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| **Debating Disclosure - Improving Life Chances Through Awareness and Understanding** |  |
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| **Debbie Nolan, CYCJ** |
| **June, 2018** |

Acknowledgements

CYCJ, would like to thank CELCIS and the Scottish Care Leavers Covenant for their parts in organising the conference, all invited speakers from Disclosure Scotland, Who Cares? Scotland, Scottish Children’s Reporter Administration, Clan Childlaw, and the University of Strathclyde who provided an overview of the current system of disclosure and to all those who attended and contributed to the discussions of the day.

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On April 25, 2018, the [Centre for Youth & Criminal Justice (CYCJ)](file:///C:\Users\rtb13113\AppData\Local\Temp\j.org.uk\), [CELCIS](https://www.celcis.org/) and the [Scottish Care Leavers Covenant](http://www.scottishcareleaverscovenant.org/) co-hosted the Debating Disclosure: Improving Life Chances Through Awareness and Understanding Conference at the University of Strathclyde. The event aims were:

* For participants to leave with a better understanding of the current system of the disclosure of criminal records
* To highlight what is working well and the complexity in the current system
* To explore what the future of disclosure could look like and how this could be achieved.

Over 70 delegates attended the event from the looked after children and youth and criminal justice workforce, including representatives from Local Authorities, the Scottish Government, third sector organisations, Scottish Children’s Reporters Administration (SCRA), Police Scotland, the Scottish Prison Service, secure care centres, and academics. Over half of the attendees completed event evaluations, and of those who did only 25% agreed or strongly agreed that their knowledge and understanding of this topic was good prior to the event, suggesting the event aims were the correct ones.

The event combined formal inputs and opportunities for facilitated table top discussion and reflection ([presentations and voice recordings are available here](http://www.cycj.org.uk/resource/debating-disclosure/)). Many respondents commented positively on this combined format and the variety, quality and knowledge of the presenters, as illustrated by two respondents:

“Information-packed and quick paced event - loads shared but enough time to discuss/reflect and talk. Thank you!”

“Presentations were excellent giving a varied view point of complex issues and possible solutions.”

The following is a summary of the dominant themes discussed at the event and included in the event evaluations. This report should be of interest and use to those who attended the event, but also to all those working within the youth and criminal justice system and with looked after children and care leavers.

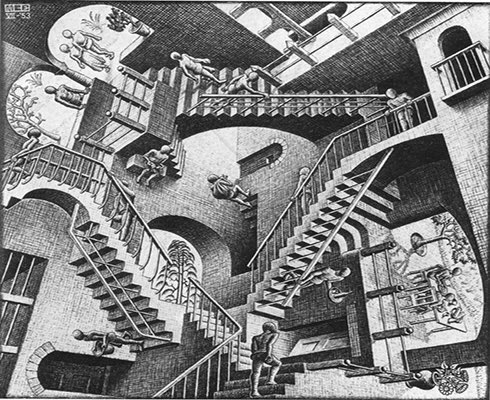
The current system

Dr Claire Lightowler (Director, CYCJ) opened the event, highlighting that the disclosure of criminal records is an issue that affects all children and young people who have come into contact with the justice system, and that the effects of childhood criminal records are long-lasting, across a range of life chances and opportunities. This includes in access to employment, education, training, volunteering opportunities, housing, insurance, and visas for travel. It was highlighted that the effects of disclosure are felt disproportionately by certain young people, with the evidence clear that children involved in a pattern of offending, or involved in more serious offences, are almost always our most vulnerable, victimised and traumatised young people (CYCJ, 2016). Of particular concern is the overrepresentation of care leavers in the justice system and that behaviours by looked after children are more likely to be reported to the police and therefore attract a criminalising state response (Scottish Government, 2018; Scottish Care Leavers Covenant, 2015), discussed further below. Numerous participants stated that greater understanding of the impact of disclosure on life chances was a key area of learning from the event:

“More importantly this event has highlighted the lifelong implications for children and young people.”

“I have learned how the disclosure system effects the future chances of care experienced young people.”

From the outset of the event, the **complexity of the current system of disclosure** was highlighted. In his introduction, Nick Hobbs (Office of the Commissioner for Children and Young People in Scotland) likened the image below to the current system of disclosure, in that the closer you get to the system, and the more you look at it, the more difficult it becomes to understand:



Indeed, one of the most common responses in completed evaluations regarding the most important thing participants had learned from the event was how complex the current system and issues related to disclosure are, leading two participants to conclude:

“We don’t even know what the system is.”

“Very few people appear to understand the complex system – how can we expect young people, vulnerable people to?”

While it was acknowledged that a level of complexity in the system is unavoidable and Claire Sands highlighted in her input that this is an issue across [international systems](http://scyj.org.uk/wp-content/uploads/2016/04/ICRFINAL.pdf), the current level of complexity was deemed to be fundamentally a rights issue. Throughout the formal inputs and during participants’ discussions, the resulting lack of detailed understanding of the current system at all levels – for people with convictions, practitioners supporting these individuals, and employers and opportunity providers – was highlighted. This lack of individual and collective understanding was reported to have a range of negative implications, particularly for individuals with convictions, including anxiety, psychological impacts, de-selection from opportunities and limiting aspirations. Participants also reported professional anxiety and feelings of helplessness regarding their inability to help people to understand and navigate the system and were highly concerned about providing misinformation.

**Current sources of information, training and support** were highlighted by participants including:

* Drawing on colleagues’ expertise
* Utilising legal and rights organisations such as Clan Childlaw, the Scottish Child Law Centre and Together Scotland
* CYCJ
* Recruit with Conviction
* Unlock
* Disclosure Scotland, with Gareth Wilkes and Rachel McLean providing an overview of the current system of disclosure (different types of certificates, the PVG scheme, and individual rights) and the supports that can be provided by Disclosure Scotland at the event, with this deemed helpful in supporting greater understanding of the system
* [Scotland Works for You](https://www.mygov.scot/scotland-works-for-you/) Alliance, which was introduced in the above input. The Alliance is chaired by Disclosure Scotland and recently published online guidance which has sections on the current system of disclosure, support for employers, and support for individuals with convictions, with training/workshops for individuals and employers planned.

However, participants reported that it remained difficult to know where to go for consistent, accessible information and individualised, case-specific support.

The need for more support in understanding disclosure

Participants were asked what more support is needed to understand the current system of disclosure, with the responses summarised below. A range of specific questions were asked at the event, responses to which are currently being collated.

Participants sought **the provision of more widely accessible, understandable generic information**, almost a toolkit on the disclosure system, accompanied by authoritative guidance. Having information available to everyone online that is regularly updated, and which includes visual and interactive formats was deemed to be important. The guidance published by [Scotland Works For You](https://www.mygov.scot/scotland-works-for-you/) has sought to achieve this and Disclosure Scotland are keen to hear any feedback on this resource. It was also suggested having a chapter on disclosure in the CYCJ Guide to Youth Justice in Scotland may be useful.

It was deemed imperative that **resources specifically aimed at children and young people** be made available, containing ‘simplified’, short, child-friendly language which could be understood by young people without a third party, tailored to different ages and stages of development. An app for young people was suggested at various times, as was having a resource pack for young people that could be provided at different stages of the journey through justice (e.g. by police, at Hearings, at court). Such resources would also be valuable in providing practitioners with tools which could be used consistently to promote effective communication with young people.

Participants said that **employers and opportunity providers** would benefit from specific guidance, information and support, given their critical role in making opportunities available. The complexity and significance of decisions made by employers and providers was recognised, with the development of skills, capacities and understanding (including the meaning of information contained within certificates), rights and responsibilities, the quantification of risk, bias, timing of disclosure requests, the benefits of employing a diverse workforce, and good practice examples deemed to be important. It was noted that the Scotland Works for You Guidance has specific information for employers and [Release Scotland](https://www.releasescotland.com/) is a network to support employers who want to recruit people with convictions.

Participants recommended making the **information included on disclosure certificates and Subject Access Requests more meaningful and understandable**. It was suggested that this could be achieved by documenting whether convictions are spent or unspent, when any unspent convictions will become spent, what an individual needs to self-disclose and how long for, and any rights regarding the removal of information (albeit with caveats that this information could change upon further offending and is dependent on role/purpose).

**Building the knowledge and understanding of the workforce** through training was deemed crucial. It was acknowledged that this is important across organisations, including the looked after children workforce, social workers, panel members, Reporters, Scottish Prison Service, police, careers advisors, opportunity providers, employers, and counter signatories. It was suggested that a consistently available training requirement/input, perhaps as part of pre-qualifying training and continuous professional development (including on a multi-disciplinary basis) would be useful. Such training would need to be accessible, engaging and participatory, and adopt a tiered approach. In terms of content, it was deemed beneficial to include information on legislation and the interface between Scottish and UK legislation, rights and responsibilities, different levels of disclosure and what is needed for different roles, the Children’s Hearing System, risk, rehabilitation and desistance, and lived experience and sources of support.

It was recommended that the training be accompanied by **individualised, in-person** (either face-to-face or by phone) **information and support** that is available to everyone. Many participants deemed a “one stop shop”, which could provide consistent and correct information, peer support and signpost to community support, from individuals with expertise in this area to be important. It was accepted that this needed to be accessible at the outset when a young person is charged/accepting offence grounds/convicted; continually on the journey through justice; and later in life, which may be when the implications of records become more evident.

Moreover, participants reported a need for enhanced **access to legal representatives and advocacy support** for young people. It was specifically suggested that there should be a right and duty to such representation when young people and their families were attending Children’s Hearings on offence grounds. This would aid in their understanding of the potential consequences and long-term implications of accepting such grounds. Access to this representation, including to legal aid, as well as ensuring the accuracy of information provided was reported by participants to currently be an issue.

Some participants concluded that **with a system as complex as it currently is, achieving the above would be impossible**. It was suggested that rather than trying to navigate such complexity, the system needed to be **fundamentally overhauled and simplified**, potentially requiring starting afresh, and that this needed to begin with agreeing the basic principles of the disclosure system.

Areas that are working well and challenges in the current system

During the event, a range of inputs were provided on areas that were working well and challenges within the current system on:

* Breaking Barriers–The Care Experienced Perspective – Shumela Ahmed and Lucy Hughes (Who Cares? Scotland)
* The Children’s Hearings System – Malcolm Schaffer (Scottish Children’s Reporter Administration)
* Legal Challenges and Human Rights – Alison Reid (Clan Childlaw)
* Time for Policy Redemption – Beth Weaver (University of Strathclyde)

During these inputs and the subsequent discussions, a range of factors were highlighted as either currently working well, or as areas of challenge. These are summarised below.

It was recognised that the current system of disclosure provides **strong gatekeeping and good protection** for vulnerable groups by preventing individuals whom it is deemed should not be working with them from doing so. However, many participants commented that the reach of the current system was disproportionate to the risk presented by a critical few, and was not achieving the right balance between the public’s right to protection and the rights of the individual, including the right to ‘move on’ from offending behaviour and to put offences committed in childhood behind them.

There is a policy and practice drive to **avoid the criminalisation of children, to keep children out of formal systems where possible, and to develop understanding** of the impact of adverse childhood experiences, the needs and experiences of care experienced young people and of young people involved in offending. Too many children continue to have criminal record information requiring disclosure into adulthood, and **the current system of disclosure affords insufficient recognition of distinction between offences committed by children and adults**.Many participants suggested that developing a **distinct approach to offences committed in childhood should be a priority**, in recognition of the different developmental needs of children, systems within which their behaviour is addressed, the recognised differences between offending in childhood and adulthood, and significant costs and implications of disclosing childhood records. Calls were made for the non-disclosure and deletion of records accrued in childhood to become the norm in Scotland, with the exception of the small number of very serious offences committed by children. Many participants drew on Claire Sands’ (Consultant Youth Justice Researcher) input highlighting the international evidence that such approaches were possible, begging the question **why not in Scotland?** It was also suggested that Scotland could go further than this and adopt an individualised, ‘developmental needs lens’ to disclosure rather than arbitrary chronological, age related thresholds. Gerard Hart & Lynne McMinn (Disclosure Scotland) in their input highlighted proposed reform in this area in their discussion of the [Protection of Vulnerable Groups and the Disclosure of Criminal Information: A Consultation on Proposals for Change](http://www.gov.scot/Publications/2018/04/6517) as discussed further below.

It was also acknowledged throughout the inputs and discussions that the disclosure of childhood records **disproportionately impacts on some children more than others**.The intersection between offending, vulnerability, need and protected characteristics, or at least areas that can result in further discrimination such as disability, mental health difficulties, poverty, deprivation, inequality and care experience, is well recognised. Shumela Ahmed and Lucy Hughes (Who Cares? Scotland) in their powerful input highlighted that **in spite of only 0.28% of the population being in care, a third of young people in custody have reported being care experienced**. Concerns regarding the criminalisation of looked after children and the significant negative effects of the current system of disclosure on the lives of care experienced young people were clearly highlighted. It was acknowledged that these issues are fundamentally ones of corporate parenting and rights, as well as alignment with the guiding principles of the Scottish Care Leavers Covenant of care-proofing policy and assumption of entitlement. There requires greater focus on preventing the criminalisation of looked after children and offending in the first place; in building the understanding of the workforce of these issues; and the impact of disclosure.

Linked to this was the strong agreement about the need to consider the **context of offending**, which was often deemed to be missing. In particular **trauma, mental health and care experience** were deemed to be important contextual factors within which offending behaviour by children should be judged. In respect of care experienced children, it was noted that very minor behaviours or trauma-related behaviours could attract a criminalising response and subsequently disclosable information, but that this conviction information was often accredited sole focus, with the wider context of the situation invisible. Moreover, conviction information should be recognised as only providing a snapshot of that child’s life and not what progress may have subsequently been made.

The **lack of scope for individualised responses and discretion** within the current system of disclosure was highlighted. Linked with this was a wider discussion about the the role of the police, the Reporter and Procurator Fiscal in making decisions about charging, charge type, the framing of grounds, prosecution, and what discretion was available. Malcolm Schaffer (SCRA) highlighted the example of young people being charged under section 38 *Criminal Justice and Licensing (Scotland) Act 2010*, which covers a wide range of offences but is one which will always be disclosed on a higher level disclosure certificate, unless either 15 years have passed (if the individual was 18 or over when convicted) or 7 and a half years have passed (if the individual was under 18 when convicted) and, following an application to a Sheriff, the Sheriff has ordered removal of the conviction from a disclosure.

The **incompatibility between the welfare-based Children’s Hearings System and the current system of disclosure** was introduced by Malcolm Schaffer (SCRA) in his input and a range of issues were revisited in the discussions. Almost every table commented that the acceptance or establishment of offence grounds at a Hearing should not be treated as a conviction, nor should children be penalised for being vulnerable, with this again having a massively detrimental impact on care experienced children. The current system was deemed by participants to be disproportionate, irrational and unfair in this area. Again, this was highlighted as a major area of misunderstanding on all levels (children, families, and professionals), where the complexity of the system made the provision of accessible information very difficult, and where young people and families were often poorly supported to consider the significant long-term consequences of accepting such grounds. Moreover, this illustrated an area where policy was not aligned (e.g. the Whole System Approach encourages children to be supported within the CHS if formal intervention is deemed necessary but this can still result in the long-term implications of having a criminal record). It was noted that this is an area where reform has been proposed under the [Management of Offenders (Scotland) Bill](http://www.parliament.scot/parliamentarybusiness/Bills/107731.aspx) and the [Age of Criminal Responsibility Bill](http://www.parliament.scot/parliamentarybusiness/Bills/107986.aspx).

Where opportunities do exist for people to **fulfil their rights** (for example to make representations in cases for formal consideration, or to appeal to have spent conviction information removed from certificates), these can work well. It was however suggested that too much **onus was still placed on individuals with convictions** to fulfil these rights. It was recognised that this was within a context of the system being so poorly understood that individuals with convictions are often disenfranchised, and often motivation to fight the system has been lost and it may be difficult to see the benefits of doing so. It was also suggested that even where the system had been amended to promote rights compliance, the extent to which young people were **supported and equipped with the tools to utilise these rights is limited**.

However, more critically significant questions were raised as to what extent the current system of disclosure was compatible with **human rights and children’s rights, and the principles of fairness and justice**. In Nick Hobbs’ input, fundamental questions were raised regarding the extent to which the current system of disclosure:

* had the best interests of the child as a primary consideration (Article 3 United Nations Convention on the Rights of the Child (UNCRC))
* respected the child’s right to privacy (Article 16 UNCRC)
* upheld the right to a fair trial (Article 6 European Convention on Human Rights (ECHR)).

Likewise, Alison Reid (Clan Childlaw) focused on the amendments and challenges that had been made to promote compliance of the current system with Article 8 of the ECHR (the right to respect of private and family life). Alison Reid outlined the components of a compliant system, including the requirement of scope for discretion, the ability to make prior representations, to appeal and rational connection to the aim, as well as the remaining areas of challenge in the current system. Similarly, Claire Sands highlighted the elements of a more child-friendly system of disclosure based on international evidence, which included: clear distinctions between childhood and adult records; avoiding imposing records, with severe criminal records consequences, on children; deletion of records; limitations on disclosure of/access to childhood records, including sealing; and more lenient cultures around criminal checks.

A significant concern in respect of rights and understanding was the ability of the Police to include **other relevant information** (ORI) on certain levels of disclosure (enhanced disclosure certificates and PVG scheme record disclosures). The concerns relating to ORI included the unpredictability of what could be included in this, rendering it difficult to appropriately advise and support young people; lack of transparency of this process, in part as a result of the limited guidance available in respect of decision-making; and lack of ability to challenge this information prior to the being included on a disclosure certificate. It was recognised that this could negatively interface with other areas of policy, for example the Whole System Approach, if information in terms of cases dealt with through Early and Effective Intervention or Diversion from Prosecution could be included as ORI, which has significant implications for the accessing of opportunities.

While incremental, piecemeal improvements to the system have been made, as Nick Hobbs noted, these have changed different parts to a minimum standard, and in light of the issues identified above, it was consistently agreed that **more needed to be done**. It was positively acknowledged that there is real motivation to do so and to address the complexities of the system on a multi-agency basis, with Scotland currently having a timely window of opportunity to achieve this.

Advocating for change in the system

The final session opened with Gerard Hart and Lynne McMinn highlighting the forthcoming opportunities to change the system of disclosure. The Management of Offenders (Scotland) Bill has been laid before Parliament, which aims to modernise and improve the *Rehabilitation of Offenders Act 1974*. The Bill proposals include reducing the length of time most people with convictions have to disclose their offending history, bringing more people within the scope of the protections not to disclose, and making the regime more transparent and easier to understand. Moreover, at the event the [Protection of Vulnerable Groups and the Disclosure of Criminal Information: A Consultation on Proposals for Change](http://www.gov.scot/Publications/2018/04/6517) was launched. The consultation proposes significant changes which aim to simplify and improve the system of disclosure. Of particular significance in light of the issues identified above, the consultation proposes reform to the provision of ORI, to improve proportionality, and to the disclosure of childhood records. This is linked with the Age of Criminal Responsibility Bill which proposes to increase the age of criminal responsibility from 8 to 12 and as such makes changes to the disclosure arrangements for under 12s.

Participants were asked to reflect on what could support them to make use of these opportunities and to advocate for change within the system. Primarily, it was acknowledged that it is inherently difficult for people to advocate for change when they do not understand the current system, the strengths and weaknesses, and what change could look like. Having said that, a range of supports were identified:

* Spread awareness of the issues, make information accessible in a range of forms, and utilise case studies and ‘good news’ stories
* Continue to provide opportunities to bring multiple agencies together through collaboration and networking, like this event, and enable contact with experts in the field, including care experienced young people and people with convictions
* Respond to the [Protection of Vulnerable Groups and the Disclosure of Criminal Information: A Consultation on Proposals for Change](http://www.gov.scot/Publications/2018/04/6517) and have a range of methods available to do so, including engaging with young people
* Use all the strategies available to effect change
* Modern apprenticeships could be a small group where approaches/issues are tested out and improvements scaled up
* Utilise international comparisons and research to make the case for change. Challenge policy and practice that is not evidence-based to demonstrate that another way is possible and show how this can be achieved in practice
* Respondents commented particularly positively on the inputs by Beth Weaver and Claire Sands. Beth Weaver’s input provided a review of the evidence on the relationship between employment and desistance, [Time to Redemption studies](http://www.sccjr.ac.uk/wp-content/uploads/2018/03/Weaver_Time-For-Policy-Redemption1.pdf) and the differences in disclosure practices. In doing so, proposals for further reform were suggested around the themes of forgetting, forgiving, forbidding, and facilitating. Similarly, Claire Sands highlighted the international treatment of childhood criminal records, encouraging consideration of how Scotland compared with other jurisdictions which had implemented more child-friendly approaches to childhood criminal records, with such international comparisons highlighted as important learning by many participants in completed evaluations

* Further research in this area was also suggested, for example in terms of the public protection benefits of the Scottish system compared with other systems worldwide. Making this research available and accessible is also important
* Link with wider policy opportunities to join up legislative and policy change, as well as highlighting where the current system and wider policy disconnect
* Cultural change, with the UK’s recognised culture of criminal record checks, and broader discussions about what this is rooted in, the risks this may present and whether this is really needed in light of advances in other measures to protect the public, and whether duplication of processes could be reduced (for example, when individuals are subject to conduct proceedings through the Scottish Social Services Council). The media and social media have an important role in influencing culture and need to be engaged in this journey of change
* Challenging the stigma and discrimination, including at a structural level, experienced by people with convictions and care experienced young people

The event highlighted the energy and commitment to work together to address the issues and challenges identified during the workshop to effect real change for Scotland’s children. Almost 70% of participants who completed event evaluations stated that the knowledge gained from the event would impact on their practice and a similar percentage intended to apply this learning to their role and encourage colleagues to consider this as well. Shumela Ahmed challenged us to do so for the children we work with and Nick Hobbs encouraged us to be bold and brave to achieve change.

For further information or to offer additional feedback, please contact:

Debbie Nolan,

Centre for Youth & Criminal Justice

[deborah.nolan@strath.ac.uk](mailto:deborah.nolan@strath.ac.uk)

[www.cycj.org.uk](http://www.cycj.org.uk)