

13 March 2018

Mr Robert Neill MP  
Chair, Justice Select Committee  
House of Commons  
London  
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Sent by email to [bob.neill.mp@parliament.uk](mailto:bob.neill.mp@parliament.uk), and CC to [justicecom@parliament.uk](mailto:justicecom@parliament.uk)

Dear Mr Neill,

**Re: Government response to Justice Committee's report on the disclosure of youth criminal records**

We are writing to you following the government's response in January to the committee's excellent report on the disclosure of youth criminal records published in late 2017. We are concerned by a number of aspects to the government's response and so wanted to write to you to bring these to the attention of the committee.

***Using the Supreme Court case to procrastinate***

It is concerning that the government is clearly ducking behind the Supreme Court case (a judgment in this case is not expected until the latter part of 2018 at the earliest) as a reason for not doing any proactive work in looking at the disclosure of youth criminal records. It is a red-herring to suggest that the case delays any work on reform. It is clear that a Supreme Court judgment could put beyond doubt how the current regime is unlawful, however, the government is not restricted by the judgment in the sense that if it wanted to review the regime, it could. Pre-judgment, there is nothing preventing the government from doing this. Even if the case is lost by the claimants, the government can still go beyond the judgment. There is overwhelming evidence that the fall-out from the current regime is disproportionately damaging to the prospects of people who acquired a criminal record in their youth, and there are strong social policy reasons for why the government should not restrict itself to doing the bare legal minimum.

On a practical point, if the government waits until the Supreme Court judgment before doing any review work, they could be operating what would effectively be an unlawful system. The risk then would be that any efforts to alter the system will repeat the mistakes made in 2013 when the government hastily cobbled together the filtering system – the very system now subject to legal challenge.

While some issues raised by the committee do link with the Supreme Court case, many issues (such as the time it takes for convictions to become spent) could be taken on by the government if they genuinely wanted to improve the system. Sadly, as evidenced by its recent response to Lord Ramsbotham's Private Members Bill on criminal records, the government is using the legal case as a reason for not making any amendments to the length of time that it takes for convictions to become spent. This is procrastination, obfuscation and prevarication. The government acknowledges in its response to the committee that the Rehabilitation of Offenders Act 1974 (ROA) is not subject to legal challenge. The legal case specifically focuses on employment positions that are exempt from the ROA – such as teachers, social workers and carers. Lord Ramsbotham's Private Members' Bill focuses on an entirely different set of employment positions – such as roles in restaurants, hospitality and warehouses.

The government states that *"it is important to consider the Committee's recommendations regarding different aspects of the disclosure system in the round"*. This suggests that the government is looking at taking action to consider the recommendations, examining both the rehabilitation periods and the filtering system. This is what Unlock and SCYJ have recommended. In light of all of the recent recommendations for reform, from both your committee and elsewhere, we would encourage the committee to ask the government to commit to taking action to consider the recommendations and publishing an action plan to ensure that all of the committee's recommendations are fully explored. This can take place regardless of the outcome at the Supreme Court. This work could start apace well in advance of any judgment from the Supreme Court. There is nothing preventing the government from undertaking the work that we're proposing.

### **Comments on particular elements of the government response**

1. **Guidance for individuals** – We welcome the government's commitment to refreshing guidance and online content to make sure that it is clear, consistent and easily accessible. It will be important to ensure that the government takes the lead in publishing and hosting this, and we look forward to working with the government as part of the content stakeholder panel that it is planning to set up. We await to hear more details about the plans and timescales for this. However, action on this front does pre-suppose that the system will maintain as it is. Any work on guidance will need to have as part of the plan the need to promptly revise it as and when changes to the regime come into effect.
2. **Employment**
  - a. The government's response refers to the Civil Service commitment to Ban the Box. It is striking how little public information there is available that reports on the Civil Services' progress on this. For example, there is no information about which 3% of roles in the civil service are not suitable for removal of the "box". The government says, *"Departments will be required to report on exemptions periodically, to the Cabinet Office"*. Will the government publish these exemptions? Will the government publish a detailed implementation plan? It is our understanding that a number of government departments have not yet implemented Ban the Box, and so although the roles may have been "identified" as suitable, it hasn't been fully implemented in the way the government is suggesting.
  - b. The government appears to be suggesting that it will be meeting the recommendation by David Lammy MP by publishing its employment and education plan. His recommendation was *"To ensure that the public understands the case for reform of the criminal records regime, the MoJ, HMRC and DWP should commission and publish a study indicating the costs of unemployment among ex-offenders."* The government started work on its employment strategy in late 2016, well in advance of any findings from David Lammy MP; the upcoming plan is not the same as what David Lammy MP recommend. Will the government commission the research he recommended? We would encourage the committee to review this plan once it is published.
3. **Housing**
  - a. It is astonishing that the government *"do not consider it appropriate to outline a specific commitment in relation to guidance we provide local authorities on social housing allocation"*. That would be an understandable position if the guidance suggested was optional; however, the recommendation from the committee related to a High Court case which asserted legal responsibilities. In short, it is a legal requirement to not take into account spent convictions, it is not a policy choice. This has recently been clarified in the government's [homelessness code of guidance for local authorities](#), and should likewise be clarified in housing allocation guidance. To propose waiting for a government Green Paper on social housing, which will inevitably take a significant time before any changes

materialise, means that in the meantime it facilitates a number of local authorities to continue operating unlawful allocations policies. The fact that the Welsh Government is currently working on its guidance to reflect the High Court's decision is welcomed, and adds more weight to why the government should do likewise.

4. **Insurance** - We welcome the engagement that the government has had with the Association of British Insurers (ABI) and the Financial Conduct Authority (FCA) on the issues raised by the committee. In particular, the FCA's commitment to look at these issues as part of its investigative work is to be welcomed. To ensure that the committee's recommendation relating to the ABI guidance is followed through, we would suggest that the government reports back to the committee in 12 months' time to report on progress.
5. **Young adults** - The government's response on this point fails to give any real consideration as to the scale of the problem presented by the disclosure of criminal records acquired in early adulthood. Unlock will shortly be publishing a report that sets out the problems that people face as a result of criminal records acquired in earlier adulthood, and why the arbitrary line of 18 years old needs to be looked at. We would encourage the committee to press the government for more action on this issue.
6. **Machinery of government** - We very much support the committee's recommendation for government policy to be consolidated into a single department. Nevertheless, we found the government's response interesting in as much as it suggested that the Ministry of Justice leads on policy for criminal records disclosure. Although it is fair to say that the Ministry of Justice leads on the Rehabilitation of Offenders Act 1974 (ROA), the work on the disclosure rules for roles exempt from the ROA has been historically led by the Home Office. Although the government may well say that the two departments work well together, the question of who leads on what is important. We would encourage the committee to seek clarification from the government (particularly in light of how that element of the disclosure regime is the subject of the current legal challenge) as to whether it will be the Ministry of Justice that leads on any future changes to the disclosure rules applying to roles exempt from the ROA.

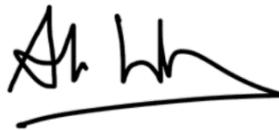
Yours sincerely,



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