

Ex-offenders, charity trustees & managers

Briefing – Charities (Protection and Social Investment) Bill 2015-16
Second reading, House of Commons

This briefing relates to the [Charities \(Protection and Social Investment\) Bill 2015-16](#), which is due to have its Second Reading in the House of Commons on **Thursday 3rd December 2015**. It builds on a [consultation response we published in February 2014](#). These concerns were featured in an article in *Third Sector* on Wednesday 25th November, titled *Extension of disqualifications in charities bill 'unnecessary'*.¹

The concerns raised in this briefing focus on issues relating to criminal records, and represent the views of Unlock. Unlock is an independent award-winning charity that supports ex-offenders (a group which we refer to as “people with criminal records”) and seeks to remove the barriers that result from criminal records. Unlock is a peer-led charity – this means that we recruit staff, volunteers and trustees that have criminal records. At a board level, we aim to have at least 50% of our trustees who have personal experience of living with a criminal record.

These concerns have the support of a number of charities, including:



Summary

There are proposals within the Bill that represent a direct threat to Unlock and to other charities that work to rehabilitate people with criminal records, many of whom employ former offenders either as trustees or in senior management positions. At the heart of the voluntary sector is the principle of working with our service users, rather than doing things to them. This is no less important with people in the criminal justice system than with any other group. Any unnecessary barriers to the recruitment of people with convictions as trustees and in senior positions is a threat to the core mission of our sector.

¹ Available at <http://www.thirdsector.co.uk/extension-disqualifications-charities-bill-unnecessary/policy-and-politics/article/1374365>

As the Secretary of State for Justice himself has stated, we should not judge individuals by the worst moments in their lives. Instead of seeking to narrow opportunities for ex-offenders to reintegrate and contribute to society, we should be supporting efforts to contribute to civil society through paid employment in the voluntary sector or as volunteers.

The provisions of the Bill, which extends the disqualification framework to a broader range of offences and roles within charities, will undermine the ability of people with criminal records to participate actively in society through legitimate voluntary and paid work. The automatic barring of people on the sex offenders register from becoming charity trustees is a crude and ineffective means of safeguarding children and vulnerable adults.

Although the Government acknowledges the potential for waivers to be issued in cases where an individual seeks to be a trustee of an “ex-offender” charity, our own direct experience and the support we’ve provided to other organisations shows the waiver process is woefully inadequate and not workable in a way that allows charities like Unlock to fulfil their charitable purposes. This briefing seeks to address these concerns as well as others that we have about the Bill.

The proposals contained in the Bill

- Clause 10 of the Bill significantly extends the remit of the current (and proposed) disqualification framework to cover a number of additional roles within charities, beyond the role of Trustee. For example, it will cover senior management positions in charities (i.e. employees). This raises the prospect of significant numbers of existing charity employees being legally prevented from doing their job. It also risks having a long-standing impact on the potential career prospects of ex-offenders working within charities.
- Clause 10 significantly extends the types of offences which, if unspent under the Rehabilitation of Offenders Act 1974 (ROA), would disqualify an individual from becoming a Trustee.
- Clause 10 extends the disqualification criteria to include disqualifying any individual currently subject to the notification requirements under the Sexual Offences Act 2003, even once the conviction is spent under the ROA.
- Clause 11 creates a discretionary power to disqualify, which can include individuals that have received disposals for criminal offences that are legally spent under the ROA (i.e. cautions).
- The Bill is founded upon having an effective waiver process which we argue is not workable in a way that allows charities like Unlock to fulfil their charitable purposes.
- The presumption by Government is that being subject to the notification requirements (i.e. a “registered sex offender”) makes an individual unfit to be in a position of trustee, even once the

conviction becomes spent. The idea of an automatic disqualification in this situation is troubling and would raise the prospect of people with old spent sexual convictions being barred from serving as trustees of a whole range of charities where safeguarding of children or vulnerable beneficiaries is not an issue. This proposal comes as part of plans to extend the reach of the current legislation surrounding trustees, meaning it will also extend to senior management positions within the charity.

- There are existing safeguards in place for charities that appoint trustees and recruit staff that work with children or vulnerable adults. This additional legislation is unnecessary from a safeguarding perspective, yet creates additional burdens on charities who work with and/or employ ex-offenders.

The impact of the Bill as it stands

- Currently, those individuals with an unspent conviction² for an offence relating to dishonesty or deception are automatically disqualified from acting as a Trustee. The Bill would extend this power so that those in senior management positions in charities would also be disqualified.
- The proposal to extend disqualification to those subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 would mean over 46,000 people would be automatically disqualified from trustee positions and senior management posts.³
- There are currently in excess of 1,000,000 trustee positions in England and Wales.⁴
- An unknown number of existing trustees would become automatically disqualified in their roles.
- An unknown number of senior managers in charities would become disqualified from their roles.
- Consider this example:

David has been a trustee of a charity in his local community for 6 years. He has a spent conviction for sexual assault which he obtained 12 years ago for which he was sent to prison for 3 years. None of his fellow trustees are aware of this as he didn't need to disclose it. The charity is involved in policy and campaigning on environmental issues and doesn't deliver front-line work.

As it stands, David would become automatically disqualified from his role because he remains on the sexual offences register for life. He will have to either agree to disclose his convictions to his fellow trustees, so that they can decide whether to support a waiver application, or he might decide to resign his position due to fear of the reaction and the potential risk to his personal safety and relationships in the local community.

² As determined by the Rehabilitation of Offenders Act 1974

³ In 2013/14, 46,102 individuals were subject to the notification requirements (see [here](#))

⁴ <http://trusteesweek.blogspot.co.uk/p/trustee-facts-and-figures.html>, accessed 10/09/15

Concerns with the Bill

The proposals are unnecessary

- It was not the Governments' original intention to introduce legislation to disqualify those subject to the notification requirements. Indeed, the Government rejected this proposal in their consultation response in October 2014 due to existing safeguards;

We carefully considered whether or not an unspent conviction for sexual offences should result in automatic disqualification from charity trusteeship for charities primarily involved with children or vulnerable adults. In such circumstances primary responsibility rests with the charity to have its own safeguarding policy and processes in place, which may include undertaking checks of the trustees before they take up their post. The Charity Commission would also be able to exercise its discretionary disqualification power ... in such cases if the person had exhibited conduct damaging to public trust and confidence in charity (or a particular class of charity – in this case charity working with children or vulnerable adults) on grounds of unfitness to serve as a charity trustee (for that class of charity).⁵

- Trustees working in charities that work with children or vulnerable adults conduct DBS checks – guidance from the Charity Commission ('Finding new trustees') states:

The appointment of a new trustee to a charity is an important matter. Before appointing a new trustee the trustee board must make sure it is acting within the law, in accordance with the charity's governing document, and that the prospective trustee is not disqualified from being a trustee. The commission recommends that DBS checks should be obtained for trustees of charities which work with children or vulnerable adults. Charities should also ensure that a prospective trustee understands the responsibilities they are taking on and can be relied on to carry them out responsibly.

- Those individuals subject to the notification requirements are monitored by the Police. Any moves to increase the disclosure of information relating to these individuals should be done via the Police, rather than through self-disclosure by the individual.

The proposals are ineffective

- The disqualification criteria relies on self-disclosure by individual trustees as a trigger for the disqualification and/or waiver process. Those most likely to be a risk are those that are least likely to self-disclose.

⁵ Para 29 of Government response to the Consultation on Extending the Charity Commission's Powers https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365710/43820_Cm_8954_web_accessible_Draft_protection_of_charities_bill.pdf (page 48-9)

The proposals could discourage service-user involvement and increase reoffending

- A NOMS (2010) briefing, 'Understanding Desistance From Crime'⁶ shows how the proposed legislation could increase the risk of re-offending. The proposal in the Bill to extend the criteria by which people must be excluded from serving charities is at odds with the Ministry of Justice's own research. Working as an employee or contributing as a trustee facilitates:
 - Opportunities to contribute to society
 - Networks that provide social capital
 - A sense of belonging that is inconsistent with crime.
- 'Understanding Desistance From Crime' highlights the following as important factors in promoting desistance:
 - **Something to give.** People who feel and show concern and empathy for others are more likely to desist from crime. Offenders who find ways to contribute to society, their community, or their families, appear to be more successful at giving up crime.
 - **Having a place within a social group.** Those who feel connected to others in a (non-criminal) community of some sort are more likely to stay away from crime. Criminologists call this "social capital" – the amount of social support that someone has "in the bank" to draw upon.
 - **Work with and support communities.** Individuals who feel like they are a welcomed part of society are less likely to offend than those who feel stigmatised. The voluntary sector, faith-based and other community groups, and local employers, are all key components in reintegration. Their influence can last far beyond the criminal justice agencies. . . . Without community reintegration, the only place where an offender can find a warm welcome and social acceptance will be the criminal community.
- The extension of the disqualification framework to senior management positions could have a significant impact on the potential career prospects of people with convictions, and a wider negative impact on the ability of ex-offenders to establish their own charities to help others.

The legality of taking into account spent convictions

- It is unclear how the disqualification criteria would be legally permissible under criminal record disclosure legislation. This particularly applies in two instances:

⁶ Maruna, S (2010) "Understanding desistance from crime", Ministry of Justice Rehabilitation Services Group/Professor Shadd Maruna

- The proposals contain a discretionary power to disqualify where the Charity Commission would take into account cautions (which are 'spent' immediately under the Rehabilitation of Offenders Act)
- The proposals widen the automatic disqualification criteria to all individuals subject to notification requirements. This, by consequence, would apply to sexual convictions that are legally 'spent' under the Rehabilitation of Offenders Act 1974). Since the Rehabilitation of Offenders Act 1974 was reformed in 2014, most convictions become spent much earlier.
- However, an individual may remain subject to the notification requirements for longer.

Take, for example, an individual convicted of a sexual assault and sentenced to 3 years in prison. Assuming the individual doesn't re-offend, the conviction will become spent 7 years after the end of the sentence. However, they will remain subject to the notification requirements indefinitely, with a right to review after 15 years.

In the example above, under the proposals of the Bill the individual would be automatically disqualified from being a trustee for *at least* 15 years, and potentially for the rest of their life. The Joint Committee on Human Rights have raised concerns about the broader provisions of the Bill which, it says, "increases the power of the Commission and provides insufficient certainty to both individual trustees and charities about the possible consequences of their conduct in relation to matters which may have nothing to do with the management or administration of a charity."⁷

The impact on the voluntary sector

- It is important to consider the impact on the 1,750 voluntary sector organisations whose main client group are people in the criminal justice system, as well as the 4,900 that support them as part of their work'.⁸
- The proposals would create unnecessary additional obstacles in the way of recruiting trustees.
- The disqualification framework and waiver process conflicts with the charitable purposes of those charities promoting the rehabilitation and social integration of people with criminal records.
- Although it is welcomed that the Government acknowledges the potential for waivers to be issued in cases where an individual seeks to be a trustee of an "ex-offender" charity, [we know](#) that the Charity Commission's waiver process is woefully inadequate and is not fit for purpose in relying on it as an adequate safeguard. Since 1993, the Commission estimates that it has granted approximately 10 waivers relating to unspent convictions, which is incredibly low given the

⁷ http://www.parliament.uk/documents/joint-committees/human-rights/Letter_to_Lord_Hope_of_Craighead_070115.pdf

⁸ TSRC working paper 34: <http://www.birmingham.ac.uk/generic/tsrc/publications/index.aspx>

numbers of people with unspent convictions. From the numbers of those seeking waivers (which again is very low), it could be inferred that the requirement to seek a waiver is creating a chilling effect, leading to fewer expressions of interest in such positions from those who have relevant convictions.

- The Charity Commission's starting position is that if disqualified by the legislation, it is Parliaments' intention for that individual to be disqualified, and therefore the Charity Commission currently grant waivers in 'exceptional circumstances only', which is a high threshold.
- The concern for Unlock is that suitable individuals, who could well contribute a great deal to our governance, may simply not come forward.
- A significant proportion of voluntary sector organisations begin as self-help groups, founded by lived experience of the issues they are working to resolve. The widening of the disqualification framework therefore represents a real danger to the future diversity and vibrancy of the voluntary sector working in criminal justice.

Alternative approach

We believe that the proposals in relation to criminal records are unnecessary and ineffective. Ideally we would like to see the majority of the provisions above not proceed into legislation. However, concerns could be mitigated by:

- Aligning the provisions of the Bill with the requirements of the Rehabilitation of Offenders Act 1974.
- Strengthening the waiver process so that charities who wish to appoint a disqualified person are able to do so.
- Restricting the disqualification framework so that it does not impact on people employed in senior management, subject to appropriate safeguards.
- Creating an opt out from the legislation for charities which work with and/or employ people with criminal records as part of their charitable purpose.

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