representative of DBS applications and applicants' associated criminal record histories.

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[14] Whilst rule changes mean that some convictions and cautions may now not be automatically disclosed, offences may still be disclosed by the police if relevant police tests are met.

Application and offence input data

Data source

A dataset covering approximately 890,000 applications for a criminal record check made between May 2013 and May 2017 was provided to the Home Office by the Disclosure and Barring Service (DBS).[15] These data were extracted from the DBS administrative database. Whenever a person applies for a job that requires a check by the DBS, their personal details are run through the Police National Computer (PNC).[16] The dataset provided by the DBS contained all matched offences from the PNC, along with a flag indicating if an offence was included in the DBS certificate or not (i.e. whether the offence was disclosed to the employer). The data were anonymised at application level. The only demographic characteristic provided was the applicant's age at the time the conviction/caution was given, in order to differentiate adult and youth offences.

The analysis was conducted on data for the financial year 2015/16. This period was selected as it provided, at the time that the analysis was undertaken, the most recent, complete financial year data from the original provided DBS dataset.[17] Data for 2015/16 covered a total of 357,946 applications that had been matched against the PNC and returned at least one conviction or caution. Of these, 237,949 resulted in a conviction or caution being disclosed to employers. This means that there were 119,997 applications that contained at least one conviction or caution but the certificate did not disclose any criminal record history. This is because their criminal record history did not qualify for disclosure under the rules described above (for example, convictions/ cautions weren't 'serious', or 'recent').

It is possible that some individuals made multiple DBS applications in 2015/16. The applicant could potentially have a slightly different criminal record history (and resultant disclosures), depending on whether they had received any further convictions/cautions between DBS application dates. Multiple applications from the same individual will have been included in the analysis. However, due to anonymisation at the application level, it is not possible to establish how many unique applicants exist.

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[15] This dataset was received by the Home Office in early 2019.

[16] Further details on the PNC can be found at: https://www.college.police.uk/What-we-do/Learning/Professional-Training/Information-communication-technology/Pages/PNC-Police-National-Computer.aspx [Accessed August 2020].

[17] A DBS data system change in 2016/17 may have affected data recording for this period. Due to this, the financial year 2015/16 was used for the analysis.

Input data structure

The data used can be divided into two main categories:

- a spreadsheet of all offences retrieved from the PNC that are associated with any application made, and whether disclosed or not in accordance with the rules at the time; and

- reference data (for example, look up tables of offence codes and corresponding offence categories and descriptions), including the table of 'serious' offences.

The key data columns used for the analysis comprised:

- the date of the DBS application;

- whether the disposal was a conviction or a caution;

- the offence code;

- the person's age when the offence occurred; and

- the date that the conviction or caution was given.

Reference data were used to identify which offences were on the 'serious' list and which could lead to a custodial sentence.

Methodology

A computer model was constructed at the offence and application level using the source dataset received from the Disclosure and Barring Service (DBS) to assess the impact of the proposed rule changes. Removing offences under the multiple conviction and youth caution rules would mean that individuals who had two or more convictions, and/or a 'recent' or 'serious' youth caution and did not meet the other disclosure conditions ('serious', 'recent', and/or custodial conviction), would now receive a clear DBS certificate. The task was to determine how many applicants this would relate to, and how many applicants would still have offences disclosed due to the other disclosure rules.

The approach taken was as follows.

- Disclosure rules were first modelled at the *offence* level*:*

  o the applicant's age at the time of the sentence being handed down was recorded, as well as whether the sentence was a caution/conviction – this allowed the determination of whether to apply the youth or adult disclosure rules for the offence;

  o the rules were then tested against each caution/conviction within the table, coding a '1' against the relevant corresponding column if the caution/ conviction qualified for disclosure under that rule – for example, if it was on the list of 'serious' offences, was 'recent', carried a custodial sentence or there were more than one conviction in the application;

  o if the conviction/caution met none of the disclosure criteria, it remained within the offence table, but remained blank against all of the disclosure columns – this enabled testing the proposed rule changes and ensured that all offences were considered; and

  o the above method then generated the offence level table – an illustration of this table is presented as Table 1.

- Disclosure rules were then modelled at the *application* level:

  o using the offence level table that was generated, the application level table assigned a '1' to a column if the application along the corresponding row contained a caution/conviction that was being disclosed by a specific rule – for example, the 'serious' column would have a '1' assigned if the application along that row contained a serious conviction that qualified for disclosure;

- an additional column was also generated that gave the total count of cautions/convictions that were being disclosed as a result of the rules applied; and

- this method generated the application level table, and an illustration of this is presented as Table 2.

In Tables 1 and 2 actual offence codes have been used to represent individual offences. For example, the code 1.8.12.1 represents 'Assault occasioning actual bodily harm', and 31.6.7.0 represents 'Having article with a blade in a public place'.

Table 1 – Disclosure at offence level, fictional illustration of the offence table

Application URN[1]	Age	Type	Serious	Recent	Custodial	Multi.	Disclosed	Offence code[2]
Appl_12345	17	Conviction				1	1	1.8.12.1
Appl_12345	21	Conviction	1			1	1	31.6.7.0
Appl_98764	17	Caution	1	1			1	2.0.1.1
Appl_98764	17	Caution						3.0.4.2

[1] URN stands for 'unique reference number'

[2] The codes used in this case are those defined by the Association of Chief Police Officers (ACPO)

Table 2 – Fictional illustration of the application table

Application URN	Serious	Recent	Custodial	Multi.	Youth Caution	Count of offences disclosed
Appl_12345	1			1		2
Appl_98764	1	1			1	1

In the fictional example above, for *Appl_12345*, the convictions would have been disclosed under the rules prior to these proposed legislative changes, even if they were not 'serious' or 'recent', because they qualify for disclosure under the multiple conviction rule. For *Appl_98764* two cautions were listed but only one met the criteria to be disclosed (due to being both 'serious' and 'recent'). The data in Tables 1 and 2 are linked by a single *Application URN*, which allowed the calculation of the total disclosed and undisclosed

counts of offences under combinations of rule changes, by the disclosure reason(s) for each application.

The analysis then comprised two main strands:

- quantifying the disclosure of applications and offences *under the existing rules*; and

- quantifying the disclosure of applications and offences *under the proposed rule changes* (i.e. the removal of the youth caution and multiple conviction rules).

This in turn allowed the calculation of the count of offences that would not have been disclosed if the proposed rules had been applied retrospectively in 2015/16, and the number of applications that would now have returned clear certificates.

In order to calculate how many applications were disclosing solely due to the multiple conviction rule, a filter was applied to the application-level data that would count rows that contained a '1' in the 'multiple conviction' column and did not contain a '1' in the columns for the other conviction disclosure rules.

In order to identify youth cautions, filters were applied on the age of the applicant when the offence was committed. This subset of offences was then coded according to whether the offence was 'serious' and/or 'recent', to identify how many filtered offences would no longer be disclosed to identify the types of offence affected.

Results

Multiple conviction rule

Table 3 below shows the count of offences (listed at an offence category level) that would not have been disclosed if the multiple conviction rule had not been applied to 2015/16 Disclosure and Barring Service (DBS) applications. 'Theft and kindred offences' have the highest count not being disclosed (59,880), with 'miscellaneous offences' the second largest group (31,126).

The offence categories are taken from the Association of Chief Police Officers (ACPO) framework.[18] Although most of the categories are self-explanatory, 'sexual offences' deserves further comment. Unlike the categories used in Home Office Counting Rules for police recorded crime, the sex offence category used here is more wide ranging and includes prostitution offences.[19] In fact, these offences dominate multiple conviction sex offences – 96% of the 2,740 listed sexual offences were for prostitution-related offences. Just 1 offence, 'prostitute loitering', made up 83% of the listed sexual offences.

In total there are just over 161,000 offences that would no longer be disclosed under this rule change, which were previously disclosed in just over 41,000 unique applications. This equates to 11% of *all* applications with a Police National Computer (PNC) recorded offence and 17% of all applications that contained a disclosure of any kind in 2015/16.

Table 3 – Offences disclosed in 2015/16 solely due to the multiple conviction rule, by offence category

Offence category[1]	Count of offences
Theft and kindred offences	59,880
Miscellaneous offences	31,126
Fraud and kindred offences	29,758
Offences against property	9,492
Offences related to police/courts/prisons	9,085
Drugs offences	8,477
Public disorder and rioting	4,888
Offences against the person	3,339

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[18] The full list of ACPO offence codes can be found at:
http://listpoint.co.uk/CodeList/details/ACPO%20Offence%20Codes/2019.6 [Accessed August 2020].

[19] Prostitution offences are covered under 'Miscellaneous crimes against society' under Home Office Counting Rules.

Sexual offences	2,740
Firearms/shotguns/offensive weapons	2,099
Other	735
Total count of offences	161,619
Applications affected	41,041

[1] Only the highest volume offence categories are listed separately. Smaller offence categories are combined under 'other'.

Table 4 below shows how many convictions were disclosed on each application under the multiple conviction rule. Over 80% of applications had less than 6 offences disclosed, while 3% had more than 10 offences disclosed.

Table 4 – Count of convictions disclosed by application in 2015/16, solely due to the multiple conviction rule

Count of convictions per application disclosed due to the multiple conviction rule	Number of applications
2	15,582
3–5	18,460
6–10	5,595
11–20	1,231
21–50	158
51+	15
Total	41,041

Youth caution rule[20]

Of the applications that disclosed any conviction or caution in 2015/16, 4% of applicants disclosed at least 1 youth caution, while 2% solely disclosed youth cautions on their application.

The results for youth cautions data are divided into three groups:

- youth cautions for offences that were defined as 'recent', but were not defined as 'serious';

- youth cautions that were not defined as 'recent' but were defined as 'serious'; and

- youth cautions for offences that were defined as both 'recent' and 'serious'.

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[20] This section covers all youth cautions, reprimands and warnings.

All three of the above groups would no longer be disclosed under the proposed changes. Table 5 shows the count of youth cautions for offences (listed at an offence category level) that were 'recent' but not 'serious'. In total, there were 1,164 youth cautions for 'recent' and 'non-serious' offences in 2015/16, contained within 903 applications. The most common offence category was 'theft and kindred offences', which accounted for just over 30% of 'recent' (but not 'serious') cautions.

Table 5 – Youth cautions that were disclosed in 2015/16, defined as 'recent', but not 'serious'

Offence category	Count of offences
Theft and kindred offences	353
Offences against the person	218
Drugs offences	183
Offences against property	143
Miscellaneous offences	90
Public disorder and rioting	78
Offences related to police/courts/prisons	59
Fraud and kindred offences	23
Firearms/shotguns/offensive weapons	16
Other	1
Total count of offences	**1,164**
Applications affected	**903**

Figures for youth cautions covering offences that were defined as 'serious' but not 'recent' are shown in Table 6. This group is the most numerous of the three youth caution sub-groups (7,667 applicants covering 8,272 offences). 'Offences against the person' cover most of the offence counts, accounting for just over 70% of all offences.

There are 358 sexual offences that would not have been *automatically* disclosed had the rule changes been applied retrospectively. 'Indecent assault' offences account for 65% of these, with the remainder largely split between non-contact offences ('exposure' and 'voyeurism', 16%) and 'unlawful sexual intercourse' (12%); 3% of the sexual offence cautions relate to rapes. If a caution rather than a charge is given for a sexual offence, police guidance is that mitigating factors should be present. For example, in the case of 'unlawful sexual intercourse', both parties would be of similar age (under 16) and there would be no element of coercion. Generally, there are other mitigating factors that should

be considered, for example, that the offender was suffering from significant mental or physical ill health, or that the offender was in some way vulnerable.[21]

Youth cautions for these sexual offences might still be disclosed as police intelligence on enhanced DBS certificates. This would happen if the chief police officer reasonably believed that information about the offence to be relevant for the purpose of the certificate. When considering information for inclusion on a certificate, a chief police officer must have regard to statutory guidance issued by the Home Office.

Table 6 – Youth cautions disclosed in 2015/16 for offences that were classed 'serious', but not 'recent'

Offence category	Count of offences
Offences against the person	5,886
Public disorder and rioting	867
Offences against property	505
Theft and kindred offences	400
Sexual offences	358
Miscellaneous offences	183
Firearms/shotguns/offensive weapons	68
Offences against the state	1
Other	4
Total count of offences	**8,272**
Applications affected	**7,667**

Finally, the count of youth cautions that were for offences deemed as both 'recent' *and* 'serious' is given in Table 7. Compared with the other two groups, only a small number of youth cautions met both the 'recent' *and* 'serious' disclosure rules (92 offences contained within 87 applications). There are eight sexual offences that are within this 'serious' and 'recent' group. However, as noted above, these may still be disclosed on a DBS application at the discretion of the police, providing certain tests are met.

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[21] More examples of general and specific mitigating factors can be found here: https://yjresourcehub.uk/out-of-court-disposals-and-prevention/item/625-acpo-youth-gravity-matrix.html [Accessed August 2020].

Table 7 – Youth cautions disclosed in 2015/16 for offences that were defined as 'serious' *and* 'recent'

Offence category	Count of offences
Offences against the person	59
Miscellaneous offences	14
Sexual offences	8
Theft and kindred offences	4
Public disorder and rioting	4
Offences against property	3
Total count of offences	**92**
Applications affected	**87**

Tables 5, 6 and 7 are concerned with offence-level data for youth cautions only. That is, whilst these youth cautions would not be disclosed under the proposed rule changes, applicants may still have other convictions in their criminal record history, which would mean that would they would not return a clear certificate.

Table 8 shows the number of applications that contained only youth cautions and so would now return clear certificates under the proposed rule changes, and the number of offences contained within those applications.

Table 8 – Numbers of applications, and associated offences in 2015/16 that solely disclose youth cautions

Disclosure rule subset	Number of applications	Number of offences on those applications
Serious but not recent	4.757	5.073
Recent but not serious	750	984
Recent and serious	78	82
Total	**5.585**	**6.139**

Overall, youth cautions involving 6,139 offences would not be disclosed if the proposed rule changes were applied retrospectively to 2015/16 data, relating to 5,585 applications.

Table 9 summarises the overall impact of the proposed rule changes – if applied retrospectively to the 2015/16 dataset – on offences and applications. Overall, a total of 46,626 applications would now return clear certificates due to the proposed removal of these two disclosure rules. This is made up of 41,041 applications that were disclosing offences solely due to the multiple conviction rule, and 5,585 applications disclosing solely

due to the youth caution rules. There may be a small number of applicants who disclosed due to both the multiple conviction rule *and* a qualifying youth caution on a single certificate, which will have not been included in the table.

Table 9 – Numbers of applications, and associated offences, 2015/16 that solely disclosed youth cautions or multiple convictions

Disclosure rule sub-set	Number of applications	Number of convictions/cautions on those applications
Youth cautions only	5,585	6,139
Multiple convictions only	41,041	161,619
Total	**46,626**	**167,758**

Table 10 reframes the main findings to identify more clearly the overall impact of the proposed changes by the age at the which conviction or caution was received. In total 28,980 of the 182,528 applicants with no youth criminal record history, would now receive clear certificates (16% in total). In contrast, 17,646 of the 55,421 applicants who have at least one under 18 (youth) conviction/caution would now receive a clear certificate (32% in total).

Table 10 – Convictions/cautions removed, by age of conviction/caution

2015/16 applications	Applications[1] disclosing a conviction or caution of any kind, 2015/16	Applications that would have had at least one conviction/caution removed under the new rules	Applications that would have had all convictions/ cautions removed[2]	Percentage of all applications returning clear certificates
Applicant has only over 18 (adult) conviction/ caution	182,528	61,111	28,980	16%
Applicant has at least one under 18 (youth) conviction/ caution	55,421	47,369	17,646	32%
Total	237,949	108,480	46,626	20%

[1] Note that an individual may submit more than one application in a year

In terms of likely impact of this specific change, the analysis shows the following outcomes if the proposed rules were applied retrospectively to 2015/16 data.

Multiple convictions containing at least one youth conviction

- 70% of applicants with any youth criminality would see fewer youth convictions disclosed due to the removal of the multiple conviction rule (38,595 out of a total 55,421). However, not all these individuals would receive clear certificates (i.e. all offences removed) if they had other convictions in their criminal record history that were covered by other disclosure rules.

- In total, 12,061 applicants with at least one youth conviction[22] would no longer have *any* convictions disclosed under the new rules (these individuals were only disclosing convictions under the multiple conviction rule).

Irrespective of removing the multiple conviction rule, those who had 'serious', 'recent' or custodial convictions would have them disclosed under other disclosure rules.

Youth cautions, reprimands and warnings

- In total, 5,585 applicants who only had youth cautions, reprimands and warnings disclosed, would now not have them disclosed.

Overall, the proposed legislative changes would, if applied to 2015/16 applications, benefit a higher *proportion* of applicants for DBS certificates who had received convictions or cautions while under the age of 18, than applicants who received all their convictions as an adult. Some 85% of applicants with youth convictions or cautions would see at least one offence removed from their list of disclosed offences, while 32% would see all their convictions/cautions removed. By contrast, smaller proportions of adult offenders – that is, those who received all their convictions during adult life – would have at least one or all of their convictions removed from their list of disclosed offences (33% and 16% respectively).

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22 It is possible that the second qualifying conviction was received either as a youth or as an adult.

Limitations

This final section briefly sets out some of the limitations of the analysis.

All the data presented in this report relate to actual counts of convictions/cautions for offences and applications for 2015/16 Disclosure and Barring Service (DBS) certificates. They do not represent projections of what effects rule changes will have on future disclosures. For instance, the analysis does not claim to represent a true counterfactual of any changes to the DBS rules, as changes in the rules are likely to influence applicant behaviour. Had the proposed rule changes been introduced in 2015/16, it is probable that more individuals with multiple convictions and youth cautions would have applied for relevant employment and associated DBS checks. The outputs can only be considered as indicative of how many, and what types of offences, may no longer be disclosed, and the number of potential applicants affected by the proposed rule changes.

It is also useful to consider the extent to which using data on applications made during 2015/16, rather than more recent DBS data, might affect the outputs presented above. The impact on the results for the multiple conviction rule is likely to be modest because the rule is based on the stock of lifetime convictions. This means that it will be relatively stable from year to year. Taking a more recent 'cut' of the data will only add two or three more years of criminal records history data to the 2015/16 dataset that this analysis drew upon.

Any potential impact of using a more recent 'cut' of the DBS applications data might be expected to be more pronounced in terms of the youth caution results compared with adult convictions. This is because, within any annual cohort of applicants, individuals with *only* youth cautions are more likely to be young offenders, who will not have had time to acquire adult cautions and convictions. Given this, it might be expected that the marked reduction in youth cautions over recent years would be more likely to affect the results of the outputs if the analysis was repeated on a more recent data extract. In the year ending March 2019 around 8,600 youth cautions were issued, representing a decrease of 91% since the year ending March 2009.[23] As a result, it is likely that the figures presented in Tables 5 and 6 – on the numbers of cautions/applicants affected by changes to the youth caution rules – would be lower if they were re-calculated using more recent DBS data. In practice the proposed changes are expected to lead to fewer applicants coming back with clear certificates than the figures from the 2015/16 data imply.

Overall one might expect that analysing a more up-to-date cut of the data will have a modest impact on the numbers of convictions disclosed under the multiple conviction rule,

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[23] **Ministry of Justice** (2020) *Youth Justice Statistics Bulletin*, p 6, January 2020. London: Ministry of Justice. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf [Accessed August 2020].

but a greater effect on youth cautions. As the loss of the multiple conviction rule has by far the greatest impact on the number of offences no longer disclosed, using 2015/16 data is unlikely to affect substantially the overall magnitude of applications no longer disclosing.

Finally, details on the exact circumstances and nature of the offences analysed are not included in the DBS data extract. This absence may have implications from a safeguarding perspective, for example, on understanding why a caution was given for a 'serious' offence.