

BREAKING THE CIRCLE

**A SUMMARY OF THE VIEWS OF
CONSULTEES AND THE GOVERNMENT
RESPONSE TO THE REPORT OF THE
REVIEW OF THE REHABILITATION OF
OFFENDERS ACT 1974**

APRIL 2003

Introduction

A fundamental review of the Rehabilitation of Offenders Act 1974 (the ROA) was announced to Parliament in 2001 by the then Home Secretary, Jack Straw. The review, chaired by the Home Office, brought together a range of organisations and key stakeholders to assess the difficulties with the ROA, and to consider how to develop a scheme for limiting the disclosure of previous convictions which achieves an effective balance between the need to protect the public and the resettlement needs of ex-offenders. The review was given a year to complete its work. The review's report, **Breaking the Circle**, was published as a public consultation document in July 2002.

Over 5,000 copies of the document were distributed to employers, offender organisations, criminal justice agencies and interested individuals. The full document is also available in electronic form on a dedicated webpage of the HO website. The formal closing date for comments was 15 September 2002 but all responses received since that date have been taken into account in this report, and in formulating the Government's response.

Who responded?

Over sixty organisations and individuals commented on the report. This included responses from:

criminal justice practitioners and organisations:

- ACPO
- Association of Magisterial Officers
- Bar Council Law Reform Committee
- Council of Circuit Judges
- Criminal Bar Association
- Lord Chief Justice
- Magistrates' Association
- a number of magistrates
- Police Federation
- individual practitioners including an international lawyer, a police officer, a number of probation officers and a number of Youth Offending Teams

employers, employer organisations and professional bodies:

- Association of Optometrists
- Confederation of British Industry
- Chartered Institute of Personnel Development
- Employer's Organisation for Local Government
- Financial Services Authority

- Institute of Directors
- London Borough of Harrow
- Federation of Small Businesses
- a number of NHS Trusts

voluntary sector:

- Charity Commission
- Nacro
- Niacro
- Prison Reform Trust
- Suzy Lamplugh Trust
- Victim Support
- YWCA

other organisations:

- Connexions Service
- Criminal Records Bureau
- the Office of the Information Commissioner
- the Quakers
- a number of educational establishments, and Select Education plc
- a number of insurance companies, including Motor Conference and Standard Life

other individuals:

- including those who have experienced the requirement to disclose previous convictions, and a number of parents of young people currently required to disclose convictions.

The issues

Consultees were invited to comment on each of the review's recommendations and, in particular, to give their views on the length of the proposed buffer periods. There was an overwhelming welcome for the objectives of the review, and for most of the recommendations. This paper summarises the issues raised by consultees, identifies those areas which gave cause for concern, and sets out the Government's response to the review's recommendations.

The responses in respect of each recommendation were as follows:

Maintaining protection

Certain types of posts, professions and licensing bodies should continue to be excepted from the disclosure scheme.

There was general agreement to the premise that the disclosure scheme must be constructed in such a way that full information is available where the nature of an activity or post applied for calls for a high level of vetting in order to maintain the proper protection of the public. At present the posts and profession excepted from the ROA include work involving unsupervised access to children or vulnerable adults, the administration of justice, national security and certain posts in finance and banking. Licensed activities, including those involving the use of firearms, are also excepted from the scheme. It was widely recognised that it is crucial to maintain all current exceptions.

The only objection came from ex-offenders who feel aggrieved that there should be a lifetime barrier to entering the caring professions. In fact, there is only a ban on ex-offenders taking up employment in a limited range of posts. Requiring disclosure for other excepted posts allows for an informed risk assessment to be undertaken but does not necessarily preclude their appointment. It will be important to address the perceptions of both offenders and employers that the existence of any previous conviction automatically precludes an individual from working in these sectors.

A number of respondents endorsed the review's proposal that clear criteria should be developed to assess suitability for inclusion in the Exceptions Order to limit it to those posts that genuinely require a higher level of vetting.

The Government accepts the review's recommendation, and will seek to ensure that the current exceptions are preserved; future applications for exception judged against strict criteria; and the range of exceptions significantly clarified as part of the proposed reforms to the legislation.

A new judicial discretion should be considered to disapply the normal disclosure periods in cases where the sentencer decides there is a particular risk of harm.

Opposition was expressed by Nacro and the Criminal Bar Association who felt this measure to be unnecessary. However, the recommendation was well received by most respondents, including many employers, who consider it an essential element of the proposed new scheme to ensure an appropriate balance between the need to protect the public and the resettlement needs of ex-offenders. It is not expected to be widely used but it was generally agreed that, in those few cases where there is a significant risk beyond the normal

disclosure period, it is legitimate for employers to continue to have access to information on the conviction.

The Employers Organisation for Local Government considered that where there was a risk of re-offending in the workplace there should not necessarily be a risk of significant harm (as proposed in the report) in order for the discretion to be exercised. This position was also taken by the Financial Services Authority who proposed a criterion of 'risk of harm to the financial services'. Lord Woolf wrote to say that he would prefer the criteria for the exercise of this discretion to be drafted as widely as possible with guidance given to sentencing judges by the Sentencing Guidelines Council.

The Government accepts the review's recommendation, and will develop arrangements for the exercise of judicial discretion in consultation with the criminal justice agencies. It will be important to ensure that sentencers are able to use this discretion to protect the interests of employers, and others, in the limited number of cases where a real risk is perceived.

Ensuring that offenders understand how disclosure requirements apply to them

The requirement to disclose a conviction should be explained as part of the delivery of the sentence.

There was a mixed reaction to this recommendation. The requirement to disclose a criminal conviction is an important consequence of conviction and it was considered by the review that it would be appropriate for the sentencer to explain what the sentence means in practice. The recommendation was welcomed by many respondents, including a number of magistrates. However, the majority of the sentencers who responded to the report opposed the recommendation. It was widely considered that the issue would be lost amongst the many other issues required to be addressed at that point, and that the impact on most defendants would be minimal.

The Government rejects the review's recommendation that there should be a requirement on sentencers to explain the disclosure requirement.

Clear guidance should also be made available through the statutory agencies and other organisations involved with the rehabilitation and resettlement of offenders.

It was agreed by all those who responded on this point that the issue of clear guidance will be vital to support the new scheme.

The Government accepts this recommendation and will work with offenders, offender organisations and criminal justice practitioners to develop appropriate forms of guidance, and effective distribution routes.

Ensuring that employers understand and comply with the new arrangements

A voluntary Code of Practice should be developed for employers to govern the use of disclosures in the recruitment process.

There was widespread support for this recommendation. The review recognised that this scheme can only be effective if employers are familiar with the scheme and adopt fair recruitment practices in respect of ex-offenders.

There was some concern expressed that the Code should be statutory to ensure adherence to fair recruitment practices but this view was far outweighed by those favouring a voluntary Code. A number of respondents offered their assistance with the Code's development.

A number of respondents suggested that the Code of Practice should be equally applicable to others who may ask for disclosure, including insurers and educational establishments, as the scheme will apply to all those who ask for disclosure to inform their vetting process.

The Government accepts the review's recommendation and is keen to work with employer organisations and others to ensure that the advice is accessible to small and large organisations, and offers sound recruitment advice. The development of the Code will also involve the Criminal Record Bureau to ensure that advice is consistent and to avoid duplication. The Government will consider, with representatives of those areas of business, how to ensure that parallel advice can be made available.

As at present, there should be sanctions available if an applicant or existing employee loses a job on the grounds of a previous conviction that they were not required to disclose.

It was agreed by all those who commented on this recommendation that these sanctions should continue to be available to send a clear message to support the proper use of previous convictions, to be set out in the voluntary Code of Practice.

The Government accepts the review's recommendation.

Revising the scheme

The disclosure scheme should be based on fixed periods.

All respondents agreed that fixed periods represents the best way to simplify the scheme.

The Government accepts the review's recommendation.

The fixed periods should be based on sentence, with different periods applied to custodial and non-custodial sentences.

Again, all respondents agreed that this was the best way to simplify the scheme. Most agreed that it would also serve the objective of proportionality as the split reflects differing levels of seriousness.

The Government accepts the review's recommendation.

The disclosure periods should comprise the length of the sentence plus an additional 'buffer' period.

The concept of the length of sentence as ordered by the court as trigger plus an additional buffer period to cover the period of the greatest risk of re-offending was agreed.

The Government accepts the review's recommendation.

Separate disclosure periods should be set for young offenders (aged 10-17)

The Council of Circuit Judges proposed halving the periods for young offenders (as is currently the case) but otherwise there was wide support for the recommendation.

The Government accepts the review's recommendation.

Consideration should be given to the development of criteria to identify young offenders convicted of minor and non-persistent crime so that their records may be wiped clean for the purposes of employment (save through Enhanced Disclosure) at age 18

The proposal for a clean sheet at age 18 received little support. In the main the proposal was considered to be a step too far at this stage. One respondent favoured extending the arrangements to remove the details from Enhanced Disclosures but it was clear that this would be unacceptable to the majority. Most respondents recognised that such a regime, if it was to have value beyond the normal disclosure scheme for young offenders, would involve removing previous convictions from Standard Disclosures. The CRB has pointed out that the number of Enhanced Disclosures currently outnumbers Standard Disclosures by 10 to one. On that basis, and given that the regime would only be acceptable provided that it was only applied to minor offences and non-persistent offenders, the benefit of such a scheme would inevitably be very limited. It is proposed that the recommendation be deferred while the impact of the new disclosure scheme is assessed, with an undertaking to revisit the 'clean sheet' proposal in the future if there continues to be a particular difficulty with the resettlement of young offenders.

The Government has deferred consideration of this recommendation.

Widening the scope

The scheme should apply to all ex-offenders who have served their sentence.

The report recommended that the current 30 month cut-off should be removed so that the scheme applies to all offenders who have served their sentence. This was strongly welcomed by all but the Council of Circuit Judges and the Senior Presiding Judge for England and Wales who proposed that the 30 month cut-off point should be amended to 4 years.

The Government accepts the recommendation, but has taken account of the concerns expressed in considering the appropriate buffer periods for custodial sentences of four years and over.

The new arrangements should be applied retrospectively to bring this group within the protection of the scheme without delay.

The proposal to apply the new arrangements retrospectively was widely considered to be important. Not to do so would also have serious ramifications for the CRB operation.

The Government accepts the recommendation.

Refocusing the disclosure scheme

The disclosure scheme should be devised specifically to assist the employment process, with civil and criminal courts excepted from the scheme.

It was generally agreed that it would be sensible to refocus the scheme on the needs of employers and others outside the judicial system. It was also generally agreed that the civil and criminal courts should remain exceptions to the scheme. The admissibility of previous convictions in the courts is addressed in the Criminal Justice Bill.

The Government accepts the review's recommendation.

Setting the buffer periods

The review report specifically sought views on the length of the buffer periods to be applied to both custodial and non-custodial sentences (and in the case of both adults and young offenders) in order to ensure that they represent an appropriate balance between the needs of protection and the needs of resettlement.

Not all respondents commented on the buffer periods but many were explicit in their support for the periods proposed in the report, widely considering them to be soundly based, proportionate and appropriate. This view was shared by ACPO, CiPD, the Connexions Service, the Information Commissioner, the Magistrates' Association, Nacro, the Prison Reform Trust, the Quakers, the YMCA, the employee relations department of the London Borough of Harrow, Select Education plc, and a number of individual respondents including probation officers, ex-offenders and legal practitioners.

However, other respondents expressed some concern, although the periods for those sentenced to non-custodial sentences was not widely considered to be problematic. The Institute of Directors was alone in favouring a longer period for these offenders, proposing that it should be 18 months.

A number of NHS Trusts generally favoured longer buffer periods for custodial sentences, and the Institute of Directors proposed that the buffer period for all custodial sentences should be 3 years. However, the most common criticism of the buffer periods for custodial sentences was that they did not differentiate adequately between shorter sentences and the longer sentences imposed for more serious crimes. The Council of Circuit Judges agreed that a two year buffer period was suitable for shorter custodial sentences but considered that it should be increased to 5 years for sentences of 4 years and over, with lifetime disclosure for sentences of 10 years and over. The Criminal Bar Association and the Employers Organisation for Local Government agreed

that there should be a distinction between shorter and longer custodial sentences.

In discussion at a series of consultative events hosted by the CBI and the Federation of Small Business, it was clear that in theory some employers would prefer transparency in all cases to enable them to make informed judgements about recruitment. However, it was generally accepted that in practice there is a case for limited disclosure in order to reduce the barriers to employment and therefore to rehabilitation. On that basis, the buffer periods for non-custodial sentences were considered to be about right but there was some unease about those for custodial sentences, and particularly the longer custodial sentences. There was no consensus on the right period although periods of 3 or 4 years were widely mentioned.

The Government considered very carefully the appropriate length for the buffer periods. It was considered that it would appropriate, in the interests of proportionality to differentiate between custodial sentences of less than four years, and those of four years and over. This mirrors the arrangements in place, and widely approved, for young offenders, where a split has been made between custodial sentences of less than 24 months, and 24 months and over. The Government's proposal is that the disclosure periods for adults will be:

- *for those given a non-custodial sentence, the period of disclosure will be the period of the sentence plus an additional buffer period of one year*
- *for those given a custodial sentence of less than four years, the period of disclosure will be the period of the sentence as ordered by the court (including that part served in prison and that part served on licence in the community) plus an additional buffer period of two years*
- *for those given a custodial sentence of four years or more, the period of disclosure will be the period of the sentence as ordered by the court (including that part served in prison and that part served on licence in the community) plus an additional buffer period of four years*

What next?

The list of proposals, attached, will form the basis of legislative reform of the ROA. It is intended that a draft Bill should be published as soon as is practicable to allow for pre-legislative consideration of how the proposals are to be implemented in detail.

Any further comments on the proposed reforms, or requests for copies of this report or Breaking the Circle, can be sent to:



ROA review implementation team
Home Office
Room 471
50 Queen Anne's Gate
London SW1H 9AT

Fax: 0207 273 4219

e-mail: roareview@homeoffice.gsi.gov.uk

Government recommendations for the reform of the Rehabilitation of Offenders Act 1974

Certain types of posts, professions and licensing bodies should continue to be excepted from the disclosure scheme.

A new judicial discretion should be introduced to disapply the normal disclosure periods in cases where the sentencer decides there is a particular risk of significant harm.

Clear guidance to offenders should be made available through the statutory agencies, and other organisations involved with the rehabilitation and resettlement of offenders.

A voluntary Code of Practice should be developed for employers to govern the use of disclosures in the recruitment process.

As at present there should be sanctions available if an applicant or existing employee loses the job on the grounds of a previous conviction that they were not required to disclose.

The disclosure scheme should be based on fixed disclosure periods.

The fixed periods should be based on sentence, with different periods applied to custodial and non-custodial sentences.

The disclosure periods should comprise the length of the sentence plus an additional 'buffer' period.

The buffer period to be applied in the case of adult offenders should be one year (following a non-custodial sentence); two years (following a custodial sentence of less than 4 years); and four years (following a custodial sentence of 4 years or more).

Separate disclosure periods should be set for young offenders. In these cases there will be no buffer period added to the period of the order for non-custodial sentences but there will be a buffer period of one year (for custodial sentences of less than 24 months) and two years (following a custodial sentence for 24 months or more).

The scheme should apply to all ex-offenders who have served their sentence. The new arrangements should be applied retrospectively to bring this group within the protection of the scheme without delay.

The disclosure scheme should be devised specifically to assist the employment process, with civil and criminal courts excepted from the scheme.