

# People with convictions as trustees

## A consultation response

### Introduction

This document sets out Unlocks response to proposed reforms detailed in a consultation paper which was [launched by the Government](#) on the 4<sup>th</sup> December 2013.

As a charity that exists to support the efforts of people with convictions in moving on positively with their lives, and as an organisation which itself has sought to recruit trustees who themselves have convictions, we are concerned about the potential impact of these proposals, as well as being concerned about how the current system operates.

There is a common theme that runs throughout our response – our aim is to ensure that the processes of the Charity Commission work in a way which allows charities the freedom to recruit people as trustees who have unspent convictions, where the charity believes that the individual can fulfil their obligations as a trustee and the charity can show it has taken reasonable steps to protect the interests of the charity.

### Evidence from others

In addition to drawing on our own experience as an organisation, and the individuals that we've worked with, we sought to raise awareness of this consultation amongst organisations that we know keen to have people with convictions involved at a management level within their organisations. In particular, we have worked with Clinks, which is a charity that supports voluntary organisations that work with offenders and their families.

As well as encouraging responses from other organisations, we have included in our response anonymous extracts from the responses that we received, in order to raise awareness of the concerns of other organisations.

# The importance of 'user involvement'

## Issues

People with convictions play an important role in many charities, particularly those working in the criminal justice system. Becoming a trustee is an important voluntary role that people with convictions can take on which provides a positive pro-social identity.

Unfortunately, people with convictions regularly experience many barriers in their way when seeking to move on with their lives, and we believe that the proposed changes will be seen as yet another door being closed to them. Although this may only be a perception, rather than a reality, this points to an important issue, which the Charity Commission needs to be aware of.

"We've yet to submit for a CC waiver but have a candidate who plans on doing so – and who I think is also quite fearful of the process too." *Charity representative*

Many people with convictions have experienced a great deal of rejection in their lives. For charities that are seeking to engage positively with individuals as potential trustees, discussions about 'disqualifications' and 'waivers' have the risk of damaging what should otherwise be the beginning of a positive relationship. The idea of facing further rejection results in capable individuals choosing to not put themselves forward.

"I am very concerned about what they are proposing for people with convictions that will be covered. I think that many people make mistakes in their lives and should be able to move on, and be able to participate fully in society – this is not good news for charities either particularly small local charities which struggle to find trustees and will definitely put people off from getting involved – having a conviction and having to tell people about what happened feels like I can never move on, It's like being in a modern day version of the stocks where people can mock you and look down on you for the crime that you committed – the difference is that there is no end to it and it is for the rest of your life – how can this be good for society?" *Individual with convictions*

There is increasing recognition that charities should 'practice what they preach'. Becoming part of a charity's board of trustees is the pinnacle of this. This was recognised in the review of the Charities Act 2006, *'Trusted and Independent: Giving charity back to charities'*.

"At the heart of the voluntary sector is the idea that we work with service users, rather than doing things to them. This is no less important with offenders than with any other group. In fact, it is arguably more important, given the level of formal and informal exclusion offenders already face.

Any unnecessary barriers to the recruitment of people with unspent convictions as trustees and in senior positions is a serious threat to the core mission of our sector. At a time when many are working to promote the value of service user involvement, including to potential new providers as rehabilitation reforms get underway, it would undermine our ability to practise what we preach. Clinks therefore joins the calls on the Charity Commission to engage with organisations with direct experience of the challenges caused by the current rules before it considers any further restrictions." *Clive Martin, Clinks*

"We had someone stand to become a trustee at our last AGM who may well have had unspent convictions, unfortunately he didn't take up the position for unrelated reasons but we'd have been loath to not be able to accept him on these grounds. We've had a few people stand for our board who have been victims and I have no doubt that in time we'll have people who would want to stand who have received custodial sentences of 2.5 years or more - perhaps for burglary or other 'dishonesty' crime. The law as it currently stands already feels restrictive." *Charity representative*

## Recommendations

The Charity Commission should provide practical guidance to individuals and organisations which promotes the involvement of people with convictions as trustees, subject to the charity demonstrating to the commission that they've taken reasonable steps in their recruitment process.

The Charity Commission should look to provide positive details about individuals who have become trustees despite their unspent convictions (both specific cases and anonymously, depending on the individual case).

# The role of charities and the Charity Commission

## Issues

We understand the need for the Charity Commission to effectively regulate the charity sector. However, on this particular issue, we believe that the Commission should be acting as an enabling body, working to ensure that its policies and practices enable charities the freedom to take informed decisions.

The current consultation is aimed at 'strengthening the Charity Commission's powers to act where there is abuse of a charity' and plans to broaden the groups disqualified due to their convictions – this assumes that people with unspent convictions are more likely to abuse a charity. There is no evidence to statistically reliable evidence to suggest that this is the case, with the examples given in the consultation being little more than anecdotal examples.

This consultation suggests an increasingly regulatory approach, which would reduce the freedom of charities to recruit people with unspent convictions even where they can show that they have taken reasonable steps to respond to any risks that an individual's unspent convictions may present.

Many charities (particularly in the criminal justice sector) understand people with convictions. It is common practice for charities to have policies in place for managing risks related to this group.

In terms of its approach, we believe that the Charity Commission should hand power back to charities to self-regulate its board, with the Commission instead focusing its limited resources on ensuring that charities can demonstrate that they have taken appropriate steps to safeguard the organisation. For example, this may involve the organisation having processes around the disclosure of relevant unspent convictions, and a risk assessment process which considers any relevance to the particular organisation, and steps that the organisation decided to take to mitigate against any risks. This would enable responsible charities to achieve the right balance between involving people with convictions and protecting the interests of the charity.

"I used to be a trustee and somebody with convictions applied to be a trustee and was rejected because of the nature of her offence. It was a real shame as she could have made a really valuable contribution. I think they checked with the Charity Commission and withdrew the application at that point." *Former trustee of a charity*

Unlock was recently contacted by somebody who had served as a trustee of another organisation for many years. They had previously received a 7 year prison sentence for dishonesty, but had nevertheless fulfilled their obligations as a trustee. This was the first time they'd heard of this issue, and understandably were concerned as to whether this would impact on their position as a trustee.

"The experience I had with the Charity Commission meant that the charity that I was approached by to become one of their trustees decided against it in the end. The major problem I and the charities company secretary was because the Charity Commission were so un-helpful with the questions we raised they kept on going round and round in circles and getting nowhere. It seems as if they actually didn't know the rules themselves." *Person with unspent convictions*

## Recommendations

The Charity Commission should hand power back to charities to self-regulate its board, with the Commission instead focusing its limited resources on ensuring that charities can demonstrate that they have taken appropriate steps to safeguard the organisation.

## The list of offences

### Issues

The current range of 'disqualifying' offences (i.e. 'dishonesty or deception') includes a wide range of common offences such as theft, fraud, benefit fraud, burglary, robbery, obtaining property by deception and handling stolen goods.

The list of offences as it stands today is already very broad, and involves a number of offences which, in many specific circumstances, are arguably not directly linked to the role of becoming a trustee. There is also much confusion (and a lack of clear guidance) as to what the Charity Commission regard as involving 'dishonesty or deception'. The proposed extension will potentially include a significant number of further offences which may not be specifically relevant to a persons' ability to perform the role of trustee.

Sadly, too often we see a professional regulators approach criminal convictions in a blunt and unsophisticated way. However, one approach which seems to work well is the approach of the Security Industry Authority. Their 'Get licensed' booklet sets out their policy in some detail (see [http://www.sia.homeoffice.gov.uk/Documents/licensing/sia\\_get\\_licensed.pdf](http://www.sia.homeoffice.gov.uk/Documents/licensing/sia_get_licensed.pdf)) and they have an online 'criminal record indicator' tool that enables people to work out how their application is likely to be treated (see <http://www.sia.homeoffice.gov.uk/Pages/criminal-record-indicator.aspx>).

"I've got various convictions for drugs offences. I was dishonest by committing a crime, so does that count as a dishonesty conviction? I've contacted the Charity Commission, but they wouldn't give me any advice" *Person with unspent convictions*

### Recommendations

The Charity Commission should provide practical guidance on what constitutes 'dishonesty or deception' and be in a position to respond specifically to individual queries from individuals and charities.

The Charity Commission should develop a more sophisticated way of dealing with convictions so that they only take into account unspent convictions that are directly relevant to the role of a trustee,

## A charities' governing documents

### Issues

If disqualified, an individual can apply for a waiver from the Charity Commission, with the support of the particular charity concerned. Unfortunately, many charities' own governing documents include a standard provision (which the Charity Commission itself includes in its [model articles of association](#)) which stops the Charity Commission waiver process having any practical effect, which means that the Charity Commission will refuse to consider an application for a waiver. The specific provision of the template is s.39(2):

*"39 A director shall cease to hold office if he or she (2) is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of those provisions);"*

Section 178 relates to being disqualified as a result of unspent convictions for dishonesty/deception.

In Unlock's own case, the Charity Commissions' view was that our articles (which were similar to the above) didn't allow for their waiver to have any practical effect. Although we disagreed with this interpretation, we were required to amend our articles before the Charity Commission would consider an application for a waiver. Since that point, many charities that have sought our advice on recruiting trustees with unspent convictions have discovered that they have similar provisions in their governing documents.

*"Our Articles preclude appointment "if s/he is disqualified under Charities Act 1993 from acting as a trustee." This is a reference to S 72 (1) (a); of that Act; but subsection 72(2) states that this provision is not to apply to a spent conviction." *Chairman of a charity**

*"None of our trustees have convictions. However we are contemplating the possibility of inviting an individual with conviction and currently under licence whom we consider would add immense strength to the team. Our governing documents contain clause 39 which refers to "disqualification from acting as a trustee by virtue of section 72 of the Charities Act 1993(or any statutory re-enactment or modification of that provision)". I understand this provision will deny us the opportunity of considering appointing an individual with strengths which would add significantly to the effectiveness of the charity." *Chief Executive of a charity**

"We currently do not have any board members who have criminal convictions. However, we have two candidates who we would like to appoint to the board, both of who have un-spent convictions. A year ago we amended our Articles of Association to allow us to have Board members who do have criminal convictions as this seemed much more in line with our mission and vision. We, of course, put certain caveats around the eligibility criteria for due-diligence purposes. One candidate has decided to wait until his convictions become spent, therefore avoiding the need to ask for a waiver. The other candidate is willing to go through the waiver process but is also extremely nervous about it. His convictions date from the 1980s and we believe he is loath to have his past dredged up again due to an overly intrusive process. He has never re-offended and managed to re-build his life." *Chief Executive of a charity*

## Recommendations

The Charity Commission should either:

- (a) Change their interpretation of the relevant provision to enable the waiver process to have practical effect (**Preferred Option**), or
- (b) Change the template that they suggest charities use when establishing their governing documents, as well as provide an accessible way by which charities with an existing provision can amend them easily, in a way that doesn't prohibit the practical steps of recruitment of people with unspent convictions (given that the issue will normally only be discovered at this stage).

# The waiver process

## Issues

The proposed changes rely heavily on counter-balancing the potential negative impact that these reforms could have on people with convictions by having a waiver process in place to mitigate against this.

In our experience, the waiver process is not very well understood by either organisations or individuals, and the lack of general awareness might help to explain the recent figures that were provided to us by the Cabinet Office.

In 2013, the Commission received 3 waiver applications, all of which were granted. In 2012, the Commission received 5 waiver applications, all of which were granted. In 2011, the Commission undertook a specific exercise to match its information on trustees to that on the Insolvency Register. It followed up by contacting individuals some of which were unaware that they were disqualified, and this prompted 22 applications for waiver in 2011, of which 19 were granted.

So in the last ten years, with the exception of the spike of applications in 2011, the Commission has received no more than 6 waiver applications each year. 90% of waiver applications over the last 10 years were successful. Almost all the waiver applications were for specific charities (in four cases for more than one specific charity). *Provided by the Cabinet Office*

On the face of it, these figures appear to suggest that an application for a waiver is generally granted. However, it is unclear what these waiver applications were related to – for example, as mentioned above, many are relating to insolvency.

The number of waivers applied for is incredibly low, given that:

- (a) Although there are no figures on the number of people with unspent convictions, there are over 9 million people in England and Wales with criminal convictions (and a conservative estimate would be that 10% of these have convictions that are unspent)
- (b) In 2009/10, there were 834,000 trustee board positions within voluntary organisations in the UK

There will undoubtedly be various reasons for the low number of waiver applications, but based on our experiences, much of this will be because of the lack of awareness of the process, the onerous process placed

on applicants, the lack of clear and useable guidance, and lack of any evidence that applicants are likely to be successful.

Indeed, our own experience of the waiver process is not very positive.

In 2011, Unlock recruited for new trustees, with a specific emphasis on attracting people with convictions who have the necessary skills to be a trustee. For one individual, due to his unspent convictions for dishonesty, he had to apply for a waiver. We carried out a full and proper recruitment process, underwent a basic criminal record check, carried out a full risk assessment, put mitigating measures in place, submitted a personal letter from the individual about his offences, and submitted a supporting letter from Unlock's Chair of Trustees. Despite all of this, the Charity Commission contacted the individual to inform him that they would be carrying out further investigations, which would involve interviews with his partner and current employer. In response to this, the individual decided to withdraw his application for a waiver.

Our feeling is that this experience was incredibly intrusive and damaging to the relationship between the charity and the potential trustee. Indeed, to date Unlock has not been successful in getting a waiver for any particular individual. As a result, the only trustees we have been able to recruit to our own board (despite our best attempts) are those individuals with unspent convictions for offences *not* involving dishonesty or deception, or those individuals whose convictions are spent. Other organisations have experienced the same.

Where individuals put themselves forward for trustee positions, the fact that they will need to be given a waiver by the Charity Commission puts the organisation off.

"We've yet to submit for a CC waiver but have a candidate who plans on doing so – and who I think is also quite fearful of the process too." *Charity representative*

"I didn't want to get my past trawled up yet again. Plus, I didn't think it would be successful, because nobody seems to have been. So I've simply not bothered" *Potential trustee of a charity*

Despite our conversations with various charities, we remain unaware of any example where an individual who is disqualified from being a trustee as a result of unspent criminal convictions has been granted a

waiver by the Commission. If there are examples, it would be useful if positive attention could be drawn to these, so that both individuals and organisations can see that it is possible to be granted a waiver. This should give individuals the confidence to use the process.

"I applied to become a trustee. They didn't even ask about convictions, but I told them because mine were unspent and I knew from Unlock about the need for a waiver. When I told them this, they preferred to wait for my convictions to become spent, which will be another 3 years. I'm annoyed about this – I can't blame the charity, they have enough to worry about, and they can't be doing with all the hassle of waiting for a third-party to make decisions on their behalf."

*Person with convictions*

Any changes made to the rules disqualifying people with convictions should be matched with a waiver process that recognises charities are able to self-regulate their activities and will act responsibly when seeking waivers. We do not believe the process should be left solely to the individual application. Charities should be enabled to demonstrate how they are making a fully-informed and proportionate decision, having taken into account all relevant factors.

Many people with convictions have poor literacy skills. We believe it is inappropriate and unfair to have a waiver system that is heavily dependent on individual their writing skills, rather than their suitability to act as a charity trustee. Best-practice employer recruitment processes involve having a face-to-face discussion with an individual, to get the best understanding of the circumstances. Charities will do this as part of their recruitment process, and can convey any pertinent points to the Commission if necessary. Requiring individuals to have to do this does and will discourage people from putting themselves forward, many of whom are fed up of having to explain themselves time and time again.

This suggests the need to look more closely at the Charity Commissions waiver process, and develop this so that it is more inviting to both individuals and organisations where an individual may be initially disqualified. This work should be done in collaboration with criminal justice organisations and others who have an interest in encouraging opportunities for people with convictions. For example, Unlock has previously published a guide on becoming a trustee with convictions – available online at <http://hub.unlock.org.uk/knowledgebase/trustee-charity/> - and we would welcome the opportunity to work in collaboration with the Commission and others on developing this further.

## Recommendations

The Charity Commission should develop a process which places less emphasis on a detailed written account from the individual concerned.

The Charity Commission should produce easy-to-use guidance, for both individuals and charities, on becoming a trustee with criminal convictions, working in collaboration with other organisations who are keen to promote this issue.

The Charity Commission should release annual figures on the number of people who apply for a waiver as a result of being disqualified because of an unspent conviction, and how many of these are successful.

The Charity Commission should develop a strategy which aims towards increasing the number of applications for a waiver, looking at the various way that this could be achieved.

## Broader proposals

### A new power to disqualify a person from charity trusteeship

Any new powers that the Charity Commission has in relation to disqualifying people from becoming trustees must take into account the points made above. In particular, there remains a need to give clarity to individuals on how their application would be treated. Although the current system is in need of development in many respects, there is at least some clarity around the categories of people disqualified and the process required to seek a waiver.

Recommendation - The Charity Commission should ensure that individuals and organisations are able to get clarity about whether an individual with unspent convictions will be able to become a trustee.

### Preventing disqualified trustees acting in another position of power in a charity

This proposal would extend the remit of the Charity Commission to be able prevent people with unspent convictions that disqualify them from being a trustee from being able to be appointed to another position of responsibility within a charity – such as the Chief Executive or Finance Director. A waiver would be needed before being able to perform this role.

This proposal has caused concern across many organisations who currently have individuals in management roles.

"I'm the director of a charity, and have unspent convictions. Does this mean the Charity Commission will be able to stop me from doing the job that I've done for the last 6 years."  
*Person with unspent convictions*

Recommendation - The Charity Commission should explain what (if any) transitional arrangements they will put in place for any new powers they introduce.

Recommendation - The Charity Commission should work with the charitable sector (particularly criminal justice organisations that are more likely than most to have individuals with unspent convictions as trustees, potential trustees or in management positions) to ensure that any new powers do not result in unintended consequences.

### Other relevant changes

Forthcoming changes to the Rehabilitation of Offenders Act 1974 will have an impact on who is disqualified from becoming a trustee under the current framework.

Recommendation - The Charity Commission should ensure that they have guidance available both internally and externally on how changes to the Rehabilitation of Offenders Act 1974 will have an impact on an individual's ability to become a trustee.

## Response to the consultation questions

Much of the above will be relevant to the specific questions of the consultation, but to respond directly to the questions raised, our views are set out below.

### Proposal 1

1. No – see our recommendations above about the list of offences and the waiver process.
2. No.
3. See earlier in this response.

### Proposal 2

4. No – we believe that this type of decision should be left in the hands of the charity concerned.
5. N/A
6. N/A
7. No – we have set out our views on the waiver process in this response.

## About Unlock

We are an independent award-winning charity, providing trusted information, advice and advocacy services for people with criminal convictions. Our staff and volunteers combine professional training with personal experience to help others overcome the long-term problems that having a conviction can cause. Our expertise, knowledge and insight helps us work with government, employers and others to change policies and practices so that together we can create a fairer and more inclusive society.

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