

Response

Ministry of Justice consultation – Strengthening probation, building confidence

About Unlock

Unlock is an independent, award-winning national charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal record, often long after they have served their sentence. Our focus is predominantly on people in England and Wales.

Firstly, **we help people**. We provide information, advice and support to people with convictions to help them to overcome the stigma of their criminal record. This includes running an information site which has over 1 million visitors a year, and a confidential peer-run helpline that helps around 8,000 a year. This work is charitably funded; we do not deliver government-contracted services. We help practitioners support people with convictions by providing criminal record disclosure training. We support employers, universities and others to develop and implement fair and inclusive policies and procedures that enable the recruitment of people with convictions and that treat people with criminal records fairly.

Secondly, **we advocate for change**. Every year we hear from thousands of people who are unnecessarily held back in life because of their criminal record. We work at policy level to address systemic and structural issues. We listen to and consult with people with criminal records, undertake research and produce evidence-based reports to inform policy makers and the public. We challenge bad practice, influence attitudes and speak truth to power. We co-founded and support the Ban the Box campaign and we are pushing to wipe DBS checks clean of old/minor criminal records. We have a track record of constructive engagement with government, the DBS and employers in working towards a fairer and more inclusive approach.

About this response

Unlock welcomes the opportunity to provide a response to the Ministry of Justice's (MoJ) consultation on the probation system. Much of our response is focused on the practical activities that need to be provided by probation services, commissioned by the MoJ, to ensure that people on probation can become law-abiding members of society. We also look at the role of the MoJ, and wider government, in addressing structural and systemic issues that are beyond the control of probation providers and those on probation, but which if resolved would increase chances of both probation providers and those on probation being successful.

Although our response is informed by what we learn from people who have used probation services, due to the limited time period of this consultation we have been unable to directly consult across our network to gain the direct, personal views and experiences of these people, however this is something we have encouraged the MoJ to do itself, beyond what is traditionally regarded as 'service user involvement' through delivery agencies, and we hope that this has been taken forward and has enabled the independent voices of people with lived experience to feed in their thoughts on how the probation system can be improved.

Summary

Our response can be summarised into three key areas:

- 1. The role of probation providers (public, private or voluntary) in supporting people into employment** - This was looked at closely by the Work and Pensions Committee in their "support for ex-offenders" inquiry, and the current probation consultation fails to adequately address this question in terms of asking what the role of probation is, or should be, in terms of helping people on probation secure employment. Under Transforming Rehabilitation (TR), much was promised; in practice, support around education and employment is lacking. Therefore, our response recommends that the MoJ develop a specific education and employment strategy for probation. This is particularly important given that the MoJ's Education and Employment Strategy (launched in May 2018) focused very much on prisons – failing to recognise the large numbers of people within the criminal justice system that do not go to prison. A strategy for probation is likely to interconnect significantly with mainstream employment support provision, and there is an important role for employment support charities that provide services under contract from probation providers, as well as those that receive charitable funding from trusts and foundations. However, taking a strategic view on the role of probation in this context is important and has been overlooked for far too long.
- 2. Individuals expectations of probation providers** - The consultation has focused, in terms of "expectations", more on levels of contact/supervision, and less on "what help or support an individual can expect from probation". This is linked to the above point about employment, but it is also a key question for organisations like Unlock, who are proudly independent of the system and, although we provide practical advice and support, we do not believe that it is the job of a charity like ours (funded by organisations such as the Esmée Fairbairn Foundation) to provide the resettlement advice and support that people should reasonably expect to get from a statutory service like probation. In this response we refer to two specific examples - advice on disclosing criminal records, and setting up a bank account before release. Taking the bank account example, this is a key resettlement requirement, and Unlock has already done a significant amount of work to help prisons and banks set up relationships. TR meant ownership of resettlement within prisons was left wanting, and it is now unclear what help an individual can expect from probation (or the prison). This speaks to the need for minimum standards, but also to the broader point about lack of clarity on what probation is for – and *not* for, and where charities and funders might appropriately identify and fill the gaps.
- 3. The role of the MoJ and wider government in addressing structural/systemic issues that are barriers to success for both probation providers and people on probation** – Probation providers and individuals on probation face barriers to success as a result of policy issues that can only be resolved by government. Little is mentioned about this in the consultation, as so much focus is on getting the machinery of probation contracts right next time around, but as part of the design of a future probation system, there needs to be significant cross-government working to remove obstacles to success. For example, housing; local authorities and other housing providers de-prioritising people leaving prison, and defining prison leavers as 'intentionally homeless', is a significant obstacle that cannot be resolved by the MoJ alone. The Reducing Reoffending Board has some scope to work cross-departmentally, and the vision of this board is one that Unlock welcomes. It is important that in practice there is scope for the MoJ to work across government when looking at the future of probation services and that work is done to overcome the structural and systemic issues that would invariably positively impact on both probation providers and, more importantly, people on probation.

Language

As a charity that uses language which identifies people as people first, we have concerns that the term 'offenders' is unnecessarily stigmatising and contributes to negative stereotypes towards people with a criminal record. In our experience, people with criminal records face obstacles in gaining and keeping employment precisely because of stigma and misconceptions. The term 'offender' is often used to describe someone who has been arrested by the police or is actively involved (or very recently committed) crime. We encourage the MoJ to move away from unnecessarily stigmatizing language and instead seek to identify individuals in the most factually appropriate way given the content. **We recommend that that the MoJ uses language that identifies people as people first – in this specific context, we suggest that be 'people on probation'.**

Expectations of probation services

We believe that everyone serving a sentence in the community (either on a community sentence or on release from prison) should be able to have expectations of what they should be receiving. This should be many and varied, but from the perspective that we bring to this subject, we believe this should include ensuring that probation services have made sure that those they are responsible for:

- a) Understand their criminal record and the impact this will have
- b) Understand the impact of the Rehabilitation of Offenders Act 1974 and how it impacts on them
- c) Are confident in if, what, when and how to disclose to employers
- d) Are clear who is able to help them find employment and how
- e) Are provided with details of those in the community that can provide further help in securing employment
- f) Have received help before their release in finding employment on release
- g) Be aware of other ways in which their criminal record might cause them problems and how they can overcome these – such as house insurance and car insurance.

For those released from prison, some of this work may have taken place in prison, and for all of those serving a sentence in the community, it may be that another agency takes the lead. However, probation services need to make sure that people on probation either receive this directly or get access to them from elsewhere. The future framework needs to ensure that the expectations of probation providers are framed in such a way as to ensure that the above is achieved.

Specific issues

1. Advice and support with disclosing criminal records

As part of the delivery requirements of Community Rehabilitation Companies (CRC's), in Schedule 7 – Services Output Specification, under "Sentence Delivery and Planning" in Service Output Group 7, it states that *"The Contractor shall take reasonable steps to ensure that the Allocated Person is aware of the need to disclose offences to potential employers in accordance with the Rehabilitation of Offenders Act 1974."*

Any community-based support for someone with criminal convictions should include an assessment of their situation under the Rehabilitation of Offenders Act 1974, advising of when convictions becomes 'spent', and where they stand in relation to disclosing their conviction to employers, insurers and others, being confident in if, what, when and how to disclose to employers.

We recommend that it should be a minimum expectation that probation providers ensure that all people they supervise receive appropriate advice and support on understanding the Rehabilitation of Offenders Act 1974, covering if, what, when and how to disclose their criminal record to employers, insurers and others.

2. Employment support and developing opportunities with employers

In a HMI Probation report on 'Through the Gate' in 2016, not a single prisoner, in a sample of 86 cases, had been helped into a job on release by the CRC. The same was found in a similar report published in 2017.

Around three-quarters of people leaving prison do not have paid employment to go to after release. There is a range of national-level services that, to varying degrees, support people in the community and post-release into employment. These include CRC providers, careers advisors (through National Careers Service (NCS) provision), Job centre advisors, work programme providers and HMPPS Co-Financing Organisation (HMPPS CFO) provision (joint HMPPS-ESF funded support for people further from the labour market).

Unfortunately, on a practical level their respective roles (and responsibilities/accountability) are often unclear. Through us providing training to a range of these providers on providing advice/support in criminal record disclosure, the question of "who is responsible for doing this" often comes up. Delivery arrangements tend to rely on regional and local working arrangements which are often inconsistent with other areas, and this results in gaps, confusion and poor service. The changes to support as a result of the Transforming Rehabilitation have added to the confusion (which existed before those reforms) about who is responsible for providing support to people in the community.

A person preparing for release and wondering "who can support me with employment?" will often struggle to find the answer. We regularly receive calls to our helpline from people who have been referred to Unlock by their probation officer or jobcentre advisor for help finding work with a criminal record. As Unlock does not take formal referrals from these agencies, our role in these situations is to advise where we can and then signpost appropriately, but it is often impossible for us to know precisely where we can point them to as there is a lack of transparency. CRCs supervise low and medium risk people on probation or on release from prison – in some ways this group have the best chance of getting into employment, yet CRCs have no standard employment routes in place.

A response provided by Seetec to the Work and Pensions Committee inquiry into support for ex-offenders, stated "*availability of support is not currently the issue...however there is too much complexity with a breadth of providers with differing outcome drivers and a lack of structured signposting. Transforming Rehabilitation was designed to provide a consistent rehabilitation journey for offenders from sentencing to prison to the community and include additional support for short sentenced prisoners.*" They go on to say that CRCs are "*taking steps to join up provision and provide advocacy to support offenders to navigate services throughout their rehabilitation journey and should be the vehicle to connect up services going forward.*" This is an approach that we believe all CRCs should take, and they should be measured against this.

According to the Target Operating Model published by the Ministry of Justice, resettlement services "*must include providing direct support in custody in helping offenders find accommodation, providing assistance with*

retaining employment held pre-custody and gaining employment or training opportunities post-release. It is unclear to what extent CRCs are doing this and how. However, in one example that we are aware of, the CRC has subcontracted their broad resettlement intervention to a specialist housing advice provider, to which 'employment support' has been added on, despite a lack of skills, expertise or resources to be able to deliver this significant addition to the contract. Given there are 8 CRCs operating in 21 areas, it is unlikely that there will be consistency in the employment support people receive on release as each area is likely to commission differently. There is a lack of transparency of supply chain partners in terms of the work they are delivering and how they are resourced. As a charity that advocates for people with convictions, it is challenging for Unlock to determine what employment support is available to people before and after release.

It is not expected that resettlement prisons and probation areas should commission all forms of support themselves. There is necessary cross-over with other commissioners (such as DWP) to avoid duplication. However, often through fear of duplication (or confusion about responsibilities) there are gaps that are left unfilled.

CRC's/NPS have power over where people live and where they can work. They require people to take time off to attend appointments. However they have almost no statutory obligation to provide help with work or accommodation. When referring people to other organisations, like Unlock, they should be clear about what the organisation does. We've had people call the helpline because *"Probation said you'll find me a job/get me somewhere to live"*. We also receive calls where probation or job centre advice is more likely to hinder help – for example where someone has been advised to apply for a job in a care home despite having a criminal record. This raises the question of what steps probation providers are taking to ensure that the information, advice and referrals they provide are accurate and appropriate.

This was looked at closely by the Work and Pensions Committee in their "support for ex-offenders" inquiry, and the current probation consultation fails to adequately address this question in terms of asking what the role of probation is, or should be, in terms of helping people on probation secure employment.

Under Transforming Rehabilitation (TR), much was promised; in practice, support around education and employment is lacking. Therefore, we recommend that the MoJ develop a specific education and employment strategy for probation. This is particularly important given that the MoJ's Education and Employment Strategy (launched in May 2018) focused very much on prisons – failing to recognise the large numbers of people within the criminal justice system that do not go to prison. A strategy for probation is likely to interconnect significantly with mainstream employment support provision, and there is an important role for employment support charities that provide services under contract from probation providers, as well as those that receive charitable funding from trusts and foundations. However, taking a strategic view on the role of probation in this context is important and has been overlooked for far too long.

We recommend that the Ministry of Justice develop an employment strategy for people on probation (to complement the strategy that exists for prisons).

3. Support in opening a bank account

Access to a bank account is essential in accessing benefits. We have undertaken significant work in this area by establishing schemes that enable people in prison to open a basic bank account before release. This was part of a project Unlock ran until 2014, which linked every prison that released directly into the community with a bank. During the course of the 9-year project Unlock helped to set up 74 prison/banking programmes, and by the end of the project 114 prisons had links with a high-street bank. The 'big 5'

current account providers (Barclays, Halifax (part of Lloyds Banking Group), HSBC, Santander and RBS) were all actively involved (as well as a significant contribution from Co-operative), and by the end of 2013 all prisons that wanted and needed a basic bank account opening programme had one. We produced a report at the end of the project with a number of recommendations.¹ Unfortunately, as a result of the changes to the delivery of services and support in prisons, we are aware of a number of prisons that are struggling once again in this area. This seems to have come as a result of a significant amount of change within the prison estate and once well-embedded arrangements have not been properly taken up, especially by CRCs.

CRCs in appropriate prisons should be providing support to people in opening a bank account before release. CRC's should be providing support to people serving a sentence in the community to open a bank account.

We recommend that it should be a minimum expectation that probation providers provide support, where required, to support people in prison and in the community in opening a bank account.

4. Information on insurance

Insurance (such as car and household cover) can be difficult to access for people with convictions. Although this issue is limited to while a criminal conviction is 'unspent' (under the Rehabilitation of Offenders Act 1974), adults released from a sentence of imprisonment will have at least two years to wait before their conviction can become 'spent' (after which point it no longer needs to be disclosed to insurers).

We recommend that probation providers be required to provide information on insurance as part of their case supervision.

Work across Government to reduce reoffending

Work across government is highlighted in the consultation, but there was no question about it.

Probation providers and individuals on probation face barriers to success as a result of policy issues that can only be resolved by government. Little is mentioned about this in the consultation, as so much focus is on getting the machinery of probation contracts right next time around, but as part of the design of a future probation system, there needs to be significant cross-government working to remove obstacles to success. For example, housing; local authorities and other housing providers de-prioritising people leaving prison, and defining prison leavers as 'intentionally homeless', is a significant obstacle that cannot be resolved by the MoJ alone. This is the key area of resettlement where MoJ centrally needs to lead the way in developing a landscape in which people on probation, and probation providers, have unnecessary barriers (such as local authority housing policies that reject people with convictions) removed.

The Reducing Reoffending Board has some scope to work cross-departmentally, and the vision of this board is one that Unlock welcomes. It is important that in practice there is scope for the MoJ to work across government when looking at the future of probation services and that work is done to overcome the structural and systemic issues that would invariably positively impact on both probation providers and, more importantly, people on probation. **We recommend that there be a clear, long-term commitment to working across government, combined with resources, to remove barriers to success for people leaving the prison and probation system.**

¹ Available at <http://www.unlock.org.uk/projects/past-projects/unlocking-banking/>

Response to questions

Question 3 - How can we promote unpaid work schemes which both make reparation to communities and equip offenders with employment-related skills and experience?

Unpaid work provides an opportunity, much like release on temporary licence (ROTL) for people in prison, for an individual to build skills and links with local employers and increase their chances of being employed after completion of the order. Unpaid work should be a key part of the MoJ's education and employment strategy, and should include developing relationships with employers to enable short-term voluntary placements which, if completed successfully as part of unpaid work, develop into permanent paid opportunities. Unpaid work placements should be matched with the individual's needs and skills, and probation services should take a wider view of employment beyond the traditional unskilled roles made available.

We recommend that unpaid work schemes form a key part of an employment strategy for probation.

Question 4 - What changes should we make to post-sentence supervision arrangements to make them more proportionate and improve rehabilitative outcomes?

Given the purpose of post-sentence supervision is rehabilitation, it is principally wrong for this to potentially lead to sanctions. Instead of top-down blanket supervision periods, the policy on post-sentence supervision should enable probation providers to work collaboratively and flexibly with an individual for as long as is deemed mutually appropriate. This should not come with the prospect of sanctions – it should be genuinely voluntary.

We support the Justice Committee's recommendation to repeal section 2 of the Offender Rehabilitation Act in order to remove the 12-month blanket supervision period. We favour an assessment based approach which would be suitably flexible to respond to a person's needs and support desistance.

Question 10 - Which skills, training or competencies do you think are essential for responsible officers authorised to deliver probation services, and how do you think these differ depending on the types of offenders staff are working with?

Unlock runs a helpline that deals with around 8,000 people every year. The majority of these enquiries are from people with a criminal record in the community who do not understand how to deal with a particular problem they are facing as a result of their convictions. Research by Unlock and Prison Reform Trust suggested only 2% of people in prison understand the Rehabilitation of Offenders Act. We should expect statutory providers to provide support these people who have been to prison or are on probation, people, yet this is very often not the case.

The majority of people serving a sentence in the community will turn to their probation officer for advice, yet there is limited knowledge amongst staff of the specialist help needed to support people with convictions. Some of these examples are below:

- *"I'm on life licence, so I just use my probation officer. But, they tend not to know very much about longer term issues. Even so, I just rely on what they say, as if I get it wrong, I can just say, "My probation officer told me"*
- *"Everyone says "you don't have to disclose if you don't ask", but I'm being told by MAPPA that I must disclose. Everyone I speak to says there's nothing I can do about this – surely that's not right?"*
- *"I want to be a taxi driver, but not sure whether it's the best career move because of my convictions. I'd quite like some specific careers advice based on my convictions"*

Probation officers do not always provide accurate or appropriate advice – either because they are not confident in doing so or because they do not see it as part of their role. Instead, probation services inappropriately rely on charitably-funded services like our helpline to plug this gap. An NPS probation officer based in the North of England emailed us just this week:

"I have 2 people who have just lost their jobs and given your details."

As we do not take formal referrals from these agencies (as we do not seek to deliver services on their behalf), we provide training to probation officers, careers advisors and others whose role should involve providing support around criminal records. David, a project manager of a charity based in London, said of our training:

"I had to write in and let you know how I appreciate the criminal record disclosure training I attended earlier this year and how it's improved the information I can provide my clients regarding their criminal convictions. As an ex-offender myself, I have always had to disclose my convictions due to my job role (working with vulnerable adults). I thought I had a good grasp on the ROA 1974 until I attended the training.

The amount of new information I learned on the day was extensive and extremely thorough. It was presented very clearly and you made some difficult parts easy to understand. I can honestly say that I normally struggle in this type of environment but found the day flew by. I thoroughly recommend service providers who work with ex-offenders to attend this training day as we owe it to the people we work with to provide accurate and up to date information."

As part of the delivery requirements of CRC's, in Schedule 8 – "Service delivery proposal", providers should have *"procedures for ensuring that Contractor Personnel have the necessary skills to act as officers of the Contractor for the provision of probation services"*.

In the last 3 years, we have delivered criminal record disclosure training to over 700 practitioners, the majority of whom are delivering probation services in the community. This training, accredited by the Probation Institute and the Institute for Employability Professionals, has been rolled out across certain CRC's as a core part of the training for those providing through-the-gate and/or employment support. However, such training and skills are not recognised as a core requirement nor are CRC's measured against this.

In their response to the Work and Pensions Committee inquiry in 2016, Seetec stated that *"disclosure support must be a key element of employability provision for this cohort to ensure that offenders are able to highlight their strengths and skills to employers and overcome objections to their criminal record, particularly in sectors where there are known skills shortages at entry level e.g. construction."* We have worked specifically with KSS CRC, part of Seetec, although it is unclear how other CRCs are taking on their responsibilities in this regard.

We recommend that every probation office should have a specialist worker trained in dealing with criminal record and disclosure matters. All advisors should have a basic awareness and be able to make internal referrals to the specialist where appropriate.

There is a growing recognition of the importance of lived experience as an effective way of engaging with people in the criminal justice system. As a charity that was set up and is led by people with criminal records, we are a strong believer that this should be echoed throughout the formal justice system. Unfortunately, although many third-sector providers proactively encourage this, we continue to hear of stories where people with criminal records have been unnecessarily held back from jobs in the NPS, CRC's and even third-sector providers where the role requires prison clearance. This problem is mirrored in the prison system (although outside of the scope of this consultation).

We recommend that the MoJ make a firm commitment to the recruitment of people with lived experience in probation-related roles, including as probation officers, youth workers, recovery supporters or other relevant roles, alongside setting targets and establishing ways of measuring progress.

Question 11 - How would you see a national professional register operating across all providers – both public and private sector, and including agency staff – and what information should it capture?

Building on our answer to question 10, we are supportive of a national professional register operating across all providers. Our training to practitioners on criminal record disclosure is endorsed by the Probation Institute, and has been delivered to a number of CRC prime providers and sub-contractors. However, take up is inconsistent both between and within areas, and clear expectations, backed with a national professional register with a model of endorsed training would be a positive way forward.

Question 14 - How can we better engage voluntary sector providers in the design and delivery of rehabilitation and resettlement services for offenders in the community?

We support the submission made by Clinks.

Question 17 - What should our key measures of success be for probation providers, and how can we effectively encourage the right focus on those outcomes and on the quality of services?

Our experience as a charity is that Payment-by-Results and black-box approaches have increased the number of referrals we receive (despite not being a formal referral partner).

Minimum standards need to go beyond form and frequency of contact. Probation providers should be preparing people on probation/release from prison for life with a criminal record and equipping them with the information, support and confidence to overcome the barriers they might face as a result of their criminal record.

Ultimately, there needs to be clear accountability. **Given securing accommodation and employment are two key factors in reducing reoffending, we recommend that there are measurable outcomes linked to these factors, rather than generalised, unquantifiable outputs.**

More information

Written

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