





Debating Disclosure: Improving life chances through awareness and understanding

25th April 2018 #debatingdisclosure



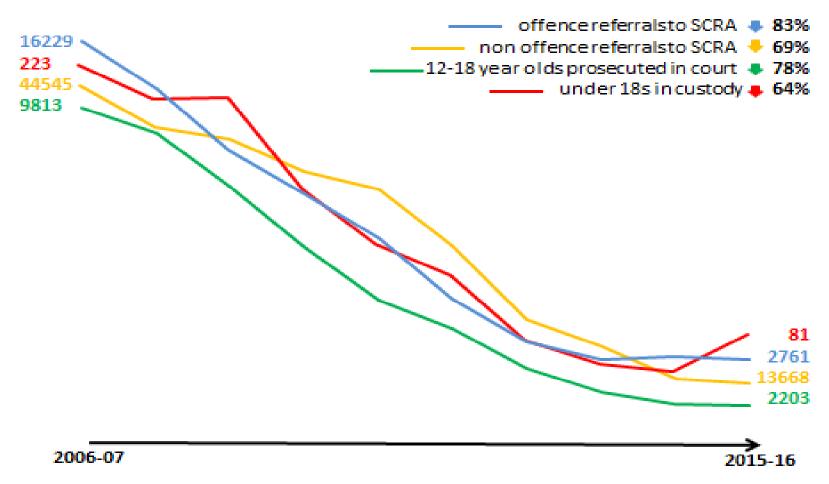




Welcome

Claire Lightowler Director, CYCJ

Childhood offending

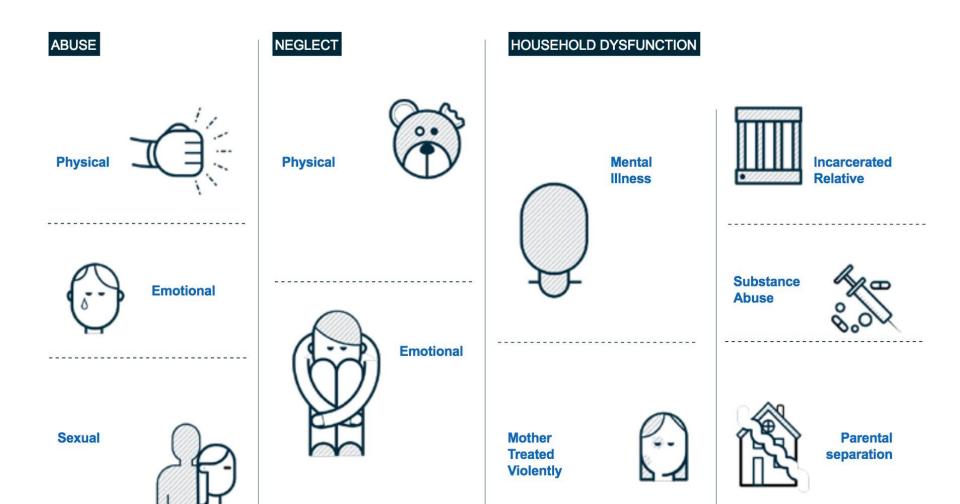


(Scottish Government Analytical Services, 2015)

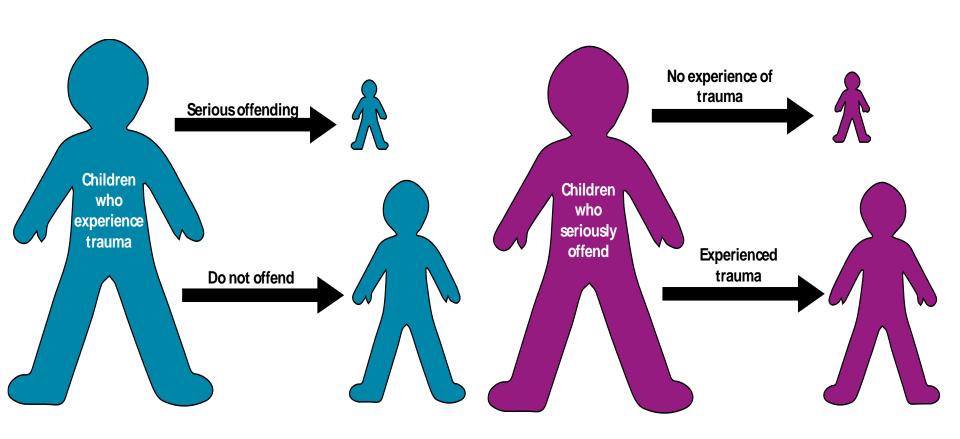
www.cycj.org.uk developing, supporting & understanding youth justice



Vulnerability and offending



Retrospective NOT predictive





Significant implications







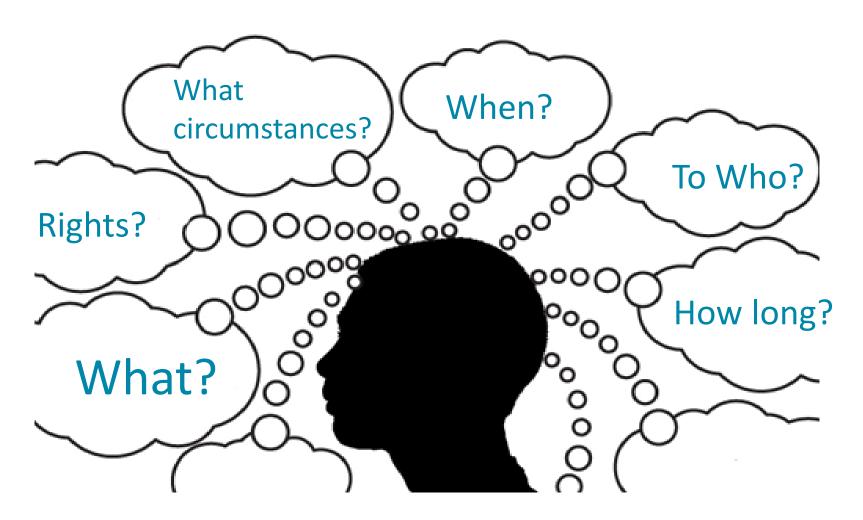








A complex system...





Window of opportunity





Aims of the event:

- To leave with a better understanding of the current system of the disclosure of criminal records
- Highlight what is working well and the complexity in the current system
- Explore what the future of disclosure could look like and how this could be achieved











Introduction

Commissioner for Children and Young People in Scotland







Overview of the current system of disclosure

Gareth Wilkes & Rachel McLean,
Disclosure Scotland

CHECK TO PROTECT

The Current Disclosure System

Gareth Wilks & Rachel McLean Disclosure Scotland

@disclosurescot
www.mygov.scot/disclosure





CHECK TO PROTECT

We will cover

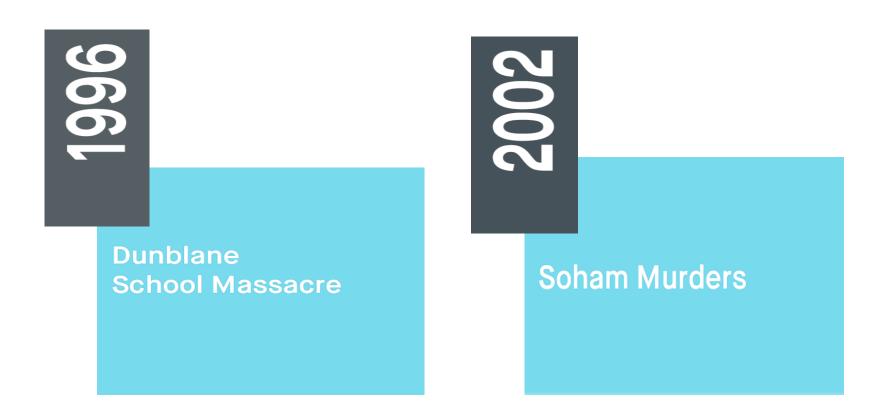
- Different types of disclosure
- PVG Scheme
- Rights individual has
- Support from DS
- Scotland Works For You





DISCLOSURE SCOTLAND

CHECK TO PROTECT







CHECK TO PROTECT

DISCLOSURE SCOTLAND

Basic Disclosure

Standard Disclosure

Enhanced Disclosure

PVG





CHECK TO PROTECT

What is an unspent conviction?

- 2.5 years custodial sentences are never spent
- Rehab periods are halved for under 18s (e.g. fines 2.5 years; CPO 2.5 years)
- If rehab period has passed, conviction becomes spent and person does not need to declare to an employer for a Basic level role.





CHECK TO PROTECT

Childrens Hearing System

- Referral is discharged, rehab period is six month from when grounds were accepted or proven.
- If subject to CSO, the rehab period is one year or when the order is terminated if more than one year.





CHECK TO PROTECT

How are spent conviction handled?

CATEGORIES	
1. Always	Appeal on spent convictions available AFTER 15 years – offences disclosable until removed (7.5 years if under 18)
2. Rules	Appeal on spent convictions available UP TO 15 years after conviction then not disclosable (7.5 years if under 18)





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How does the appeals process work?

 Individual is given notice of appealable conviction and employer copy retained by DS

Appeal submitted to sheriff

Sheriff can order conviction is removed from a certificate





DISCLOSURE SCOTLAND

CHECK TO PROTECT

Protecting
Vulnerable Groups
Scheme
CHECK TO PROTECT

- Automatic barring only for certain offences
- Other decisions case by case.
- 2 stage consideration process
- Right to representations.
- DS notify "interested parties" of outcomes.





CHECK TO PROTECT

UNDER 21s

- Under 21s represent around 14% of all PVG scheme members
- 9.5% of all people formally considered were under 21 at the time
- 7.5% of all people listed were under 21 at time of decision

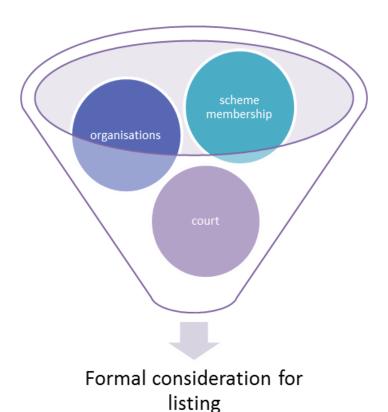




DISCLOSURE SCOTLAND

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Initial consideration







DISCLOSURE SCOTLAND

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Formal Consideration

- The individual is not barred
- Information gathering
- Right to make representations
- Notifying interested parties





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DECISION MAKING SAFEGUARDS

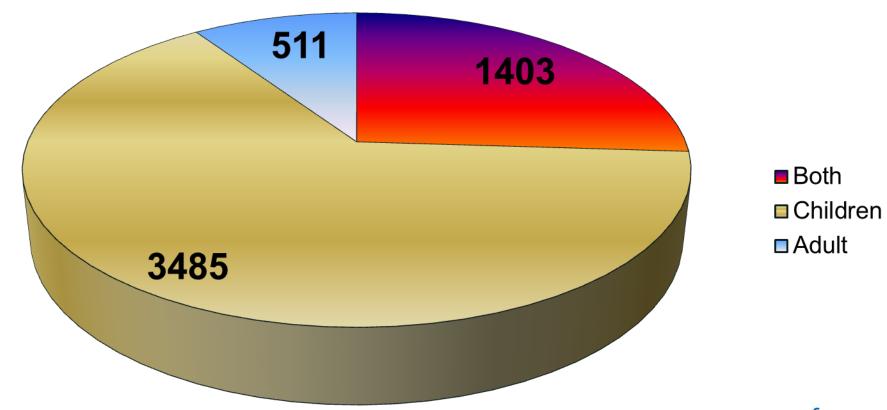
- Structured decision making protocol
- No decision is ever made by one individual
- Expert advisors may be used
- Independent reports may be requested from suitably qualified people on unsuitability





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Numbers of individuals barred from regulated work (to beginning April 2018 – 5399 people)







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<u>REMOVALS</u>

Prescribed period (10 years)

- Change of circumstances
- DWCL





CHECK TO PROTECT

Support for individuals/employers

- Disclosure Scotland helpline (0300 0200 040)
- Disputes process
- Sampling of forms
- Additional information provided to applicants
- Code of Practice for employers.





CHECK TO PROTECT

Support for individuals/employers

- User research
- Regular training available for new/existing countersignatories
- We are a corporate parent!
- Chair of Scotland Works For You alliance





DISCLOSURE SCOTLAND

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CHECK TO PROTECT

Scotland Works for You

The online guidance resource is divided into three sections:

- Overview of the disclosure system in Scotland
- Support for employers
- Support for individuals





DISCLOSURE SCOTLAND

CHECK TO PROTECT

Scotland Works for You

Next steps, training/workshops for:

- Individuals on how to disclose convictions
- Employers on safe and fair recruitment based on advice contained in the guidance





CHECK TO PROTECT

Summary

- Different types of disclosure mean many convictions do not have to be declared.
- Established processes for individuals to make case for removal of spent convictions from certificates and/or explain past issues to DS Protection Unit.
- DS work closely with employers and aspire to improve young people's knowledge of disclosure process.
- Chair of Scotland Works For You alliance group











Table top discussion: What more support is needed to understand the current system of disclosure?

#debatingdisclosure







Coffee break

11:30-11:45

#debatingdisclosure







Breaking barriers – The care experienced perspective

Shumela Ahmed & Lucy Hughes, Who Cares? Scotland



What do we mean by 'care experience'?

Care Population in Scotland,

14,897

children and young people are in care. Scottish Government (2018)

5,404,700 people in Scotland

0.28% of the population

Kinship care

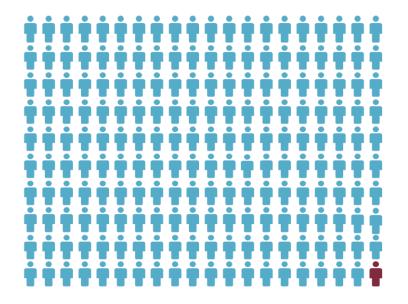
• Secure care

Foster care

Adoption

Residential care

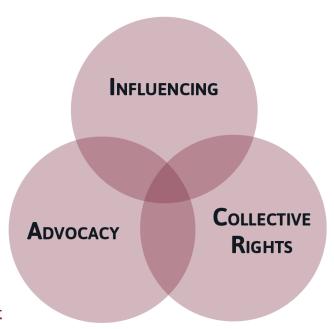
Looked after at home





Who Cares? Scotland - what we do

- National charity established in 1978 40 years' experience of working directly with care experienced people across Scotland
- Independent advocacy is at the heart of the organisation
- A membership organisation with a multi-layered participation model
- We work to tackle stigma, promote positive care identity and effect positive change for care experienced people





The Disclosure System and Care Experience What the research tells us:

Young people in care **are more likely to be criminalised** than their non-looked after peers.

- The Howard League for Penal Reform, 2016

Those in care settings tend to be criminalised for "minor infringements and indiscretions that would be dealt with informally in a family home".

- Criminal Justice Alliance

The disclosure process which exposes criminal convictions, specifically affects, and adds to the poor outcomes of care experienced children and young people.

- House of Commons Justice Committee (October 2017), *Disclosure of youth criminal records, First Report of Session 2017–19HC 416.*



33% of young people in prison and 31% of adult prisoners self-reported as having previously been in care.

Scottish Prison Service (2016)



What do care experienced people tell us about Disclosures?

1. Disclosing information about previous misconduct **goes against the aim to support** young people to reach their potential.

"They know crime is wrong but might not understand the consequence."

2. **Minor and petty crimes should not be displayed** on a disclosure, especially if received under the age of 16.

"Everyone should get a second chance, if it is a minor offence."

- 3. Criminal behaviour under 18 must be **judged in the full context** of mental health, disability and whether the individual has experienced trauma.
- 4. **Care experience must be acknowledged** in the disclosure process and a process put in place to help identify if a criminal conviction was received whilst in care.

"I had no support, and now something as stupid as that comes up on a PVG. The way I looked at things changed, I just needed the right support."





Shumela Ahmed Alumni Member of WCS



The Disclosure System – Current Challenges

- 1. Invisibility of care experienced context of crime
- 2. Widespread criminalisation of young people
- 3. The process is hard to navigate and figure out on your own
- 4. Having a criminal record makes someone feel unemployable



The Disclosure System - what needs to change?

- 1. Create better training and awareness raising, to tackle the criminalisation of young people
- 2. Provide support for the PVG process
- 3. Improve of the appeals process
- 4. Encourage employers to hire a diverse workforce



Keep in touch:

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The Children's Hearing System

Malcolm Schaffer, Scottish Children's Reporter Administration



ETHOS OF HEARING SYSTEM

- Children are referred to children's hearing because of a need for compulsory measures
- Decisions based on welfare of child
- Nature and seriousness of offence is a consideration but not a final determining factor in decision making



CURRENT SYSTEM OF DISCLOSURE

- Hugely complex and difficult to understand or explain
- A system designed for adults and fitted over the children's hearing system without match
- Not proportionate, rational, or fair
- Does not promote constructive reintegration into society



AMY AGED 13

- Referred to a children's hearing aged 11 because of lack of parental care and exposure to perpetrator of domestic abuse
- Placed in residential unit, parents unable to care for her
- Has no contact with family around her birthday



AMY AGED 13

- Starts to leave the unit to get drunk
- Reacts violently to a staff member in the unit and to Police when they are called to contain her behaviour
- Charged with threatening and abusive behaviour under Criminal Justice and Licensing (Scotland)
 Act 2010 s 38, detained in police custody and appears at children's hearing the next day



AMY AGED 13

- Twenty five years later Amy is married with two children, never been in any further trouble and applies to work at old peoples home
- Offence of threatening and abusive behaviour is listed and still on record



JAYSON

 First appeared at children's hearing, aged 11, for non attendance at school

 Two years later, he is charged with the rape of an 11 yr old under section 18 of the Sexual Offences (Scotland) Act 2009. Following discussion with the PF and the opinion of Crown Counsel, the offence is referred to a children's hearing



JAYSON

- Placed in secure accommodation for six months
- Moves to Residential School until aged 16
- Continues to be involved in offending behaviour whilst in school, including several offences of a sexual nature
- At age of 16 and a half supervision is varied for Jayson to reside at home but reports still refer to challenging and at risk conduct



JAYSON

- Aged 17 he is charged with breach of the peace and assault for offences committed in the community while under influence of alcohol.
- Appears in court, sentence is deferred, court reports speak of his lack of impulse control
- Supervision is terminated by children's hearing because of his age and because he is now appearing in court



THE FUTURE

- Accepted or established grounds no longer to be termed 'convictions'
- Any ground can only appear on enhanced disclosure if considered serious and still relevant after independent review
- Any decision of an independent review can be appealed to the sheriff court









Legal challenges and human rights

Alison Reid, Clan Childlaw



Legal Challenges and Human Rights

Alison Reid
Principal Solicitor
Clan Childlaw



Clan Childlaw

- Improve children and young people's life chances
- Use legal skills and expert knowledge
- Help take part in decisions
- Children's rights are realised in Scots Law



Legal Challenges and Human Rights

- 1. Article 8 European Convention on Human Rights (ECHR)
- 2. Legal Challenges taken
- 3. Is the scheme Art 8 Compliant now?



Article 8 - ECHR

Right to Respect for Private & Family Life

- Interfere if in accordance with law and necessary and proportionate to a legitimate aim
- Legitimate aim balance protecting vulnerable persons and individual's right to privacy



T case (2013) – warned for stealing bikes aged 11; caution for stealing false eye lashes

"No scope for the exercise of any discretion....nor is there any provision for making prior representations"

Held: Not Art 8 compliant



Remedial Order (No 2) 2015

Schedule 8A and 8B

BUT:

P v Scottish Ministers case

Pornographic material; exposing himself – 14



Remedial Order (No 2) 2015

P case held scheme not Art 8 compliant as:

- Sch 8A always disclosed "too sweeping and indiscriminate"
- Sch 8A no appeal
- No rational connection to aim



Revised scheme (Remedial Order 2018) Sch 8A

- Can apply to sheriff if spent and 7.5 years passed
- If don't appeal, will show on disclosure
- Does not allow for individual cases to be considered



Ongoing Cases

In England: Further challenge in P, G and W case

In Northern Ireland: Gallagher case

Now:

Appeals to Supreme Court on 19,20,21 June 2018 to review scheme again in England, Wales and Northern Ireland (not Scotland)



What a compliant system requires

- Scope for discretion can't be indiscriminate
- Ability to make prior representations
- Ability to appeal
- Rational connection to the aim



Is the scheme Art 8 compliant now?

1. Blanket ban – still in place for Sch 8A before 7.5 years – no scope for looking at individual circumstances

2. Is it good enough to put onus on applicant to go to sheriff for review?



Is the scheme Art 8 compliant now?

- 3. Rational connection of childhood offending as different to adults?
- Within a welfare based system
- 4. Enhanced disclosure "reasonably believe" relevant (even if within "welfare" grounds) fair notice; rational connection?



Is the scheme Article 8 compliant now?

5. Still will treat accepted/established grounds as a conviction if over 12

(See Management of Offenders (Sc) Bill

& Age of Criminal Responsibility (Sc) Bill)



Is the scheme Article 8 compliant now?

6. Retention of Information

- 20/40 and 100 year rules?
- Disproportionate?



Is the scheme Art 8 compliant now?

- 7. Accessibility of scheme
- Is it foreseeable, easy to explain to young person?

children & young people

- Must be fair notice- allow to regulate behaviour
- Legal Aid Duty Scheme not offence grounds

Conclusion

- 4 laws & 2 cases piecemeal scheme
- Open to more challenges
- Need to consider childhood offending as different to adult offending
- Must be easy to understand
- Must remove the power to include "reasonably believe" relevant



Thank you

info@clanchildlaw.org www.clanchildlaw.org











Time for policy redemption

Beth Weaver,
University of Strathclyde





Time to Redemption Beth Weaver

A summary of research

March 2018

Overview



- Issue of criminal history checking affects a large proportion of people.
- A review of the evidence on:
 - Relationship between employment and desistance,
 - Time to Redemption Studies
 - Comparing practices of disclosure and vetting in the UK, Europe and the U.S.
- Approaches to further and future reform

Why does it matter?



- A complex relationship between (un)employment, offending and desistance
- Employment can provide opportunities for offending (Hirschi, 1969; Sviridoff and Thompson, 1983; West and Farrington, 1977), but it can also support desistance (Farrall 2005; Laub and Sampson 2003; Uggen 2000; Bouffard et al 2000).
- Employment may reduce the likelihood of reoffending, but unemployment does not necessarily correlate with an increase in offending.
- Myriad obstacles including the stigma of a criminal record and discrimination





Authors	Where	What	Time to Redemption Period
Kurlycheck et al., (2006); Kurlycheck et al., (2007)	U.S	Arrest and Contact Records data.	7 Years.
Blumstein and Nakamura (2009)	U.S	Arrest data: variation by age and crime type	Younger onset of offending leads to longer time to redemption periods periods; people convicted of violent crimes also have longer time to redemption periods periods than those of property crimes
Soothill and Francis (2009)	U.K	Conviction data.	10 years
Bushway et al., (2011)	Netherlands	Conviction data: age and criminal history	10 years, but for older people, this time is reduced, and does not apply to those with extensive criminal histories.

University of Strathclyde Humanities & Social Sciences

A Comparison of Disclosure Practices

- Practices of disclosure vary widely internationally
 - U.S., focus on judicial transparency: publicly accessible and privately available
 - U.K., wide and complex disclosure system, including use of 'soft information', may undermine prospects for reintegration and contradict the 1974 Act?
 - Europe rights based (privacy and rehabilitation): disclose unspent convictions

Approaching Reform



- Forgetting: A review of spent periods and the issue of enduringly unspent convictions;
- Forgiving: Certificates of Rehabilitation;
- Forbidding: Court imposed Occupational Disqualification;
- Facilitating: Production of guidance.

Final words



 Argument that existing reforms could go further to ameliorate impacts on access to employment, desistance and reintegration.

Key questions: what kind of model(s) do we want to adopt? In which direction are we heading?

Key issue: in the U.K, existing practices of disclosure retain the right to require that spent convictions and soft information will always be disclosed in certain circumstances, justified in reference to purposes of public protection.

This is *irrespective* of whether the person's risk of reconviction is equivalent to that of non-convicted persons (time to redemption) and often in contradiction to the 1974 Act.

Disclosure of criminal histories tend to engender risk-averse reactions from many employers, who may be reluctant to employ and by destabilising desistance efforts / knifing off opportunities, can undermine public protection in the longer term.







Table top discussion: What else can you identify that is working well, or presents challenges, in the current system?

#debatingdisclosure







Lunch

13:15-14:00

#debatingdisclosure







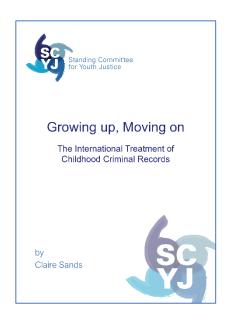
The international treatment of childhood criminal records

Claire Sands,
Consultant Youth Justice
Researcher

The international treatment of childhood criminal records

Claire Sands
Consultant Youth Justice Researcher
claire.sands@outlook.com

Debating Disclosure, Glasgow 25 April 2018



scyj.org.uk

Summary

- Background to the research
- Overview of the childhood criminal records system in England and Wales
- International research: key findings and country examples
- Where does Scotland fit into the international picture?

The Standing Committee for Youth Justice (SCYJ)

- Membership body of around 50 not-for-profit organisations working for reform of the youth justice system in England.
- SCYJ advocates for:
 - a child-focused youth justice system that promotes the integration of children in trouble with the law into society;
 - reductions in offending by tackling underlying causes of offending behaviour;
 - a justice system which works to promote rehabilitation and desistance.



NSPCC

















SCYJ's criminal records campaign



Overall project aim

• To secure meaningful changes to reduce the negative effect criminal records acquired in childhood have on a person's life, including their ability to achieve their aims and reintegrate into society, both as a child and an adult.

Initial objectives

- Identify problems within the current system in England; and
- Establish how these problems could be best addressed through changes to legislation and policy.

The same regime for children and adults

Records are held on the same databases and are subject to the same retention and disclosure rules

The only difference

Childhood records can be 'spent' and 'filtered' more quickly than adult records

Retention

- All convictions, cautions, reprimands, warnings, and arrests for "recordable offences" are recorded on the Police National Computer (PNC)
- The Police National Database (PND) contains non-conviction police intelligence
- This information is only ever deleted when the subject turns 100



Disclosure

- Basic checks: unspent convictions and cautions
- Standard checks: all convictions & cautions both spent and unspent
- Enhanced checks: all convictions & cautions plus relevant intelligence



Culture of criminal record checks

- Employers have a "tick box" mentality to criminal records
- Over 4.3 million certificates issued annually. Numbers are increasing year on year. (DBS, 2017a&b)
- Over 90% are for enhanced checks (DBS, 2017c)
- 2013 2015: under-18 shoplifting disclosed 34,000 times; 2,795 disclosures for theft of a cycle (DBS, 2017c)
- Over the last five years, 127,000 children have had their names added to the Police National Computer. (Lammy Review, 2017)

Filtering

England

- In 2012 all convictions and cautions were always disclosed and there was no discretion.
- *R (T) v Chief Constable of Greater Manchester Police* [2013] EWCA Civ 25: the existing regime was unlawful it was indiscriminate and in breach of Art 8 ECHR
- The Government introduced filtering in May 2013

Filtering

England

Records of childhood convictions will be removed from a DBS standard or enhanced certificate if:

- 5.5 years have elapsed since the date of the conviction; and
- It is the person's only offence; and
- It did not result in a custodial sentence; and
- It is not a "Schedule 15" offence. There are over 1,000 offences in Sch. 15 Criminal justice Act 2003 that cannot be filtered.

Filtering

England

• R (P, G, W and Krol) v SSHD & SSJ [2017] EWCA Civ 321 declared that aspects of the current filtering regime were unlawful. The government has appealed and the case is due to be heard in the Supreme Court in June 2018



Calls for reform

- Taylor Review (MoJ, 2016) calls for distinct approach, reduction in rehab periods and presumption that police intelligence is only disclosed in exceptional circumstances
- Lammy Review (2017) recommends system for 'sealing' records
- Justice Committee report (2017) 'the current system undermines the laudable principles of the youth justice system and may well fall short of the UK's obligations under the UN Convention on the Rights of the Child'

Government response

England

- The government will consider the recommendations contained in the Taylor Review, the Lammy Review and many of the recommendations in the Justice Committee report "following the conclusion of the ongoing litigation".
- However, in its view, the current disclosure arrangements are proportionate and "strike the right balance between protecting the public and the individuals' right to privacy".

R v NPCC [2017] EWHC 2586 (Admin)

- Reprimand for shoplifting aged 13 years
- South Wales Police refused to allow her to apply for a role as a service support officer aged 24 years
- SWP's letter was a violation of Art 8 ECHR and therefore unlawful: 'in that it reflected a policy whereby historical low-level reprimands served to preclude employment in a supporting role in the police.'

HA v Wolverhampton [2018] EWHC 144 (Admin)

 High Court quashed decision of the University of Wolverhampton to expel a student from a Master of Pharmacy degree course for convictions related to offences committed when he was 14 years old

• Held:

- The university was entitled to require disclosure of spent convictions and obtain an enhanced criminal record check
- This disclosure did not infringe Article 8 ECHR rights
- The decision to exclude the applicant was unlawful because the panel had failed to strike a proportionate balance between the protection of the public and the claimant's rights

R (on an application of (1) QSA (2) Fiona Broadfoot (3) ARB v 91) SSHD and (2) SSJ [2018] EWHC 407 (Admin) England

- 3 women claimants, groomed into prostitution as teenagers
- Each had multiple convictions for offences related to prostitution
- Held: the multiple conviction rule was incompatible with ECHR, Art 8 and therefore unlawful
 - It operated in an indiscriminate, and therefore arbitrary, manner
 - It was not necessary in a democratic society that the desirable aim of safeguarding children and vulnerable adults should be achieved by the use of the rule
 - The rule operated in circumstances in which any link between past offending and the assessment of present risk in a particular employment was either non-existent or, at best, extremely tenuous
 - it ought to be possible "for Parliament to devise a scheme which more fairly balances the public interest with the rights of an individual applicant for employment in relevant areas of work".

International comparisons



Sixteen jurisdictions

Australia: New South Wales

Canada

England and Wales

France

Germany

Italy

New Zealand

Northern Ireland

Poland

Republic of Ireland

Scotland

Spain

Sweden

USA: New Mexico

USA: Ohio

USA: Texas

General findings

- Lack of/difficulty finding information
- Complexity of systems
- Lack of understanding on the part of children and professionals



Elements of a child-friendly system

- 1. Clear distinctions between childhood and adult records
- 2. Measures to avoid imposing records with severe criminal records consequences on children
- 3. Deletion of records
- Limitations on disclosure of/access to childhood records, including sealing
- 5. More lenient cultures around criminal checks

Sealing and expungement

- Sealing = records still exist but cannot be disclosed and can only be accessed by certain parties in limited circumstances
- Expungement = deletion

Point 1: Clear distinctions between child and adult records

- Most jurisdictions had separate systems for child and adult criminal records
- Germany, Ohio, Texas, Spain: separate databases with access restrictions
- New Mexico, Ohio, Texas: Sealing and expungement provisions generally only available for childhood records
- New Mexico, New Zealand, Poland, Texas: Only the most serious offences result in a criminal record or conviction

NB exceptions are usually made for most serious offences, records for which are often treated like adult criminal records

 Scotland: No separate databases but timescales before which offences become "spent" are halved for most disposals

Point 2: Measures to avoid imposing records with severe criminal records consequences on children

Ohio, Poland, New South Wales, New Mexico, New Zealand: only the most serious childhood offences attract a criminal record

2013/14: England and Wales: 60,000 cautions and convictions all attracting a criminal record given to children; New Zealand: Only 48 children aged 16 and under were given a criminal record with equivalent consequences; New Mexico: only one child received an adult sanction with equivalent criminal record consequences

Scotland: Efforts are made to prevent the "criminalisation" of children but some offences dealt with without formal systems and through the Children's Hearings System can be disclosable

Point 3: Deletion of records

- 11 jurisdictions, including Scotland, had some provision for deleting childhood criminal records.
- Italy: deletes all non-custodial records at 18 years
- France: most childhood records deleted after 3 years
- Germany: most records must be removed from the Register when the person turns 24
- Sweden: most records expunged after 3 or 5 years
- Canada and Poland: automatic deletion at the end of specified periods
- Scotland: 'weeding' is available under some circumstances

Point 4: Disclosure of/access to childhood criminal records

- Ohio, Texas, New Mexico, Sweden, Poland, Germany, Canada: Childhood records can be 'sealed' or expunged
- Spain: Almost impossible for anyone, even a judge, to access a record once a child turns 18
- Canada: Access restricted to certain people/authorities
- New South Wales, Germany and France: Only most serious offences disclosed to employers
- Scotland: Certificates routinely required for employment and these could include childhood records for spent and unspent convictions and informal records depending on the type of check applied for

Point 5: Culture of checks

- Spain: it is unusual for employers to ask for a check
- Germany: more relaxed approach to minor and non-relevant offences
- Poland: criminal record checks are not routinely asked for in all employment sectors
- Texas: employers are not allowed to run background checks for criminal history dating back further than seven years if annual salary is less than \$75,000
- Scotland: level of check depends on purpose and role but checks are more extensive practice in the UK than elsewhere in Europe

Italy

- Childhood records held separately to those of adults, although and same system (Central Criminal Register)
- Access to childhood records is restricted to judicial authorities and the subject of the record
- Only custodial records are disclosed on criminal record checks
- At the age of 18, non-custodial records are destroyed, even if the child has received more than one record

New Mexico

- Most 'juvenile' cases dealt with informally, without a reco
- 'Juvenile dispositions' are held separately to adult records
- Complex systems mean juvenile dispositions are not disclosed on checks but the public could access unsealed records at the court
- Childhood records can be sealed but not deleted
- Records should be automatically sealed at 18 (or the expiration of the disposition if later)
- The system for sealing is very complicated and patchy and records can be re-opened

Poland

- Most children aged 13 16 years are tried in a family court; they are deemed to commit 'punishable acts' not 'offences'
- Family courts can only impose educational or correctional measures; these are not treated as 'convictions' and they are not disclosable to employers
- Educational measures are generally automatically deleted when the child turns 18
- Correctional measures automatically deleted by, at the latest, the young person's 23rd birthday

France

- Legal principle of droit à l'oubli the 'right to be forgotten' ingrained in legal establishment and public mentality
- Strong recognition of link between desistance and criminal records
- Educational and juvenile justice system sanctions are automatically deleted after three years
- Neither employers nor individuals can request a copy of records of juvenile dispositions

Example 1: Child is arrested by police and released with no further action

Germany	New Zealand	England and Wales	Scotland
Information never disclosed on criminal records checks	Information never disclosed on criminal records checks	Information held locally by police and may, at the discretion of the police, be disclosed on enhanced criminal records checks forever	Information could be disclosed as Other Relevant Information on enhanced disclosure certificates and PVG scheme record by Chief Officer if tests are met

Example: 2 Child is convicted of a second minor offence (e.g. theft)

Germany	New Zealand	England and Wales	Scotland
Child receives an educational or disciplinary measure	An out of court alternative measure is generally imposed	Child receives out of court disposal or court order	Child referred to the Children's Hearings System
Offence is recorded on the Educative Measures Register, a sub-register of the central criminal register (the register is entirely separate from the database of adult records)	No criminal record. Offence will not appear on any checks.	Offence is recorded on the Police National Computer	Acceptance or establishment of offence grounds is treated as a conviction
1		Offence disclosed on all criminal records checks until 'spent'	Offence disclosed on all criminal records checks until 'spent'
Offence is not included in any criminal records checks (including those for work with vulnerable people)			
		Once spent it will not appear on Basic criminal records checks but it will appear on Standard and Enhanced checks for the rest of the person's life	Once spent it will not appear on Basic Disclosure checks but can on higher level disclosures (periods vary)
The offence is deleted from the database when the subject is 24 (providing there is no record for a serious offence or a prison term)			

To conclude

- Other jurisdictions can provide ideas for more child-friendly approaches to childhood criminal records which we can explore and learn from.
- Areas that might be considered are as follows:
 - 1. Clear distinctions between childhood and adult records
 - Measures to avoid imposing records with severe criminal records consequences on children
 - Deletion of records
 - 4. Limitations on disclosure of/access to childhood records, including sealing
 - More lenient cultures around criminal checks



Growing up, Moving on

The International Treatment of Childhood Criminal Records

by Claire Sands



scyj.org.uk/

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The future of disclosure

Gerard Hart & Lynne McMinn, Disclosure Scotland



Disclosure: Looking to the Future





Management of Offenders

- Electronic Monitoring
- Disclosure of convictions
- The parole board



Key points

- Change in language
- Change in disclosure periods
- No change to licence endorsements
- Compulsion order new power



Disclosure Consultation

- ► Starts 25 April
- ► Ends 18 July





Simplify the products and processes





A mandatory PVG Scheme





Time limited membership





Proportionality





New powers to protect





Age of Criminal Responsibility

- A child under the age of 12 years cannot commit an offence
- Disclosure of information can only happen subject to independent review



12 years old and over









Table top discussion: What can support you to advocate for change in the system?

#debatingdisclosure







Panel discussion

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Closing remarks