

Introduction

The Criminal Justice Voluntary Sector Forum and its members welcome this opportunity to provide evidence in response to the Education and Skills Committee's call for views on the Disclosure (Scotland) Bill. This response has been developed through discussions with our membership and draws on their experiences both as employers and as service providers working with those in the justice system.

The Criminal Justice Voluntary Sector Forum (CJVSF) is a national network of voluntary sector organisations working in criminal and community justice in Scotland. CJVSF is hosted by the Coalition of Care and Support Providers in Scotland and, with the help of its members, aims to:

- Support voluntary sector collaboration in justice
- Strengthen the third sector's role in local Community Justice processes
- Strengthen the involvement of the third sector in national community justice, penal policy and legislative development
- Support third sector organisations to continually improve their own practice and contribute to the development and sharing of good practice

CJVSF Support for the General Principles of the Bill

CJVSF members support the general aim of this Bill to introduce a more individualised and proportionate approach to the disclosure of previous criminal convictions and safeguarding under the Protection of Vulnerable Groups Scheme.

As the Scottish Government have recognised in their National Strategy for Community Justice, being able to access employment, education and housing are key in ensuring that people with criminal convictions are able to re-establish their lives and to become contributing members of society as they put their past offending behind them. Research shows that employment in particular can be a key factor in ensuring that people in contact with the justice system are able to achieve their potential and to lead lives free of crime.

A criminal record, however, particularly one that involves a period of imprisonment, can be a barrier to people establishing productive lives and people can suffer considerable stigmatisation as a result of having to disclose previous criminal convictions. Evidence would suggest, for example, that employers are less likely to hire a person once they become aware of their criminal record. These negative effects are especially serious for children and young people, who may receive a conviction early in life that then follows them for the rest of their lives despite their best efforts to put their offending behind them as they grow older.

The current system makes these problems worse as it does not distinguish between relevant and irrelevant convictions. Disclosure checks and the PVG Scheme record currently reveal all unspent convictions and, in some instances, any spent convictions

on the Schedule 8a or 8b lists. The system at present also allows the sharing of non-conviction information, called Other Relevant Information, which is passed on by Police Scotland through certain disclosure checks and through the PVG scheme monitoring processes. The system also provides people with very limited opportunities to challenge or review what is disclosed about them and the current process of application to a sheriff to challenge the disclosure of information is slow and expensive to pursue. This means that people are having to disclose previous criminal convictions that may have no bearing on their current situation and which may unfairly prevent them from accessing employment or education that would help them to make a positive contribution to society.

The changes introduced by this Bill, however, offer an opportunity to move towards a more proportionate and balanced system of disclosure that limits the unnecessary sharing of a person's criminal record. CJVSF members were particularly supportive of the introduction of changes that limit the disclosure of criminal convictions for those under the ages of 18 and the introduction of new review mechanisms to allow people to challenge the unnecessary disclosure of irrelevant convictions. We believe that the changes in this Bill will support more people to build positive and productive lives as they put their offending behaviour behind them and enter into employment or education, whilst still allowing for the disclosure of criminal conviction information to ensure that vulnerable children and adults are protected.

CJVSF Members Views on the Proposals in the Bill

The views of CJVSF members on specific aspects of the Bill are set out in the sections below.

Changes to the disclosure of criminal convictions received between the ages of 12 and 17

CJVSF members support the introduction of changes to disclosure for those convictions obtained by people aged 12-17 at the time of their conviction. Evidence is clear that offending behaviour by children and young people requires a different approach to that of adults and that the negative effects of the justice system on children and young people are profound. CJVSF members therefore support the proposals in the Bill to greatly reduce the amount of information automatically revealed about childhood convictions whilst retaining the ability to disclose those serious convictions that may be relevant to future checks.

Whether the proposals included in the Bill are successful or not will depend on the internal processes and guidance developed by Disclosure Scotland to determine whether a conviction obtained between the ages of 12 and 18 should be disclosed. The current tests set out in Paras. 102 & 103 of the Policy Memorandum lack clarity and risk a broad interpretation that could lead to little change from current practices. Developing comprehensive guidance on what constitutes a relevant offence and on the frameworks that should be used by Disclosure Scotland in determining whether to disclose a criminal conviction will be vitally important. To do this effectively Disclosure Scotland will need to ensure that they engage with a range of stakeholders, including with people who have received convictions when young.

CJVSF members also stressed the need to ensure that a decision to include a childhood conviction as part of a disclosure check is not seen by employers as being determinative of an individual's suitability for a role. There is a risk that employers will

take Disclosure Scotland's decision to disclose a criminal conviction as an assessment that the person they are considering is not a suitable or safe candidate by virtue of the decision that a previous conviction "ought" to have been disclosed. Disclosure Scotland will therefore need to ensure that sufficiently clear explanations of why a conviction is being disclosed are provided to employers. This will also need to be reflected in the training Disclosure Scotland provides to employers.

Disclosure Scotland review of convictions and role of independent reviewer

CJVSF members welcomed the proposals in the Bill to introduce an internal review process for the disclosure of relevant convictions obtained between the age of 12 and 17 and for the review of disclosure of Schedule 8a and 8b convictions. Members also supported expanding the role of the independent reviewer created by the Age of Criminal Responsibility Act to allow individuals to appeal against the inclusion of criminal conviction information on their disclosure and PVG scheme records.

These are considerable improvements on the current processes, which provide no right of appeal for the disclosure of the majority of criminal convictions and allow only limited rights of appeal through the courts for those convictions on the 8a and 8b lists.

The processes surrounding the internal Disclosure Scotland reviews and the independent reviewer will, however, be key to ensuring that the system is fair and effective when considering appeals. CJVSF members expressed concerns that the Financial Memorandum proceeds on the assumption that the independent reviewer will be engaged for around 4 days' work per month to process any appeals that follow the internal Disclosure Scotland review process. CJVSF members were concerned that this may lead to delays in processing review applications and therefore in the late return of disclosure checks.

CJVSF members observed that, particularly for those leaving prison, gaining access to employment quickly can be of vital importance in helping people to desist from criminal behaviour and to rebuild their lives. Many jobs are also time sensitive and employers may not be willing or able to keep them open while awaiting the results of a prolonged disclosure check. Inefficient appeal processes could cause delays and if a check takes considerably longer than normal this risks making employers aware of previous criminal convictions, undermining the whole purpose of an appeal process. It is therefore essential that Disclosure Scotland and the independent reviewer establish efficient processes to ensure that all appeals are processed quickly and backlogs are avoided.

CJVSF members were also concerned that the proposals for review do not allow for the permanent removal of conviction information from a person's record, only the removal of previous convictions from individual disclosure checks. It is our understanding that there will be only a limited number of circumstances in which a determination to remove a conviction from disclosure check will have a lasting effect (i.e. where a determination has been made that a previous conviction should be removed from a Level 2 check and the person later moves to a new job in a similar role). It seems contrary to the intent and purpose of the Bill that a conviction that has previously been judged irrelevant to a person's current circumstances should continue to follow them every time they have to make a disclosure check and that they should have to pay every time to challenge it. The legislation should therefore allow for the possibility of permanently removing historic convictions that no longer bear any relevance on an individual's behaviour.

Online by Preference

CJVSF members agree with the general principle of establishing an online system for disclosure and the PVG scheme. This will facilitate easier access and applications for a majority of people.

It is important, however, that the system is still able to process paper applications to ensure that everyone is able to use the system. This is particularly important given that people in prison are not able to access the internet but may still need to apply for disclosure checks before they can start a new job upon their release. Any changes to the system will need to ensure that people are not prevented from entering employment because they are unable to access the online platform.

CJVSF members also noted that any future system will need to be easily accessible and understandable by the people using it. A considerable body of evidence suggests that people in the justice system are more likely to have speech, language and communication needs, lower educational attainment and higher rates of learning difficulties and disabilities than the general public. Any new system will need to provide easy read versions of information and processes to ensure it is accessible for everyone.

Fees

CJVSF members were concerned that current fee proposals put forward by Disclosure Scotland are prohibitively expensive, particularly given that many people coming through the justice system face considerable financial disadvantage. Those in receipt of benefits or leaving prison with only a small liberation grant may not be able to afford the fees required to make applications or to appeal decisions to disclose their criminal convictions. To deny them the opportunity of employment or education on the grounds that they cannot afford to pay a fee to Disclosure Scotland would be perverse. Any changes to fees will therefore need to include the possibility of fee waivers to ensure that no one is prevented from accessing a disclosure check because they have insufficient funds to do so.

Training, Guidance and Support for People with Convictions and Employers

CJVSF members stressed that the success of these changes will depend largely on how Disclosure Scotland can engage with people with convictions and employers to help them to understand the new system of disclosure and PVG checks. While the changes set out in the Bill do simplify the system these will need to be communicated clearly to those affected by them. Engaging the voluntary sector and people with convictions in developing that training and guidance will be vital in ensuring it is effective. More generally, it will be important for Disclosure Scotland to continue to engage with employers to help them to understand disclosure and how to properly consider previous criminal convictions.