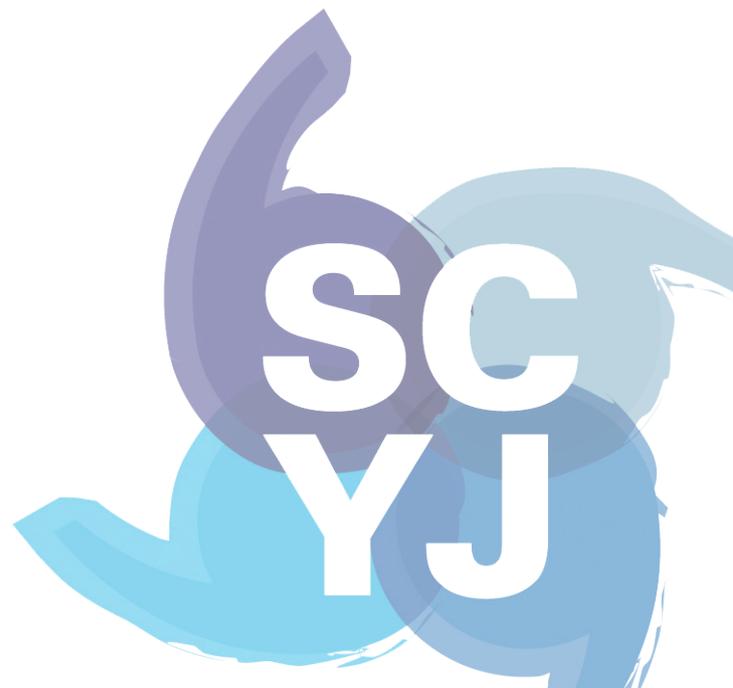




Standing Committee
for Youth Justice

Growing up, Moving on

A report on the childhood criminal
records system in England and Wales



The Standing Committee for Youth Justice (SCYJ) is a membership body campaigning for a better youth justice system. We pool the expertise of our members to work on issues surrounding children in trouble with the law. Our work focuses on policy and legislation affecting all aspects of the youth justice system and young people caught up in it – from policing to resettlement. We advocate a child-focused youth justice system that promotes the integration of children in trouble with the law into society and tackles the underlying causes of offending. Such a system would serve the best interests of the children themselves and the community at large.

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.

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Executive summary

The Standing Committee for Youth Justice (SCYJ) is concerned by the treatment of childhood criminal records (those acquired before a person is 18) in England and Wales. The system allows widespread, lengthy and unnecessary disclosure of childhood records, it anchors children to their past, inhibits access to education, employment, travel and housing, and so works against the aims of, and government vision for, the youth justice system. International comparisons show that our system is particularly punitive, and that far more rehabilitative systems are possible.

The system should be reformed to reflect the nature of childhood offending, treat child and adult records differently, and limit disclosure to information required to protect the public. In the future, SCYJ would like to see provision for childhood records to be physically deleted after a period of non-offending (though exceptions for serious and violent offending may be required), and guidance for police including a presumption that under-18 police intelligence is not disclosed. In the immediate term, we would like to see rehabilitation periods reduced, the filtering system expanded, and discretion introduced to the under-18 criminal records system, specifically:

- Allow Youth Rehabilitation Orders to become spent as soon as the order is finished;
- Reduce the rehabilitation periods for custodial sentences under two years (including Detention and Training Orders) to six months;
- Reduce the rehabilitation period for custodial sentences between two and four years to two years;
- Allow convictions resulting in custodial sentences of more than four years and less than life to become spent after seven years (currently, these convictions can never be spent).
- All under-18 cautions are automatically filtered out after two years, at most;
- There is no limit on the number of under-18 convictions that can be filtered out providing they did not result in a prison sentence. Convictions that did not result in a prison sentence should be automatically filtered, at the most, four years after the person's last conviction;
- Where filtering is not automatic, a review mechanism should be introduced to consider offences for filtering. This could be performed by the police with the possibility of appeal;
- Police guidance should make it clear that if a person has any unspent convictions, none of their convictions should be filtered.

Introduction

“No one will give me a chance, now I have a record. What’s the point? I won’t get a decent job”.

The criminal records system in England and Wales allows childhood records to create significant problems for children as they try to change their lives and move on from the mistakes they have made.

This is not to say people with childhood criminal records are unable to take up opportunities or fulfil their potential. They can and do. However, a childhood record – even a relatively minor one – can create psychological and actual barriers, both for children and adults, causing real damage.

This report sets out the Standing Committee for Youth Justice’s (SCYJ) blueprint for reform of the criminal records system in England and Wales. It is based on reports from our members, the available evidence, information on comparable jurisdictions, focus groups with children with criminal records and Youth Offending Teams (YOTs), and discussions with other practitioners and advice charities.

Our argument is clear: the childhood criminal records system is unnecessary and damaging. A child-specific, proportionate system should be developed that protects the public without unduly harming children’s opportunity to change.

It is a sad irony that a criminal record only becomes an issue when a child decides to try to turn their life around; a criminal records check is not required to sell drugs or join a gang, but it is to go to university or get a job in most major supermarkets. If the government is serious about helping children to move on from their past, and ensuring children in trouble are “earning or learning”, reform of the childhood criminal records system should be a priority.

The criminal records system in England and Wales

The rules surrounding the retention and disclosure of criminal records in England and Wales are complex and apply almost identically to criminal records acquired in childhood as to those acquired in adulthood.

Retention

All cautions and convictions received in England and Wales are stored on the Police National Computer (PNC) until an individual is 100 years old; there is almost no means to delete them¹. Information is also stored on local police records and the Police National Database (PND)². The Disclosure and Barring Service (DBS) access the PNC to issue criminal records certificates. The main user of the PND is the police. Police intelligence is held locally and on the PND – this includes “non-conviction” information, such as arrest, acquittals, and reports to police. This is held on the PND for a minimum of six years and can be retained until the subject’s 100th birthday (Lipscombe and Beard 2014); there is little scope to remove it³.

Disclosure system – Rehabilitation periods and exemptions

Criminal records are subject to “rehabilitation periods”. For the duration of the rehabilitation period, a caution or conviction is “unspent”, meaning it can be widely disclosed to any employer or other body. The length of rehabilitation periods are set out in the Rehabilitation of Offenders Act (ROA) 1974, and depend on the disposal or sentence a person receives. They vary greatly in length and some convictions are never spent. The rehabilitation periods that apply to children are half those that apply to adults.

Once the rehabilitation period has expired, the caution or conviction becomes “spent”. The ROA gives people the right not to disclose spent cautions and convictions. However, a list of “excepted professions”⁴ are exempt from the ROA – they are entitled to know about all cautions and convictions, spent or unspent, because they are entitled to Standard and Enhanced criminal records check (see below). The list of excepted professions is broad, it includes, for instance, traffic wardens and vets.

Criminal records checks

There are three principle types of criminal records checks in England and Wales:

- Basic check: There are no limits to who can request a Basic check, any employer or educational establishment is entitled to ask for one. This check discloses all **unspent** cautions and convictions;
- Standard check: Only those on the “excepted professions” list can access these checks which disclose both **spent and unspent convictions** (subject to filtering - see below);

- Enhanced check: Generally, only those working in “excepted professions” with vulnerable people⁵ can access these checks. It discloses both **spent and unspent convictions** (subject to filtering - see below) as well as relevant **police intelligence**.

In addition to the Enhanced check, certain employers can request an Enhanced check with a check of the ‘barred lists’. People on the barred lists cannot do certain types of works, known as ‘regulated activities’. It is against the law for employers to employ someone or allow them to volunteer for this kind of work if they know they are on one of the barred lists.

An individual can also apply for their own **Police Certificate**. This is required for a work or residency visa for many countries. Some countries, like the United States, require a Police Certificate for holiday purposes if you have ever been arrested or convicted of any offence. Police certificates will include details of all convictions, warnings, cautions and reprimands included on UK police systems.

Disclosure system – filtering

In response to a Court of Appeal judgement, in 2013 the government introduced a system of ‘filtering’. This restricts the information that is disclosed on Standard and Enhanced DBS checks; it does not affect Basic checks or Police Certificates.

Under the filtering rules, a spent childhood conviction 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 does not appear on the list of “exempt offences” which will never be removed from a certificate.

There are over 1,000 offences included on the “exempt offences list”, which can never be filtered. They include (but are not limited to), offences with a degree of violence, drug offences involving supply, and sexual offences – for instance, cautions or convictions for distributing indecent images of children⁶ or assault with intent to resist arrest⁷ can never be filtered.

If a person has more than one offence, then none of their convictions will ever be filtered, this is known as the “two offences rule”. In January 2016, the High Court declared that the “two offences rule” is not compatible with the right to privacy. The Government appealed this decision to the Court of Appeal, which ruled in May 2017 that the criminal records disclosure regime was unlawful and disproportionate.⁸

A childhood caution will be filtered two years after the date of the caution, so long as it does not appear on the “exempt offences” list and there are no other convictions on the individual’s records. Multiple cautions can be filtered.

Childhood cautions and convictions are filtered in half the time of those of adults.

The system in practice

Rehabilitation periods

The rehabilitation periods that apply to childhood convictions require some convictions to be disclosed on Basic checks for lengthy periods of time. The rehabilitation periods for the main youth justice disposals are as follows⁹:

Order	Rehabilitation Period
Youth Caution	No rehabilitation period
Referral order	Spent on completion of order
Youth Rehabilitation Order (YRO)	Spent six months after the end of the order
Custodial sentence under six months	Spent 18 months after the end of the sentence
Custodial sentence greater than six months and less than 30 months	Spent two years after the end of the sentence
Custodial sentence greater than 30 months but less than four years	Spent 3.5 years after the end of the sentence
Custodial sentence over four years	Never spent

As a result of rehabilitation periods, children have to disclose convictions just as they finish their sentence and are trying to change – for instance by applying for jobs or housing, or to college or university. Disclosure may be particularly harmful for children who, unlike adults, rarely have employment or tenancy histories to support them.

Rehabilitation periods affect many children; in 2015/16 alone, 6,958 children received a YRO and 1,687 received a custodial sentence (Ministry of Justice/YJB 2017).

The filtering system

The intention of the filtering system was to prevent the disclosure of old and minor offences on Standard and Enhanced criminal records checks. However, it is not working effectively in practice, particularly where childhood records are concerned. In 2015, SCYJ made a Freedom of Information (FOI) request to the DBS to ascertain the effect of the filtering system. This revealed serious limitations:

A significant number of under-18 cautions were still being disclosed; in 2013/14 and 2014/15 respectively, the DBS disclosed 8,935 and 9,722 under-18 cautions. Between 2013 and 2015, 93,799 checks disclosed an under-18 conviction. In fact, 88% of checks where the subject had an under-18 conviction, disclosed a conviction. Childhood convictions are slightly more likely to be disclosed than adult convictions.

Furthermore, the DBS FOI response revealed that relatively minor under-18 convictions are routinely and widely disclosed. Between 2013 and 2015 under-18 shoplifting was disclosed 34,000 times and there were over 2,795 disclosures of under-18 convictions for theft of a cycle. Such disclosure of minor offences (that do not appear on the list of exempt offences) was relatively common; shoplifting, common assault and possession of various

forms of cannabis were some of the most commonly disclosed under-18 convictions. This suggests that the “two offences” rule is having a significant impact on children.

Many children will be convicted of more than one offence – for instance, a child caught driving a stolen car will have committed at least three offences (theft, driving without a licence, and driving without insurance), and many children go through a “phase”, of offending and then desist entirely (for instance, a thirteen-year-old may be caught shoplifting three times over a six-month period and then stop offending altogether). Having more than one childhood conviction does not necessarily indicate serious or persistent offending.

The two offences rule in practice

“I have two convictions. Both happened 38-years ago, when I was a juvenile. The first was for petty theft, a silly prank with two mates, for which I got a conditional discharge. The second was for ABH: I got into a scrape, pushed someone to the ground and was fined £10. Since then I’ve become a teacher. I was a Deputy Head for some 20 years, but now I’ve started supply teaching I have to explain these as if I am now a criminal.”

The filtering system is also severely limited by the lengthy list of “exempt offences” (cautions and convictions for which can never be filtered). SCYJ does not believe this list is an appropriate means to determine whether a caution or conviction should be disclosed, and certainly does not limit disclosure to information required to protect employers or the public.

Offences themselves are not a good indicator of the seriousness or nature of the child's offending behaviour. For instance, robbery (an exempt offence) can refer to an extremely wide range of behaviour – for example, a 12-year-old pushing over a classmate and taking their mobile phone could get a caution for robbery. Some offences on the exempt list could take on a different quality when committed by a child. For instance, assault of, or sexual activity with, a child, or the production and distribution of sexual images of a child – such offences could, for example, relate to a 16-year-old having sex with their 14-year-old girlfriend, or a child sending a classmate a naked picture of themselves. Particularly, when it comes to cautions, people may accept a caution for a relatively serious offence, when, if they were charged, that offence would likely be downgraded or they might be acquitted.

International comparisons

SCYJ's 2016 report on the comparative treatment of childhood criminal records examined sixteen jurisdictions across Europe, Australasia and North America. It found that the system in England and Wales was one of the most punitive of all those examined; a criminal record acquired by a child in England and Wales could affect that person for longer, and more profoundly, than in any other jurisdiction under consideration (Sands, 2016). Several factors combined to make this the case:

High numbers of children receive criminal records

Compared to many of the other jurisdictions we examined, children in England and Wales receive formal disposals, which have serious criminal records implications, comparatively frequently. In 2013/14, 60,000 cautions and convictions (all attracting a criminal record) were given to children in England and Wales. By way of contrast, over the same time frame, only 48 children under the age of 17 were given a criminal record in New Zealand. Accounting for population, this makes England and Wales 90 times more punitive than New Zealand (The Economist, 2017).

No distinction between child and adult records

Most jurisdictions we examined have separate systems for child and adult criminal records. In Germany, Ohio, Texas and Spain, for instance, childhood criminal records are held on entirely separate databases to those of adults (with some rare exceptions), with access restricted. Other jurisdictions don't give children criminal records, while others do not class anything but very serious childhood offending as convictions at all. England and Wales is an outlier in treating child and adult records almost exactly the same.

Childhood records can never be deleted

Of the jurisdictions we looked at eleven had some provision for expunging childhood criminal records – whereby records acquired in childhood are destroyed. There is no such provision in England and Wales. There is significant variation in the restrictions, conditions, time frames and processes that jurisdictions applied to expungement policies. Germany and Spain permit all sentences apart from life to be removed from a record. Other jurisdictions exclude the most serious offences. Some jurisdictions have automatic expungement, others by application, while others link it to certain conditions.

Wide-ranging disclosure of childhood records

The retention and disclosure of childhood criminal records is far more limited in most of the other jurisdictions we looked at compared to England and Wales. In New South Wales, Germany and France for instance, only more serious offences are disclosed to employers. In countries such as New Zealand, very few children are given a criminal record at all, and those that are, do not have that record disclosed after a given period if certain conditions are met. In Ohio, Texas, and New Mexico, childhood records can be 'sealed' so that they are no longer disclosed. It should be noted, however, that exceptions or different rules apply to the most serious offences in almost all the jurisdictions we examined. But even for work with vulnerable people, other jurisdictions took a far more rehabilitative approach than England and Wales. In Germany, only those childhood offences resulting in custody (which is very rare) are disclosed for work with vulnerable people; likewise, in New Zealand and Ohio, only more serious convictions are disclosed.

A culture of checks

The culture surrounding criminal records, and criminal records checks, compound the situation in England and Wales. Employers in some other jurisdictions do not place the same emphasis on criminal records. For instance, in Spain, it is very unusual for employers to ask for a criminal records check; in France, the 'right to be forgotten' is a dominant attitude; and in Germany a relaxed approach is often taken by employers to minor or irrelevant convictions. Criminal records checks are comparatively frequent in England and Wales, for instance, nine out of ten major supermarkets ask about criminal record in the early stages of their application process (see section on 'Access to Opportunities' below).

What's wrong with the current system

An anchor to the past

Children should have the opportunity to move on from the mistakes they have made. But a criminal record can stop them from doing so because it anchors them to their past.

Childhood criminal records must be disclosed disproportionately widely and for lengthy periods of time. For instance:

- A 10-year-old cautioned for stealing sweets must disclose this for life for travel to the United States and will never be eligible for the US visa-waiver programme;
- A 12-year-old child convicted of shoplifting two items of makeup on the same day will have to disclose this for life to work as a traffic warden;
- A 14-year-old reported to the police for sending naked pictures of themselves to a classmate, where the police take no further action, could have this disclosed for life to work as a teacher;
- A 16-year-old cautioned for having sex with their 15-year-old partner will have to disclose this for life to work as a vet;
- A 17-year-old given a four-month custodial sentence for breaching an order will have to disclose this for a year and half when seeking work in most supermarkets.

Several elements of the system combine to make this the case: lengthy rehabilitation periods; a long list of excepted professions; and the two-offences rule and use of the exempt offences list in the filtering system.

The system does not reflect the nature of childhood offending. Many children will go through a “stage” of offending and then desist entirely; childhood is a period of rapid change, and many children grow out of crime altogether. Yet the system treats childhood offending as both a short and long-term indicator of risk, causing significant difficulties for children at crucial points, and just as they try to turn their lives around, as one YOT officer told us:

The issue with young people is that things can change so much in a relatively short period. Many of the young people we work with live quite complex, sometimes chaotic, lives. There are so many factors as to how long it takes a young person to be ‘rehabilitated’. Where young people are motivated to move on with their life – particularly if they are between 16 – 18 – looking for employment, housing and so, it can then create difficulties.

Lifelong disclosure in practice

“In 1979 I received a conditional discharge for indecent exposure. I was at school at the time and celebrating finishing my exams. I “mooned” a passer-by but didn’t appreciate the legal difference between exposing my bottom rather than my genitals. I went to university, and when my conviction was spent, starting working in a bank. I carved out a career in financial services and ended up working in a number of senior roles in prestigious firms. In 2007 the Financial Services Authority obtained complete exception from the Rehabilitation of Offenders Act (ROA) meaning that I need a full CRB check. Since then I have dropped out of a senior new role as I couldn’t take the risk of a check damaging my reputation in the industry. So, bizarrely, my conviction has become more relevant the older it has got. Now, nearly 35 years on, it is strangling a career that, until now, flourished with the same criminal background. Surely, there should be some sensible time after which spent means spent. To find that, after nearly 35 years, a conviction that merited only a conditional discharge is still as live today as it was 35 years ago, is very odd. In fact, in a way it is more live today.”

No distinct system for children

Though England and Wales have a distinct youth justice system, the criminal records framework applies to children and adults, making almost no distinction between records obtained as a child and as an adult. This is incongruous with the wider approach; the youth justice system has different aims, institutions and sentencing framework to the adult system. Failing to distinguish between child and adult records has implications for our children’s’ rights obligations and undermines the aims of the youth justice system (see section on Impact of Rehabilitation below). Many other jurisdictions distinguish between child and adult records (see section on International Comparisons above), reflecting the unique status of childhood and the benefits of giving children the opportunity to put their past behind them.

No discretion, blanket disclosure

The system applies blanket disclosure rules. There is almost no room for discretion to ensure information disclosed is relevant to the job, accommodation or education to which a person is applying. So, for example, Standard and Enhanced checks will disclose all cautions and convictions, subject to the filtering rules. In this regard, they will disclose the same information whether the person is applying for work in a bank or a school and regardless of how old or minor the convictions (subject to the filtering rules). We believe there should be room for discretion in the system so that the information disclosed is relevant to the situation in hand.

Access to opportunities: education, employment, housing and motivation

A criminal record, even a relatively minor one, can create difficulties in accessing opportunities, particularly education, employment and housing.

Children themselves are aware of the problems that they can cause. SCYJ's focus group with children with criminal records found that older children worried about how they would cope with getting turned down for a job or changing careers as a consequence of mistakes they made while growing up. The Carlile Inquiry into youth courts spoke to children who reported similar concerns (Carlile, 2014). A criminal record can also affect children's motivation to change or try to access opportunities, we explore this further in the remainder of this section.

Housing

Most applications forms for social housing lists ask about criminal convictions, and since 2011, local authorities have had the right to apply "blanket bans" on people with criminal records registering for their housing lists. Several local authorities apply significant restrictions to people with criminal records accessing social housing. For instance, Croydon Council states that: if you "have been involved in relevant criminal behaviour you will be disqualified from going on the housing register... Relevant criminal behaviour includes conviction of an arrestable offence in, but not restricted to, the locality of the dwelling." (London Borough of Croydon, 2016: 29). SCYJ examined 30 of the 33 London boroughs' housing allocation policies¹⁰. 13 of them contained restrictions on people with criminal records accessing social housing¹¹ (this does not include restrictions on accessing priority lists, or restrictions placed on people committing anti-social behaviour¹² or housing related fraud).

In 2016, Hammersmith and Fulham Council were found to have acted unlawfully when they refused to add a 19-year-old to the housing register because of a spent conviction acquired as a child¹³. Despite this victory, some housing providers ask "misleading questions, not making it clear that applicants only need disclose unspent convictions." (Unlock, 2016A). Croydon Council, for instance, says that it may make an exception to its ban on those with convictions accessing the housing register, "if you can clearly demonstrate ...you are now unlikely to repeat such behaviour. This could include ...having maintained a clear record of behaviour for at least 3 years since the offences occurred" (London Borough of Croydon, 2016: 29). This gives the impression that a three-year-old conviction should be declared, even if it is long spent.

Private landlords and housing associations are free to reject potential tenants on the basis that they have a criminal record. Camelot, the "property guardian" provider, for instance, has a blanket ban on tenants with a criminal record (Camelot, 2017), and there is some evidence to suggest that those with a criminal record may be viewed as risky tenants. (YJB, 2008)

It is no wonder therefore that the housing charity Shelter claims that "involvement with the criminal justice system can lead to housing problems for young people" (Shelter, 2005: 9). Similarly, Homeless Link (2011) found that people with a criminal record face exclusions from housing associations, private landlords and supported accommodation providers, with

some social landlords applying blanket bans. Research conducted in Stoke on Trent on 80 people with a history of violent behaviour who were homeless, or at risk of homelessness, found that criminal records (rather than the offences themselves) were causing “increased resistance” from housing providers or a withdrawal of a tenancy offer. They also found that criminal records checks could “deter respondents with convictions from pursuing their application” (Reeve et al, 2009).

SCYJ held focus groups with staff from two YOTs (both managers and officers) on childhood criminal records; both cited access to housing as a problem. Youth Justice Board (YJB) commissioned research on the housing needs and experiences of children in trouble with the law, recommended a review of the way in which, “housing legislation can be used to discriminate against individuals with a criminal record when seeking access to housing” (YJB, 2007).

Employment

Work in “excepted professions” will reveal details of spent convictions, and certain professions with vulnerable people are required by law to check applicants’ criminal records. Many employers continue to operate a “tick box” system whereby initial application forms ask about the presence of a criminal records, requiring applicants to disclose unspent convictions. In September 2016 the charity Unlock checked a number of major employers as to whether they had such a “tick box” in their initial application form, the results were startling: nine of the ten leading supermarkets, and 11 of the 14 major retailers requested information on unspent convictions in their initial application forms, as did three of the five hotels, and eight of the 12 fast food chains and restaurants.

It is well documented that a criminal record can make it difficult to find a job. For instance, “a survey by the Chartered Institute of Personnel and development showed that people with a criminal record are part of the “core jobless group” that more than 60% of employers deliberately exclude when recruiting.” (Prison Reform Trust, 2012: 56).

The effect of childhood records could be more pronounced given that young people will not have an employment history to bolster their application. One study from Belgium, looked specifically at childhood criminal records and employment, sending out fictional entry-level job applications of school-leavers, identical except for the inclusion of time in a juvenile detention centre. They found direct discrimination against those with a criminal record, who received 22% less call backs. (Baert, and Verhofstadt, 2013). A study of young adults from Milwaukee produced comparable results. Researchers found that “ex-offenders are only one-half to one-third as likely as non-offenders to be considered by employers suggest[ing] that a criminal record indeed presents a major barrier to employment.” Crucially, these researchers found that black candidates were more affected than white candidates” (Pager, 2003: 938).

These findings accord with anecdotal evidence we have gathered from practitioners and those affected by childhood criminal records in England and Wales. For example:

Frankie has a criminal record and had spent time in custody. He turned his life around, went on to study law, and is currently a year away from graduating with a law degree. However, he has met with many hurdles due to his criminal record... He was turned down for most jobs and work experience he applied for. He experimented with the application forms for various jobs and he reapplied for roles

he had been turned down for with the same CV but a different name, saying that he did not have a criminal record, and he found that he was offered an interview or was offered to progress to the “next stage” when they had automatically rejected him under his real name.

Practitioners, and children themselves, report that the presence of a criminal record can affect people’s motivation to apply for jobs – children feel as if they are being set up to fail and that their prospects are limited. One probation officer told us: “People feel unmotivated to apply for posts – they feel what is the point if my application gets screwed up? They give up from the outset”.

Education

A childhood criminal record can make it more difficult to access education. The University and College Admissions Service (UCAS) advises candidates to declare all unspent convictions, and, if applying for “a course leading to certain professions or occupations” exempt from the ROA, to declare spent convictions too (UCAS, 2017). NACRO advise that in most cases, the same rules apply for college applications (NACRO, 2017)

A study from Chicago, USA, found that arrest significantly affects high school drop-out rates and college enrolment of otherwise similar children. Crucially, they found that institutional response to the criminal record was a key factor in this disparity (Kirk and Sampson, 2013).

Case studies from the UK show that criminal records cause problems in accessing education in England and Wales too:

We had a case where a young female was accepted on a college course in social care... When [her DBS check] did come back it disclosed a conviction for shoplifting. This offence took place during a very difficult period in her life where she lost her father and uncle within a six month time period. When the conviction was disclosed to the college they marched her off the premises and removed her from the course. She was later offered a place on a health and beauty course. She was not given a choice and this is not something she wanted to do. In addition, health and beauty does not fit the demand in the labour market. She wanted to work in a care home.

Unspent convictions can also cause problems. An individual reported to the charity Unlock:

I applied for a place on a Human Resource and Management course at a local university. ...I met all the academic requirements... I filled in the form, ticked the box to say I had unspent criminal convictions and made a full disclosure as requested. It did not take long for me to receive a forty five word email refusing me entry. I appealed but I was refused entry again. At this point, it would have been easy to walk away... However, I decided it was worth one last effort... [Six months after my original application a] letter came through the letter box overturning the original decision to keep me out and offering me a place on the course... We all deserve a second chance, whatever we have done, but be prepared to fight for it – it certainly won’t be handed to you on a plate. (Unlock, 2016B)

The presence of a criminal record can also affect children's motivation to apply for education, both because they feel they may be discriminated against and because they do not want their conviction to be disclosed. One YOT officer told us: "We had one young person who felt so strongly that she did not want her conviction disclosing that she chose not to apply for further education. This could have life-long consequences for the young person."

Impact on rehabilitation

We know that education, employment and housing are key to reducing reoffending and encouraging desistance; none are a "magic bullet" but all have a significant impact. This indicates that widespread criminal records disclosure will inhibit desistance and efforts to reduce reoffending.

In 2013, the government published an analysis of the research around reoffending and desistance (this was not child-specific). This found that people with accommodation problems can be "more likely to reoffend" and that accommodation "can be seen as 'a necessary, if not sufficient, condition for the reduction of reoffending'." Though the relationship is complex, the government found that, "evidence suggests that steady employment ... can support offenders in stopping offending" (Ministry of Justice, 2013A: 8). Similar results were found by a 2013 analysis by the Ministry of Justice on employment and reoffending (Ministry of Justice, 2013B).

Research on children is more limited, though there is evidence that employment, or the chance of employment or "conventional living," aids desistance, and that lack of employment can be a contributory factor in the continuation of offending (Barry, 2009, 2010; HMI Probation, 2016). The housing charity Shelter identifies a link between homelessness and offending amongst young people (Shelter 2005). And HM Inspectorate of Prisons (HMIP) reported in 2011 that children in custody "felt that having something to do, such as a job or education place, was key to stopping them reoffending on release." (HMIP, 2011: 16). Previous HMIP surveys have elicited similar responses. (HMIP 2009, 2011, and 2012).

Lessons from the desistance literature further indicate that criminal records reform could help to reduce offending. As Maruna and LeBel (2010: 78) put it: "If stigma and labelling influence the longevity and persistence of criminal behaviour over time, as the research increasingly suggests, then policy efforts should seek to avoid such penalties, removing barriers to full participation in society whenever possible". In particular, they suggest reducing or removing the stigma created by a criminal record.

Tertiary, also known as relational, desistance - "the recognition by others that one has changed and the development of a sense of belonging" - is increasingly recognised in the desistance literature as "necessary for long-term change" (Nugent and Schinkel, 2016: 570). Nugent and Schinkel outline how criminal records can make "identity desistance" (the development of a non-criminal identity) more difficult, and have a particularly negative effect on relational desistance: when men in the study applied for jobs, "they were confronted with a lack of relational desistance... society at large saw them as (potential) offenders rather than desisters, and rejected them as such" (2016: 574). This undermined hope and, without hope, "sustained desistance become less probable" (Nugent and Schinkel, 2016: 580). The authors recommend criminal records reform.

Aims of the YJ system, child rights and the government's vision

SCYJ believes that, as part of the youth justice system, criminal records should fulfil the aims of the wider system, as set out in domestic legislation and the UN Convention on the Rights of the Child (UNCRC)¹⁴.

Domestic legislation requires that the youth justice system must have regard to preventing re-offending, and promoting the rehabilitation and reintegration of children whilst giving due regard to their rights and welfare¹⁵. The UNCRC, which the UK ratified in 1991, sets out that children in trouble with the law must have their privacy respected, and be treated in a way that promotes their reintegration, and encourages them to assume a constructive role in society (Article 40).

The government has recently set out its vision for the youth justice system. This includes a focus on providing children in trouble with “purpose”, and ensuring all children leaving custody are “earning or learning”, in an attempt to bring down reoffending rates and help children desist from crime (Ministry of Justice, 2016).

If childhood criminal records system is inhibiting access to opportunities and so working against desistance, it is also working against the very aims of the youth justice system and the government's vision for it.

In addition, Article 40 (3) of the UNCRC states that: “Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”. However, there is no separate system for child records in England and Wales (see section on International Comparisons above).

A child-specific criminal records system that promotes the reintegration and rehabilitation of children would far better align with child rights, the aims of the youth justice system, and the government's vision for the system.

Public protection

Public protection is extremely important and there are cases where information must be disclosed in order to ensure this is achieved, particularly for vulnerable people. However, SCYJ believes the current child criminal records system goes far beyond what is required for public protection. As set out above, records have to be disclosed for lengthy periods of time, and sometimes for life. Information continues to be disclosed when it can no longer be considered a reasonable predictor of risk.

SCYJ believes the state should exercise discretion and determine the information that needs to be disclosed, rather than disclosing a large amount of information and leaving employers, and housing and education providers, to determine what is relevant. Employers are naturally risk averse, the disclosure of information puts people off applying for jobs, and disclosure itself gives employers the impression that the information is relevant and a person is a risk (Business In the Community, 2017).

Children change quickly. They may go through a stage of offending, say when they are having difficulties in their lives, and then desist entirely. Children's involvement in offending behaviour is related to an age-crime curve and many desist, or 'grow out' of crime naturally as they mature. Statistics on cautions and convictions have consistently shown a sharp incline in offending behaviour of children from early adolescence that peaks during the mid to late teenage years and then declines sharply (Farrington, 1986).

We need a system that protects the public but which more closely reflects the nature of childhood offending and does not cause undue harm to people who have offended as children. The National Police Chiefs' Council (NPCC) lead on safeguarding has said that a more "nuanced" approach to the disclosure of childhood criminal records could "accommodate the needs of all stakeholders" (NPCC, 2017).

Our recommendations for reform

The childhood criminal records system in England and Wales is disproportionate, damaging, and at odds with the aims of the youth justice system. SCYJ believes fundamentally that children should have the opportunity to move on from the mistakes they have made, and that the system must be reformed to create a more even balance between public protection and rehabilitation.

As set out above, rehabilitation periods are lengthy, and often affect children just as their sentence has finished and they may be trying to change. Some childhood convictions are never spent, which SCYJ believes is unjustifiable – people should have the ability to move on from the mistakes they made as children, and all sentences other than life should be able to become spent at some point. Rehabilitation periods should only apply to more serious childhood offending, where public protection is more likely to be an issue. SCYJ's general approach would be to limit rehabilitation periods to those cases where a court has imposed a severe sentence (particularly custody). Specifically, we would:

- Allow Youth Rehabilitation Orders to become spent as soon as the order is finished;
- Reduce the rehabilitation periods for custodial sentences under two years (including Detention and Training Orders) to six months;
- Reduce the rehabilitation period for custodial sentences between two and four years to two years;
- Allow convictions resulting in custodial sentences of more than four years and less than life to become spent after seven years (currently, these convictions can never be spent).

We would also like to see guidance to police amended, setting out a presumption that under-18 police intelligence is not disclosed on Enhanced records checks.

The chances of reoffending decrease over time. One study has shown that seven years after an offence, the chances of offending become similar to someone who has never offended (Kurlychek, Brame and Bushway, 2006). In principle, SCYJ believes all childhood criminal records that are spent should have the potential to be “wiped” at some point, if certain conditions are met (for example, if they have not offended in the 10 years following the end of their sentence) – the record should be physically deleted from police computers. Other jurisdictions have such provision (see section on International Comparisons above) which is the best way to truly allow children to move on from their mistakes (Maruna and LeBel, 2012). We would like to see such provision introduced in the future, though exceptions for the most serious violent and sexual offences may be required.

In the more immediate term, we would like to see the filtering system expanded and a review mechanism introduced so that discretion can be applied to disclosure. The filtering system is ineffective, allowing disproportionate disclosure of childhood records and there is almost no room for discretion in the system. In particular, we are particularly concerned by the “two offences rule” and the use of the list of exempt offences, and the time it takes

for offences to be filtered. The system needs to be reformed to address these issues. We recommend:

- All under-18 cautions are automatically filtered out after two years, at most;
- There is no limit on the number of under-18 convictions that can be filtered out providing they did not result in a prison sentence. Convictions that did not result in a prison sentence should be automatically filtered, at the most, four years after the person's last conviction;
- Where filtering is not automatic, a review mechanism should be introduced to consider offences for filtering. This could be performed by the police with the possibility of appeal;
- Police guidance should make it clear that if a person has any unspent convictions, none of their convictions should be filtered.

Concluding remarks

The childhood criminal records system is ripe for reform; it is disproportionate, damaging, and works against the aims of, and government vision for, the youth justice system. A new child-specific system is needed which better balances rehabilitation with public protection and better reflects the nature of childhood offending.

Important questions of equity hang over our childhood criminal records system. Since 2008, first time entrants to the youth justice system have, thankfully, fallen dramatically. Many people who received a childhood criminal record before 2008 would be unlikely to receive one now, yet their lives may be seriously affected. We know that looked after children are disproportionately criminalised (Laming, 2016) and that black and minority ethnic children are over-represented in the youth justice system (see, for instance, Lammy, 2016). These groups will therefore experience criminal records more than others.

A series of reviews have now recommended reform of the system, including the government's Breaking the Circle report in 2002 (Home Office, 2002), Lord Carlile's review in 2014 (Carlile, 2014), the Ministry of Justice commissioned review of the youth justice system by Charlie Taylor (Taylor, 2016) and, most recently, a report on the filtering system by the Law Commission (Law Commission, 2017). We add our voice to the calls for change, particularly we encourage a reduction in childhood rehabilitation periods, and an expansion of the filtering system. If the government is to achieve its vision for a youth justice system that provides purpose for children who offend, it would do well to take heed of the numerous bodies recommending change and take action to reform the system.

Endnotes

1. The charity Unlock (2017A) explains, “You retain the right to contact the police directly about information about you which is held on the PNC, and ask them to remove it, through the ‘Deletion of records from National Police Systems guidance’ (see below). However, it is very rare for convictions to be removed under this procedure. The deletion of records from National Police Systems is usually reserved for cases involving non-conviction information (such as unproven allegations, or findings of innocence), or where it can be proved that the arrest was unlawful or where it is established beyond doubt that no offence existed. It is only in exceptional circumstances that the police will remove a caution... If the police agree to ‘expunge’ your caution then the PNC will show ‘no further action’ instead of the caution...even if your caution is ‘expunged’, the information held by the police force could still be disclosed under the ‘other relevant information’ section of an enhanced check, if the police feel that it is relevant and ought to be disclosed.”
2. The PNC holds, “Convictions, cautions, reprimands and warnings for any offence punishable by imprisonment and any other offence that is specified within regulations. It can also access other information such as details of people recently arrested... All police forces in England and Wales have full access. There is an extensive list of non-police organisations with access, including the Disclosure and Barring Service.” The PND holds, “records on intelligence, crime, custody, domestic abuse and child abuse, and allows users to search the data records of all UK forces in relation to people, objects, locations and events. It allows the named users to search full data records of all UK forces.” The main user is the police. (Sands, 2016)
3. Unlock (2017B) explains, “Under the ACPO Retention Guidelines, there is an Exceptional Case Procedure for the removal of DNA, fingerprints and PNC records. As each Chief Police Officer is the Data Controller of their PNC, they have the discretion to authorise the deletion of any specific data entry on the PNC owned by them. However, this discretion is only ever exercised in exceptional cases. Exceptional cases will, by definition, be rare. They might include cases where it can be proved that the arrest was unlawful, or where it is established beyond doubt that no offence existed. A library of circumstances have been collected by the DNA and Fingerprint Retention Project (DNAFRP) that have been viewed as exceptional cases, and this is used to assist Chief Officers by providing a bank of precedents when considering requests to remove records.”
4. Set out in The Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974
5. Unlock (2017C) explains, “Included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as well as being one that is “prescribed” in regulations made under s113B, Part V of the Police Act 1997. The majority of these positions include where there is frequent or intensive contact with children or vulnerable adults, e.g. teachers, doctors or social workers.”
6. Criminal Justice Act 2001, Schedule 3
7. Offences Against the Person Act 1861, s38
8. Ruling by Court of Appeal, 03/05/2017, Secretary of State for the Home Department & others v P and other cases <https://www.matrixlaw.co.uk/wp-content/uploads/2017/05/P-ors-v-SSHD-SSJ-ors-approved.pdf>
9. The last government made changes to rehabilitation periods, which came into force in 2014 (via changes in the Legal Aid, Sentencing and Punishment of Offenders Act 2012). They sought to shorten rehabilitation periods and simplify the system. However, in pursuing the latter, the changes inadvertently lengthened rehabilitation periods for some children (those for YROs were increased, as were Detention and Training Orders (DTOs) for 10-14 year-olds.
10. Up to date housing allocation policies for Bexley, Bromley and Ealing were not obviously available online.
11. London local authorities placing restrictions on people with criminal records accessing social housing are: The City and London Boroughs of: Brent; Camden; Croydon; Enfield; Haringay; Hounslow; Islington; Kensington and Chelsea; Merton; Southwark; Tower Hamlets; and Westminster.
12. Other than where anti-social behaviour is explicitly defined in the housing allocation policy as convictions for other offences, for instance, Westminster, which says applicants cannot join the housing register if: “the applicant or a person in his or her household has been guilty of unacceptable behaviour serious enough to make a person unsuitable to be a tenant. This includes a household in which a person has been prosecuted and found guilty of anti-social behaviour including for example theft, public disorder offences”.
13. R (YA) v Hammersmith & Fulham LBC [2016] EWHC 1850 (Admin)
14. UNCRC plus its associated documents and other relevant international standards. See especially United Nations General Assembly, 1985, Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”); United Nations General Assembly, 1990, Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”) United Nations General Assembly, 1990, Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”).
15. Section 37 Crime and Disorder Act 1998, Section 44 Children and Young Persons Act 1933, Sentencing Guidelines Council, Overarching Principles: Sentencing Youths, para 1.3

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