Disclosure of youth criminal records

Written response to the Justice Committee inquiry

About Unlock

1. Unlock is an independent award-winning charity for people with convictions which exists for two simple reasons. Firstly, we assist people to move on positively with their lives by empowering them with information, advice and support to overcome the stigma of their previous convictions. Secondly, we seek to promote a fairer and more inclusive society by challenging discriminatory practices and promoting socially just alternatives.

Introduction

2. Unlock welcomes the opportunity to provide a written submission to the Committee's short inquiry into the system governing the disclosure of youth criminal records.[1] Given the importance of this subject to Unlock (and the people that we exist for) we have sought to provide a substantial written submission. However, we note that the Committee intends to hold at least one oral evidence session and we would welcome the opportunity to take part in this so that we are able to expand on those areas of our written submission that the Committee feels are particularly important. We would also welcome the opportunity to support efforts by the Committee to hear from people with personal experience of a criminal record obtained in their youth, should the Committee think that this would be helpful. We receive calls and emails every day to our helpline from people whose lives are blighted by the continued disclosure of old and minor criminal records they obtained in their youth. We have attached case studies to support the points we have made.

Summary

3. Unlock believes strongly that children and young adults who have been in trouble with the law should be given an opportunity to put their past behind them and be able to move on positively in their lives free of the stigma a criminal record. The current criminal record disclosure system acts as a significant barrier to them doing so and can have profound effects well into adulthood, and often indefinitely.

[1] Throughout this submission we respond to the subject of 'youth criminal records' by referring to criminal record acquired in childhood (up to the age of 18) and criminal records acquired as young adults (between the ages of 18 and 25).

Through Unlock's helpline, we speak to around 6,000 people every year who are encountering barriers as a result of their criminal record, often acquired in childhood or early adulthood.

4. In our work as an active member of the Standing Committee for Youth Justice (SCYJ), we have highlighted the disproportionate burden that the current system places on childhood criminal records in England and Wales. The way these records are treated is almost entirely the same as adult records (with just shorter periods of disclosure before they may become spent or be filtered).

5. We believe there is a need for a distinct system of disclosure for records acquired in childhood. We are not aware of any evidence to support the current system. In fact, there is significant evidence to suggest that the current disclosure framework for childhood convictions works *against* rehabilitation. Whilst it is important to ensure that employers and the public are protected, the current system allows for disclosure of significantly more information than would be required to achieve this. International comparisons indicate that far less punitive systems are possible, with no compromises on public or employer protection. The current system involves disproportionate, lengthy and wide disclosure which is unnecessary and actively unhelpful to children in building positive lives in adulthood.

6. Changes brought in to the system of criminal records disclosure in 2013 (introducing filtering) and 2014 (changes to the Rehabilitation of Offenders Act 1974, ROA) were of significant benefit to many people. However, the introduction of filtering was the government's technical response to attempt to comply with a legal ruling, rather than starting from the principle of 'what system is fair and proportionate'.

7. The filtering system should be based on the sentence and disposal, not a list of offences; and the filtering limit of 'one conviction only' should be abolished. The changes to the ROA did not go far enough; offences are 'unspent' for too long, and for some young people the changes actually made the situation worse. Taken together, despite these changes, it remains the case that children continue to have their lives blighted well into adulthood, and often for the rest of their lives.

8. Finally, we particularly welcome the Committee's decision to extend the inquiry to consider *"whether the regime governing disclosure of such criminal records should be extended to apply to records of offences committed by older people, for example up to the ages of 21 or 25."* We believe that there is a need to introduce a nuanced approach to criminal records acquired as a young adult (between the ages of 18 and 25). We set out our reasons for this view in this response.

Background

9. Over 10.5 million people in England and Wales have a criminal record and thus share the common characteristic of having passed through the criminal justice system. The vast majority of these people are now living crime-free lives in the community but often struggle to contribute fully to society because of the stigma, discrimination and practical problems associated with having a past criminal record.

10. The figure of 10.5 million includes many people whose offences were committed when they were children or young adults. Whilst the Rehabilitation of Offenders Act 1974 (ROA) made provision for the convictions of under 18s to become 'spent' sooner than those of over 18s, England and Wales is unusual insofar as it makes no further distinction between criminal records acquired in childhood and adulthood. By contrast, many other jurisdictions provide for the expungement or sealing of juvenile convictions.

11. The criminal record disclosure system in England and Wales has been subject to a number of significant but piecemeal reforms in the last decade. Reforms to the ROA were implemented in March 2014 which reduced the rehabilitation periods for many sentences. In May 2013, changes to what is disclosed on standard and enhanced criminal background checks were introduced, following a legal challenge to the previous system. As a result, some convictions can now be 'filtered' from certain criminal record checks. However, many convictions (including those obtained by children and young adults) are excluded altogether from the provisions of the filtering system.

12. The last major attempt to review the system as a whole occurred in 2002 with the 'Breaking the Circle' report. However, there has been little attempt since then to think through the system of criminal record disclosure as a whole, what it seeks to achieve and whether this is actually delivered. Furthermore, the impact of the recent reforms outlined above has not been examined. A comprehensive review of the aims, effectiveness and unintended consequences of the system is therefore long overdue. The situation is complicated by the fact that responsibility for issues of criminal records and their disclosure now straddles two government departments - the Ministry of Justice and the Home Office.

Criminal records disclosure: a balancing act?

13. Legal and policy debates involving criminal records and their disclosure are often concerned with the issue of 'balance'[2]. That is, they start from the position that any measure which seek to enable people with convictions to put their pasts behind them must somehow be balanced against the need to 'protect the public' from any potential threat which such individuals may continue to pose. Despite the recent piecemeal reforms to the treatment of criminal records in England and Wales, there has been little attempt to consider the weight that should be applied to either factor or to appraise the system as a whole to determine whether it 'strikes the right balance'. Moreover, this metaphor of 'balance' is not particularly helpful in seeking to resolve the complex moral questions which arise when considering when, how, to whom and for what purposes information about criminal history might be disclosed – particularly in relation to children and young adults.

14. Firstly, the 'balance' metaphor sets up the whole debate about the legal rehabilitation of lawbreakers as a zero-sum game between people with convictions on the one hand and 'the public' on the other. Within this framework, people with convictions are presumed to be bearers of 'risk' against which other members of society are vulnerable. However, this is to make a false distinction, since the 10.5 million people with criminal records in England and Wales are a significant proportion of 'the public' and thus a neat division between 'lawbreakers' and the 'law-abiding' becomes confused. The distinction merely raises a further set of complex questions about precisely who is being protected from what by the disclosure of criminal records.

15. Secondly, the 'balance' metaphor presumes that the process of disclosing offending history offers a necessary 'counter-balance' to any risk which might conceivably be posed to 'the public' (or particularly vulnerable members of the public). This presumption is flawed on several levels since:
    a) the absence of prior offending history offers no guarantee that the subject of a background check will not offend in future (for instance, many convicted perpetrators of sexual offences against children have no prior offending history);
    b) a person's criminal record is not necessarily predictive of future offending (research suggests that criminal records tend to lose any predictive validity after about seven years and cannot specify with any exactitude the type of offences which an individual may go on to commit); and
    c) information about offending history tends to result in the imposition of de facto 'blanket bans' against people with convictions from working in particular occupations

[2] This is in part because legal cases concerning the lawfulness of disclosure of criminal records in recent years have focused upon Article 8 of the European Convention on Human Rights which necessarily requires a determination of the balance between privacy and disclosure.

16. Thirdly, the metaphor of 'balance' alone is unhelpful. A constructive approach to 'balance' requires consideration about what the 'right balance' looks like between restrictions on disclosure (through the Rehabilitation of Offenders Act 1974 and the 'filtering' system) and 'public protection' (through the activities of the Disclosure and Barring Service). Due to the often incorrect presumption that people with convictions are inherently 'risky' (regardless of the duration since their last conviction or the nature of the offence(s)), this has all too often resulted in the disclosure of full offending histories to those who are ill-equipped to determine which information is relevant to the circumstances for which it was requested.

17. In light of these limitations it is clear that the law and policy surrounding criminal background checks and disclosure is ripe for a fundamental review and overhaul. Whilst the safeguarding of children or vulnerable people from potential harm is, of course, of paramount importance in society, it is clear that the current system of disclosure regularly leads to the actual harm of routine discrimination against people based upon criminal records often acquired in childhood or early adulthood.

The case for a different approach to the criminal records of children and young adults

The case for a distinct system for children

18. Currently, the criminal record disclosure system applies to children and adults alike, making no distinction between records obtained at a certain age, except to reduce the rehabilitation periods and filtering periods for those individuals convicted before they turn 18. As a member of SCYJ, Unlock supports the view submitted to the Committee by SCYJ that there is a need for a distinct system for children. In this response, we focus on building on this by making the case for a nuanced approach to young adults.

The case for a nuanced approach to young adults

19. The Committee has recently published its report into young adults in the criminal justice system, which establishes a significant case for change to the treatment of young adults. There are several compelling arguments for treating the criminal records of young adults differently to those acquired later in life.

20. Most obviously, there appears to be a growing scientific consensus that the maturation of young adults (and young men in particular) occurs over a much longer period than previously recognised – often extending into the mid-twenties. It is no coincidence that this period overlaps with the peak age at which

individuals are involved in criminal offending and that the onset of 'desistance' from crime often occurs in the mid- to late-twenties. Given that the process of maturation appears to result in many people 'growing out of crime', this raises questions about whether criminal records acquired in youth or early adulthood are of much use in predicting the 'risk' of future offending after the age of about 25. We support the approach to 'maturity' as set out by the Transition to Adulthood Alliance on their website:

> *"Blowing out the candles on an 18th birthday cake does not transform anyone into a fully functioning and mature adult. For those who have experienced disadvantages in life, as many young adult offenders have, this is even more the case. With a tailored criminal justice intervention – one that takes account of the developmental maturity and particular needs of young adults – research has found that young adult offenders are far more likely to 'grow out of crime'. For the 18-25 age group, T2A has found that the level of maturity of an individual must be taken into account when sentencing and delivering interventions to help keep them out of criminal activity."*

21. As well as the process of maturation, desistance from crime has also been linked to other factors such as stable employment, housing, access to education and civic participation. Intervening positively to reduce the burden of criminal records disclosure (particularly in relation to children and young adults) also removes obstacles to factors which are known to promote desistance. This reduces the potential for patterns of criminal offending to become 'embedded' due to the systematic discrimination that people with convictions often face. More than half of all young adults who finish a custodial or community sentence are reconvicted within a year. Nevertheless, young adults are also the age group most likely to 'grow out of crime', and young people who commit crime typically stop doing so by their mid-20s. A positive intervention at this stage can get a young adult back on the right track and turn them into law-abiding members of society. Thus, restricting the disclosure of criminal records for certain purposes might be seen as having considerable utility in the reduction of recidivism.

22. In addition to the removal of barriers to desistance, a reduction in the burden of disclosure may also improve the perceived legitimacy of the criminal justice system amongst children and young adults with convictions. That is, when a person who has already been punished by the criminal justice system continues to suffer discrimination (from potential employers and others) after their sentence has ended, they are unlikely to perceive this as legitimate. This sense of injustice is likely to be felt particularly keenly by those who have successfully desisted from offending or who are making a genuine effort to cooperate with rehabilitative interventions.

23. A related argument concerns the disproportionate exposure to potential discrimination faced by those who receive convictions at a younger age. This is particularly so for offences which cannot benefit from becoming spent or the 'filtering' system. For example, a 20-year-old who receives a conviction has a

longer working life ahead of them than a person convicted at the age of 40. If both receive a conviction for an offence which cannot currently be filtered, there is a disproportionate impact on the younger person who may need to disclose the conviction for longer for certain occupations. Thus the receipt of criminal record at a younger age can be seen as potentially structuring social inequality in the longer-term. This is particularly concerning when considered in relation to the over-representation of people from BAME communities at many stages of the criminal justice system.

The appropriateness and effectiveness of the statutory framework

24. Criminal records only become a problem for individuals when they try to turn their lives around; an individual who plans to defraud an employer will not disclose their past criminal record to them. Likewise, a Disclosure and Barring Service (DBS) check is not required to join a gang. However, those individuals who are honest and up-front when applying for university courses and jobs find that their criminal record can be a significant barrier; effectively, it acts as an additional punishment to those who are trying to change and lead law-abiding lives.

25. Unlock supports the view submitted by SCYJ that, as part of the youth justice system, criminal records should fulfil the aims of the wider system, as set out in domestic legislation and the UN Convention of the Rights of the Child (UNCRC). A key factor in whether or not the criminal records framework is "appropriate and effective" is whether it meets these aims.

26. Domestic legislation requires that the principal aims of the youth justice system are preventing re-offending, and promoting the rehabilitation and reintegration of children whilst giving due regard to their rights and welfare. The UNCRC, which the UK ratified in 1991, sets out that: children in trouble with the law must be treated in a way that promotes their reintegration, and encourages them to assume a constructive role in society (Article 40); and that the best interests of children must be a primary consideration in decisions concerning them (Article 3). The courts in the UK have recognised that: "one of the key principles of the UNCRC is that a child is to enjoy special protection." Article 40 (3) of the UNCRC states that: "Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law".

27. The case set out above for a nuanced approach to young adults takes us to the conclusion that the current statutory framework is neither appropriate nor effective for this group. We believe that there

needs to a more nuanced approach towards criminal records acquired as a young adult (aged 18-25). This is based on desistance research, reconviction data and the findings from the Committee's recent report, *The treatment of young adults in the criminal justice system*:

> *"Research from a range of disciplines strongly supports the view that young adults are a distinct group with needs that are different both from children under 18 and adults older than 25, underpinned by the developmental maturation process that takes place in this age group. In the context of the criminal justice system this is important as young people who commit crime typically stop doing so by their mid-20s. Those who decide no longer to commit crime can have their efforts to achieve this frustrated both by their previous involvement in the criminal justice system due to the consequences of having criminal records, and limitations in achieving financial independence due to lack of access to affordable accommodation or well-paid employment as wages and benefits are typically lower for this age group." (Paragraph 14)*

The effects of changes in 2013 to filtering of offences

28. The government reluctantly introduced a 'filtering' process in May 2013 to comply with a Court of Appeal ruling. We welcomed its introduction; it has helped many people with old and minor criminal records to be free of the stigma and discrimination that is often faced. However, the current filtering system does not go far enough; it is blunt, restrictive and disproportionate. As things stand, a criminal record is for life, no matter how old or minor. This is despite the obvious fact that young people, in particular, make mistakes. In our view, the criminal records system should account for this; it should allow young people to fail and not penalise them for them for the rest of their lives.

29. In 2015, SCYJ made a Freedom of Information (FOI) request to the DBS to ascertain the effect of the filtering system, introduced in 2013. The results indicated that the system has had a limited effect on under-18 offences and pointed to serious limitations in the filtering framework, including the routine disclosure of trivial under-18 records, and widespread disclosure of under-18 convictions.

30. The DBS FOI response revealed that there was an 88% rate of disclosure of convictions where the subject was under 18 at the time of the conviction. Furthermore, the data revealed that relatively minor under-18 convictions are routinely and widely disclosed. For instance, under-18 shoplifting was disclosed 34,000 times in 2013/14 and 2014/15 combined, and over the same period over 2,795 under-18 convictions for theft of a cycle were disclosed. The most commonly disclosed under-18 conviction offences in 2013/14 and 2014/15 were: shoplifting; theft; burglary and theft (dwelling and non-dwelling); assault occasioning actual bodily harm; criminal damage; taking conveyance without authority; no insurance; non-repayment of fine; and handling stolen goods.

31. Disclosure of minor offences that are not on the list of 'offences that will never be filtered' is relatively common. For instance, shoplifting, common assault and possession of various forms of cannabis were all some of the most commonly disclosed under-18 convictions. This suggests that the "one conviction only" rule is having a significant impact on children. Under-18 cautions were filtered out far more frequently than convictions. In part, this may be because multiple cautions can be filtered. However, far too many under-18 cautions are being disclosed; in 2013/14 and 2014/15 the DBS disclosed 8,935 and 9,722 under-18 cautions, respectively.

32. The filtering system needs significant reform so that it is more effective in preventing disclosure of old and minor criminal records on DBS checks. We would like to see the government establish a system that makes sure old and minor convictions and cautions are not disclosed on criminal record checks. This would apply to multiple convictions, more offence categories than currently covered by filtering, and would apply to prison sentences too.

33. We would like to see a number of general changes to the filtering process, including:
    1. **Filtering all offences that were previously stepped down –** In October 2009, the 'step down' process was removed following a court case. Filtering was introduced in 2013 in part as an alternative. Yet as case studies one, two and four in the annex demonstrate, this has led to significant unfairness for those whose record was previously stepped-down but now no longer eligible to be filtered. In many cases, out of court disposals (such as cautions) were accepted on the express indication from the police that the record would be hidden at some (specific) date in the future.
    2. **Removal of the 'one offence/conviction' only rule** – Such a limit ignores the reality of the majority of petty offending committed by young people. This rule also fails to recognise how two identical cases may end up in court, one as one conviction only, one as multiple 'charges'. The example of Bob Ashford, prospective PCC candidate, illustrates this unfairness.
    3. **Removal of the list of offences** – The list of 'specified offences' (i.e. those exempt from filtering so the individual cannot benefit from the filtering system) includes some offences which given the level of disposal, should benefit from filtering. For example, affray is a broad category of offence which covers a range of behaviour. This list is currently being reviewed as part of a narrowly defined project led by the Law Commission, which is due to publish its recommendations soon. An alternative and more effective approach would be to base filtering on the disposal and sentence, not offence. It would also allow the length of time to be considered; take the case featured in the Northern Echo in May 2016 – "Anger as pensioner claims 50-year-old juvenile conviction scuppered job application" – at 15 years old, the man in question was caught fighting and was fined 10 shillings. This would not be eligible for filtering as the system stands and so continues to be disclosed 51 years later.

4. **Filtering of suspended sentences** – A suspended sentence is classed as a custodial sentence. However, since custodial sentences are exempt from filtering, this leaves people with suspended prison sentences outside of scope for filtering. This leads to confusion amongst people with convictions and employers alike. It also fails to recognise the very fact that the court considered it appropriate to make what is essentially a community sentence.
5. **Removal of the restriction on prison sentences** - A scale could be developed for serious convictions so that a longer period of time 'conviction-free' must elapse before they could be filtered.
6. **Introduce a review mechanism -** For people with cautions or convictions for offences not yet eligible because the corresponding length of time hasn't yet passed, or for those with offences covered by the 'list of offences that will never be eligible for filtering' (should it remain), there should be the ability to make an application for cautions/convictions to be considered as filtered through a review process. In September 2015, the Scottish government introduced a filtering system for old/minor convictions. Although this system is not ideal, it involves a 'review process' that allows those with a spent conviction for an offence on the 'rules list' to apply to a sheriff to have this information removed from their disclosure certificate if they think it is not relevant to the role for which they have asked for the disclosure. In March 2016, the Department for Justice in Northern Ireland introduced a criminal records filtering review scheme which includes an opportunity for independent review. Despite these systems having their own limitations, it nevertheless provides a strong basis for a similar process to be introduced in England and Wales.
7. **A more targeted disclosure system -** The government should develop a sophisticated model via the Police Act 1997 to better define a 'relevant matter' so as to determine what information is relevant and therefore what should be disclosed for specific roles currently entitled to undertake a standard or enhanced check. This would ensure that information is available where the nature of an activity or post applied for makes it relevant. However, for positions where an exemption is required because of a specific risk, only relevant information would be disclosed e.g. only spent financial convictions for financial-related positions.
8. **Individuals able to obtain their own DBS check -** Individuals should be able to apply for their own standard and enhanced check. Although the filtering rules are established in law, in practice many people with cautions and convictions do not know exactly how their situation was dealt with. This means that often they do not know whether something will be filtered or not until the check has been returned to them. At this stage, they will have normally had to have already made a decision about whether to disclose or not as part of the application process.

34. As part of SCYJ's work on childhood criminal records, we have made recommendations as part of their *Growing up, Moving on* campaign. The recommendations align with those above, and the ones relevant to filtering are that:

1. All under-18 cautions are automatically filtered out after a two-year time limit.
2. There is no limit on the number of under-18 convictions that can be filtered out providing they did not result in a prison sentence, and providing that four years have elapsed since the last conviction. The police have discretion as to whether or not to filter under-18 convictions that resulted in a prison sentence providing four years have elapsed since the end of their last sentence or order.
3. Police guidance should make it clear that if a person has any unspent convictions, none of their convictions should be filtered.
4. Guidance to police should be amended, setting out the presumption that under-18 police intelligence is not disclosed.

Wiping the slate clean

35. Wiping records is the only fully effective way of allowing people to move on from mistakes they made when they were young. It also helps to protect individuals from future changes to legislation or practice in the way cautions/convictions still held by the police become subject to disclosure (see case studies one, two and four in the annex).

36. England and Wales are unusual in that the state retains records of criminal behaviour indefinitely. In research conducted by SCYJ, eleven out of the sixteen international jurisdictions examined had provision for expunging or 'wiping' childhood criminal records. In research conducted by Unlock into the practices in France, Spain and Sweden, one consistency across all three countries was that shorter periods apply than in England and Wales before records are 'expunged', or individuals are regarded as rehabilitated. Furthermore, the breadth of offences that could be expunged – for example, very serious offences could be expunged in all three countries – shows a level of commitment to rehabilitation that is simply not present in England and Wales. An important principle results from this – that nobody is 'beyond the pale' and that everyone is capable of being granted the status of being legally 'rehabilitated'.

37. Yet in England and Wales there are no means to expunge convictions or cautions received as either a child or adult. This means that convictions or cautions effectively stay on a person's record for life and may be disclosed. Unlock believes that there is a strong case for a system to enable records to be expunged without compromising public protection; once the record can no longer reasonably be regarded as a predictor of future offending.

38. Research suggests reoffending is most likely to occur in the period immediately following conviction or release from custody. Government research indicates that most re-offences are committed within the first 12-24 months of release/offending. Three to four years after conviction or release from custody, the risk of reoffending is relatively stable at around 1% for most offences (and around 2% for violent offences); the rate of reoffending barely increases thereafter. There is some evidence to show that after

seven years, the chance of an individual reoffending has significantly diminished, and becomes close to that of a person who has never offended.

39. In relation to childhood criminal records, we recommend that ten years after the end of the sentence or order for the last offence committed, convictions or cautions received as a child should be expunged from the Police National Computer (PNC) and Police National Database (PND) and, consequently, be incapable of being disclosed by police as part of an enhanced check. So expungement would only be available if a person has not been reconvicted ten years later. A similar recommendation was made by the Home Office report, 'Breaking the Circle' in 2002, and more recently by the Lord Carlile inquiry which proposed:

> *"Children who have offended be given a 'clean sheet' at 18, meaning that previous offences would be expunged from their record rather than only filtered. This would only be available if a specified period time had elapsed in which there had been no further convictions. This would not be available for homicide, serial sexual offences and other violent crimes."*

The effects of changes in 2014 to rehabilitation periods

40. Reforms to the Rehabilitation of Offenders Act (ROA) in 2014 made a huge difference to thousands of people with convictions. However, the changes did not go far enough, and for some childhood criminal records, the situation was made worse; some of the time periods were increased as a result of the 2014 reforms. This came about as part of a general effort by government to simplify the legislation, meaning more offences were caught by the 'prison' definition, including Detention and Training Orders. This highlights the need and significance of a distinct system for childhood criminal records.

41. We would like to see a number of general changes to the ROA, including:
    1. **All determinate sentences being capable of becoming spent -** We believe that sentences of over 4 years in prison should have a rehabilitation period. The law continues to tell over 7,200 individuals every year who are sentenced to over 4 years in prison that they can never be legally rehabilitated, no matter what they do later in life. In this way, the disclosure rules act as an additional punishment which is contrary to the principles of the justice system. We also believe that it is fundamentally wrong that people are effectively 'written off' for the rest of their lives. We believe it is not justifiable for criminal records acquired in childhood or as a young adult to remain unspent for life. It is important to give people the opportunity to have the positive things they have done since leaving prison recognised in law by allowing them to become legally 'rehabilitated' at some point.

2. **Giving people an opportunity to prove themselves -** Where sentences have not yet reached the specified age to become spent, we would like to see a system established that involves an individual case assessment. This would enable people to demonstrate how they have rehabilitated in the community, allowing their convictions to become spent earlier than they would automatically as set out in the legislation.
3. **Clearing up technical anomalies -** We would also like to see the government clean up the many technical anomalies with the current law which came about as a result of the reforms, such as how motoring convictions have a default 5-year rehabilitation period. There is a notable impact on young adults in the way that the government responded to concerns raised by the insurance industry. Many people with minor motoring offences will find themselves having to disclose a conviction to employers for 5 years, which is now longer than somebody who receives an 8-month prison sentence. This will particularly affect young adults who are more likely to receive a motoring conviction than other adult age groups. The Ministry of Justice should urgently review the way that endorsements, fixed penalty notices and road traffic offences are dealt with under the ROA.

42. As part of SCYJ's work on childhood criminal records, we have made recommendations as part of their *Growing up, Moving on* campaign which seek to restrict rehabilitation periods to more serious offending. The recommendations align with those above, and the ones relevant to rehabilitation periods following convictions received as a child are that:

1. Youth Rehabilitation Orders (YROs) should become spent as soon as the order is finished. This would bring YRO rehabilitation periods in line with Referral Order (RO) rehabilitation periods which are spent as soon as the order ends.
2. Detention and Training Orders (DTOs) should become spent six months after the order has finished. This would reduce rehabilitation periods for DTOs considerably. Currently rehabilitation periods for DTOs are the same as prison sentences. Prior to the 2014 changes (which resulted in harsher treatment for DTO's), it was as follows: DTOs of less than 6 months are spent 18 months after the end of the order; DTOs of over 6 months are spent two years after the end of the order. The impact of these proposed changes on critical points in the life of a 13-year-old are contained in the submission by SCYJ.
3. All under 18 custodial sentences greater than two years and less than four years should become spent two years after the end of the sentence.
4. Under 18 custodial sentences greater than four years and less than life should become spent seven years after the end of the sentence. Currently, custodial sentences of more than four years for under 18s can never be spent. The threshold at which custodial sentences can never be spent is the same for children and adults. This change would mean that a child's custodial sentence could always become spent at some point in the future, unless they were on a life sentence.

Dealing with criminal records acquired as a young adult

43. We believe there is a strong case for a comprehensive review of current system of disclosure of criminal records to employers, with a view to achieving a more proportionate balance in the amount of information that individuals are required to disclose to prospective employers (and that is revealed on official disclosures).

44. As set out above, there is a strong case for a distinct approach towards young adults. We support the introduction of a nuanced system that treats criminal records acquired as a young adult more leniently than the current system applying to adults.

45. We believe that further research is needed into how this nuanced system towards young adults should operate in practice. More evidence, and better understanding, of the problems that people face as a result of criminal records acquired as young adults will help to shape proposals for how these problems can be mitigated. This could form part of a much more comprehensive review of the current system as recommended above. It may be helpful to note that we are about to begin some initial work looking at young adults in particular and the specific barriers that they face as a result of the current disclosure regime. We would welcome the opportunity to keep the Committee informed on the progress of this work.

More information

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Appendix – Case studies

The case studies below have been provided to us by individuals. Names and personal details have been changed to protect the identities of those involved.

Case study one

"In 1980 I was convicted of indecent exposure and received a fine of £75. This stupid behaviour was a 'one off' and I have since worked for 30 years in public service as a community officer and manager. Most of these posts involved working with vulnerable adults / children to some extent but didn't require a disclosure at the time. I also coached my son's junior football team for 4 years in the 90's. I have clearly not been a risk to children or vulnerable adults for over 30 years.

"In October 2009 I was made redundant and, looking for other work/volunteering opportunities, queried what would be disclosed and learnt about the step down procedure. I was advised that this conviction would be stepped down, would not show on a standard disclosure, and, given the length of time would not be likely to be deemed 'relevant' on an enhanced check. I have gained permanent employment as deputy managing director at a subsidiary and the company policy is to carry out a check on all employees. I am not sure whether this is standard or enhanced but the reinstatement of stepped down offences mean this will be revealed on either.

"It now looks like I lied on my disclosure form (I did not disclose this stepped down offence) in December and may lose this job – which I have been doing successfully on a temporary basis for 7 months. I am devastated and extremely anxious about the results of the check."

Case study two

"In 2006 I lost the offer of a job because of convictions for theft disclosed on my CRB Check. I appealed to the Information Commissioner that these convictions occurred as a school boy more than 30 years ago and that I have not reoffended or been in any trouble with the police since. He authorised the Police to step down the convictions from the record and I was subsequently issued with an SIA license because I work in the Security Industry. I have recently been informed that the Police have applied to reinstate the convictions, following the October 2009 Court decision. It was back in the 1970's when I was originally convicted in Juvenile Court, now 35 years ago and once again these convictions have come back to haunt me, as I require another CRB Check and the convictions will once again be on it. What about my Human Rights or the Data Protection Act?"

Case study three

"Like many teenagers, I suffered at the hands of the school bully and like many teenagers, the day came when I finally decided that enough was enough and retaliated. The result was a fight in the school playground when I was 15 years old.

"The police were called and I was taken to the local police station. The police officer dealing with my case listened to my side of the story and seemed genuinely concerned about me. He suggested that the best thing would be for me to accept a warning for assault occasioning actual bodily harm. He told me that if I did, I'd be able to go home quickly, wouldn't have the hassle of going to court and in any case, it would be wiped from my record when I was 18. It seemed the best option at the time. The year was 2003 and I'd never been in any trouble before and I've not been in any trouble since. I put the whole thing out of my mind and started to concentrate on my future.

"My troubles only really started in 2010 when I decided that I wanted to work in healthcare. I'd received an offer from one of the top universities in the country but, once the university received copy of my CRB (now a DBS) certificate, they revoked the offer. Desperate to get work, I looked to go into the security industry but found it really, really hard to get my SIA badge. Initially I was rejected but, a very supportive employer wrote a fantastic letter of support and I eventually got my badge. I went on to work at some very high profile events.

"As a caring individual, I knew I couldn't give up on my ambition to be a nurse and decided to go through the university's appeals process. This was the first of many times that I'd have to write out a disclosure statement explaining to an interview or risk assessment panel how I'd ended up with this warning on my record. Disclosure has never gotten any easier for me – each time as traumatic as the first because it takes me back to a really bad time in my life that people just won't let me move on from. Thinking back to what was going on in my life back then reduces me to tears.

"I worked really hard, finished my nursing course and started applying for jobs. I always disclosed my warning on application forms and there were many times when I never heard anything back from an employer. I'll never know whether it was because of the warning or because there were other more suitable candidates. Eventually, I received a job offer. I had to write another disclosure statement which was read by so many people – people that I would potentially have to work with!! I had to have a further telephone interview with my manager where I had to explain the warning all over again. I think the process took about five months in all but eventually I thought I had things settled.

"Sadly this was not to be the case. As well as my main job, I wanted to apply to join the hospital's 'bank list' which would have enabled me to do overtime shifts around the hospital. Yet another application form asked me to disclose details of my criminal record which I was asked to complete and leave in my new manager's mail tray (on

her desk) ready for her to sign off. I was extremely worried about who would potentially see this form and concerned that my personal information was not being more carefully protected.

"After yet another discussion about the warning, my manager refused to sign off my application form stating that she 'didn't think I was ready for this'. However, I knew that several of my co-workers (who had considerably less experience than me), had been signed up really quickly and were already doing overtime shifts.

"Over time, I've noticed how differently I've been treated from my co-workers and how my manager rarely makes eye contact with me. Sometimes I'd like to shout out "Just because I've got assault on my record, doesn't mean I'm dangerous". Recently I applied for a job with another nursing agency and as usual, disclosed my warning on the application form. However, once the agency had reviewed my references and my DBS certificate, the job offer was rescinded.

"I'm now at the point where I feel employers and agencies only offer me interviews to stop them being accused of discrimination. However, once they see details of my record in black and white, my CV/job offer goes in the bin. The government talks about rehabilitation but never stops to consider why re-offending rates are so high. I've really struggled to move on with my life because something I did as a child is always hanging over my head. It's been over 12 years since that stupid fight in the playground but, because my offence is a violent one, it will never be filtered from DBS certificates and will stay with me for life."

Case study four

"I was convicted of ABH 37 years ago. It sounds really bad but it was in self-defence protecting a pregnant woman from assault. I was 18 years old. The magistrate said it was commendable, however I took the law in to my own hands. I was just in the wrong place at the wrong time, like most people. I received a 1-year conditional discharge and a fine of £75 in May 1979.

"I note on the filtering list that this offence has to stay on. Why? It was 37 years ago and I have never been in trouble since. I got educated so I could get well paid and look after my loved ones. I feel so bad about this being disclosed as I work in private education and recently I had to do a self-certification for the school. They knew about my conviction because it came up on the CRB prior to appointment. You may think I am being over sensitive but it really does affect me privately. I cannot prove it, but it has also held me back on occasions when applying for jobs. I know on at least five job applications I have applied for and met every detail of the job specification, qualifications and experience to do the job and because I was honest (i.e declared my conviction), I never even got an interview!

"I understand the police wish to keep it on their PNC and oddly enough I agree with that, but surely after 37 years I shouldn't have to declare the offence on a DBS, I am completely rehabilitated, happy family man who made one

error when I was 18 years old. I did manage to have it removed with the old system. Then the rules changed again in 2010 and the CRB refused to delete it based on the new law. I still have that CRB with no offences on and I wish it still applied. I have to fill in this self-declaration form annually for the school. I am so embarrassed about it, even though I have declared it to the school. I don't who to turn to now, it just seems so unfair."

Case study five

Despite having enjoyed a successful 40-year career in the private sector – and having raised his children successfully to adulthood – Richard was surprised to discover that his record branded him as a criminal with two previous convictions – one for possessing "dangerous drugs" and the other for "theft from an employer".

The records surfaced approximately forty years on. Richard's son wanted to join a choir and as a dad, Richard needed to pass the new record check.

In the 1960's, aged 16, Richard had been prosecuted for the possession of marijuana and was given a one-year conditional discharge. He was never a habitual drug taker; the offence resulted from a one-off mistake when he was approached by a dealer the police wanted to trap. Richard got into trouble again, a few years later, while a student. He was convicted of taking an item of food from a warehouse where he had a job stacking shelves. He believed the item he took was going to waste. Again, he was given a one-year conditional discharge and put the mistake behind him.

After graduating, Richard found private sector jobs throughout the 1970s, 80s, 90s and 00s without anyone wanting to know if he had a criminal record. He was given positions of responsibility and had a productive career. Had anyone asked him, he would have said that he had no convictions. He had been discharged by the Courts and understood that his record was still clear. However, approaching sixty, he suddenly discovered that even after forty years of good behaviour, the Police were listing his youthful mistakes as criminal convictions on a non-basic check. Richard now feels he has been retrospectively criminalized and is being punished for events that should have been forgotten decades ago.

Richard says: *"When you look at this record, it looks dreadful. But I was never really the drug taking thief that it suggests – I was a young person who made a couple of silly mistakes. But it's harder than you would ever believe to correct the impression this record creates, even though no-one apart from me knows or should care about what happened over forty years ago."*

Because of this "new" old record, Richard feels unable to apply for third sector work he would like to do. He thinks he is being prevented from contributing in a way the justice system never intended: *"I thought that*

conditional discharges were invented to help people get back on track – but since the invention of the CRB/DBS, people like me are shackled with old records they cannot get deleted. This creates a problem that never goes away."

Richard believes that, realistically, he will never be chosen to do voluntary or third sector work for charities etc. He is inhibited about making applications requiring checks because he knows he will be required to explain away his mistakes to people who would largely prefer not to hear, or be asked to think deeply, about a senior applicant's juvenile problems.

Richard believes that the government needs to make decisive changes to the law so that checks stop listing youthful mistakes that resulted in conditional discharges decades ago.

Richard concludes, *"We have lost faith in the capacity of people to learn from their mistakes and to change for the better. The present system is preventing people like me from participating."*

